

DC/21/04711 - EDF - Tabled Papers

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Policy update following Inspector's report on the BMSDC Joint Local Plan

Application DC/21/04711 - Change of use from agricultural land to solar farm and construction of a solar farm (up to 49.9MW AC maximum combined capacity) with associated grid connection cable route, infrastructure and planting

Land north of Tye Lane, Bramford

Introduction:

On 19th September 2023, the Babergh and Mid Suffolk District Councils received the Inspectors' report on the examination of the Joint Local Plan. The Inspectors' have concluded that, subject to the recommended modifications, the Plan is sound. Accordingly, officers have considered the modified policies having regard to the requirements of paragraph 48 of the NPPF, as relevant to the determination of this planning application. The JLP and its policies are a material consideration of significant weight in this case.

The primacy of decision taking remains with the development plan. At the date of the Committee meeting (27th September 2023) the development plan comprised the saved policies of the Mid Suffolk Local Plan 1998, the Core Strategy 2008 and the Core Strategy Focussed Review 2012.

However, the status of the JLP and its policies are 'other material considerations' of significant weight that may affect the weight to be afforded to development plan policies and indicate whether the direction of the development plan should be followed or not.

This paper identifies the JLP policies that are relevant to the determination of the application and assesses the compliance of the scheme with those policies in comparison to the assessment undertaken in the officer's Committee report.

Relevant policies:

The following policies from the JLP are relevant to the application:

- SP03 - The sustainable location of new development
- SP09 - Enhancement and Management of the Environment
- LP15 - Environmental Protection and Conservation
- LP16 - Biodiversity & Geodiversity
- LP17 - Landscape
- LP19 - The Historic Environment
- LP24 - Design and Residential Amenity
- LP25 - Energy Sources, Storage and Distribution
- LP27 - Flood risk and vulnerability

Assessment of policies:

- SP03 - The sustainable location of new development

This policy carried forward the settlement boundaries previously defined by the Local Plan and Core Strategy. The application site remains in the countryside for planning purposes under the JLP and there is no change of approach arising from this policy.

SP09 - Enhancement and Management of the Environment

This policy requires development to conserve, enhance and manage the natural and local environment with specific requirements for protected habitats and biodiversity net gain. This policy largely reflects the objectives of existing development plan policies, recognising the direction of travel towards BNG as a statutory requirement. There is no material change to the assessment in the officer's report.

LP15 - Environmental Protection and Conservation

This policy requires proposals to demonstrate prioritisation of the use of previously developed land and the avoidance of use of BMV land, to address land contamination and in stability, prevent and mitigate pollution, avoid significant adverse amenity impacts and protection of ground and surface water features. This policy largely reflects the objectives of existing development plan policies. The site is approximately 50% BMV. There is no material change to the assessment in the officer's report.

LP16 - Biodiversity & Geodiversity

This policy requires development proposals to protect and improve biodiversity and geodiversity including a requirement of a minimum of 10% BNG. This policy largely reflects the objectives of existing development plan policies, recognising the direction of travel towards BNG as a statutory requirement. There is no material change to the assessment in the officer's report.

LP17 – Landscape

This policy requires development proposals to conserve and enhance landscape character and, where significant landscape or visual impacts are likely to occur, provide an LVIA. This policy largely reflects the objectives of existing development plan policies. The application is accompanied by an LVIA and landscape mitigation proposals. There is no material change to the assessment in the officer's report.

LP19 - The Historic Environment

This policy requires applications to assess potential impacts on above and below ground heritage assets. The policy seeks to safeguard and enhance the historic environment, preserve, enhance or conserve heritage assets and requires clear and convincing justification for harm to heritage assets. This policy largely reflects the objectives of existing development plan policies. The application is accompanied by an heritage assessment and mitigation proposals. The harm to heritage assets has been considered and weighed. There is no material change to the assessment in the officer's report.

LP24 - Design and Residential Amenity

This policy sets out the principles of high-quality design required by all new development. This policy largely reflects the objectives of existing development plan policies. There is no material change to the assessment in the officer's report.

LP25 - Energy Sources, Storage and Distribution

This policy supports renewable energy generating proposals subject to the impacts of development, including associated off-site infrastructure, having been fully considered and mitigated where appropriate effectively mitigated. It also requires the provision of mitigation,

enhancement and compensation measures when necessary and approval of connection rights to be demonstrated. It states that conditions will usually be used to secure restoration of sites on cessation of generation and that where proposals impact the setting of heritage assets and other features, the applicant must convincingly demonstrate that potential harm can be effectively mitigated and that there are no alternative sites available within the District or for community initiatives within the area which it is intended to serve. This policy reflects many the objectives of many existing development plan policies but adds further issues for consideration of such applications.

The application documents include confirmation of an extant connection agreement to export energy to the national grid and an assessment of alternative sites considered, however, this assessment does not explicitly state that there are no alternative sites that could deliver the proposed development. It is reasonable to suggest that such alternative sites as may be existing would need to be within proximity to an appropriate grid supply point and even the point at which the connection agreement is secured, in this case the Bramford sub station.

LP27 - Flood risk and vulnerability

This policy requires new development to demonstrate that it will be safe for its lifetime without increasing the risk of flooding elsewhere and that mitigation of flood risk impacts, including surface water drainage schemes and betterment of greenfield runoff rates are provided where possible. The application includes an FRA and surface water drainage mitigation measures, including betterment of the existing runoff rate. This policy largely reflects the objectives of existing development plan policies. There is no material change to the assessment in the officer's report.

Overall planning balance:

Having regard to the significant weight afforded to the JLP policies as an other material consideration and reviewing the overall planning balance of the assessment in the Committee report your officers consider that the JLP policies do not materially change the direction of the development plan or the recommendation to grant permission.

