



## Appeal Decision

Inquiry Held on 7 December 2021

Site visit made on 16 December 2021

**by S R G Baird BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 February 2022**

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**Appeal Ref: APP/B3030/W/21/3279533**

**Land north of Halloughton, Southwell, Nottinghamshire**

- 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 JBM Solar Projects 6 Limited against the decision of Newark & Sherwood District Council.
  - The application Ref 20/01242/FULM, dated 7 July 2020, was refused by notice dated 4 March 2021.
  - The development proposed is the construction of a solar farm and battery stations together with all associated works, equipment, and necessary infrastructure.
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### Preliminary Matters

1. Further to Regulation 14(5) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017), the Secretary of State issued a direction that an Environmental Statement (ES) was required. An ES was submitted on 30 November 2021. At the inquiry, the appellant submitted a revised Biodiversity Net Gain Assessment (BNG) using the updated Biodiversity Metric 3 issued in July 2021. I have had regard to its contents and the representations made.
2. The appellant requested that the appeal be determined based on an amended plan, *P18-2917\_12 Rev M Site Layout and Planting Proposal*, and an additional plan *P18-2917\_26 Indicative Landscape Site Section (Year 5 & 15)*. Whilst the boundaries of the site remain unchanged, the amendment involves, the removal of solar panels and associated infrastructure from Fields 7 and 12, additional planting in the south-west corner of Field 3 and on the northern boundary of Field 1 and the introduction of a rewilding area in the north-west corner of Field 1. Following public consultation and formal consideration the local planning authority (lpa) has no objection to the proposal being determined on these plans. No party would be prejudiced by the appeal being determined based on Drawing Nos. P18-2917\_12 Rev M and P18-2917\_26 and I have proceeded on this basis.
3. To allow for consideration of the ES, the revised BNG assessment and receipt of closing submissions, the inquiry was adjourned and closed in writing on 14 January 2022.

### Decision

4. The appeal is allowed, and planning permission is granted for the construction of a solar farm and battery stations together with all associated works, equipment, and necessary infrastructure on land north of Halloughton, Southwell, Nottinghamshire in accordance with the terms of the application,

Ref 20/01242/FULM, dated 7 July 2020, and the plans submitted with it, subject to the conditions contained in Annex A to this decision.

## **Main Issues**

5. These are: (1) the landscape and visual impact of the scheme; (2) the effect on heritage assets (HA); and (3) whether the proposal would conflict with the development plan and if so whether there are any material considerations that would outweigh that conflict; the planning balance.

*Development Plan and other relevant Policy Guidance*

6. The development plan includes the Newark and Sherwood Amended Core Strategy (CS), the Allocations and Development Management Development Plan Document (A&DM) and the Southwell Neighbourhood Plan (SNP).

*Core Strategy*

7. The objective of Policy CP 9 is the protection and enhancement of the natural environment. Policy CP 10 indicates that proposals for renewable energy generation will be supported, where adverse impacts have been satisfactorily addressed. To assist decision makers in assessing the impact of proposed developments on landscape character, the Ipa has adopted the Newark and Sherwood Landscape Character Assessment Supplementary Planning Document (SPD). The SPD identifies Landscape Policy Zones (LPZ), and landscape conservation and enhancement aims for each LPZ. Policy CP 13 seeks to secure development that positively addresses the implications of the relevant LPZs consistent with the landscape conservation and enhancement aims for those areas ensuring that landscapes, including valued landscapes, have been protected and enhanced. Policy CP 14 seeks the conservation and enhancement of the character, appearance and setting of HAs in line with their significance.

*Allocations and Development Management Development Plan Document*

8. Policy DM 4 indicates that applications for renewable energy schemes will be permitted where the benefits are not outweighed by harm to, amongst other things, landscape character, HAs or living conditions. Policy DM5 lists the criteria against which proposals are assessed. These include access, amenity, landscape, biodiversity, green infrastructure, ecology, and flood risk. Policy DM9 adopts a positive approach to proposals to reflect the overarching presumption in favour of sustainable development.

*Southwell Neighbourhood Plan*

9. The supporting text to Policy E6 indicates that the SNP seeks to increase the amount of energy generated locally from renewable sources. Low carbon energy schemes will be supported where, amongst other things, they would not negatively impact on local landscape character. Whilst Policy E6 refers to effect on the setting and character of HAs, this criterion relates to Policy DH3, which solely relates to Southwell and as such is not relevant to this proposal.

*National Planning Policy Framework Framework) and Planning Practice Guidance (PPG)*

10. The Framework and PPG provide generic and specific policy and guidance on development in general and renewable energy developments. These cover

considerations such as biodiversity, historic environment, landscape and visual effects, traffic, living conditions and socio-economic benefits.

