

**Greenways
Little Blakenham
Suffolk
IP8 4NH**

DC/21/04711

Bron Curtis
Case Officer
Mid Suffolk District Council
Endeavour House
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Sent to: bron.curtis@baberghmidsuffolk.gov.uk

11 September 2023

Dear Bron

OBJECTION TO APPLICATION FOR PLANNING PERMISSION - DC/21/04711

Proposal: Planning application – Change of use from agricultural land to solar farm etc
Location: Land north of Tye Lane, Bramford, Suffolk

This is a late paper commenting on the Committee Report which I should be grateful if you would draw to the Committee's attention.

The local development plan appears to me to encourage renewable energy development in Mid Suffolk in a particular way which is adapted to the local context. The Committee Report, however, takes the view that the plan encourages renewable energy development generally so long as impacts can be made acceptable, which is not the same thing.

It is not the same thing because it would mean that the proposal is in accordance with the plan whereas, if I am right, it would not be. Different consequences follow depending on which view is correct.

The question is not whether renewable energy development should be encouraged in Mid Suffolk but how? Should it be in the fields or on rooftops? That is the question. The answer depends in part on one's view of the meaning and effect of the development plan. This letter seeks to explain briefly how this question arises and how I believe it should be answered.

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The local development plan

1. How renewable energy should be encouraged is a question that arises out of Mid Suffolk's local development plan, which sets out its policy towards renewable energy schemes as Policy CS3 of the Core Strategy. It is a question of interpretation.
2. The Committee Report takes the view that the plan encourages renewable energy development generally, so long as impacts can be made acceptable.¹
3. That is not, however, what Policy CS3 says. While encouraging "stand alone" schemes, it requires the integration in all major non-residential development proposals of a specified level of renewable energy technology.² In other words, it expressly limits its support for renewable energy generation to stand alone schemes and technologies that are integrated into the built environment.
4. Stand alone power systems are small scale off-grid electricity systems.³ Schemes that are integrated into the built environment are typically rooftop solar systems of the kind that current government policy is seeking to encourage in commercial, industrial and domestic properties.⁴
5. Which is the correct interpretation?
6. The principles applicable to the interpretation of development plan policy are, I believe, well settled. Ultimately it is a matter of law for the court. The decision-maker must, in the words of a leading planning judge, seek to discern the sensible meaning of the policies in question in their full context, including the objectives to which the policies are directed, other relevant policies in the plan and the relevant supporting text.⁵
7. In this present case, the objectives include meeting the challenge of climate change.⁶ Other relevant policies in the plan include those for development to be sustainable in the local context,⁷ including protecting BMV land⁸ and Mid Suffolk's visual character and amenities.⁹ The relevant supporting text is discussed below.
8. Part of the context is the passages in the supporting text that deal with climate change and delivering sustainable development. The plan recognises that climate change is

¹ Committee Report paragraph 4.15.

² Policy CS3, first and last paragraphs.

³ See for example the description in Wikipedia.

⁴ Current government policy is to seek widespread deployment of rooftop solar: see page 20 of Powering Up Britain, Department of Energy Security and Net Zero, March 2023.

⁵ Lindblom LJ in *Gladman Developments v Canterbury City Council* [2019] EWCA Civ 669 paragraphs 21 and 22.

⁶ See Core Strategy Chapter 3 Strategic Policies and the section headed Climate Change.

⁷ Policy FC1 on sustainable development.

⁸ Policy CL11 and see also Core Strategy 1.40: "Development will be refused on high quality agricultural land ..."

⁹ Policy CS5 on Mid Suffolk's environment.

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one of the biggest challenges facing Mid Suffolk.¹⁰ It aims to strike a sustainable balance between the local social, environmental and economic considerations.¹¹

9. In striking that balance, the plan says there are some “key local considerations” with a particular bearing on the balance, one example being that it would often be difficult to accommodate “large-scale, on-shore renewable energy generation.”¹²
10. It does not seem hard to discern from this the sensible meaning of Policy CS3. Far from encouraging renewable energy generally, I suggest that the context confirms that the Policy means what it says: that it is intended to promote and encourage smaller stand alone schemes and to require all major non-residential development proposals to integrate at least a specified level of renewable energy technology in their construction. It is a policy that responds to the challenge of climate change in a way that is sustainable in the particular circumstances of Mid Suffolk.
11. I recognise that only a few weeks ago a planning Inspector interpreted Policy CS3 in the more general way favoured by the Report but I am not aware that any rule of precedent requires the Committee to follow that interpretation. And with all due respect to the Inspector, I believe for the reasons set out above that the better view is that Policy CS3 does mean what it says and that the proposal for a large scale renewable energy development is therefore not in accordance with Policy CS3.
12. This is not a case where the Committee has to resolve a conflict between policies that pull in different directions.¹³ It is a case where all relevant policies pull in the same direction, that is to say towards refusal: Policy CS3 favours particular kinds of renewable energy schemes that are tailored to local conditions in Mid Suffolk, Policy CL11 protects BMV agricultural land against the kind of development that is proposed and Policy CS5 protects the distinctive landscape and environment of Mid Suffolk.
13. I suggest therefore that the local development plan encourages renewable energy development in Mid Suffolk in a particular way which is adapted to the local context and that the large scale development proposed by the applicant is not in accordance with it. If that is right, and I believe it is, the application should be refused unless material considerations indicate that the Committee should depart from the plan.

Material considerations

14. Whilst the plan has statutory primacy, and a statutory presumption in its favour, the application may nevertheless be decided otherwise than in accordance with it if material considerations so indicate.

¹⁰ Core Strategy paragraph 3.1.

¹¹ Focused Review paragraph 3.6.

¹² Ibid paragraph 3.7.

¹³ Unlike, for example, the decision of the Court of Appeal in *Corbett v The Cornwall Council* [2020] EWCA Civ 508.

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15. It might seem that the question for present purposes is simply whether the Government's net zero agenda is a material consideration that outweighs all others. I suggest that that is not so. The question in that form assumes that other material considerations are in some way in conflict with the net zero agenda. But in this present case they are not in conflict. Both the net zero agenda and Mid Suffolk's renewable energy policy are a response to climate change. They are pulling in the same direction. Like government planning policy in the NPPF,¹⁴ the plan supports the transition to a low carbon future and an increased use and supply of renewable energy.
16. In these circumstances the question must ultimately be about the planning balance that underlies Mid Suffolk's renewable energy policy in favour of smaller and rooftop schemes. It is a balance that is designed to be sustainable in the local social, economic and environmental context, where considerations such as the protection of BMV agricultural land and landscape character are highly material. The question is whether that planning balance is still the right balance in today's conditions, where the consequences of climate change are ever more apparent but where solutions need to be sustainable in the local context.
17. Policy CS3 meets the challenge of climate change in a way which is sustainable in the context of Mid Suffolk, particularly in relation to the protection of BMV agricultural land and landscape. It is also fully in accordance with the latest statement of government energy policy in "Powering Up Britain"¹⁵ and with the NPPF. Far from indicating a departure from the plan, the net zero agenda supports the plan, which is consistent with that agenda and with government policy generally. To depart from the plan would not seem to be a reasonable exercise of planning judgment.

In an area where most of the agricultural land is high quality and there is little brownfield land available, it is surely the case that the investment opportunity in solar lies not in the fields but in the kind of rooftop developments that the government is seeking to encourage and for which the plan already provides. I suggest that the Committee should be slow to disturb a plan that has been developed as a sustainable response to climate change in Mid Suffolk.

For all the reasons set out above, I submit that the proposal does not accord with the development plan and that planning permission should be refused.

Yours sincerely

Tony Ballard
Solicitor (retired)

¹⁴ NPPF paragraphs 152 and 155.

¹⁵ See footnote 4 above.

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11th September 2023

Dear Ms Curtis

Ref: DC/21/04711 - Land North of Tye Lane Bramford Suffolk

We write on behalf of our client the Little Sage Hill Caravan and Camping Site in relation to their ongoing objection to the EDF Renewables application ref. no. DC/21/04711 for a ground mounted solar photovoltaic array and associated infrastructure on land north of Tye Lane, Bramford.

Whilst our clients acknowledge the climate challenges facing our planet and the need to increase the sustainability of our energy production in the UK, this application for a large solar farm adjacent to their business which relies on the surrounding natural environment to attract visitors, is proposed to be sited in a highly sensitive and therefore inappropriate location.

Following a review of the application documents and national and local planning policies, a detailed report was submitted in October 2021. This report set out our client's grounds for objection based on how the proposed development will cause harm to the countryside, biodiversity, residential amenity, increase the risk of flooding nearby and result in the loss of best and most versatile agricultural land. These material considerations, viewed either cumulatively or in isolation, represent sufficient grounds for refusal of this application.

Our client is not satisfied that these points have been addressed by the applicant in the period between the initial application consultation and now, and is concerned about the process of assessing the planning balance by the Local Planning Authority as a result. We have reviewed the published Committee Report for this application which is due to be heard at Mid Suffolk Planning Committee on the 13th September 2023, and wish to raise a number of concerns as set out below.

Impact on Amenity and Tourism

The application site is adjacent to the Little Sage Hill Caravan and Camping site which is a certified Caravan and Camping Club site with a total of 5 caravan pitches and 10 tent pitches. The Campsite is marketed as being 'a Hideaway in the middle of beautiful Suffolk Countryside' and is described as follows on the Caravan and Camping Club website:

"Here, in the beautiful, Suffolk countryside you will find peace, quiet, an abundance of wildlife and be surrounded by many varied species of trees and plants."

Copenhagen Cottage is located close to the northern boundary of the site at a distance of approximately 80m from the nearest proposed solar panels. The garden area associated with the property extends south and west of the property and the camping and caravan site adjoins the garden areas to the east of the property.

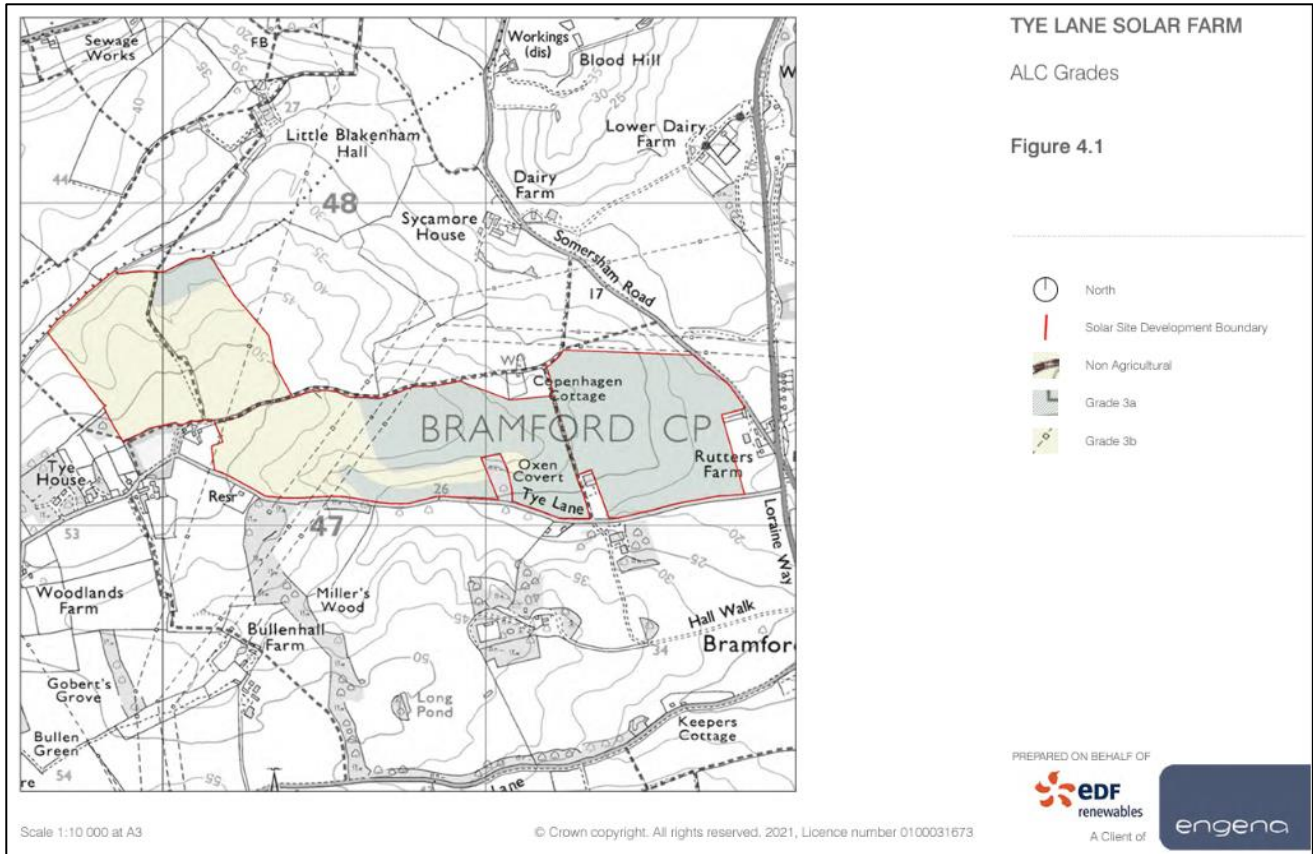
Simply put, our client's reason for operating a camping site will be removed should this application be approved.

The impact on amenity will be significant and the change in outlook for guests from open fields to a solar electricity generating station threatens the existence of this business because it will no longer be a tranquil, rural tourist destination. The site currently benefits from long range views over these fields, and this is a key factor for guests opting to stay at the site. Effectively, the mitigation put forward would act to block these valued views for the long term in order to provide inadequate screening to the proposed development in the short term.

The recommendation reached in the Committee Report has not sought to apply any weight in the planning balance to the impact of the proposals on our client's business, or the impact upon the rural economy should this visitor attraction be forced to close. We feel this is a serious oversight and the planning balance should be reassessed as a result of the loss of this valued resource for countless people over the life of the project. Paragraph 187 of the NPPF is clear that "Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses".

Agricultural Land Quality

The application site is identified on the Natural England East Region 1:250,000 Series Agricultural Land Classification map as Grade 2 land (Very good quality agricultural land). The ALC gradings according to the applicant differ and are identified as being 52.5% grade 3a (BMV land), 47.1% grade 3b, and 0.7% non-agricultural. This is shown graphically on the map below which forms part of the ES documentation, where there is a clear division between the Grade 3a BMV land and the 3b land. Our clients land falls entirely within the Grade 3a BMV area and it is disappointing that EDF have not amended their scheme to remove this higher quality agricultural land from the application.