Updated recommendation:

That Delegated Authority be given to the Chief Planning Officer to resolve skylark mitigation matters. Subject to those matters being resolved, the application is **GRANTED** planning permission and includes the following conditions and informatives (those listed, and others as may be deemed necessary*)

1. Standard time limit for commencement
2. Temp PP 35 years plus removal and reinstatement if operation ceases for a period of 6 months or at the end of the 35 year life. Reinstatement scheme to be agreed including biodiversity review, mitigation and details of retained landscape planting
3. Limitation on capacity of the development to 49.9MW AC with requirement to submit details of confirmed generation annually
4. Approved Plans (Plans submitted that form this application)
5. Access works, off site highway improvement works
6. Arboricultural Survey and Impact assessment
7. Repairs to any highway damage
8. Off-site highway improvement works
9. Archaeology

10. Carry out in accordance with ecological assessment
11. CEMP
12. Construction management plan including deliveries, vehicle routing and working hours
13. Fire safety strategy
14. Glint and glare mitigation to be implemented and maintained.
15. HDD methodology for Miller's Wood to be agreed
16. Information board strategy
17. Landscape planting scheme, to include planting to northern boundary along footpath 8 and long-term landscape compensation
18. Landscape management and implementation
19. LEMP
20. Lighting restriction (no external lighting to be operated)
21. No burning of waste on site
22. Noise assessment once operational
23. Right of way information board strategy
24. Surface water drainage strategy to be agreed, implemented and verified
25. Skylark mitigation
26. Soil management plan
27. Visibility splays

And the following informative notes as summarised and those as may be deemed necessary:

- Proactive working statement
- SCC Highways notes
- Support for sustainable development principles

Emily Green

Subject: FW: REDACTED - URGENT: EDF is NOT below 50MW

From: Bron Curtis
Sent: Sunday, September 24, 2023 11:40 AM
To: Samantha Main
Cc: Tom Barker <Tom.Barker@baberghmidsuffolk.gov.uk>; Andrew Stringer (MSDC Cllr) <Andrew.Stringer@midsuffolk.gov.uk>; James Caston (Cllr) <James.Caston@midsuffolk.gov.uk>; Adrienne Marriott (Cllr) <Adrienne.Marriott@midsuffolk.gov.uk>; David Busby (Cllr) <David.Busby@babergh.gov.uk>;
Subject: RE: URGENT: EDF is NOT below 50MW

Hi Sam, thank you for your email.

Application DC/21/04711 is for a solar farm. The Pivoted Power BESS currently under construction is permitted by a separate decision. In assessing capacity, it is of each development proposed rather than the cumulative impact of the development with other schemes, even if those schemes are owned / operated by the same organisation, in this case EDF. In fact, the NSIP threshold for BESS is different to the threshold for solar generation.

As you know, a similar query arose when the 3 applications first came to us, whether all 3 schemes together, totalling over 50MW in capacity should be determined as an NSIP. At the time I advised that each application is considered on its own merits and I checked this with the NPCU. There has been recent case law dealing with this and confirming that approach.

It is my opinion that there is no existing prescription for the assessment of capacity, within the PA or other legislation or policy currently in force. The draft EN-3 seeks to rectify this with the AC approach, as far as I can tell, to bring greater certainty and consistency to the process. This is the direction of travel for capacity assessment and I therefore consider it appropriate to accept the AC approach EDF have explained.

To confirm, I remain satisfied that the application falls to be determined under the TCPA. I will whoever discuss this further with colleagues before the meeting on 27th to ensure the Committee have appropriate advice.

Kind regards,
Bron

Bron Curtis BA(Hons), MA, MRTPI
Principal Planning Officer, Strategic Projects and Delivery - Development Management **
Mondays, Tuesdays, Wednesdays and Thursdays only **
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Mid Suffolk and Babergh District Councils - Working Together

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From: Samantha Main

Sent: Friday, September 22, 2023 8:13 PM

To: Bron Curtis <Bron.Curtis@baberghmidsuffolk.gov.uk>

Cc: Tom Barker <Tom.Barker@baberghmidsuffolk.gov.uk>; Andrew Stringer (MSDC Cllr) <Andrew.Stringer@midsuffolk.gov.uk>; James Caston (Cllr) <James.Caston@midsuffolk.gov.uk>; Adrienne Marriott (Cllr) <Adrienne.Marriott@midsuffolk.gov.uk>; David Busby (Cllr) <David.Busby@babergh.gov.uk>;

Subject: Re: URGENT: EDF is NOT below 50MW

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Hi Bron,

Thank you for explaining about the works.

There is still disagreement about the capacity though. On 6th Sept you sent me a comment from EDF explaining that the grid connection was under the name Pivoted Power with National Grid, and that they amended the contract in June 2022 as it will be used by both the BESS and solar panels. You yourself approved the Pivoted Power BESS to be increased to 57MW. The National Grid TEC Register has been updated since 6th Sept and clearly shows an agreement for an AC export capacity of 57MW.

Further EDF seem to be telling you that the draft EN-3 states it is based on the AC inverter capacity, but anyone reading the draft EN-3 can plainly see this is not the case. That may be what it will be, but it is not what it is now because the draft EN-3 has not been adopted yet.

The Planning Act 2008 and draft EN-3 clearly explain that the 50MW threshold is currently based on the DC capacity, which in EDF's response they admit will be over the 50MW limit. And you've seen the photo showing they are requesting a DC capacity of 70MW be installed.

I understand there has been inconsistency in the application of the policy across the country. And I understand why the Council originally accepted the application under the TCPA. That should not excuse allowing it to continue.

Best wishes,
Sam

From: Bron Curtis <Bron.Curtis@baberghmidsuffolk.gov.uk>

Sent: Friday, September 22, 2023 7:26:32 PM

To: Samantha Main

Cc: Tom Barker <Tom.Barker@baberghmidsuffolk.gov.uk>; Andrew Stringer (MSDC Cllr) <Andrew.Stringer@midsuffolk.gov.uk>; James Caston (Cllr) <James.Caston@midsuffolk.gov.uk>; Adrienne Marriott (Cllr) <Adrienne.Marriott@midsuffolk.gov.uk>; David Busby (Cllr) <David.Busby@babergh.gov.uk>;

Subject: RE: URGENT: EDF is NOT below 50MW

Hi Sam,

Pre-commencement conditions relate to permission for development not works which are not development so, things like ground investigation and preparatory works are often not development and are therefore not controlled by the planning regime at all. In this case there is no permission and we have no allegation of unauthorised development being carried on.