## Reasons

### Issue 1 – Landscape & Visual Impact

11. Given their nature and scale, it is inevitable that large scale solar farms may result in landscape harm. In this context, national and development plan policy adopts a positive approach indicating that development will be approved where the harm would be outweighed by the benefits of a scheme.

### Landscape Character

12. Framework, paragraph 174, indicates that the intrinsic character and beauty of the countryside should be recognised. That said, the Framework does not seek to protect, for its own sake, all countryside from development; rather it concentrates on the protection of valued landscapes. The site does not form part of any designated landscape and the Ipa acknowledges that for the purposes of the Framework, the site is not a valued landscape.
13. The Framework does not define what constitutes a valued landscape. However, given that all landscapes are valued by someone at some time, the term, valued landscape, must mean a landscape that is of value because of demonstrable attributes that takes it to a level of more than just mere open countryside. I note the strong feelings eloquently expressed both at the inquiry and in writing by residents about their attachment to and value they place on Halloughton and its surroundings. However, nothing I have read, heard, or seen would elevate this site and its surroundings to that of a Framework valued landscape.
14. Of the various landscape character documents referred to, the most relevant is the SPD. The site extends over 12 fields at the confluence of 3 LPZs. Fields 1 to 5 and 12 are within LPZ 37 – Halam Village Farmlands with Ancient Woodlands. Part of Field 8 and Fields 9 to 11 are within LPZ 38 - Halloughton Village Farmlands. Field 7 and the balance of Field 8 is found within LPZ 39 - Thurgarton Village Farmlands with Ancient Woodlands.
15. The landscape characteristics of the site and immediate surroundings are consistent with the characteristic visual features listed for the LPZs. These are: a predominantly arable agricultural landscape with medium to large scale fields with some smaller pasture fields; field boundaries comprising well-maintained hedgerows albeit fragmented in places, with some mature hedgerow trees; blocks of woodland of varying age and linear sections of woodland along field boundaries, streams, and drains. Topography is gently undulating and rounded with medium distance skyline views enclosed by hedgerows and woodland.
16. The assessments of the individual LPZs conclude on their value and sensitivity. However, as the LPZs cover extensive areas and the site extends over a relatively small part of these LPZs, I see it as an area of transition. Here, it would be inappropriate to apply the wider area values and sensitivities uncritically. For example, Field 7 and less than half of Field 8 is located within LPZ 39. However, there is nothing on the ground that would distinguish that part of Field 8 falling within LPZ 38, which is judged to be of moderate landscape sensitivity from that part in LPZ 39, which is judged to

have a high landscape sensitivity. Taking the landscape characteristics, condition, and sensitivities of each of the 3 LPZs as a starting point and looking at value and sensitivity in the round, the site and its surroundings have a medium landscape value and medium sensitivity to change.

17. The key elements that contribute to landscape character are topography, land use/land cover, tree/woodland, hedgerows, public footpaths, and watercourses. Although for some of these elements, the conclusions reached by the lpa and appellant differ in terms of value, susceptibility and sensitivity, there is a large measure of agreement on the significance of effect.
18. Apart from the proposed permanent electricity substation, the solar panels and associated infrastructure, would, for the want of a better phrase, sit lightly on the affected fields, with no material change to topography. As to land use/land cover, most of the site would be retained in agricultural use as grazing pasture. Sheep grazing is an accepted part of solar farm developments as a means of naturally managing the pasture. Seeking opportunities to restore arable land to pasture is an "action" promoted by the SPD. For these landscape elements, the lpa and appellant agree that the degree/scale of effect would be *Not Significant* in landscape character terms.
19. For trees and hedgerows, whilst the lpa accepts there would be some minor to moderate beneficial impacts from the proposed mitigation, it regards these changes as Not Significant. The appellant, on the other hand, assesses the changes as being Major Beneficial and Significant. Relative to the existing fund of trees/woodland in the area, the additional tree planting on the southern edges of Fields 8 and 9, the northern edges of Fields 7 to 11, the western and southern edges of Field 4 and on the northern edge of Field 1 does appear modest. However, these are strategic areas for planting and the impact belies their extent. In my view the outcome would be a Major and Significant Beneficial Effect. A similar approach can be adopted for hedgerows. Here, the existing 8km of hedgerow around and within the site would be supplemented by some 1.2km of new planting. This would be a significant expansion and result in a Major and Significant Beneficial Effect. Moreover, tree and hedgerow planting are consistent with "actions" promoted by the SPD, which are, to conserve and enhance hedgerow and tree cover
20. For public footpaths there would be no change. For watercourses, whilst there is a difference between the parties as to the scale of beneficial effect, there is agreement that it would be Not Significant in terms of landscape character effect.
21. It is common ground that, given their spatial extent, there would be no significant adverse effects on the landscape character of the wider LPZs. Moreover, the lpa accepts there would be no direct impacts on landscape character outside the boundaries of the site. Given the topography of the area, existing planting and overhead power lines/pylons that bisect Fields 6 and 8 to 11, the lpa acknowledges there are, limited medium distance views and visibility of the site. Accordingly, whilst the solar panels and associated infrastructure would, in Environmental Impact Assessment terms, have a Significant Adverse effect on landscape character, it would be highly localised.
22. In terms of the degree/scale of impact of the scheme, the assessments carried out by the lpa and the appellant concentrate on the construction period and Years 1 and 10. During the construction period and at Year 1, it