The Written Ministerial Statement (WMS) dated 25 March 2015 and the more recently published Government Energy Security Plan ‘Powering Up Britain’ of 30 March 2023, did not place a restriction on the use of BMV land for solar, but there was a clear emphasis placed on the priority being the utilisation of roof tops and brownfield land (Page 37). In relation to ground mounted arrays the Plan states on Page 37-38 that “The Government seeks large scale ground-mount solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land.

Planning Practice Guidance suggests maintaining agricultural use during the operational phase of the development, such as through sheep grazing. The Committee Report maintains that sheep will indeed be grazed under the panels. However, this is no longer possible as the height of the panels has been reduced to a height which would present welfare issues for sheep. Paragraphs 5.8 and 5.9 relating to sheep grazing and continued agricultural use are therefore inaccurate and the weight attributed to the loss of BMZ agricultural land in the planning balance should be increased. Indeed, the application makes no such claim regarding sheep grazing.

Our client has liaised with Care Suffolk and we note the comments in their rebuttal letter around the claims made of improved soil quality on solar farms. Despite numerous requests to solar farm operators, including EDF, no evidence has been provided to substantiate these claims. Care Suffolk also sent FOI requests to both the Department for Levelling Up, Housing and Communities (DLUHC) and Natural

England asking for such evidence. DLUHC replied with a few studies that actually showed a decline, and Natural England replied with no studies but stated the following:

“With regards to long term impact of the solar array on soil quality (which include properties that reflect current management practices, i.e. variable soil properties), there could be a disbenefit to the soil resource due to unknowns as a result of the solar development infrastructure. It is currently unclear as to what impact the solar panels may have on the soil properties such as carbon storage, structure and biodiversity. For example, as a result of changes in shading; temperature changes; preferential flow pathways; micro-climate; and vegetation growth caused by the panels.”

The reality is that the whole area is being taken out of agricultural use and the current high quality of the soil will be lost permanently.

Landscape Impact

The application is for a solar farm of 85ha for a duration of 35 years (subject to future extension). The proposal would consist of 114,000 solar panels mounted onto a metal framework 2.5m high, along with 20 containerised units up to 3.4m high.

In 2018 a Settlement Sensitivity Assessment was carried out by MSDC in conjunction with two other district councils. It separates the fringes of Bramford into 3 areas, BF1 being relevant to the proposed development. It states at Page 29 that the land “is valued as a rural landscape setting to the village which reinforces the location of the settlement within the Gipping Valley” and goes on to conclude that “This area is sensitive to development where it would appear visually prominent on the valley slopes... Development should not rise onto higher undulations or upper valley slopes which would be uncharacteristic.”

Paragraph 7.5 of the Committee Report states “On the proposals, it is clear that the proposed development would have a significant visual impact on the agricultural character of the landscape in the area as a result of the change in appearance of the site arising from the development, by introducing solar arrays, but also industrial features such as fencing, CCTV cameras and tracks. In turn, this would significantly change the character of the landscape and reduce the overall value and quality of the site.”

It is of great concern that paragraph 7.6 confirms that the Council’s Landscape officer generally agrees with the conclusion in the submitted LVIA that significant effects on the landscape character are inevitable.

Further landscape mitigation is suggested at Paragraph 7.7, although this has not been agreed and it is therefore unclear how this will be secured as it is not being offered by EDF. The network of PROWs are widely used by guests at Little Sage Hill as well as by the local community. Paragraph 6.12 acknowledges that there will be significant effects in terms of views and experiences from the ProW network.

Paragraph 7.8 considers the cumulative impact of the solar developments and states that “there is some concern however that depending on the routes walked, PROW users may encounter multiple views of solar developments along the route, where these travel past or through the developments.”

There are outstanding concerns from the PROW Officer at SCC as well as many concerns raised by members of the community, as noted in paragraph 6.9 of the report, demonstrating that these PROWs and the amenity that they provide are very important to the local community.

The temporary nature of the proposed development is largely used to justify the conclusions reached in paragraph 7.11 where it is stated “When weighing the landscape and visual impacts of the development in the overall assessment of the proposal it is also necessary to consider the public benefits of the development as an installation for the generation of renewable energy. Overall, there are not considered to be grounds to refuse the application on this basis.”

It is not appropriate to view this as a temporary development as the consent could be extended at a point in the future way beyond 35 years. Regarding the so-called ‘temporary nature of the installation’, appeal inspectors have pointed out that such timeframes represent a significant period in people’s lives, during which the solar development would seriously detract from landscape character, and visual amenity (see the concluding sentence in the 2022 Appeal decision APP/M/ 005/W/22/3299953-Land NW of Hall Farm, Alfreton).

The mitigation proposed is planting of hedges which will firstly, take a long time to establish, but secondly, will also have the effect of interrupting the important views. In the meantime, the panels themselves will have this effect. Therefore, in relation to screening and concealment, the site is on a prominent site and cannot be effectively screened.

There is therefore agreement on both sides that the proposal will adversely affect the character of the landscape. This application is much larger than the adjacent Enso application, is located on areas of higher ground and is more widely visible. It is not only visible from Tye Lane and Somersham Road, but also Bramford village, Whitton Leyer in Bramford, the cemetery, and from arrival at the campsite and every PROW in this area.

We strongly believe that this harm and the protection recommended in the 2018 Settlement Sensitivity Assessment should be given far more weight in the planning balance. Without further mitigation, which isn’t being offered, there has been significant harm to the landscape identified, which hasn’t been made acceptable as required by Paragraph 158 of the NPPF.

Noise

Paragraph 10.7 of the Committee Reports states “Whilst solar arrays are not considered to be significant sources of noise, the development includes electrical/mechanical equipment that will produce some noise when operational which has the potential to be heard at nearby residential properties, affecting the level of amenity enjoyed by occupants.

Paragraph 10.8 confirms that the applicants noise assessment sets out the likely impact of the operational phase of the development and explains that the equipment is expected to operate from 04:30am to 1 hour after sunset in the worst-case scenario. Their assessment finds that, “when operational, the noise from the development perceived at the nearest noise sensitive receptors, as detailed above, would be below the guideline level in every case.”

During the lengthy 6-month construction period there will be considerable noise from piling, site works, site traffic, construction workers etc. The result will be an undesirable environment for a camp site.

There will be a permanent hum of electrical equipment during the operational phase along with regular disturbance caused by maintenance operations such as grass cutting, strimming and power washing the panels. There has been no consideration for this noise impact on nearby homes and businesses. The Campsite will be affected due to its location north of the array so the sound will be carried by the prevailing southerly winds and will be particularly at risk of disturbance due to the outdoor nature of this tourist business with guests sleeping under canvas and eating and socialising outdoors.

Paragraph 13.78 of the applicants Noise Assessment states “The predicted specific noise levels are very low at the identified receptor locations. The levels are sufficiently low to assume that any distinguishing features i.e. tonal content or intermittency, would be masked by other environmental noise: bird song, wind noise etc. We would argue that the sound of lawn mowers, strimmers and power washers would not be drowned out by bird song or wind noise.

The specific requirements for noise levels at a campsite have not been considered. Typical mitigation suggestions such as shutting windows simply isn’t appropriate for this business when guests will be sleeping under canvas. The unique selling point and reason for being in this location will be lost if the fields surrounding the campsite are developed. The operational hours will extend late into the evening during the summer months and the maintenance rota will be continual in order to keep the panels clean and the grass under control. How long does it take to strim around and clean 114,000 solar panels before you need to start at the beginning again?

Overall, there needs to be weight attributed to the noise impacts and loss of amenity to residences and businesses in the planning balance within the Committee Report.

Traffic/Highways

Access for the proposed Solar Farm during both the construction and operational phases is via the same private track entrance off Tye Lane. This access is also used to access Little Sage Hill Caravan and Camping site, the owner’s private residence (Copenhagen Cottage), the farm, and also forms part of the Public Footpath network.

Paragraph 10.3 of the Committee Report states that “There will be increased traffic movements in the area during the period of construction, however, once the development is operational it will be unmanned so there will minimal disturbance impact from vehicle movements associated with the development.”

If this is the case, then a suggestion would be to remove the works suggested in the access plans which are considered to be excess in scale and out of character with the ‘Quiet Lane’ status. The new access from Tye Lane will effectively create a large, industrialised entrance for access to our clients campsite. Our client comments that “Currently the unmade road provides a sense of adventure and leaving the world behind when you turn onto it and the holiday at Little Sage Hill Hideaway begins”.

The private track affords wide unbroken views of farmland and the Suffolk countryside for guests currently arriving at the site. This character will be changed and instead the access track will appear to wind its way through a mass of solar panels rising to the west and falling away to the east, resulting in extensive views of the arrays.

Paragraph 110 of the NPPF requires that safe and suitable access should be secured for all users. This is referenced at Paragraph 6.2 in the Committee Report.

The Committee Reports concludes in Paragraph 6.14 “In assessing the overall highway safety and PROW impacts of the proposal, in terms of the NPPF and Development Plan considerations, it is concluded that the proposal would not result in any unacceptable impact on highway safety or a severe impact on the highway network when considered alone or cumulatively with other development in the area. Furthermore, the development would not have any unacceptable impact on users of the rights of way network. There is considered to be no grounds to refuse the application on these issues.

Our client contests the conclusion that has been reached as there has been no Risk Assessment carried out to ensure the safety of users of the PROW along the access track as well as the combination of construction and private vehicles. It is attested that that safe and suitable access as required by the NPPF cannot be secured for all users during the construction phase. This represents a considerable period of time and therefore the identified conflicts between users of the track during this period should be given greater weight in the overall planning balance.

Ecology

The Committee Reports states at Paragraph 8.4 that “A number of concerns have been raised regarding the impact on ecology”.

Indeed, we note that Place Services has submitted a Holding Objection as they are still not satisfied that there is sufficient ecological information available for determination of this application, due to loss of nesting availability for Skylark.

Paragraph 8.7 of the Committee Report confirms that the ecology officer’s main concerns in respect of ecology impacts arising from the development include the construction method for the grid connection cable, impacts on protected species and habitats and the impact of external lighting within the site. Moreover, Paragraph 8.14 confirms that “The development will affect ecology within the site and surrounding area”, but that “the proposed development is not considered to have an unacceptable impact on ecology that would warrant refusal of the application”. It is not clear how this position has been reached given the Holding Objection from Place Services as the Council’s ecology adviser in relation to the displaced 12 Skylark territories.

Place Services state in their letter dated 31 August 2023 that “an outlined strategy could be provided to support this application, to demonstrate that a suitable mitigation strategy can be delivered, with the finalised Skylark Mitigation Strategy to be secured as a pre-commencement condition of any consent or legal agreement. This further information is necessary to allow the LPA to demonstrate it has met its biodiversity duty under the NERC Act 2006 (as amended) for Skylark.”

We are not aware of the existence of an “Outline Strategy” and therefore impacts on protected species should be given considerable weight in the planning balance. Furthermore, it is unusual for an application to be determined without a suitable solution in place, especially considering the complex on and off-site mitigation requirements for Skylarks.

If the Council cannot demonstrate it has discharged its duties under the NERC Act 2006, as pointed out by the ecology officer, then it would be open to legal challenge if it were to approve this application. For this reason alone, the application should be refused.

Heritage Impact

In relation to heritage assets, the Committee Reports states at Paragraph 11.8 that “the development would result in no harm to Tye Farmhouse and that the impact on Rutters Farmhouse is at the lower end of less than substantial harm, by reason of the change to its setting arising from the development.”

In relation to archaeological remains the Committee Reports states at Paragraph 11.12 The SCC Archaeology officer advises that, “although the archaeological investigation works show that the development will damage or destroy known archaeological remains, and that there is potential for further remains to be impacted in areas which have not been investigated, there are no archaeological grounds to refuse permission and a condition is recommended to record and advance understanding of the significance of any heritage asset before it is damaged or destroyed.

We would contest the position taken both with respect to harm attributed to the impact on identified heritage assets and the known archaeological remains. Both matters should be given greater weight in the planning balance rather than simply being dismissed due to the “public benefits of the proposal” (Paragraph 11.13).

There is a risk that the Council are not undertaking the duty imposed on them by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which sets a presumption against the grant of planning permission which causes harm to a heritage asset. This duty requires that a finding of harm, even less than substantial harm, to the setting of a listed building is a material consideration to which the decision-maker must give “considerable importance and weight”.

Flood Risk

Concerns are also raised in relation to the impact of the development on flooding, in particular the potential to exacerbate surface water flooding along Tye Lane. Flooding along Tye Lane is an annual problem which makes the road impassable, often several times a year. The water level in the winter of 2022/23 was so deep near the junction of Tye Lane/B1113 that the southern road verge collapsed and a telegraph pole had to be replaced. Our clients are also concerned that they are downhill of the development yet there are no drainage ditches included to protect the campsite, their property, the access track or the northern part of their land ownership which has planning permission for caravan storage.

Paragraph 9.4 of the Committee Report confirms that “*The FRA states that all built development... would be located within FZ1 and explains the surface water risk affecting the site, including the results of infiltration testing.*” However, the FRA v5.0 dated August 2023 states at section 3.2 that “*The proposed solar panel layout places some infrastructure and panels within the surface water flood zone.*” Furthermore, at section 5.2 “*...it is recommended that infiltration testing is undertaken at the detailed design phase to confirm the potential for infiltration.*”

Our clients are not convinced that the proposed drainage strategy will have the desired outcome due to the absence of infiltration tests and the proposed infilling of the ditches along the southern boundary of Tye Lane. It is therefore unclear how the Officer has reached the conclusion that flood risk is no longer a matter of concern in the determination of this application.

Other Concerns

There has been an absence of genuine neighbour consultation from EDF. Our clients had a visit from the Project Lead who listened to their concerns and suggestions for how the proposal could be made more acceptable to them. These suggestions included the following:

1. Working with the topography of the site and removing the land on the higher ground from the application.
2. Reducing the size of the application site by excluding the land between Rutters Farm and Oxen Covert, and the high land around Bramford Tye residential properties.

The Project Lead commented that “There are always going to be losers in the process” and that “He may have to pay them to close”. Both statements are wholly inappropriate and underline the arrogance of EDF throughout this application. There has been no follow up to the suggestions made or amendments to the scheme by EDF.

Summary

Paragraph 47 of the National Planning Policy Framework (NPPF) confirms that planning law requires applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

Through a review of the application documents and national and local planning policies presented above and in our original consultation response from October 2021, we summarise below how the proposed development should be assessed. These material considerations, viewed either cumulatively or in isolation, represent sufficient grounds for refusal of this application.