Examples of works which are not development are things like pegging out certain elements, removal of unprotected vegetation, survey works and *de minimus* activities (such as working in your garden). In terms of archaeological assets, EDF have carried out trial trenching and other archaeological investigation in accordance with advice from SCC. The risk I refer to is borne by EDF – either if they don't get permission and the works are then abortive or, if the works are development, they are at risk of enforcement action.

I appreciate that the capacity rating of solar installations is not clearly prescribed in legislation, policy or guidance, neither is there complete consistency across the country. This is the reason for the change to AC approach mentioned in EN-3, to ensure greater consistency. It will also be likely to mean that less projects are NSIPs going forward.

I continue to be satisfied that the application falls within scope of the provisions of the TCPA.

EDF have commented as follows:

“Our grid connection at Bramford substation is for 49.9MW AC. The grid works on alternating current and it is not possible to export more than our contracted grid connection i.e. below 50MW. Solar panels are rated in DC capacity as they generate electricity as direct current and this is then converted to alternating current via inverters. It is the capacity of the AC rated inverters which is the test of solar capacity and not the DC rating of the panels. NPS EN 3 at para. 3-10-41 to 3-10-49 explains this. I'm not sure what plan some of the local community may have seen but the panels are as I say rated in DC so may well be over 50MW, but the inverters are limited to below 50MW and we will not export any more than 49.9MW of electricity.

Whilst there is some investigative work going on at the site present this is not in any way relating to the implementation or commencement of work on the scheme that we have applied for. On all our solar sites we carry out site investigation works and particularly here at Tye Lane because of the gas pipeline and underground cables. In many instances this is done pre planning determination and involves pull out tests (to ascertain soil resistivity) which if we build the project will inform how deep the panel frames will need to be inserted into the ground. This is entirely without prejudice to any decision made by the Council and the opportunity has been taken now to limit the impact on the current farming methods.”

I hope this is helpful. Please do let me know if you need anything further.

Kind regards,
Bron

Bron Curtis BA(Hons), MA, MRTPI
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From: Samantha Main

Sent: Friday, September 22, 2023 3:00 PM

To: Bron Curtis <Bron.Curtis@baberghmidsuffolk.gov.uk>

Cc: Tom Barker <Tom.Barker@baberghmidsuffolk.gov.uk>; Andrew Stringer (MSDC Cllr) <Andrew.Stringer@midsuffolk.gov.uk>; James Caston (Cllr) <James.Caston@midsuffolk.gov.uk>; Adrienne Marriott (Cllr) <Adrienne.Marriott@midsuffolk.gov.uk>; David Busby (Cllr) <David.Busby@babergh.gov.uk>;

Subject: Re: URGENT: EDF is NOT below 50MW

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Hi Bron,

Thank you for getting back to me.

I understand that sometimes pre-works are common and are at the developers risk. How then does this sit with regards to pre-commencement conditions, in particular archaeology since groundworks have been done? And you say the Council has asked for some areas to be marked out - at whose risk is this done?

With regards to capacity if you read the documentation EDF clearly state up to 49.9MW at **point of connection**. The regulations do not refer to the export or point of connection capacity, they refer to the DC capacity. And we both know that EDF are no longer limited to a 49.9MW-ac export connection with National Grid because you yourself approved the Pivot Power BESS to be increased to 57MW.

Jokes about the British weather aside, to assess the capacity of an application based on how much sun and cloud we get in one particular location is an impossible assessment to make. It is akin to considering an application for a 6-bed house and saying we will judge it as a 2-bed house because the applicant says they'll only use 2 of the rooms. Solar radiation varies across England, and so for the policy to be applicable equally across the various weather conditions of our country the capacity an application should be judged on must be a consistent factor - this is the capacity of the site in DC terms as clarified by the draft EN-3 - **"solar farms are assessed on their DC capacity"** - not by what might be generated capped or not.

I understand that you have to take an application at face value and why you originally accepted it under the TCPA, and I too did not see the nuances of what EDF claimed in their original documentation. We now know that EDF's principle contractor has been hired to install a solar PV farm with a DC capacity of 70MWp and this is the figure by which EN-3 makes it clear the threshold must be judged by. Not what it might maybe potentially perhaps generate depending on if it is or isn't sunny.

I am not sure how the Council would need to proceed with an application accepted under the TCPA that in actuality is not within the scope of it. But to approve it would surely be beyond Mid Suffolks authority as LPA.

Best wishes,
Sam

From: Bron Curtis <Bron.Curtis@babberghmidsuffolk.gov.uk>
Sent: 22 September 2023 07:29
To: Samantha Main
Cc: Tom Barker <Tom.Barker@babberghmidsuffolk.gov.uk>; Andrew Stringer (MSDC Cllr) <Andrew.Stringer@midsuffolk.gov.uk>; James Caston (Cllr) <James.Caston@midsuffolk.gov.uk>; Adrienne Marriott (Cllr) <Adrienne.Marriott@midsuffolk.gov.uk>; David Busby (Cllr) <David.Busby@babbergh.gov.uk>;
Subject: RE: URGENT: EDF is NOT below 50MW

Dear Sam, thank you for your email.

I will add this to the file and ensure the Planning Committee have the opportunity to see your comments and my response before their meeting next week.

Regarding the work on site: We have asked EDF to mark out some areas of the proposed development for the benefit of the Planning Committee site visit on 27th which may account for some of the work. Otherwise, it is not uncommon for developers to start ground investigation and preparatory works, which are usually not development and so don't need planning permission, in advance and hopeful of permission being granted. Such work is undertaken at the developer's risk.

If you or any other party are concerned that unauthorised development, that doesn't have planning permission or does not accord with planning permission, is being carried out this can be reported to our Planning Enforcement team who will investigate and respond as appropriate. You can report a concern here: <https://www.midsuffolk.gov.uk/planning/enforcement/report-it/>

Regarding the capacity of the development: You rightly point out the relevant legislation and the commentary on adopted practice for assessing capacity in your email below and so I fully appreciate your concerns. There are a few points that are relevant to our accepting the application under the Town and Country Planning Act 1990 (TCPA) as opposed to The Planning Act 2008. Firstly, an application is accepted at face value, as stated in the submitted documents. In this case the application is made under the TCPA and states the capacity of the installation to be 'up to 49.9MW'. Secondly, the peak capacity of an installation is it's capacity to generate at peak conditions, i.e. continually sunny days. In reality, weather is mixed and so actual generating capacity is lower than installed potential capacity for solar farms (and indeed all solar installations).