is agreed that within the site, the scale of effect would be Major and have a Significant adverse effect on landscape character. In my view, this significant adverse effect would be experienced at several places where there are views into the site. However, given the relatively short construction period, some 26 weeks, and at a time when the mitigation planting would be young, such adverse impacts cannot be avoided. Thus, the weight I attach to these early effects is limited. As François Athenase de Charette de la Contrie<sup>1</sup> is reputed to have said, "*...you cannot make an omelette without breaking a few eggs*".

23. The lpa acknowledges that over the lifetime of the scheme the planting would increasingly mitigate the landscape impact of the solar panels and associated infrastructure. The main difference between the parties is that by Year 10 the appellant considers that the adverse effect would be reduced to a largely Moderate Adverse impact and Not Significant in landscape character terms whereas the lpa submit that there would still be a Major Adverse and Significant effect on landscape character. The difference appears to rest largely on the lpa's conclusion that the impacts of the proposed mitigation measures rather than the presence of the solar panels and associated infrastructure would be the source of the enduring adverse landscape effect. Essentially, the additional tree cover, hedgerow reinforcement and allowing the hedgerows to grow out would result in long term harm by interrupting or curtailing medium distance views.
24. The lpa acknowledges that the proposed mitigation, is consistent with the nature and character of existing planting. Moreover, these works are entirely consistent with the "actions" to conserve and reinforce hedgerow and tree cover promoted for these LPZs. Indeed, the landscape character changes the lpa assert would be a harmful is something that has already occurred in the landscape to the north of the village. Here, over the last 2 decades landowners have engaged in extensive tree planting and hedgerow maintenance. The prime example of this is the extensive and dense woodland planting to the east and south of Fields 10 and 11.
25. No important or protected views were identified by the lpa. However, residents refer to the loss of views of the twin towers of Southwell Minster, looking eastwards from public footpaths that run along the western and northern boundaries of the site. That said, whilst there are some views of the tops of the Minster towers from the field to the west of Fields 2 and 4, these are not from the official line of the public footpath that runs hard against the hedge line of Fields 2 and 4, but a desire line that follows vehicle tracks across the centre of the field. In any event, these views are not sequential, but glimpsed and any loss would be limited.

#### Visual Impact

26. The assessment of visual impact is based on an assessment of views from 18 agreed representative viewpoints<sup>2</sup> (VP). In concluding on visual impact, I acknowledge that, (a) the views obtained from these VPs are a snapshot of the site and do not reflect the experience of walkers as they proceed along the road/public footpath and (b) the photographs were taken when the deciduous trees and hedgerows were in full leaf. That said, my visits to the

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<sup>1</sup> Breton soldier and politician 1863 to 1796.

<sup>2</sup> In addition, there are views from 3 points on the edge of Southwell included for the assessment of impact on heritage assets.

site and its surrounding were in winter, which presents a worst-case scenario. Moreover, on views, the area is well endowed with extensive tree and hedge cover that limits views to short or medium range. Moreover, given the topography and existing tree/hedgerow cover, the opportunity for sequential views is limited. This is particularly the case where Footpath 209/74/1 runs along the southern boundary of Field 6 and where Footpath 209/42/1 runs northwards along Fields 4 and 2.