Principle of Development - The proposal is contrary to adopted Development Plan Policies CS2, CL3, CL11, CL17, and paragraph 158 and 174 of the NPPF because it will be to the detriment of amenity, wildlife and landscape protection, and does not ensure the protection and enhancement of natural environmental assets or the safeguarding of the best and most versatile agricultural land.

Impact on Amenity and Tourism - The application site is adjacent to the Little Sage Hill Caravan and Camping site. The proposals represent a genuine threat to the continued existence of this business through the loss of the tranquil, undeveloped nature of its rural setting. The loss of this visitor generating business and its impact on the local economy in this rural part of the district should be an important material consideration when determining the application. The Council should give these amenity (including noise impact) and tourism impact considerations great weight in determining the application.

Agricultural Land Quality - There is no clear compelling evidence provided with this application to justify why the Council should approve the development of the best and most versatile agricultural land for this use. The Council should give this material consideration great weight in determining the application. As a minimum options for removing the parts of the site which are BMV land should be explored.

Landscape Impact - Whilst the land does not carry a statutory status requiring its protection, it is clear that it is worthy of protection in its own right due to its landscape character and quality. The LVIA concludes at paragraph 11.57 the main effects on the landscape character of the site would occur

during the operational phase as a result of the presence of the solar panels and associated infrastructure. Development of the site as proposed is therefore objected to on the grounds of landscape impact and on the basis it would be contrary to NPPF paragraph 174 and adopted Local Plan policy CL1 and CS5.

Highway Safety and PROW Impacts - It is attested that that safe and suitable access as required by the NPPF cannot be secured for all users during the construction phase. This represents a considerable period of time and therefore the identified conflicts between users of the track during this period should be given greater weight in the overall planning balance.

Environmental Considerations - There are a number of protected species and habitats located on site and a solution has not been forthcoming regarding Skylarks. The Council should give this non-conformity with Policies CS5 and CL8, along with outstanding matters concerning flood risk, great weight in determining the application.

Heritage Impact - We contest the position taken both with respect to harm attributed to the impact on identified heritage assets and the known archaeological remains. The Council should give the impact on heritage assets increased weight in line with the NPPF when determining the application.

Overall, the need for renewable energy generation should not automatically override environmental protections and the amenity of local communities. The planning balance reached in the Committee Report needs to be urgently reviewed as the negative impacts of the development set out in this letter, when viewed individually or cumulatively, outweigh the claimed public benefits of the development.

The proposals are contrary to both national and local planning policy and it is requested the application be refused by the Members of the Planning Committee.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Dan Hewett', written over a faint blue line.

Dan Hewett MRTPI MRICS
Head of Planning

Summary of Care Suffolk appendices and updated solar appeal decisions summary

A – letter from DLUHC regarding impact of solar farms on soil quality

B- letter from Natural England regarding impact of solar farms on soil quality

C – Alfreton appeal decision (see below for summary)

D – Manuden appeal decision (see below for summary)

E – Swadlingcote appeal decision (see below for summary)

Summary of solar appeal decisions (updated September 2023)

SECTION 78 DECISIONS

- *Steerway Farm, Telford APP/C3240/W/22/3308481 (“Steerway”)*
 - 9th May 2023, decision of Inspector Shrigley (inquiry)
 - **Allowed** 49.9MW solar farm
 - Acknowledges valued landscape given local designation and proximity to the AONB. Development would represent a substantial and significant change in character and would have a material adverse effect on the landscape character and appearance of the site. Outweighed by benefits of the development.
- *Park Farm, Essex APP/V1505/W/22/3301454 (“Park Farm”)*
 - 5th April 2023, Secretary of State
 - **Allowed** 2.4MW solar farm (cross boundary – part of a 30MW solar farm)
 - Proposed development would result in harm to the openness of the Green Belt, in conflict with policy. Benefits of the proposal must be afforded considerable weight.
- *Telford, Shropshire APP/C3240/W/22/3293667 (“Telford”)*
 - 27th March 2023, Secretary of State
 - **Allowed** 30MW solar farm and battery storage
 - Accepted that the solar farm would cause detrimental change to the ‘valued’ landscape and would therefore not be in accordance with the local landscape policy. However, considered this was outweighed by the benefits of the proposal. Disagreeing with an Inspector the Secretary of State allowed the appeal relying on the Framework support for the increased use and supply of renewable energy.
- *Bramley, Hampshire APP/H1705/W/22/3304561 (“Bramley”)*
 - 13th February 2023, decision of Inspector McCoy (inquiry)
 - **Allowed** 45MW solar farm and battery storage
 - Around 53% of the site was BMV agricultural land. The Inspector accepted that while the use of higher quality agricultural land is discouraged, the proposal was for a temporary period of forty years, and that the agricultural land would not be permanently or irreversibly lost particularly as pasture grazing would occur between the solar panels.
- *Gillingham, Dorset APP/D1265/W/22/3300299 (“Gillingham”)*
 - 13th February 2023, decision of Inspector Ware (inquiry)
 - **Allowed** 25MW solar farm and battery storage
 - Some harm to landscape and less than substantial harm to heritage assets that would conflict policies was given considerable importance and weight. Public benefits outweigh some non-compliance with policy on the basis of harm to landscape and heritage assets.
- *Chelmsford, Essex APP/W1525/W/22/3300222 (“Chelmsford”)*
 - 6th February 2023, decision of Inspector Plenty (hearing)
 - **Allowed** 49.9MW solar farm and battery storage
 - Proposal would result in harm to the green belt, as openness would be reduced. Acknowledge that as development would only be in place for 40 years, this effect would be

reversible. Cumulative landscape impact with 2 other schemes nearby. Benefits outweighed impacts.

- *Langford, Devon APP/Y1138/W/22/3293104 (“Langford”)*
 - 5th December, Secretary of State decision (inquiry)
 - **Allowed** 49.9MW solar farm and battery storage
 - Agreed that a solar farm of a large size would have some adverse landscape and visual effect, but that it would be very limited and mitigated increasingly as planting matures. This would be outweighed by the benefits of the production of electricity.
- *Alfreton, Derbyshire APP/M1005/W/22/3299953 (“Alfreton”)*
 - 5th December 2022, decision of Inspector Jackson (inquiry)
 - **Refused** 49.9MW solar farm
 - 49.9MW solar farm was refused where there was serious harm found to local valued countryside, material harm to designated heritage assets and substantial heritage harm to non-designated assets.
 - Counsel advice is that is a materially different situation to the proposal before the Council now
- *Bishop’s Itchington, Warwickshire APP/J3720/W/22/3292579 (“Bishop’s Itchington”)*
 - 1st December 2022, decision of Inspector Major (hearing)
 - **Allowed** 49.9MW solar farm
 - Inevitable that 55ha development would have an impact on the character of the countryside. The provision of clean renewable energy which contributes to security of supply attracts substantial positive weight. BNG attracts significant weight in favour of the proposal.
- *Halloughton, Nottinghamshire APP/B3030/W/21/3279533 (“Halloughton”)*
 - 18th February 2022, decision of Inspector Baird (inquiry)
 - **Allowed** 49.9MW solar farm and battery stations
 - In acknowledging landscape impacts quotes “...you cannot make an omelette without breaking a few eggs”. Significant weight given to benefits.
- *North of Lullington, Swadlincote APP/F1040/W/22/3313316 (“Swadlincote”)*
 - 21st July 2023, decision of Inspector Thomas (hearing)
 - **Dismissed** 50MW solar farm
 - 34 Ha of BMV 15% grade 2, 34% grade 3a. Failed to demonstrate there was no suitable poorer quality land that could be used. In acknowledging the main issues for food security which emphasise the importance of maintaining higher quality agricultural land where this is found in food production. Impact of BMV outweighs public benefits.
- *Squirrel Lane, Shropshire APP/L3245/W/23/3314982 (“Squirrel Lane”)*
 - 7th July 2023, decision of Inspector Woolcock (hearing)
 - Allowed 12MW solar farm
 - Adverse effect on BMV (95% of site is grade 3a), adverse effect on the landscape and adverse effect on the visual amenity of the area. Substantial weight given to benefits of renewable energy and contribution to climate change.

SECTION 62A DECISIONS

- *Manuden, Uttlesford s62A/2022/0011 (“Manuden”)*
 - 11th May 2023, Secretary of State
 - **Refused** 49.9MW solar farm and battery storage
 - Landscape character noticeably and drastically altered. 40 year lifetime would be perceived as permanent structures, not temporary. Benefits do not outweigh significant harm to heritage asset. Incomplete archaeology information.
- *Berden, Uttlesford s62A/2022/0006 (“Berden”)*
 - 9th May 2023, Secretary of State
 - **Allowed** 49.9MW solar farm

- Accepted there would be an impact on PROW crossing the site and adjacent to the site. Also accepted that approximately 72% of the site would be BMV agricultural land and that in using such land the scheme was not fully compliant with national and local policy. However, there was no other suitable site identified and it was acknowledged that the effect on agricultural land is ultimately temporary and reversible. The Inspector did note that although there would be limited grazing permitted that would not be equivalent to the current agricultural practice. However, the benefits of the solar array outweighed those harms.



Date: 11th September 2023

Dear Ms Curtis and Mid Suffolk Planning Committee Councillors,

Ref: Full Planning Application DC/21/04711 - Change of use from agricultural land to solar farm and construction of a solar farm (up to 49.9MW) with associated grid connection cable route, infrastructure and planting (accompanied by EIA Statement)

We understand that the above application has been scheduled for hearing, and potentially determination, by Mid Suffolk Planning Committee on Wednesday 13th September 2023. We have read the officers recommendation report produced for the Councillors and wish to raise a number of concerns about some of the content of that report.

We understand that the rural campsite business at Little Sage Hill intends to submit additional information about traffic and access, tourism, and noise, which we will not include here.

The advice provided in the officers' report contains serious factual errors and conclusions that are not based on expert evidence from national departments or from some of its own consultees. We set out below 5 grounds, any one of which would constitute a basis for rejection:

1. Application requests a change of use from agricultural land, including a majority % of BMV land, which is afforded particular protection in local and national policy
2. Landscape officer advises there would be significant adverse landscape effects and that proposed planting is inadequate, with no offers from the applicant of additional planting
3. Ecology officer still has a HOLDING OBJECTION in place against this application due to the Council not being able to discharge its duties under the NERC Act 2006 (as amended) for Skylark
4. SCC PROW officer raised numerous unresolved concerns about the impact on PROW, leaving significant adverse impacts of the development on users of the PROW, specifically in terms of views and experience
5. Heritage officers were given materially misleading information by the applicant, and would harm the setting of three Grade II listed buildings

There are also other additional concerns which remain outstanding or appear to have prejudiced the planning balance exercise that officers have undertaken, and have been explained further below in the hope that Councillors do not make the same errors.

1. Loss of BMV land

The most worrying error in the report is that of the agricultural land. The title of the application clearly starts "CHANGE OF USE FROM AGRICULTURAL LAND..."

The application proposes to use greenfield arable agricultural land, which is graded at 52% Grade 3a, 47% Grade 3b, and the rest as non-agricultural land. This means that the majority of the land is what is classed as best and most versatile (BMV) agricultural land.

Planning policy is clear that solar farms should avoid the use of BMV land, and this is restated most recently in the Powering Up Britain document of March 2023.

The officers report states that there would be continued agricultural use by way of sheep grazing during the lifetime of the project (paragraphs 5.6 & 5.8). Yet the applicant makes no mention of including sheep within their application. This is because their choice to lower the panel height as part of their design process meant that they could not do so. A resident and member of CARE Suffolk was told that "sheep are a no go" by Darren Cummings, the lead for EDF Renewables on this application.

There would simply be no continued agricultural use for the entire duration of this development.

Even more, the claims of improved soil quality on solar farms are unsubstantiated by scientific evidence. Despite requests, not just to EDF Renewables, no solar developer has even been able to provide CARE Suffolk with any scientific studies that demonstrate an improvement in soil quality. We have sent FOI requests to both the Department for Levelling Up, Housing and Communities (DLUHC) and Natural England asking for such evidence.

The DLUHC replied with a few studies that actually showed a decline, and Natural England replied with no studies but stated the following:

"With regards to long term impact of the solar array on soil quality (which include properties that reflect current management practices, i.e. variable soil properties), there could be a disbenefit to the soil resource due to unknowns as a result of the solar development infrastructure. It is currently unclear as to what impact the solar panels may have on the soil properties such as carbon storage, structure and biodiversity. For example, as a result of changes in shading; temperature changes; preferential flow pathways; micro-climate; and vegetation growth caused by the panels."

A copy of the correspondence from the DLUHC is in Appendix A, and from Natural England in Appendix B.

It seems that the recommendation report stating there are no reasons to refuse the application on the grounds of BMV land are based on misleading information. **The application is literally asking for a change of land use, Natural England state that there may be disbenefits to soil due to solar farms, and policy CL11 of the local plan states that BMV land will be afforded particular protection.**

2. Landscape

Paragraph 3.7 of the Core Strategy Focussed Review 2012 states:

"The environmental and landscape sensitivity of the district means that large-scale, onshore renewable energy generation will often be difficult to accommodate in the landscape in an acceptable way."

This is included within paragraph 4.8 of the officers report.

Equally policy CL3 for major utility installations in the countryside have the objective to "...reduce intrusion in the landscape..."

The report clearly states at paragraph 7.5 that:

"it is clear that the proposed development would have a significant visual impact on the agricultural character of the landscape... this would significantly change the character of the landscape and reduce the overall value and quality of the site."

and that the landscape officer at paragraph 7.6 states:

"they generally agree with the assessment of effects that significant effects on the landscape character are inevitable."

and again at paragraph 7.10 that:

"there will be a significant change to the visual appearance of the site and the wider landscape of the area resulting from this proposal."

The next part at paragraph 7.10 is somewhat confusing though, stating:

"...whilst the development would not comply with the NPPF paragraph 174, CS5 and FC1.1 in terms of enhancing the landscape, measures to protect the landscape can be secured..."

Yet those measures as per paragraph 7.7 are:

“Your officer further recommends that opportunities for further landscape mitigation than is currently proposed are secured, particularly for further hedgerow planting along the northern boundary of the site, on the southern edge of footpath 8 and for compensatory planting within the landscape to mitigate wider views.”