I understand that the technology of the EDF installation will be capped such as it will not be possible to generate more than 49.9MW. This assessment of capacity is in line with draft EN-3.

I can confirm that the application has been referred to the National Planning Casework Unit who deal with NSIPs and manage planning decisions on behalf of the Secretary of State. They have acknowledged the application and confirm that it is not 'called in'.

I have put your concerns to EDF to ask if there is any more information they can provide to explain this in terms of the technical arrangement of the development.

I hope this is helpful. Please do let me know if you need anything further.

Kind regards,
Bron

Bron Curtis BA(Hons), MA, MRTPI

Principal Planning Officer, Strategic Projects and Delivery - Development Management **
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From: Samantha Main

Sent: Thursday, September 21, 2023 12:19 PM

To: Bron Curtis <Bron.Curtis@babermidsuffolk.gov.uk>

Cc: Tom Barker <Tom.Barker@babermidsuffolk.gov.uk>; Andrew Stringer (MSDC Cllr)

<Andrew.Stringer@midsuffolk.gov.uk>; James Caston (Cllr) <James.Caston@midsuffolk.gov.uk>; Adrienne Marriott

(Cllr) <Adrienne.Marriott@midsuffolk.gov.uk>; David Busby (Cllr) <David.Busby@babermidsuffolk.gov.uk>;

Subject: URGENT: EDF is NOT below 50MW

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Good morning Bron and all,

I have been sent important information that EDF application DC/21/04711 is NOT below the 50MW threshold which allows it to go through Mid Suffolk as the LPA.

As some of you are aware EDF has already appointed their principle contractor. They have been working on site almost 2 weeks now (yes before the application has even been determined) and residents have been speaking with the contractors on a regular basis. One resident was shown drawings by the principle contractor and has taken a photo (attached). **They have been contracted by EDF to install 70MWp of solar power!** This is significantly above the 50MW threshold.

In the Officers Report to committee it stated that the application is for a generating capacity of 49.9MW. But upon closer inspection the EDF documents actually state it is 49.9MW at the point of connection. These two are not the same thing!

My apologies to those who already know this, but to explain... solar panels create electricity in a DC current (generating capacity). This then goes through an inverter which converts it to an AC current, then

through a transformer to upgrade the voltage, then through the on-site substation,* , and then to the grid (i.e. point of connection). *The EDF application varies from this normal pattern slightly because it also goes through the Pivot Power BESS before the grid - something else which is misleading in their application. At every one of these stages energy is lost and the capacity is reduced. So to get to a 49.9MW capacity at point of connection requires a much larger generating capacity to be installed. The term MW is used as shortform a lot. The correct unit for the generating capacity is MWp - the p indicating the MW peak or maximum potential output - in this case the DC current.

A generating station of more than 50MW is classified as a NSIP under the Planning Act 2008 Sections 14(1)(a) and 15(2)(c), and must be determined as an NSIP (Section 31). Whilst the Planning Act does not specify at what point the MW capacity is to be measured, the most recent draft NPS EN-3 does:

"3.10.42 For the purposes of determining the capacity thresholds in Section 15 of the 2008 Act, all forms of generation other than solar are currently assessed on an AC basis, while a practice has developed where solar farms are assessed on their DC capacity.

3.10.43 Having reviewed this matter, the Secretary of State is now content that this disparity should end, particularly as electricity from some other forms of generation is switched between DC and AC within a generator before it is measured.

3.10.44 From the date of designation of this NPS, for the purposes of Section 15 of the Planning Act 2008, the maximum combined capacity of the installed inverters (measured in alternating current (AC)) should be used for the purposes of determining solar site capacity.

The draft NPS EN-3 makes it clear that the capacity for a solar PV farm, like the EDF one, must currently be measured based on the DC current of the development - i.e. the MWp capacity that the principle contractor has been hired to install. There is a proposal for change, but not only was DC/21/04711 submitted before the change, the current policy even now remains unchanged because the new NPS EN-3 has NOT yet been designated. It is still a draft. This is not a matter of planning judgement or balance like the degrees of harm to landscape for example. It is a very specific and measurable policy. EDF intend to install a solar farm of 70MWp, which exceeds the threshold that Mid Suffolk are allowed to even consider granting permission for.

Mid Suffolk, and all of us it seems, have been materially misled by EDF as to the true capacity of application DC/21/04711. A generating capacity of 70MWp is not within Mid Suffolk's remit to determine. This single factor could of course be easily resolved by removing a significant area from the proposed site - perhaps pushing it back from Bramford to behind Oxen Covert, bringing it down from the higher slopes and moving it further away from the residents to the east. But EDF aren't proposing that. **EDF are proposing a solar farm with a generating capacity of 70MWp. On this ground alone Mid Suffolk must refuse DC/21/04711.**

With this information, we also urge the Planning Department of Mid Suffolk and Babergh to review the capacity of ALL of the solar farms proposed for the Districts.

As always I am more than happy to discuss this further if need be.

Best wishes,
Samantha Main

Emily Green

Subject: FW: Description of development DC/21/04711

From: Darren Cuming
Sent: Monday, September 25, 2023 11:22 AM
To: Ian Booker, Bron Curtis
Cc: BMSDC Planning Area Team Pink
Subject: RE: Description of development DC/21/04711

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Thanks Bron and Ian.

I have spoken to our planning lawyers at Eversheds Sutherland, who are preparing a note which I will share when provided.

I am happy with the amended description. As stated our connection offer is for 49.9MWac and we will not export anymore than 49.9MWac from the site. The rated capacity of our installed inverters will not exceed 49.9MW.

We would be happy to accept a planning condition limiting export from the site to 49.9MW.



Darren Cuming
Head of Onshore Development

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From: Ian Booker
Sent: 25 September 2023 11:05
To: Bron Curtis
Cc: Darren Cuming BMSDC Planning Area Team Pink
Subject: Re: Description of development DC/21/04711

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Thanks Bron,

On a technical note, if the 'mw' could be capitalised, that is 'MW'. Darren, are you comfortable?