This application has been with the Council for 2.5 years; no offers of additional planting have ever been forthcoming; and it is questionable whether a condition can be adequately secured for something which is not being offered. If conditions can be used to request things that aren't being offered, then why not include a condition that requires all the solar panels be relocated to rooftops? A planting scheme as a reserved matter would need to be required prior to commencement, and pre-commencement conditions must be agreed with the applicant. So it seems that a pre-commencement condition requiring planting that is not being offered is already not in agreement.

It must also be noted that planting itself as a mitigation option is just that – mitigation or compensation. It does nothing to actually remove the harm that is being caused by the development in the first place. If Councillors are supportive of the idea of mitigation though, it would be more normal to defer the consideration of the application until the applicant comes up with something they can actually consider. Otherwise they would be establishing the principle that a scheme is acceptable without actually knowing what it would ultimately look like. This is a dangerous precedent to start.

Therefore, without this further mitigation, which isn't being offered, then the conclusion cannot be the same. Because **there is identified significant harm to the landscape, which hasn't been made acceptable, and that alone is a valid reason for refusing the application under policies CS5, E10, and FC1.1.**

Furthermore, the report gives no consideration to a 2018 Settlement Sensitivity Report that was produced by Mid Suffolk Council. This report aimed to assess the fringe settlements of Ipswich and the surrounding areas that would be sensitive to continued development. Bramford was included in this assessment and the report separates the other areas of the village into three areas. Area BF1 assessed the same fields that are proposed for this site. Page 29 of the assessment states it:

“is valued as a rural landscape setting to the village which reinforces the location of the settlement within the Gipping Valley.”

and concludes that:

“this area is sensitive to development where it would appear visually prominent on the valley slopes... Development should not rise onto higher undulations or upper valley slopes which would be uncharacteristic.”

This proposal includes uncharacteristic development (from a rural arable setting to an industrial one) on those prominent upper valley slopes. Approving this application would be contrary to the Council's own assessment.

It is important to note that for application DC/21/06825 – a much smaller solar farm in Rickinghall - Mid Suffolk officers stated that:

“It cannot be disputed that the proposals would result in a high level of change to the character and appearance of the appeal site. The committee have interpreted the some 12.28ha of glass as representing a significant, indeed dominating, visual intrusion into the rural landscape - for example a field of glass can glint in the sun, a large body of solar panels and the technical paraphernalia needed will to some degree clearly change the character of the agricultural landscape, if for no other reason that the area occupied by the panels will read as not being natural features but a sea of technology. This in the opinion of the Council would be an industrialising effect.”

The application here is for 85ha.

3. Ecology

It is worrying that the officers report does not make it clear that the Council's own ecologist still has a **HOLDING OBJECTION** against this application, which was submitted on 31st August 2023. This is because they are still not satisfied that there is enough information for the Council to discharge its duties under the NERC Act 2006 (as amended) for Skylark. This objection is summarised in Internal Consultee Responses as follows:

“However, we are not currently satisfied that there is sufficient ecological information available for regarding Skylarks.”

Paragraph 8.14 states:

"The development will affect ecology within the site and surrounding area."

Ignoring this and the above holding objection from the ecology officer, the report somehow comes to the conclusion:

"The applicant has provided sufficient information to demonstrate the scale of these effects and how the impacts will be mitigated and compensated.... On the basis of the advice from your ecology officer and subject to conditions, the proposed development is not considered to have an unacceptable impact on ecology that would warrant refusal of the application."

If the Council cannot demonstrate it has discharged its duties under the NERC Act 2006, as pointed out by its own ecology officer, then it would be open to legal challenge if it were to approve this application, and its only logical route of action is to refuse the application.

4. PROW Comments

Paragraph 6.12 states:

"Impacts of the development on users of the PROW, specifically in terms of views and experience, will be significant, as discussed below."

And summarises the SCC PROW teams response at paragraph 6.9 saying they have:

"raised concerns regarding the assessment of PROW impacts and the lack of mitigation measures proposed."

Whilst the SCC PROW officer doesn't explicitly state they have a holding objection in place, it certainly reads like one. The concerns, in addition to the ones selectively chosen for the officers report, from SCC PROWs' full response dated 21st September 2021 include:

- *"Any fencing should be screened with planting on the PROW side of the fence." – it is not all screened*
- *"Any new structures should also be screened." – they are not all screened*
- *"11.128 notes that there are a wealth of walking options in the area, suggesting the value of those routes within the site are less important. This does not in any way reduce the value of the PROW network through and directly affected by this development and those PROW should be protected and where necessary, the experience of using them enhanced. The comments about users of Bullen Lane are quite subjective, presumptuous and based on a limited observation. It can equally be argued that many walkers prefer walking on a natural surface to a hard surface which impacts more greatly on joints." – those routes within the site are highly valued and used by local residents and tourists visiting Little Sage Hill campsite.*
- *"The LVIA concludes with 'LVIA Conclusion', but there seems to be an omission of 'Mitigation' (apologies if we have missed this). It would be helpful to see exactly what mitigation is proposed for PROW, where it is proposed and the exact nature of that mitigation."*
- *"Chapter 14 – Glint and Glare indicates assessments were completed from residential, road and rail location but not from the PROW network. We would like to see Glint and Glare Assessments consider the impact on walkers, cyclists and equestrians (where applicable) from the PROW network." – this has still not been done*
- *"There remains a concern over the loss of amenity value to users of the PROW network from this development especially when combined with other similar developments in this area, with views of open countryside replaced with hedged paths, restricted views over the landscape, and the visual impact of solar farms both close up and from a distance."*
- *"There is also concern over the length of time it will take new planting to mature and the impact on the user experience during that period."*

Many concerns were also raised by members of the community, as noted in paragraph 6.9 of the report, indicating that these PROWs and the amenity that they provide are very important to the local community.

It is clear that there are outstanding concerns from the SCC PROW officer, and that there would be significant impacts for users of PROW affected by the proposal.

5. Heritage

The heritage section in the officers’ report appears to have some duplication of paragraph numbers, going up to 11.10 and then restarting at 11.7 again, so we apologise if there is any confusion with our comments here.

The built heritage assets in this area have stood in a predominantly rural landscape throughout their lifetime, with the agricultural fields commanding a prominent position on steep valley slopes and an open plateau landscape. It is no accident that these heritage assets are here, as they are all part of the much larger Bramford Hall Estate that was accumulated by its owners since Bramford Hall was built in the 15th Century, tenancing out the land and buildings. Nor is it by accident that the PROW network in the area connect the various tenanted buildings together, and with the neighbouring parishes.

It is unsurprising that the officers came to the conclusion that the heritage assets in the area had no connection to the surrounding landscape, because the applicant made no mention of this connection in its assessment. **It was omitted from their assessment in its entirety.**

Records retained by the current owner of Copenhagen Cottage show residents of the cottage over the years were employed at the Hall and on the surrounding land which all belonged to the Estate. The Housekeeper and Cook at the Hall bought the Cottage out of the Estate in 1962. Copenhagen Cottage is the last remaining of what were 4 cottages on this Back Lane, and though it has been extended all of the original heritage features of the building remain. It was not demolished as the applicant suggests. It now hosts a small campsite which appeals to holiday makers seeking a quiet and refreshing getaway in the rural countryside, but it now faces being surrounded on three sides by solar panels.

Further down Tye Lane is Tye Grange. This was originally two farm cottages built in 1780 as part of the same estate as Copenhagen Cottage. Tye Grange is another non-designated heritage asset, and also faces adverse impacts on its setting as a result if this proposal were to be built. Very limited screening has been proposed here due to the presence of the underground gas pipeline.

The Heritage Technical Note also misleadingly claims that historically the site has no connection to Tye Farmhouse, a Grade II listed building... *“The application site has no historical functional connection with Tye Farmhouse.”* A 1902 Schedule of Property found within the deeds of Copenhagen Cottage shows Tye Farm, with 150 acres of land tenanted by E. Watkins as part of the Bramford Estate. The farmhouse today is still set in its agricultural surroundings from which it made its living.

1902 Schedule of Property:

AND RECITING that the hereditaments then subject to the said Settlement of 31st October 1902 were intended to be set out in the Schedule thereto

IT WAS WITNESSED as follows:-

1. The said David Augustus Bevan the said Sydney Rhodes James and the said Sir Percy Lyham Loraine (hereinafter called "the Trustees") as Trustees thereby declared that the freehold hereditaments and premises described in the Schedule thereto and delineated and coloured pink on the plan thereto and all other (if any) the premises capable of being vested by reciting declaration which then by any means were subject to the limitations of the said Indenture of the 31st October 1902 were vested in the said Dame F.M.H. Loraine Broke as to the freehold hereditaments and premises described in the Schedule thereto and all other freehold hereditaments (if any) which were subject as aforesaid in fee simple and as to all leasehold hereditaments and premises (if any) which were subject as aforesaid for the residue of the terms of years for which the same might be holden respectively
2. The said Dame F.M.H. Loraine Broke should stand possessed of the premises upon the trusts and subject to the powers and provisions upon and subject to which under the said Indenture of the 31st October 1902 or otherwise the same ought to be held from time to time
3. The Trustees were the trustees of the said Settlement for the purposes of the Settled Land Act 1925
4. The power of appointing a new trustee or new trustees for the said Settlement was vested in the said Dame F.M.H. Loraine Broke

THE SCHEDULE above referred to

No. on plan	Tenant	Description	Acreage A. R. P.
1	In hand	Hall and Park	120. 2. 7
2	ditto.	Plantations	74. 1. 29
3	Various	Cottages Allotments and Orchard	
4	H. Fiske	Thornbush Farm	368. 1. 9
5	ditto.	Ranton Farm	260. 1. 37
6	ditto.	Bullen Hall Farm	173. 0. 7
7	G. Jackson	Sycamore Farm	445. 1. 3
8	E. Fiske	Dairy Farm	269. 0. 23
9	E. Watkins	Tye Farm	150. 3. 14
10	E. S. Steward	Bullen Farm	61. 0. 16
11	W. Clarke	Land	6. 2. 4

The Applicant was also asked to assess Bullen Hall Farmhouse, Grade II listed, but has failed to do so. The same Schedule of Property shows this Grade II listed building plus 173 acres were tenanted by H. Fiske also as part of the Bramford Estate. Both the Watkins and Fiske families are still farming in the area today.

Rutters Farmhouse, Copenhagen Cottage, Tye Grange, Tye Farmhouse, Bullen Hall Farmhouse, and the agricultural fields of both this proposal and another solar farm proposal are all part of the historic Bramford Estate. These parts may be legally separated today, but the current agricultural setting allows them to be appreciated together in a manner that is greater than the sum of its parts. These properties (farm houses and farmworkers houses) set in this agricultural land all belonged to the very wealthy and influential families of Acton and later Broke and Loraine. These families have had a significant impact on the shaping of Bramford's rural agricultural economy and its social history past and present. The Acton, Loraine and Broke names are found in road names, in buildings and in Bramford Church. Their tenant farmers – Fiske, Jackson, Watkins, Steward, Clarke - of the varied Estate properties and land gradually became its freeholders, and these families still shape in many ways the local farms and rural economy of today. Changes from the current agricultural setting to an industrial one of solar panels would diminish understanding of the historical landscape and social history, and thus diminish the historic context of these buildings, both listed and non-designated heritage assets.

All of this information was provided to officers by the community during the consultation phases, and appears to have been ignored entirely.

According to the response of Place Services on 19th November 2021 *"If the buildings do have sufficient interest to be considered non-designated heritage assets, it is anticipated that the proposed solar farm will result in harm to their settings."*

Again, none of this information was presented by the applicant, thus the second paragraph 11.8 of the officers report states:

"Your Heritage adviser has reviewed the information submitted and requested the further assessment of Copenhagen Cottage and Little Blakenham Hall as well as a revisiting of the assessment of Rutters Farmhouse. On receipt of this information [from the applicant only] your Heritage adviser has confirmed they have no objection to the development and accept that Copenhagen Cottage and Little Blakenham Hall are not considered to be non-designated heritage assets. Your adviser further confirms their opinion, in agreement with the ES, that the development would result in no harm to Tye Farmhouse and that the impact on Rutters Farmhouse is at the lower end of less than substantial harm, by reason of the change to its setting arising from the development."

Historic England requested on 30th September 2021 that Tye Farmhouse and Rutters Farmhouse (both Grade II listed) should be considered in further detail, stating:

"the Council should consider that the surrounding agricultural fields might have historically formed part of their functional setting. The change of use of this land from agricultural fields to power generating facility should therefore be considered when harm to the significance of the listed buildings is assessed."

And

"recommend the Council considers the cumulative impact of this and other solar energy developments in the vicinity and the impact on the historic significance of the grade II listed Rutter's Farmhouse and Tye Farmhouse by changing the use of agricultural fields in their settings to power generating."

The introduction of 85ha of monoculture solar farm with its associated technology will impose widespread alien features into the landscape, which **would destroy the traditional character of the historical agricultural landscape, and would harm the significance of the heritage assets by way of changing a significant expanse of the historical setting they are associated with.**

There is a duty imposed on the Council by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which sets a presumption against the grant of planning permission which causes harm to a heritage asset. **A finding of harm, even less than substantial harm, to the setting of a listed building is a material consideration to which the decision-maker must give "considerable importance and weight". Less than substantial harm does not mean less than substantial weight. Local policy HB1 is designed to ensure the heritage assets and their settings are protected.**

6. Flood Risk

The risk of flooding along Tye Lane remains a significant concern for local residents. Flooding along Tye Lane is an annual problem which makes the road impassable. Sometimes more than once. More recently in the winter of 2022/3 it was so deep near the junction of Tye Lane/B1113 that the southern road verge collapsed and a telephone pole had to be replaced.

Paragraph 9.4 states that:

"The FRA states that all built development... would be located within FZ1 and explains the surface water risk affecting the site, including the results of infiltration testing."

We are not sure how the officer came to this conclusion, since the FRA v5.0 dated August 2023 at section 3.2 states:

"The proposed solar panel layout places some infrastructure and panels within the surface water flood zone."

And at section 5.2:

"...it is recommended that infiltration testing is undertaken at the detailed design phase to confirm the potential for infiltration."

Frustratingly, flood risk is one of the topics that we actually believe could be made acceptable. But as none of our suggestions have ever been taken on board or considered we believe that the current mitigation measures are underestimated. This is exacerbated by the proposal to fill in large parts of the existing ditch in FZ3 along the southern boundary, in order to satisfy SCC Highways, but which has not even been mentioned in the FRA or assessed by the SCC Flood officer.

7. Other Concerns

Other Appeal Decisions

Paragraph 4.14 includes a narrow selection of recent appeals that were allowed for solar farms in other parts of the country. In the more local and recent decision for appeal 3319970 (Enso Energy) those same appeals were presented to the Inspector who stated:

"Across all of these decisions, various decision-makers have both granted and refused planning permission for developments similar to that sought here. Having taken these into account, I do not find that they provide justification in themselves for making a decision either way. I note the approaches taken, but ultimately I have determined the appeal scheme here on the basis of the evidence put before me."

Furthermore, this Council's own Chief Planning Officer – Philip Isbell – at a Planning Meeting on 8th February 2023 for another solar farm, reminded Councillors to consider that application and only that application, and then led Councillors to ignore other appeal decisions.

This is contrary to the Councils' own advice on its own website, which states that previous decisions, including appeals, are material considerations in planning decisions.

It seems then, that officers are cherry-picking when to allow appeals to be material considerations, and when not to. And more worryingly, when they do allow appeals to be considered, they are not presenting a balanced story for Councillors to consider.

Yes, appeals for solar farms have recently been allowed. But **Planning Inspectors have also refused solar farms too.** Such as:

- Appeal APP/M1005/W/22/3299953 - Land north west of Hall Farm, Church Street, Alfreton DE55 7AH – it was found that the harms of the proposed solar farm being located on sloping land with a wide ranging visual influence which is locally valued, and the harm caused to the setting of non-designation and a Grade II listed building, both outweighed the benefits of the renewable energy, further stating that local amenity is also an important consideration which should be given proper weight in planning decisions (Appendix C).
- S62A to Planning Inspectors - s62A/2022/0011 - Land East of Pelham Substation, Maggots End, Manuden – The creation of renewable energy would not outweigh *"the harms identified to character and appearance, landscape and visual matters, the settings of designated heritage assets, archaeological remains, loss of*

BMVAL, highway safety, biodiversity and noise. The benefits in this case are clearly outweighed by the harms identified.” (Appendix D)

- Appeal APP/F1040/W/22/3313316 - Land North of Lullington, Swadlincote, Derbyshire, DE12 8EW – there would be harm to the use of BMV land, even at less than half of the total site, making an unacceptable indent on food security was not outweighed by a biodiversity net gain of 270% nor the renewable energy benefits. (Appendix E)

If officers and Councillors do decide to take other appeal decisions into consideration, then it is important to consider appeals which have been both approved and refused.

Planning Balance

Lastly, we are concerned about the approach that has been used to balance the harms vs the benefits. At each topic the officer balances the one harm to all the benefits.

Loss of BMV land vs all of the benefits
Landscape vs all of the benefits
Ecology vs all of the benefits
And so on.

But we believe this is incorrect and distorts the decision making exercise. It is our understanding that you should first identify all the harms and identify all the benefits. Then you weigh them against each other.

All Harms vs All Benefits

This approach is a more holistic way of balancing the various considerations and appears to be the approach taken within all appeal decisions by the Planning Inspectorate.

Conclusion

There are indeed benefits as a renewable energy development, and solar energy is important in the overall goal of climate change. It should be noted that the energy will feed into the National Grid, so is not for the benefit of immediate residents, and there are minimal if any benefits from the construction as the economic benefits would be short lived (6 months) and there is no guarantee that a local workforce or suppliers would be used.

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

Saying no to this application is not saying no to solar. There are better places for solar like on rooftops and car parks. Saying no here is simply saying no to solar that would have numerous significant adverse impacts including loss of BMV agricultural land, landscape, ecology, PROW, heritage, amongst others.

The application fails to accord with a significant number of local plan policies GP1, HB1, CL11, E10, CS5 and FC1.1, and so it is bemusing how the proposal could ever accord with the development plan as a whole. Since the NPPF accords with the development plan, and there are no other material considerations that instruct a departure from the development plan would be justified, quite the opposite, then it seems the officers' recommendation is unreasonable.

We ask that Councillors do not condemn residents to suffer the adverse impacts identified for 35+ years, further causing irreparable damage to a beloved local camp site retreat and tourist attraction, and **REFUSE** the application for all of the reasons discussed above.

Yours sincerely,



Samantha Main
Chair



Department for Levelling Up,
Housing & Communities

**Department for Levelling Up, Housing and
Communities**

Fry Building
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Samantha Main
samzfairyz@hotmail.com

Date: **31 May 2023**

Thank you for your request for information which we received on 21 March 2023. I apologise for the delay in responding to you.

You requested:

'I have been sent a copy of the attached response from your Department regarding solar panels. I have seen several other similar letters from your Department too.'

I notice that all the letters seem to claim that solar farms can enhance soil quality, even on intensively farmed land. This is despite the glaringly obvious fact that to turn a field into a solar farm requires a significant length of time being a construction site. Land is cleared, levelled out or graded, soil is removed and/or compacted, and large areas are dug up and filled with cables and other infrastructure.

What scientific studies, evidence, and/or case studies do you have to back up this statement that a solar farm enhances soil quality? In all the letters I have never seen any reference to evidence of any sort. I have also tried asking Solar Energy UK and several solar company developers. No one can provide anything to actually support this claim except that they say it is so.'

Although we don't hold a record that sets out what evidence was referred to in your letter; the following published information may be relevant

- *China Frontiers | Photovoltaic panels have altered grassland plant biodiversity and soil microbial diversity (frontiersin.org).*
- *Reduction of water holding capacity, soil temperature, soil organic matter and microbial activity, and increase of pH Soil properties changes after seven years of ground mounted photovoltaic panels in Central Italy coastal area – ScienceDirect*
- *Carbon and nitrogen still lower 7 years later after revegetation of solar site Frontiers | Effects of Revegetation on Soil Physical and Chemical Properties in Solar Photovoltaic Infrastructure (frontiersin.org)*
- *Soil aggregate stability reduced, degradation of soil physical quality. Soil chemical quality was lower. Solar panels reduced the soil temperature by 10% and soil CO2 effluxes by 50% (good for emissions, bad for nutrient cycling as less decomposition) Effects of solar park construction and solar panels on soil*

quality, microclimate, CO2 effluxes, and vegetation under a Mediterranean climate - Lambert - 2021 - Land Degradation & Development - Wiley Online Library

- *BEIS report to parliament: 'It should be noted that ground mounted solar can be beneficial to the environment and enhance biodiversity and soil quality, particularly where sited on land that has been previously intensively farmed'⁹. Solar and agriculture can co-exist and provide a route for farmers to cut energy costs, diversify and improve their revenue stream'¹⁰. The Natural Capital Value of Solar (2019):*

<https://solarenergyuk.org/resource/natural-capital/>

See National Farmers Union briefing note (December 2021) at:

<https://www.nfuonline.com/updates-andinformation/solar-photovoltaic-electricity-in-agriculture>

Complaints procedure

If you are unhappy with this response, we will review it and report back to you. (This is called an internal review.) If you want us to do this, let us know by return email within two months of receiving this response. You can also ask by letter addressed to:

Department for Levelling Up, Housing and Communities
Knowledge and Information Access Team
4th Floor SE, Fry Building
2 Marsham Street
London, SW1P 4DF

If you are unhappy with the outcome of this internal review, you can ask the independent Information Commissioner to investigate. The Information Commissioner can be contacted at email address casework@ico.org.uk or use their online form at ico.org.uk/concerns or call them on 0303 123 1113.

Yours sincerely,

Department for Levelling Up, Housing & Communities FOI Team

RE: Soil Studies for Solar Farms

SM-NE-Enquiries (NE) <enquiries@naturalengland.org.uk>

Mon 10/07/2023 09:59

To:Samantha Main <samzfairyz@hotmail.com>

Good morning,

Thank you for your email and apologies for the delayed reply. We asked a soil specialist within Natural England and they replied with the following information:

The Agricultural Land Classification (ALC) system classifies agricultural land according to the extent to which its inherent physical and chemical characteristics impose long-term limitations on agricultural use. The ALC system uses one of six numbered grades, according to the 1988 MAFF *'Revised guidelines and criteria for grading the quality of agricultural land'*. The ALC grade reflects the lands long-term capability to support agricultural production and not the current land use or land management (i.e. inherent soil properties). Therefore, the current cropping system does not influence the ALC of the site.

All land which may experience temporary or permanent disturbance as a result of development, including Solar, should be subject to a detailed ALC and soil survey in line with the [Guide to assessing development proposals on agricultural land - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/guide-to-assessing-development-proposals-on-agricultural-land), so as to understand the impact of the proposed development on agricultural land and soils; inform master planning to minimise the impact on BMV agricultural land; inform suitable soil handling; inform restoration criteria and suitable re-use. Developers and Local Planning Authorities must consult Natural England for development proposals that are:

- likely to cause the loss (or likely cumulative loss) of 20ha or more of BMV land, if the land is not included in a [development plan](#) or
- not in accordance with an approved development plan and in addition (See Section 6.2 of link provided):-
- take account of smaller losses (under 20ha) if they're significant when making your decision.
- your decision should avoid unnecessary loss of BMV land.

Soil is a finite resource which plays an essential role within sustainable ecosystems, performing an array of functions supporting a range of ecosystem services, including storage of carbon, the infiltration and transport of water, nutrient cycling, and provision of food. It is recognised that a proportion of the agricultural land will change use. However, to both retain the long term potential of this land and to safeguard all soil resources as part of the overall sustainability of developments, it is important that the soil is able to retain as many of its many important functions and services (ecosystem services) as possible through careful soil management and appropriate soil use, with consideration on how any adverse impacts on soils can be avoided or minimised.

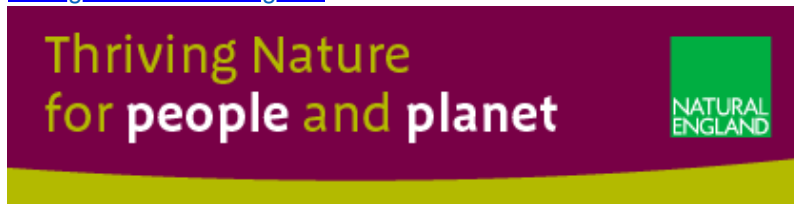
Natural England consider that if appropriate soil handling and soil management practices are employed based on the **site specific** soil properties, and the development is undertaken to high standards, the installation of the panels could result in limited soil disturbance and could be removed in the future with no permanent degradation in agricultural land quality (ALC grade). This relies on safeguarding the soil resources and agricultural land through the employment of soil handling good practice as set out in the Defra [Construction Code of Practice for the Sustainable Use of Soils on Construction Sites \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/construction-code-of-practice-for-the-sustainable-use-of-soils-on-construction-sites).

With regards to long term impact of the solar array on soil quality (which include properties that reflect current management practices, i.e. variable soil properties), there could be a disbenefit to the soil resource due to unknowns as a result of the solar development infrastructure. It is currently unclear as to what impact the solar panels may have on the soil properties such as carbon storage, structure and biodiversity. For example, as a result of changes in shading; temperature changes; preferential flow pathways; micro-climate; and vegetation growth caused by the panels.

Kind regards,

Carys
Adviser

www.gov.uk/natural-england



From: Samantha Main <samzfairy@hotmail.com>
Sent: 20 June 2023 11:43
To: SM-NE-Enquiries (NE) <enquiries@naturalengland.org.uk>
Subject: Re: Soil Studies for Solar Farms

Good morning,

I notice that I've not yet had a reply to my original request.

In planning applications the soil grade or quality is measured by MAFFs 1988 report. But I am struggling to find any studies or evidence that actually show those measurable qualities are increased because of a solar farm being constructed on it.

Would you kindly let me know within 10 days whether you have any studies that show an increase in ALC soil quality on solar farms, and investigate why I've not had a response yet please?

I look forward to hearing from you.

Best wishes,
Samantha Main

From: Samantha Main <samzfairy@hotmail.com>
Sent: 22 May 2023 18:26
To: SM-NE-Enquiries (NE) <enquiries@naturalengland.org.uk>
Subject: Re: Soil Studies for Solar Farms

Hi Stuart,

I live just west of Ipswich, Suffolk.

Kind regards,
Samantha

From: SM-NE-Enquiries (NE) <enquiries@naturalengland.org.uk>
Sent: Monday, May 22, 2023 5:11:14 PM
To: Samantha Main <samzfairy@hotmail.com>
Subject: RE: Soil Studies for Solar Farms

Good Afternoon Samantha

Can you advise the area where you are located please.

Kind Regards

Stuart Harley
Natural England Engagement Team – Operations Delivery
Natural England
County Hall, Spetchley Road
WORCESTER, WR5 2NP
Tel: 0300 060 3900



www.gov.uk/natural-england

We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

In an effort to reduce Natural England's carbon footprint, I will, wherever possible, avoid travelling to meetings and attend via audio, video or web conferencing.

From: Samantha Main <samzfairyz@hotmail.com>
Sent: 19 May 2023 20:37
To: SM-NE-Enquiries (NE) <enquiries@naturalengland.org.uk>
Subject: Soil Studies for Solar Farms

Hello,

I am hoping you might be able to help me.

We have 3 proposed adjacent solar farms in our area. All on BMV graded agricultural land. One in the Higher-Level Stewardship scheme. All three developers claim that solar farms can improve the soil quality, but when asked none of them can provide any scientific studies or evidence to back up the claim.

One of the developers Flood Risk Assessment states that an estimated 10% of the top soil would be lost simply due to the construction activities on site. If this is true, then according to the ALC guidance the new topsoil depth on that site would become the most limiting factor and downgrade the land from 3a to 3b. Assuming they would all be affected by this, they would all be affected the same way. Though some grade 2 would become 3a it is still a lowering of quality.

Whilst the final solar panels themselves will sit lightly on the ground with minimal impact from the metal posts they stand on, as I am sure you are aware to turn a field into a solar farm requires a significant length of time being a construction site. Land is cleared of vegetation, levelled out or graded, soil is removed and/or compacted, and large areas are dug up and filled with cables, construction compounds and other infrastructure. This is not light work.

I have been told on a couple of occasions by solar developers that because set-aside land improves the soil, then solar farms will too. As I am sure you are also aware, a set-aside field does not become a construction site in the process. Also, the weather interacts with the land and soil in different patterns to that of a field full of solar panels simply because the panels are in the way so-to-speak. The comparison of a solar farm to set-aside is akin to comparing apples and oranges.

I was wondering if you knew of any scientific studies, evidence, and/or case studies of solar farms that have improved the soil quality? I have also tried asking Solar Energy UK and several solar company

developers. No one can provide anything to actually support this claim except that they say it is so. That is, if they reply at all.

Soil can become damaged very easily and very quickly. Even when we don't intend it to happen. Reversing it is not easy or quick.

I look forward to hearing from you.