Cheers,

Ian

Ian Booker, MSc
Director

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On 25 Sep 2023, at 11:02, Bron Curtis wrote:

Hi both,

In order to clarify the position on capacity in response to the objectors are you happy to agree the following addition to the description please?

“...(up to 49.9mw A/C maximum combined capacity)...”

Kind regards,
Bron

Bron Curtis BA(Hons), MA, MRTPI
Principal Planning Officer, Strategic Projects and Delivery - Development
Management **** Mondays, Tuesdays, Wednesdays and Thursdays only ****
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Emily Green

Subject: FW: Tye Lane Solar Farm

From: Darren Cuming
Sent: Friday, September 22, 2023 3:16 PM
To: Bron Curtis
Cc: Ian Booker
Subject: Tye Lane Solar Farm

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Bron,

Just following up on Ian's email in relation to the electrical capacity of the site and the current ongoing work.

Our grid connection at Bramford substation is for 49.9MW AC. The grid works on alternating current and it is not possible to export more than our contracted grid connection i.e. below 50MW. Solar panels are rated in DC capacity as they generate electricity as direct current and this is then converted to alternating current via inverters. It is the capacity of the AC rated inverters which is the test of solar capacity and not the DC rating of the panels. NPS EN 3 at para. 3-10-41 to 3-10-49 explains this. I'm not sure what plan some of the local community may have seen but the panels are as I say rated in DC so may well be over 50MW, but the inverters are limited to below 50MW and we will not export any more than 49.9MW of electricity.

Whilst there is some investigative work going on at the site present this is not in any way relating to the implementation or commencement of work on the scheme that we have applied for. On all our solar sites we carry out site investigation works and particularly here at Tye Lane because of the gas pipeline and underground cables. In many instances this is done pre planning determination and involves pull out tests (to ascertain soil resistivity) which if we build the project will inform how deep the panel frames will need to be inserted into the ground. This is entirely without prejudice to any decision made by the Council and the opportunity has been taken now to limit the impact on the current farming methods.

I know this has caused some concern amongst some local residents and we are trying to carry out this with as little inconvenience as possible. I have liaised directly with the owner of Copenhagen Cottage who has experienced some issues and we have informed our contractors to not block access. We will also be making good any damage to the access track as well. I have attached the photograph below to show that we are attempting to keep the site in a tidy condition.



Darren Cuming
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Subject: FW: Tye Lane Solar Farm Jurisdiction advice

From: Nesbit, Peter
Sent: 25 September 2023 20:47
To: Darren Cuming <
Cc: 'Ian Booker'
Subject: Tye Lane Solar Farm Jurisdiction advice

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Good afternoon Darren

I have considered carefully the submission made to the Council in connection with the proposed generation capacity of the Tye Lane Solar project.

As you will be aware, the Planning Act 2008 (the "2008 Act") identifies projects that are categorised as Nationally Significant Infrastructure. Notably this includes onshore generating stations with a capacity in excess of 50 megawatts (MW). Capacity can be expressed in either alternating current (AC) or direct current (DC). The 2008 Act and the extant National Policy Statement EN3 do not define the term capacity nor state whether this should be expressed in AC or DC.

Typically for solar farms the AC capacity will be lower than the DC capacity because of losses from the station inverters and cables (not because of assumptions about the weather). It should be noted that electricity may only be exported from the station to the National Grid in AC form.

Draft NPS EN3 addresses this noting that, unlike other generating stations, a practice has developed where solar farms are assessed on their DC capacity. It goes on to say that "*From the date of designation of this NPS, for the purposes of Section 15 of the Planning Act 2008, the maximum combined capacity of the installed inverters (measured in alternating current (AC)) should be used for the purposes of determining solar site capacity*".

The submission to the Council quotes selectively from the draft NPS EN3, failing to note that the assessment of solar farm capacity in DC is merely a "practice". This is certainly not a statement of current policy, let alone law, and as the Secretary of State has noted, it is a disparity when considered against other types of generating station. There is no logical reason for the disparity in either technical or legal terms, given that the 2008 Act does not differentiate between types of generating station.

Since the publication of the draft NPS EN3 the practice of assessing solar farms has already moved on. The vast majority of local (Town and Country Planning Act 1990 ("TCPA") applications are now made referring only to capacity calculated in AC and the most recent solar NSIP decision (Longfield Solar Farm), refers exclusively to the capacity of station exceeding 50MW (AC).

It is therefore entirely appropriate for the Council to consider the planning application for Tye Lane Solar Farm, which has been made as a <50MW (AC) project. However, just to put the matter of appropriate jurisdiction beyond any possible doubt, even if Tye Lane Solar Farm was considered to exceed the 2008 Act threshold, the TCPA and 2008 Act are not mutually exclusive; meaning that even if the project were considered to be an NSIP, it would not prevent a TCPA planning permission being granted. This very issue was addressed by Mr Justice Chamberlain in the recent decision in [Durham County Council & Anor v Secretary of State for Levelling Up, Housing and Communities \[2023\] EWHC 1394 \(Admin\) \(09 June 2023\) \(bailii.org\)](#):

“50. The claimants' case is that the regimes under the TCPA 1990 and the PA 2008 are mutually exclusive. They say that the position is as set out in the Planning Encyclopaedia: "where development consent is required under the Act, planning permission under the Town and Country Planning Act 1990 is neither required nor capable of being granted" (emphasis added). In my view, this is wrong, for four reasons.

51. First, it is clear that Parliament intended that development consent under the PA 2008 should not be granted unless it was required: s. 55(3)(c). There is nothing equivalent in the TCPA 1990. Section 336(1) provides that "planning permission" means "permission under Part III or section 293A but does not include permission in principle". Parliament could have provided that planning permission can only be granted for projects for which it is required in accordance with s. 57, but it did not do so.

52. Second, s. 33 of the PA 2008 does two separate things. Section 33(1) provides that, where development consent is required in relation to development, various other permissions, consents, notices and authorisations are "not required to be obtained or given" (emphasis added). These latter words reflect the fact that some of the things that are not required – e.g. planning permission granted under the General Permitted Development Order or notice under s. 35 of the Ancient Monuments and Archaeological Areas Act 1979 – are "given" rather than "obtained". Sections 33(2) and (4) provide that, to the extent that development consent is required for development, it cannot be authorised pursuant to certain specified statutory procedures. There is no prohibition on the grant of planning permission.