Kind regards,
Samantha Main

This email and any attachments is intended for the named recipient only. If you have received it in error you have no authority to use, disclose, store or copy any of its contents and you should destroy it and inform the sender. Whilst this email and associated attachments will have been checked for known viruses whilst within the Natural England systems, we can accept no responsibility once it has left our systems. Communications on Natural England systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes. This email and any attachments is intended for the named recipient only. If you have received it in error you have no authority to use, disclose, store or copy any of its contents and you should destroy it and inform the sender. Whilst this email and associated attachments will have been checked for known viruses whilst within the Natural England systems, we can accept no responsibility once it has left our systems. Communications on Natural England systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes.

Appeal Decision

Inquiry opened on 18 October 2022

Site visit made on 2 November 2022

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 5 December 2022

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

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

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

Preliminary matters

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

Decision

5. The appeal is dismissed.

Main Issues

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

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

The site and surroundings

7. The site comprises 75 hectares (ha) of agricultural fields and woodland north west of the town of Alfreton. According to the Agricultural Land Classification (ALC) for England¹ the land is mostly Grade 4 (poor) with some areas at Grade 3 (good). It is used primarily for pasture and silage. Alfreton lies on a distinct ridge and most of the site slopes down towards the Alfreton Brook to the north. The western edge of the site slopes to the north west. The site is crossed by several public footpaths and there are long ranging views from these towards Crich and Wessington².
8. A group of farm buildings (Ufton Fields farm) including dwelling conversions lies on the western edge of the area proposed for solar panels. During the course of the application, a number of fields and parts of fields around the perimeter and around the farm buildings and on the eastern edge of the scheme between Wren Wood and Pond Wood were removed from the proposal, without affecting the potential output. The Council considered the development on the basis of the reduced area.
9. Hall Farm itself comprises a collection of buildings on the western edge of the town next to St Martins Church. The church lies at the highest point in the settlement and its square tower is conspicuous in the landscape. The farm and church are within the Alfreton Conservation Area though the adjacent associated Alfreton Hall is not.
10. The site is divided between 2 parishes, Alfreton to the east and South Wingfield to the west. The parish boundary also follows the historical western boundary of Alfreton Park, land associated with the Morewood family that lived at Alfreton Hall. The evolving pattern of footpaths, pleasure grounds and woodland associated with the 1724 Alfreton Hall and its subsequent extension can be seen on surviving maps from the Alfreton Park Enclosure map of 1812 through to Ordnance Survey maps in the 20th century³.
11. Extensive opencast coal operations took place in the 1950s on much of the parkland but areas of woodland were preserved. It appears that the land was restored to something very similar to its previous shape and form, sympathetic to the large and dominant extended Hall at the highest point next to the farm and church. Changes to hedge and fence boundaries do not now diminish understanding of its historical use as parkland. Demolition of the original 1724 hall in the 1960s due to subsidence has left the 19th century extension standing alone. It remains a substantial building on the ridge.

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

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

³ See Mr Cox's and Ms Morris's appendices

Policy background

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

Reasons

Landscape character

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

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

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

21. Turning to whether the landscape is valued (in the terms set out in the National Planning Policy Framework (NPPF) at paragraph 174, the site does not form part of a designated landscape. The appellant's assessment concludes that the site is of overall 'moderate' value. I consider⁴ that in terms of rarity, heritage, and perceptual factors, that assessment undervalues the site and its landscape setting. Rarity is the presence of rare elements or features in the landscape or the presence of a rare LCT. In Landscape Institute guidance it is combined with 'representativeness' into a newly-named factor 'distinctiveness'. The relic Alfreton Hall parkland and literary associations with D H Lawrence mentioned by many local people indicate to me that this factor should be higher than the 'low' considered by the appellant⁵, if only because these ingredients do imbue a strong 'sense of place' notwithstanding its acknowledged natural beauty and views of Crich Memorial and to a lesser extent Wingfield Manor in addition. Heritage value in terms of landscape essentially derives from the association with Alfreton Hall and the Palmer-Morewood family, whose influence on Alfreton and its surroundings is well known and recorded, not least in the current brochure for the Hall as a wedding venue. The remaining protected woodland, field boundaries, remnant estate fencing, relationship to the farm and church and non-designated heritage asset status all indicate to me a higher value assessment than 'moderate'. In perceptual terms, the contrast with the immediately adjacent urban environment of Alfreton and apparent isolation from industry and busy main roads, indeed tranquillity, combined with the far-reaching prospect towards the Peak District, suggest a strong sense of detachment. This in combination with the evident wildlife, in particular birds such as skylark, means that the perceptual factor should be higher than 'moderate'. Overall, there is strong evidence to conclude that the appellant has underestimated the landscape value of the appeal site and its setting. Moreover, there is a large body of evidence testifying to the enhanced value placed on the parkland and the appeal site by local people.
22. With regard to impact, the appellant acknowledges a major adverse effect, even after mitigation, on the Coalfield Estatelands LCT and on NCA 38, due to the scale of development proposed. Although only 2 fields of the scheme are within the 'boundary line' of NCA 50 *Derbyshire Peak Fringe and Lower Derwent*, the appellant's assessment of a 'minor adverse' impact here gives insufficient emphasis to the transitional nature of the landscape in the Amber valley and the visibility of the solar farm from the west and north. That impact level should be substantially raised. In considering this point I note that cross-referencing the Table 6 and the assessment of NCA 50 as 'medium-high' landscape value in the appellant's own LVIA indicates a higher level of harm than 'minor'. The ability to appreciate the landscape value of NCA 50 as inextricably linked with that of NCA 38 arises from longer views of the scheme, and also because of the dip where the Alfreton brook meets the Amber river, clearly seen from, for instance, the Matlock Road.
23. None of the evidence leads to a conclusion that the landform or vegetation in the former parkland or neighbouring fields have been significantly altered by open cast working in the 1950s. I give this matter very little weight in assessing the landscape value of the site and its surroundings.

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

⁵ Acknowledged by the appellant in cross-examination

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

Visual amenity

25. Industrial development lies on the north side of Alfreton, including a large sewage treatment works and activity associated with the explosives industry. It will include a recently approved solar farm at Meadow Lane. On the south side, beyond the A38, there is an extensive area of warehousing and industrial manufacturing visible from high ground at Crich. A countryside gap of about half a kilometre (km) between Alfreton and South Normanton to the east is separated from the town by a railway line, is relatively featureless and has very few public footpaths. Alfreton Park and the surrounding fields comprise the only area of attractive open countryside easily accessible from the town. This adds to its value for local residents.
26. Local occupiers and users of public footpaths are regarded as being of 'high sensitivity' when considering the impact on visual amenity. The site is criss-crossed by several public rights of way of historic and distinctly rural character. FP18 and FP19 lead directly from the Alfreton Conservation Area, St Martins church and Hall farm towards Oakerthorpe and South Wingfield, Toadhole Furnace and Shirland respectively via footpaths 47, 48, 49 and 50.
27. Immediately on leaving the churchyard, users of both footpaths would notice the extent of the solar farm to the west and to the north west of Wren Wood due to its height of up to a maximum of 3m. Although its utilitarian industrial appearance would be mitigated over time by new screening hedging, this would be in stark contrast to the prevailing field boundary hedges which are much lower. The new vegetation would seriously restrict views beyond the former parkland towards Crich and NCA 50, which currently unfold for the walker on the popular FP18. Elements such as equipment storage containers and transformer stations would be visible, sometimes above the hedges. Metal deer fencing would be apparent as a new and discordant feature, the effect lessened by mitigation in time but remaining highly visible looking at the scheme from the north. The hedging would not be effective mitigation from this direction⁶. The CCTV cameras would project above on poles and would be seriously inharmonious and intrusive in this relatively unspoilt undulating rural environment.
28. Moreover, there would be inverters positioned throughout the scheme which would produce a humming noise when in operation. At several locations, these are close to public footpaths⁷ where the noise, especially when the inverters are under load for instance in sunny weather⁸, would add to the visual impact of the panels in the visitor's experience.
29. Occupiers of dwellings at Furlane Ends would notice panels on the ascending slope opposite but there would be intervening pasture and the solar farm would not seriously impact on their experience of the surrounding landscape, unless they wanted to walk into the area of panels. On the other hand, occupiers of dwellings at Ufton Fields farm would experience a significant change in the character and appearance of the area from tranquil open small scale grazing

⁶ Most clearly indicated on the photomontages ID5, (year 10)

⁷ Using Ms Miller's plan at page 19 of her proof

⁸ 62 dB at 10m distance

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

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

The settings of listed buildings

St Martins church and Alfreton Hall

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

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

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

Alfreton Park

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

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

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

Wingfield Manor House

40. Wingfield Manor House is a ruined 15th century palatial structure on a conspicuous rocky outcrop. It lies about 900m south of the centre of South Wingfield with extensive views in all directions. It is arranged round a pair of courtyards with a 22m high tower. Originally the home of Ralph, Lord Cromwell, Treasurer of the Exchequer, it was subsequently prison accommodation for Mary, Queen of Scots, three times and the site of English Civil War sieges twice. The Manor derives significance from its archaeological, architectural and historic interest and is an exceptional survivor. Its prominent setting in largely open rural surroundings once included extensive deer parks. As far as can be ascertained, these did not extend eastwards as far as Alfreton or the appeal site. The site does not fall within any of the key views towards Wingfield Manor identified in the NP, although solar panels would be visible from footpaths around the Manor in the context of the deer parks.
41. The centre of the solar farm would be about 3 km from the tower but the nearest panels (on the approach to Ufton Fields farm) would be around 2.25km away. There would be some visibility of the Manor from the site but such views are incidental and not 'designed'. Whilst it is appreciated that panels could obstruct these where they occur, the amount of harm caused in terms of the ability to appreciate the Manor's heritage significance seen from the site would be minor.
42. In views from the tower, and from nearby footpaths (South Wingfield FP11, FP12 and FP14), clusters of fields containing solar panels would be apparent by virtue of the contrasting industrial, metallic glazed appearance on the side of the valley and extending onto the Alfreton ridge. The development would be distracting above the treeline from FP14⁹. However the overall contribution

⁹ Mel Morris Appendix 2 Panoramas 6 and 7

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

The effect on conservation areas

South Wingfield CA

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

Alfreton CA

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

Other heritage assets

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

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

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

Other matters

48. The impact of noise was not a reason for refusal but was raised by the Rule 6 party, Save Alfreton Countryside, with particular reference to noise and disturbance during construction and decommissioning and the effect of noise emanating from the completed development on pupils at Alfreton Park Community Special School. There would be solar panels in fields immediately adjacent to the existing school but the panels themselves do not emit any noise. The appellant acknowledges that inverters further away would produce noise. Specialist evidence was heard on the likely 'worst case' noise levels that would be produced by a range of the most likely models of inverters during operation with a 'noise reduction kit' in place. This indicated that it is extremely unlikely that noise pressure levels from the inverters would exceed background noise levels at any time¹⁰. The nearby A615 and the A38 dual carriageway are responsible for most of the background noise.
49. Pupils at the school are amongst the most vulnerable in society with a range of special needs, where conventional assessment of noise pressure levels may not be sufficient to prevent a harmful effect. I do not doubt that where children have complex audio-sensory processing difficulties perhaps with a hypersensitivity to noise, they may be disturbed by unusual tonal elements or unexpected sounds, and that this can be very difficult to manage. There is no evidence to contradict the experience of school staff that some pupils have enhanced audio-sensory capabilities and susceptibility to sounds which most people cannot hear. Moreover the school may need to expand further towards the northern boundary, nearer the inverter noise source. An additional difficulty is envisaged when children use local footpaths through Alfreton Park for amenity and nature appreciation purposes. Noise from inverters, perhaps behind a hedge, could be difficult for children to process.
50. A planning condition could ensure that operational noise would never exceed background noise pressure levels at the school boundary, but this would not prevent difficulties for those with increased auditory perceptual capacity. Nor

¹⁰ 14 dB below the typical daytime background sound levels at the school

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

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

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

54. A signed and dated S106 Unilateral Undertaking (UU) has been provided with the objective of providing a community benefit fund of £10000 annually for 20 years, index linked, for the parishes of Alfreton and South Wingfield to provide improvements to recreational and leisure facilities 'including improvements to local walking routes and other recreational facilities and enhancements to public awareness information about local heritage assets to help address and compensate for recreational leisure and heritage impacts of the Development'.
55. The benefit fund would not be addressing any specific projects or benefits for which a need has been identified. It is doubtful that even if suitable benefits had been put forward in the UU, they would approach being fairly and reasonably related in scale and kind to this particular scheme, which would have very significant impacts. The UU places obligations on others not party to the UU to form part of a decision-making panel to administrate the fund.
56. It has not been shown that the fund is necessary to make the development acceptable in planning terms. The appellant confirmed that the approach adopted here is standard and similar to that used at other schemes. I do not discount the benefits offered, but bearing in mind the 3 tests set out in Planning Practice Guidance¹¹, the UU can only carry very limited weight.

Conclusion

57. The production of up to 49.9 MW of renewable energy, sufficient for between 11500 and 13360 homes or more than 22% of the Borough's total households¹² is a very significant factor in favour, along with the associated reduction in carbon dioxide emissions and the contribution that would be made to addressing climate change. The development would lead to a significant and useful increase in solar renewable energy in the Amber Valley area, substantially helping the Council in its aim to support and encourage the generation of energy from renewable sources. The return of the land to arable production after 40 years means that it would not be taken out of production in the long term. The intention to continue to use the land for grazing in the meantime, as set out in the appellant's planning appraisal at page 21 and in other places, carries some weight.
58. Planning Practice Guidance advises that local topography is an important factor in assessing whether large scale solar farms could have a damaging effect on landscape: and that great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. Protecting local amenity is also an important consideration which should be given proper weight in planning decisions¹³.

¹¹ Paragraph: 002 Reference ID: 23b-002-20190901

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

¹³ Paragraphs 007 Reference ID: 5-007-20140306 & 013 Reference ID: 5-013-20150327

59. In this case, the solar farm would be mounted largely on sloping land with a very significant zone of visual influence extending for several km across attractive and locally valued countryside in a transitional character area with long reaching views. Whilst I have found that the character and appearance of the Alfreton and South Wingfield Conservation Areas would be preserved, there would be a substantial level of harm to Alfreton Park, a non-designated asset, and a degree of 'less than substantial harm' caused to the settings of Wingfield Manor, St Martins Church and Alfreton Hall.
60. The need for renewable or low carbon energy does not automatically override environmental protections. I have taken into account all the other matters raised including the proximity of a suitable grid connection, but in the overall balance, the harm caused to landscape character and visual amenity is decisive. The adverse impacts cannot be addressed satisfactorily on a site of this size and character, and the suggested planting mitigation measures would be seriously out of keeping and would largely worsen, rather than mitigate for the landscape and visual impact. Objectors point out that the panels could simply be replaced after 40 years but it is difficult to predict whether national energy strategy will still require large solar installations in 2062. I consider that 40 years is a very significant period in people's lives during which the development would seriously detract from landscape character and visual amenity.
61. For all the above reasons, the appeal must be dismissed.