53. Third, it is true that, in general, Parliament is unlikely to empower a public authority to undertake a resource intensive function, such as deciding whether to grant planning permission, if the permission will have no effect. By the same token, however, it is unlikely that parties would commit the time and expense involved in making a planning application in cases where it is clear that implementing it would be unlawful under s. 160 of the PA 2008.

54. Fourth, the facts of the present case are a good example of a situation in which the planning permissions sought would be far from useless even if – contrary to my conclusion – the two solar farms, taken together, were an NSIP. In that case, parts of the permissions could be lawfully implemented, provided that the generating capacity of the whole did not exceed 50 MW.

55. I would therefore hold that the local planning authority's power to grant planning permission, and the inspector's jurisdiction to entertain the appeals, are not dependent on the projects not being an NSIP." (my emphasis)

I hope this assists, but do let me know if it would help for me to speak to the Council's solicitor on this matter so that members of the Planning Committee are properly advised.

Kind regards

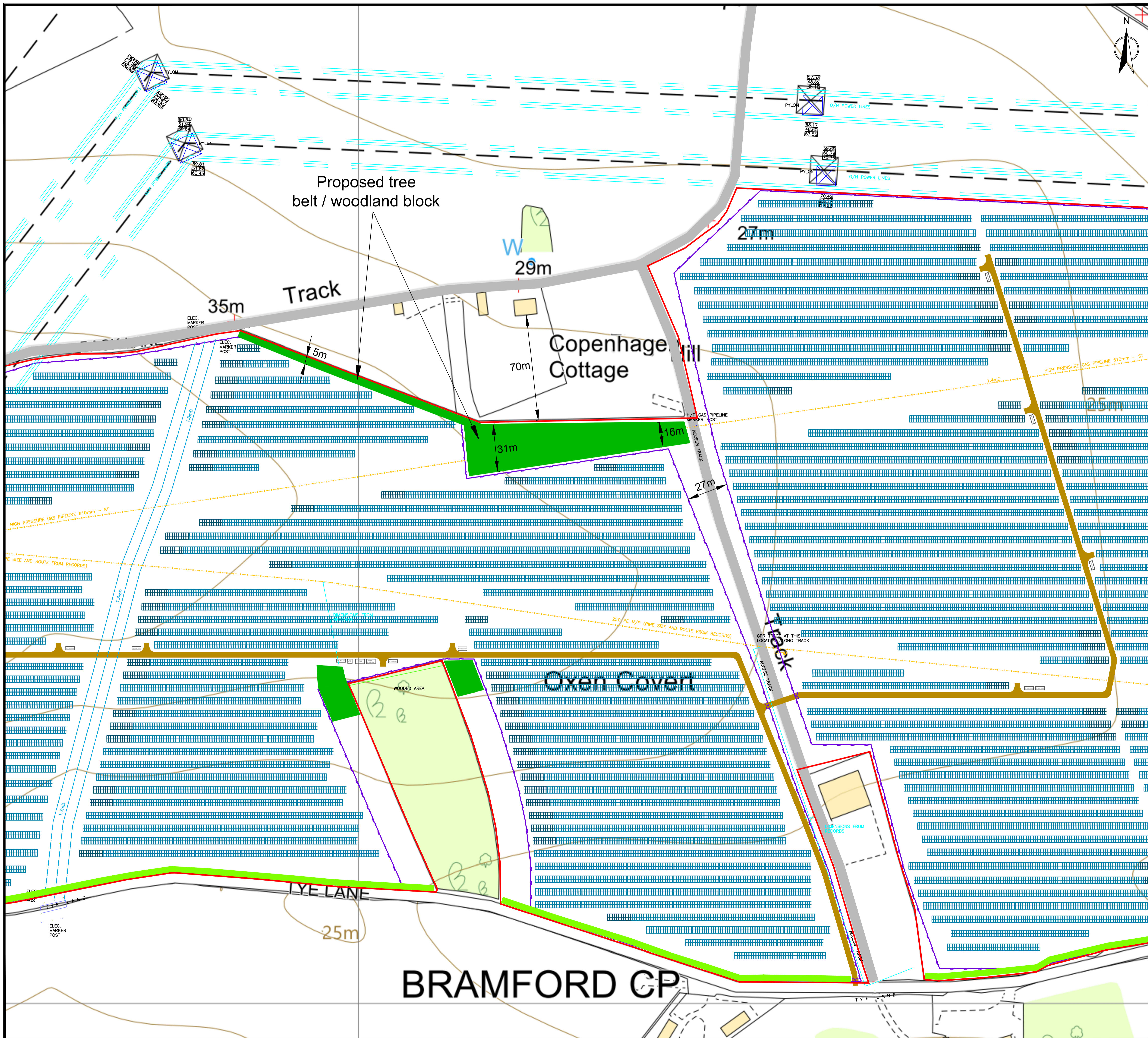
Peter Nesbit | Partner | Planning and Infrastructure Consenting | Eversheds Sutherland
He | Him | His

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Project: **Tye Lane Solar Farm**



- Key:**
- Tye Lane application boundary
 - Existing hedgerows
 - Gap up existing vegetation where necessary
 - Proposed hedgerows
 - Proposed native tree belt / woodland block

- Notes:**
1. All hedgerows on site to be grown and maintained to a height of at least 3m.
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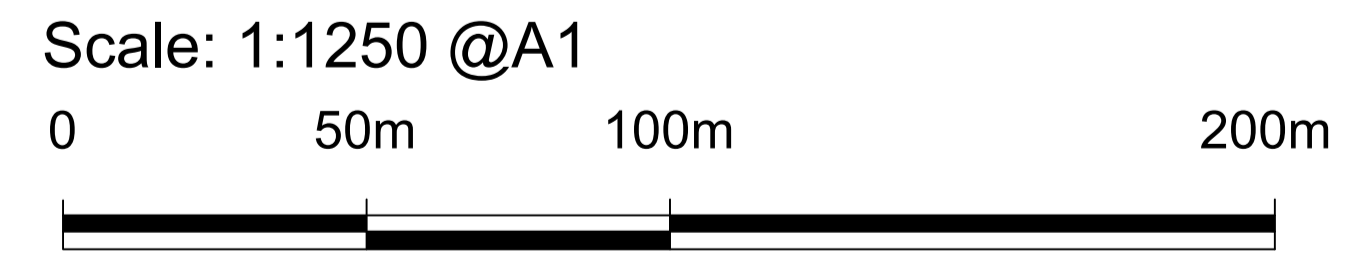
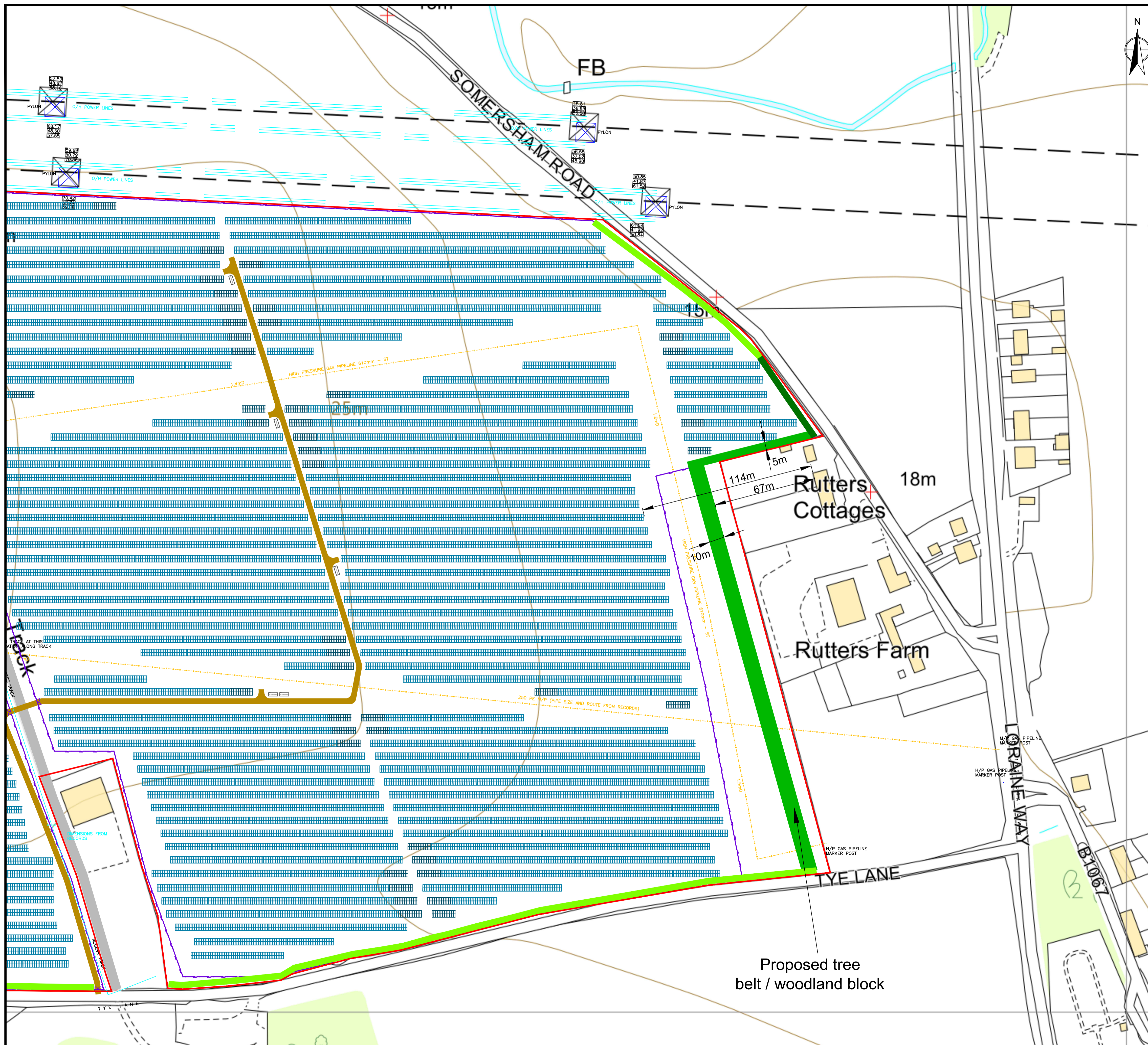


Figure: 11.8
Mitigation Proposals - Copenhagen Cottage

Drawn by: BJD
 Checked by:
 Date: 24-09-23



Project: **Tye Lane Solar Farm**



- Key:**
- Tye Lane application boundary
 - Existing hedgerows
 - Gap up existing vegetation where necessary
 - Proposed hedgerows
 - Proposed native tree belt / woodland block