Paul Jackson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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

FOR THE APPELLANT:

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

FOR SAVE ALFRETON COUNTRYSIDE:

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

INTERESTED PERSONS:

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

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

INQUIRY DOCUMENTS

ID1 Appellant Opening

ID2 Respondent Opening

ID3 Photo from resident

ID4 Staunton Harold Hall

ID5A Alfreton South Photomontages A

ID5B Alfreton South Photomontages B

ID5C Alfreton South Photomontages C

ID6 Photo from the tower of Wingfield Manor taken in 2015

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

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

ID9 R V Thanet District Council v Kentish Projects Limited

ID10 Extract from GLVIA 3rd edition

ID11 Addendum Noise Note 19th October 2022

ID12 Revised Layout Description April 2021

ID13 Revised Layout Description September 2021

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

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

ID16 Unilateral Undertaking updated 27-10-2022

ID17 Clarification on layout

ID18 ABRS+ Inquiry Statement

ID19A Soil Samples Interim Report

ID19B Email regarding Soil Samples

ID19C Location of sample no. G078827.01

ID19D Location of sample no. G078827.02

ID19E Location of sample no. G078827.03

ID19F Location of sample no. G078827.04

ID19G Location of sample no. G078827.05

ID19H Location of sample no. G078827.06

ID19I Soil Samples Full Analysis Report

ID20 Updated Unilateral Undertaking

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

ID22 Submission from Amanda Stalker



Decision Notice & Statement of Reasons

Site visits made on:

Tuesday 20 September 2022 & Monday 27 March 2023

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

a person appointed by the Secretary of State

Decision date: 11 May 2023

Application Reference: s62A/2022/0011

Land East of Pelham Substation, Maggots End, Manuden

(Easting 547257, Northing 228104)

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

Decision

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

Procedural Matters

2. The application was submitted under s62A of the *Town and Country Planning Act 1990*, as amended (TCPA). This allows for applications to be made directly to the Secretary of State (SoS), where a local authority has been designated. Uttlesford District Council (UDC) have been designated for major applications since February 2022. The SoS has appointed a person under section 76D of the TCPA 1990 to determine the application instead of the SoS.
3. The application was screened under *The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017*, (as amended) by UDC and by the SoS¹. The SoS screening direction found that: '*On the basis of the information provided, the Secretary of State considers that the Proposed Development has the potential to give rise to significant visual effects and significant cumulative effects including those on the local landscape through an increase in the amount of electrical*

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

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

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

Background and recent planning history

8. The application seeks permission for a solar farm to generate up to 49.9 MW of electricity to power approximately 16'500 homes and displace 11'000 tonnes of Carbon Dioxide (CO²) per annum. The application site is located on agricultural land to the south of Berden, northwest of Manuden and around 6km to the north of Bishops Stortford. Further particulars are described and provided in the voluminous documents provided by the Applicant, designated authority and other interested parties, which have been taken into account in determining the application. Accordingly, it has not been re-produced here. However, where appropriate, references are provided to the source text.
9. Planning application UTT/21/3356/FUL sought full planning permission for the 'Construction and operation of a solar farm comprising ground mounted solar photovoltaic (PV) arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping'. This application was submitted to Uttlesford District Council in November 2021 and subsequently refused on 24 January 2022 under delegated powers with eight reasons for refusal.
10. The Council acknowledged that this revised application has been submitted to the Secretary of State in which further information and revisions have been made in the attempt to address and overcome the reasons for refusal as imposed on the decision notice ref: UTT/21/3356/FUL.

² [Procedural guidance for Section 62A Authorities in Special Measures - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103122/procedural-guidance-for-section-62a-authorities-in-special-measures.pdf)

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

Reasons

Need and potential benefits

12. The proposal would generate electricity to power around 16'500 homes and displace around 11'000 tonnes of CO² per annum. On the basis of these figures, over the 40-year lifespan of the proposal, it would potentially displace around 440'000 tonnes of CO². This would make a moderate contribution to the local and national aspirations and legal requirements to transition to a low carbon future.
13. Indeed, there is a large amount of national legislation, guidance, and policy which supports the transition to a low carbon future⁴. Renewable energy creation; including schemes such as the proposal here, will play an important part in delivering this. Locally, UDC declared a climate change emergency in 2019, and seeks to reduce its own emissions to net zero by 2030.
14. It is clear, therefore, that there is a pressing need for renewable energy sources to provide part of the future energy mix as England moves towards a low carbon future. This is a factor which I afford significant weight in favour of the proposal. That said, it does not automatically follow that any scheme for renewable energy creation has a *carte blanche*: as with most planning matters the need for renewable energy creation needs to be weighed against the potential adverse effects or harm arising and, if this occurs, whether this harm can be mitigated, so allowing a judgment in favour of the proposal.
15. The proposal would result in socio-economic benefits in the form of the creation of 117 direct/indirect jobs and up to £3.6 million of gross value added over the five-month construction period. During the proposed 40-year operational lifespan, the proposed development would create five net additional jobs in the Uttlesford economy, £6 million of gross value added per annum and business rates of around £3.7 million over 40-years⁵ (at present values). However, it has not been clearly indicated how this would compare with the existing socio-economic activity on the application site. This being so, these social-economic benefits are afforded modest weight in favour of the proposal.
16. The development proposes biodiversity enhancements including the provision of ten bat boxes, hedgerow improvements, the provision of three hibernaculum for Great Crested Newts, seeding of native grassland and diverse wildflower seeded areas, 20 bird boxes, and installation of 20 dormouse boxes in Battles Wood. Given that many of these enhancements could be instigated regardless of whether permission was forthcoming, and that some of them are mitigation measures intended to ameliorate adverse impacts on protected species arising from the proposal, these benefits are accordingly afforded only modest weight in favour of the proposal.

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

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

⁵ *Environmental Statement, Non-Technical Summary, January 2023* Page 15

Character and appearance of the area

17. The application site is currently used as a mix of nine agricultural fields. These are used as a mixture of mainly arable farmland with two pastoral fields. The proposal would see a large part of the nearly 80-hectare site area covered by solar arrays and associated infrastructure in six 'development zones'. The effect would be that the currently open, rural and agrarian character and appearance of the area would be drastically and noticeably altered with the introduction of an overtly utilitarian industrial infrastructure into the open countryside.
18. This would be highly contrasting industrial infrastructure that would be present for an extended period of around 40 years. This extended chronological span, together with the scale and size of the proposal, would be perceived as permanent rather than temporary features within the landscape. Whilst there is the potential to use planting to mitigate some of the impact, this would take time to establish and would not completely screen the site from public vantage points.
19. Accordingly, the proposal would have a significantly harmful effect on the rural character and appearance of the area through adversely eroding the agricultural landscape and the intrinsic beauty of the countryside. As such the proposal is contrary to Policy S7 of the *Uttlesford Local Plan 2005* (LP) which sets out that in the countryside, which will be protected for its own sake, planning permission will only be given for development that needs to take place there, or is appropriate to a rural area and that development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there.
20. The proposal is also contrary to Paragraph 174 of the *National Planning Policy Framework* (the Framework) which sets out that planning policies and decisions should contribute and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Landscape and Visual

21. Chapter 6 of the *Environmental Statement* (ES) identifies in the summary of Significant effects, that during the five months construction period there would be High magnitude of effect and Major significance of effect which would have major adverse significant residual effects from a number of viewpoints, public footpaths/bridleways, and for receptors (occupiers) at residential properties Brick House End Cottages and Rose Garth.
22. Longer term, during the 40-year operational phase, the magnitude of effect would be High in most cases, with a few reductions to Medium. The magnitude of effects would be High to the sensitivity of receptors, with significance of effects Major, with the residual effects considered to be 'Moderate'.⁶
23. In landscape terms, the proposal would introduce long rows of solar panels and associated infrastructure which would have a starkly more utilitarian appearance when compared to the currently unspoilt and open rural qualities of the site. The proposal would detract from the currently pleasant rural scene

⁶ *Environmental Statement, Chapter 6, Table 6.5 Summary of Significant Effects, Mitigation and Residual Effects*

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

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

Heritage assets – setting

26. The Framework explains in the Glossary that:

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

27. In terms of Scheduled Monuments, the Applicant's Heritage Statement concludes that there is considered to be no harm to the heritage significance of the Scheduled The Crump with regards to setting⁷. It provides no similar conclusion in respect of the Scheduled Monument of Battles Manor.
28. The Crump is a well-preserved earthwork. Historic England, the government's statutory adviser on the historic environment, identify that these are rare nationally with only 200 recorded examples and, as one of a limited number and very restricted range of Anglo-Saxon and Norman fortifications, ringworks are of particular significance to our understanding of the period. Historic England identify that the proposal would result in less than substantial harm to The Crump. Similarly, the 'Moated site at Battles Manor' are the remains of a medieval moated enclosure⁸. Historic England suggest that there is the potential for less than substantial harm to this latter Scheduled Monument.
29. These Scheduled Monuments are located within a strongly defined rural context, and this contributes positively to their surroundings and significance. Visitors are currently able to appreciate the agricultural and societal history of this part of Essex and its connection with the wider landscape. The introduction of rows of solar panels and associated infrastructure would drastically alter this relationship and the experience of those seeking to appreciate it. Instead of open agricultural fields the proposal would form an expansive industrial 'techscape', severing the monuments from the rural context in which they are currently experienced.

⁷ Applicant's *Heritage Statement* dated September 2022, Page 47, paragraph 7.11

⁸ Historic England representation dated 23 February 2023

30. The Crump in particular is a rare survival, and the monument draws a considerable amount of significance from how it is experienced in the historic landscape setting. A setting which, whilst changing over the centuries, retains a dominantly rural character. Accordingly, this would result in harm to the significance of the scheduled monument The Crump, and to a lesser degree, that of Battles Manor.
31. With regard to listed buildings, Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended, (PLBCA) requires that the SoS shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.
32. The Crump (buildings rather than the ringworks) and Battles Hall are both Grade II listed buildings. The latter is also associated with the Grade II listed Cart Lodge, and Dovecote. Brick House, Rose Garth and Peyton Hall and Barn are all Listed Grade II buildings and located no more than 500 metres from the site. Similar to the Scheduled Monuments, the settings of these listed buildings would be dramatically altered. Rather than read and experienced within a rural landscape and associated historical connections with it, the listed buildings would instead be experienced in an utilitarian setting defined by solar arrays, fencing, CCTV cameras on poles, a DNO substation and other infrastructure. Accordingly, the proposal would fail to preserve the setting of the listed buildings.
33. Great weight should be given to the asset's conservation and the more important the asset, the greater the weight should be. In this case, the harm arising to the settings of the Scheduled Monuments and listed buildings identified would be no greater than less than substantial⁹ and therefore Paragraph 202 of the Framework applies.
34. The public benefits of the proposal are set out in the 'Need and potential benefits' section of this decision. Whilst these benefits weigh significantly to moderately in favour of the proposal, they would not outweigh the significant harm to the settings of the Scheduled Monuments the conservation of which is afforded great weight in the Framework. For similar reasons, they would fail to preserve the setting of the listed buildings, in being contrary to the clear expectations of s66(1) of the PLBCA, which anticipates special regard being had to that preservation. The dual conflict of the proposal with national policy and statute, and the cumulative harm that would arise from them, are matters of very significant weight that militate against them succeeding.
35. Accordingly, the proposal conflicts with Policies ENV2 and ENV4 of the LP which require that where nationally important archaeological remains and their settings are affected by proposed development there will be a presumption in favour of their physical preservation in situ and development affecting a listed building should be in keeping with its scale, character and surroundings.
36. It is also at odds with Chapter 16. Conserving and enhancing the historic environment of the Framework, which include in determining applications, local planning authorities should take account of the desirability of sustained and enhancing the significance of heritage assets and that great weight should be

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

given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Heritage assets – Archaeology

37. Paragraph 194 of the Framework sets out that where there is potential for archaeological interest on sites, an appropriate desk-based assessment and, where necessary, a field evaluation should be undertaken. Footnote 68 of the Framework sets out that *'Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.'*
38. Significant archaeological remains from Iron Age to Roman dates and a moated enclosure and ditch-like anomalies from geographical survey are identified on the site. These are located in the northern and western parts of the application site. The applicant's heritage expert indicates that *'The majority of moated sites served as prestigious aristocratic and noble residences with the provision of a moat was intended as a status symbol. They commonly consist of wide ditches which are often water-filled, which partly or completely enclose an 'island' of dry ground¹⁰.'*
39. A metal detector survey was undertaken in the mid-2000s, but only on part of the northern end of the site, and there have been finds of coins from the early first millennium. On this basis, the Applicant considers that the potential for significant archaeological remains of Iron Age to Roman date within the site is moderate to high. They go on to consider that there are around 6'000 moated sites known within England, and the two potential enclosures identified within the application site, and contained within areas earmarked for development, are not scheduled like others found nearby with the visible remains are barely perceptible above ground. They should, therefore, be considered as non-designated heritage assets rather than as commensurate with Scheduled Monuments.
40. Place Services, Essex County Council -Specialist Archaeological Advice dated 20 February 2022¹¹ set out that significance of the remains of the moated enclosure have not yet been ascertained. They recommend that trial trenching evaluation is undertaken in advance of a planning decisions. Historic England note the above comments and indicate that it is best practice in terms of the assessment of archaeological remains to identify whether any important remains are present that could preclude or modify the proposed development.
41. With a lack of trial trenching at the application site it is not possible to ascertain the significance of buried archaeological remains. In such circumstances, the decision-maker is unable to undertake the balancing exercise set out at Paragraph 202 of the Framework (or Paragraph 201 if substantial harm).
42. Clearly there is an incomplete picture in the evidence before me. The geophysical survey has found evidence of Romano-British enclosed structures; yet it is unclear whether there is any discernible evidence as to what these are and what other archaeology remains. Whilst there has been some metal

¹⁰ Applicant's *Heritage Statement* dated September 2022, Page 18, Paragraph 5.28