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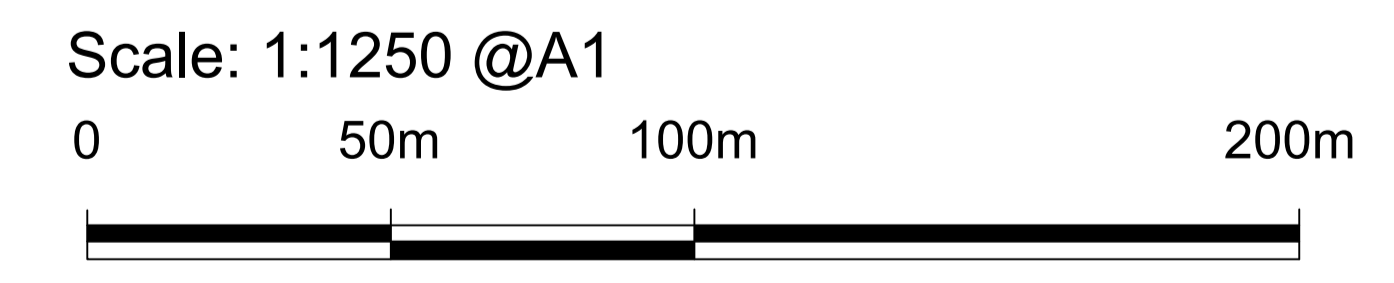
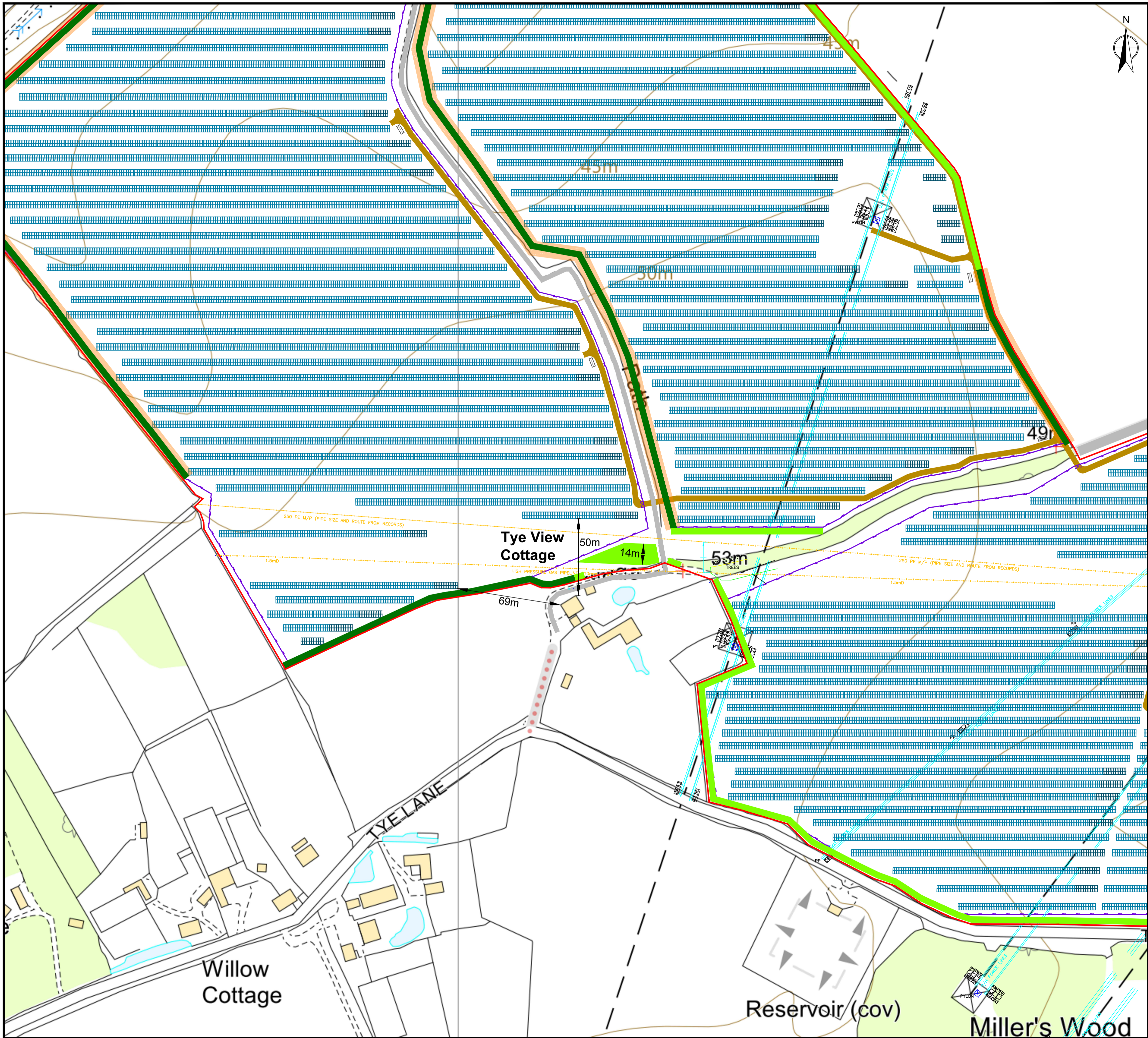


Figure: 11.8
Mitigation Proposals - Rutters Cottages

Drawn by: **BJD**
 Checked by:
 Date: **24-09-23**



Project:

Tye Lane Solar Farm



- Key:
- Tye Lane application boundary
 - Existing hedgerows
 - Gap up existing vegetation where necessary
 - Proposed hedgerows
 - Proposed native tree belt / woodland block

- Notes:
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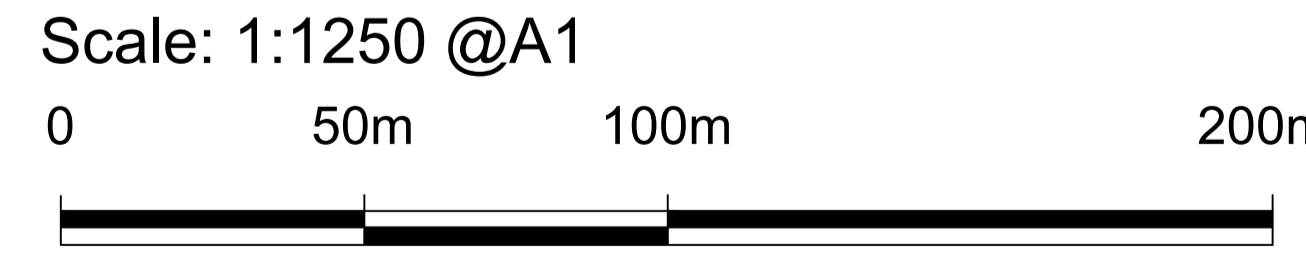


Figure: 11.8
Mitigation Proposals - Tye View Cottage

Drawn by: BJD
 Checked by:
 Date: 24-09-23

Project:

Tye Lane Solar Farm



Key:

- Tye Lane application boundary
- Existing hedgerows
- Gap up existing vegetation where necessary
- Proposed hedgerows
- New tree belt

Notes:

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Scale:

0 100 200 300 400 500m

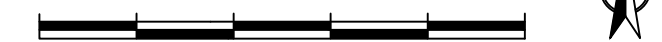


Figure: 11.8
Mitigation Planting Proposals

Drawn by:
Checked by:
Date:

BJD

22-09-23