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

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

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

Best and Most Versatile Agricultural Land

49. The Applicant's survey and report on Agricultural Land Classification identifies that around 54% of the site is evaluated to be within the Grade 2 (very good) category, roughly 28% as 3a (good) and the remaining 19% as 3b (moderate) or other land/non-agricultural¹². The *Framework* defines the Best and Most Versatile Agricultural Land (BMVAL) as being in Grades 1, 2 and 3a. Accordingly, around 82% of the site is within the BMVAL classification. The Report suggests that the Uttlesford district benefits from a high proportion of agricultural land in Grade 2 (approximately 80%, compared to 14% in England and 29% in the Eastern Region)¹³.
50. Whilst the currently arable land around the solar arrays and associated infrastructure could potentially be used for sheep grazing, it is likely that over the 40-year life of the proposed development there would be a significant reduction in agricultural production over the whole development area. This would not be an effective use of BMVAL, as reflected in the planning practice guidance which encourages the siting of large solar farms on previously developed and non-agricultural land.
51. Whilst the Applicant refers to the temporary nature of the proposal, 40 years is a considerable length of time for the solar arrays, DNO substation, fencing, CCTV towers and other associated structures to be present on site. Given this duration the proposed development would be seen as permanent features rather than as temporary.
52. Whilst an *Alternative Sites Assessment* (dated September 2022) has been submitted, this is limited by the reliance on an unsubstantiated distance of 4km point of connection with the electricity grid. Moreover, the search area was mainly limited to the Uttlesford District (for example the brownfield land search) even though the East Herts District is located immediately to the west of the site. Whilst such assessment cannot be exhaustive *ad infinitum* it is, nonetheless, reasonable to assume that it would detail reasoning as to why 4km is the maximum range for a connection point and take into account the geographical scope of the site – rather than local authority boundaries. It has also not been demonstrated that the significant development of this BMVAL is necessary in this instance – even taking into account net zero aspirations.
53. Accordingly, the proposal would conflict with Policy ENV5 of the LP which sets out that development of BMV land will only be permitted where opportunities have been assessed for accommodating the development on previously developed sites or within existing development limits. It goes on to indicate that where development of agricultural land is required, developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise.
54. It would also conflict with Paragraph 174 of the *Framework*. This sets out that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside – including the economic and other benefits of the best and most versatile agricultural land. Footnote 53 indicates that where significant

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

¹³ *Ibid*, page 13, Paragraph 4.2.1

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

Highway safety

55. Principally, construction traffic (of around 922 vehicles/trips) would access the site to the east of Manuden Road, with the vehicles having lengths of no more than 16.5 metres. These vehicles would use the M11, with access to and from along the B1383 (aka London Road to the south of Newport), turning to the west at Newport along the B1038, to Clavering when turning to leave/enter the site down Manuden Road. It is envisaged that construction traffic will only access the site from this north route and not through Manuden. Nonetheless, these are roads which, when leaving the motorway, tend to become narrower and winding without many places for larger vehicles to easily pass each other the closer to the site one is.
56. The proposed route for construction traffic is included in the submitted *Construction Transport Management Plan Sept 22 Issue (2)* (CTMP). However, since that work was undertaken further planning applications for similar development proposals have been submitted¹⁴. The CTMP does not take into account the potential cumulative impact arising from the number of proposed developments in this locality. In particular, it requires further investigation on traffic movements on Stortford Road and in specific around Clavering Primary School. The cumulative impact of construction traffic should be assessed in order to inform any plans for mitigation and co-ordination of traffic movements between sites during the construction phases.
57. Moreover, the main site access requires an updated Stage 1 Road Safety Audit and additional information to determine if the existing vehicular access at Maggots End is safe and suitable for operational vehicles. This should include a speed survey with visibility splays provided in accordance with the 85th percentile recorded. A road safety audit should accompany the current proposals.
58. In the absence of the above information and assessments, the proposal is contrary to Policy GEN1 of the LP which sets out that certain criteria should be met in order for development to be permitted. This includes that access to the main road network must be capable of carrying traffic generated safely and accommodated within the surrounding road network.
59. For the same reasons, in the absence of the above information, surveys and assessments the proposal would have an unacceptable impact on highway safety. It is therefore contrary to Paragraph 111 of the Framework which sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Biodiversity

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

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

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

61. The *Ecological Impact Assessment* identifies that at the time of the surveying, around seventeen breeding territories for Skylarks were identified across the site¹⁶ and in particular on the areas identified as development zones. The main loss of habitat is almost entirely attributed to loss of arable vegetation; habitat which is used by at least three Species of Principal Importance. Ground-nesting species such as Skylark will be especially affected by the loss of the arable farmland and its conversion to pastoral land for sheep-grazing and solar farming.
62. Consequently, it is necessary to adopt a precautionary principle and so it is reasonable to assume that the application site will support a considerably reduced number of birds than it currently supports. As such, a negative impact on breeding birds of open ground (particularly skylarks) is anticipated as a result of loss of nesting habitat as well as unmitigated direct impacts of construction associated with the proposal.
63. Mitigation for the loss of the Skylark territory has been suggested in arable fields in the local area through the provision of two 'bird foraging plots' per territory lost and that there is an abundance of open, arable farmland within the surrounding 5km of the site. However, it is unclear as to how such mitigation would be provided given that, as the *Ecological Impact Assessment* identifies: 'any off-site mitigation would need to be secured via a Section 106 agreement' but no such legal agreement is before me. Nor is there any indication where within the application site itself such areas could be provided. Lastly, it is unclear as to how such provision would also be made for other Species of Principal Importance identified such as Yellowhammer and Yellow Wagtail.
64. The potential biodiversity improvements arising from the proposal are noted. These include improvements in foraging areas, in soil qualities, and in hedgerows. However, the proposal would result in significant harm to Species of Principal Importance and their habitats. This is harm that cannot be avoided, adequately mitigated, and there is no mechanism to secure compensation for. Paragraph 180 of the Framework indicates that planning permission should be refused in such circumstances.
65. The proposal in this case would fail to conserve and enhance biodiversity, the Duty of which falls on public bodies in England under Section 40 of NERC. It is contrary to Policy GEN7 of the LP which sets out that development that would have a harmful effect on wildlife will not be permitted unless the need for the development outweighs the importance of the feature to nature conservation and where the site includes protected species or habitats for protected species measures to mitigate and/or compensate for the potential impacts of the development, secured by planning condition or condition, will be required.
66. The proposal is also contrary to Paragraph 180 of the Framework which sets out that when determining planning applications, local planning authorities should apply the following principles: (a) if significant harm to biodiversity

¹⁵ Applicant's Ecological Impact Assessment Sept 2021, Paragraph 2.6.127

¹⁶ Applicant's Ecological Impact Assessment Sept 2021, Paragraph 2.6.105

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

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

Noise

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

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

Other Matters

Planning obligation

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

Conditions

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

Planning balance and Conclusions

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

77. However, these fail to negate the harms identified to character and appearance, landscape and visual matters, the settings of designated heritage assets, archaeological remains, loss of BMVAL, highway safety, biodiversity and noise. The benefits in this case are clearly outweighed by the harms identified.

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

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

C Parker

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

Informatives

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



Appeal Decision

Hearing held on 18 April 2023

Site visit made on 19 April 2023

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

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

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

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

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

Decision

1. The appeal is dismissed.

Main Issues

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

Reasons

Policy Background

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

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

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

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

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

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

Best and Most Versatile Agricultural Land

8. The parties agreed that the Written Ministerial Statement (WPS) dated 25 March 2015 relating to the unjustified use of agricultural land remains extant. It states therein that any proposal for a solar farm involving the best and most versatile agricultural land (BMV) would require to be justified by the most *compelling evidence* (my emphasis).
9. The WMS is linked to updated National Planning Policy Guidance¹ (NPPG), which explains that where a proposal involves greenfield land, consideration should be given as to whether the proposed use of any agricultural land has shown to be necessary, whether poorer quality land has been used in preference to higher quality land and to whether the proposed development would allow for continued agricultural use where applicable and/or where biodiversity improvements around arrays would be provided. This is reflected in the National Planning Policy Framework (the Framework)² which suggests that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of higher quality.
10. Policy BNE4 of the South Derbyshire Local Plan Part 2 (SDLP) states that the local planning authority will seek to protect soils that are 'Best and Most Versatile', (Grades 1, 2 and 3a in the Agricultural Land Classification) and wherever possible direct development to areas with lower quality soils while Policy BNE5 of the SDLP states that otherwise acceptable development outside of settlement boundaries in rural areas will be granted where it will not unduly impact on BMV agricultural land.
11. Paragraph 174(b) of the Framework states that planning decisions should recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.
12. The Glossary to the Framework explains that BMV comprises land that falls within grades 1, 2 and 3a of the Agricultural Land Classification. It is not disputed that the appeal proposal would result in the loss of almost 34 Ha of BMV land consisting of 15% grade 2, 34% grade 3a and 48% grade 3b with the remaining 3% defined as other land (blocks of woodland or water bodies), which would lead to a temporary loss of 49% of BMV land at the appeal site.
13. The appellant's Site Selection Assessment (SSA) fixed the study area for the appeal proposal by a requirement to connect to a viable local electricity network that was agreed with the local distribution network operator at the application stage. The agreed point of connection would be into the 132kv network that crosses the western end of the appeal site and which connects into the major substation at Drakelow, some 6km from the connection point. A 2km offset around the 132kv line was therefore drawn at a distance of no more

¹ Paragraph 013, Reference ID: 5-013-20150327, Revision date: 27 March 2015

² Paragraph 175 Footnote

- than 8km from the Drakelow facility, which coincides with the maximum cabling connection that would be economically viable.
14. The SSA found that there were no suitable brownfield sites within the study area whilst there are only very few areas of lower grade agricultural land. These areas were grade 4 land but considered unsuitable for the siting of solar arrays due either to their being either too small or had physical or environmental constraints that limited their inclusion. The SSA was also informed by a number of other constraints, including levels of irradiance, sensitive landscape, ecological or heritage designations, sensitive human receptors and access/highway considerations, amongst others. The Council offered no evidence that would contradict these findings. The SSA confirmed that there were no sites of suitable size for a 50MW solar farm within a suitable distance from the grid connection point that lie wholly outside BMV land although on grounds of costs and practical feasibility, no soil survey work was completed other than within the appeal site. This factor is a significant omission.
 15. The appellant provided an assessment of alternative sites to demonstrate why agricultural land is to be used for the appeal development. This included assessing the opportunities that might be available on previously developed land (PDL)/brownfield land, commercial rooftops and lower grade agricultural land (grades 3b, 4 and 5).
 16. It is clear that a robust assessment has not been made of the grading of agricultural land within the remainder of the study area, which from the data held by Natural England has significant areas of Grade 3 agricultural land. While I accept the argument that it would not be practicable to undertake extensive investigation of the entire study area, I agree with the Council who pointed out that the explanatory note³ to the Agricultural Land Classification maps sets out that Grade B reflects 'areas where 20-60% of the land is likely to be 'best and most versatile' agricultural land'. This to my mind adds to the criticism that the evidence has failed to demonstrate that there is no land available for this development within the study area of a lesser agricultural quality, contrary to national and local policy. It also does not stand up to scrutiny as the 'compelling evidence', which is sought in the WMS.
 17. My attention was also drawn to the Oaklands Farm Solar Limited (BayWa r.e. UK Ltd) Preliminary Environmental Information Report⁴ submission to the National Infrastructure Planning Unit of the Planning Inspectorate for the purposes of a Development Consent Order for a 163MW solar farm and onsite storage facility at a site also within the appellant's study area to the north-west of the present appeal site and within South Derbyshire District. From the appellant's evidence, it is clear that this site would also include extensive areas of Grade 3 land, which has not been assessed. It must be assumed that lower quality grade 3 agricultural land might well be available as an alternative to the appeal site.
 18. To complete the assessment, the appellant considered the availability of previously developed land (PDL) and the possibility of utilising commercial

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

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

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

19. The appellant explained that the appeal site land will remain available for agricultural use with the land below the solar arrays possibly utilised for sheep grazing purposes. It was explained at the hearing that the 40 years of fallow would enable the quality of the soils to be repaired. Moreover, biodiversity improvements proposed include new planting of trees and hedgerows with wildlife friendly species and enhancement of existing habitat corridors throughout the site. New planting and landscaping would leave a lasting environmental legacy beyond the lifetime of the solar farm.
20. While recognising that it may not be reasonable to expect developers to fully investigate every possible location for a solar farm within a wide study area and neither is it incumbent on appellants to demonstrate that there is no possible alternatives to an application site, nevertheless, the wider study area is expansive and sufficiently so that it is being earmarked as a potential national infrastructure project. In acknowledging that the main issues for food security as identified by DEFRA⁵ are climate change and soil degradation, this only serves to emphasise the importance of maintaining higher quality agricultural land where this is found in food production.
21. The hearing heard that the land hereabouts is a valued resource with tenant farmers under contract to a national potato crisps manufacturer who demand the highest quality of outputs. It was pointed out that there are only 80 such farms in the country producing the required grade of potato crop. Moreover, no calculation had been made of the existing bioenergy plant that is being generated each year and which contribute to renewable energy targets that may also close should the proposed solar farm goes ahead. The evidence presented at the hearing on this was scant however and has not featured highly in my consideration.
22. There is no definition of what might constitute 'compelling evidence' but I accept the Council's arguments that the evidence fails to demonstrate that there are no suitable poorer quality areas of land in the study area that could be used or accommodate the appeal development save for a broad brush map-based review. In this regard, the appeal proposal contravenes relevant provisions of BNE4 of the SDLP, the NPPG and the WMS. The loss of just under 50% of BMV is a significant negative aspect of the appeal proposal which weighs heavily against the development.

⁵ United Kingdom Food Security Assessment 2009 – Department of Environment, Food and Rural Affairs

Landscape and Visual Impact

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

Landscape character

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

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

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

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

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

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

Visual effects

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

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

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

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

Heritage Impacts

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

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

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

Planning balance and conclusion

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

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

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

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

51. While collectively the benefits arising from the appeal scheme are significant, the harm that would be caused by allowing the development of just below 50% of the site's hectareage over a period of 40 years would be of greater significance.
52. Taking all this into account, the appeal proposal would be conflict with the development plan and the Framework and would not constitute sustainable development.
53. Accordingly, for the reasons stated I conclude that the appeal be dismissed.

Gareth W Thomas

INSPECTOR

Appearances:

For the Appellant:

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

For the Council:

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

Interested Parties:

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

Documents presented to the Hearing:

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