27. The parties agree that the Year 10 assessments of effect are the most important to assess the visual impact of the scheme. It is these effects that would last for most of the life of scheme. That said, the existing and proposed planting would continue to grow and increasingly screen the development. Thus, the Year 10 assessment of effect must be regarded as a worst-case scenario. It is common ground that there would be no significant visual effects after decommissioning.
28. There is a significant amount of agreement between the parties regarding visual impact. Taking the lpa's conclusions in each case as a worst-case scenario, the visual effect at VPs 1, 3, 5, 6, 7, 9, 10 to 13 and 16 to 18 are judged as Negligible and Not Significant. In landscape assessment terms, a negligible effect is where the proposed changes would maintain the existing view or where, on balance, the proposed changes would maintain the quality of the view, which could include adverse effects that would be offset by beneficial effects for the same receptor. At VPs 2 and 8, the visual effect is judged as Minor Adverse and Not Significant. Typically, this is where a proposal would represent a low magnitude of change and/or the proposal would result in a slight deterioration of the view.
29. The effect at VPs 4 and 14 is described as a Moderate to Negligible Adverse effect. A moderate adverse effect is typically described as a Medium Magnitude of change where the proposal would result in a clear deterioration in the view. In this context, I would also describe the views to the north-west obtained when walking west on Footpath 209/74/1, towards VP 2 as being Moderate Adverse and Not Significant. On this stretch of path, views of panels in Fields 3 and 5 would be obtained across the shallow valley containing the Westhorpe Dumble where the field hedgerow is heavily gapped.
30. One Significant Year 10 effect would occur on Public Footpath 209/43/1 at VP 15, and a Major Adverse effect would be experienced by walkers on the stretch between VPs 14 and 15. Here, the footpath runs along the southern edge of a tall, dense, mature hedge that has been allowed to grow out limiting the visual effect to one side of one field. That said, the lpa agreed, the effect is limited geographically and of short duration. Any impact on the footpath where it extends to the east beyond Field 1, VP 16, or to the west and north of Field 2, would, due to existing screening, be limited if not negligible. Here, the proposed mitigation includes a native hedgerow with trees along the northern edge of the solar panels and a substantial area left for rewilding in the north-east corner of Field 1. As the planting matures, the solar panels would largely disappear behind the planting mitigating the visual harm.
31. Currently, on Footpath 209/43/1, between VPs 14 and 15, the walker experiences an open aspect to the south-east albeit the extent of view is short range as Field 1 rises to the south-east and a mature hedgerow along the

eastern boundary of Field 1. Concern was expressed that the narrowness of the gap between the existing hedge and the proposed mitigation would result in walkers experiencing an unacceptable tunnel effect. Whilst walkers may experience what the appellant suggests would be a "green corridor" this is not an unusual feature of the area. Footpath 209/80/2 to the north of Halloughton Wood runs for a significant length with dense woodland on either side and Footpath 209/74/1 runs between tall dense *Miscanthus* planting on its northern and southern side as shown by the view from VP 3.

32. Drawing the above together, it is inevitable that located in a countryside location a solar farm of this scale would have some adverse landscape character and visual impact. However, through a combination of topography, existing screening and the introduction of landscape mitigation, the adverse effect would be limited and very localised. Moreover, as the existing and proposed planting matures, the adverse effects, would be acceptably mitigated. Whilst the 40-year lifetime of the scheme is significant, once the solar farm was decommissioned, there would be no residual adverse landscape effects. Rather the scheme would, through the mitigation planting, leave an enhanced landscape consistent with the objectives of the development plan and the SPD.

#### Issue 2 - Heritage

33. The site lies partly within the Halloughton Conservation Area (CA), and within the settings of several Listed Buildings (LB). Regarding the LBs, there would be no direct physical impact, rather the potential for harm would be indirect. As to effect, the key difference between the parties is the contribution the Halloughton Prebend makes to the heritage interest these HAs. Briefly, a Prebend is a salary generally given to clergymen, the Prebendary, derived from tithes on agricultural land. Here, the Halloughton Prebend was given to Canons of Southwell Minister and ceased around 1840. At that time, the estate reverted to the Diocese of Southwell and in 1952 sold to the tenants.
34. The Prebend is not, on its own, an HA rather it is a matter of historical record, and no tangible connection can be experienced on the ground or in the wider landscape; it is a non-visual historic consideration. That said, there are many LBs whose significance is founded on historic associations that are not reflected in their physical appearance or surroundings. The appellant's submissions on the relevance of the Prebend to the heritage interest of the 5 LBs and CA were deftly put. However, whilst I recognise the Prebend is now a matter of historic record rather than a physical manifestation, it is of historic interest and as such contributes to the heritage interest of these HAs.

#### *Halloughton Manor Farmhouse, Pigeon Cote, Granary and Stable*

35. Although listed separately, these buildings are part of the same complex. Halloughton Manor Farmhouse (HMF) is listed as Grade 2\*, the Pigeon Cote, Granary, Stable and Barn are listed as Grade 2. HMF, was originally the Prebendal House constructed in the 13<sup>th</sup> Century with additions and alterations during the medieval, post medieval and 19<sup>th</sup> century. At the core of this building is a 3-storey tower largely constructed of coursed rubble with ashlar dressings with the later addition of a pitched pantile roof and brick gables. A substantial part of the frontage elevation of the tower is obscured by what appear to be late 19<sup>th</sup> century single-storey extensions.

36. The Pigeon Cote, Granary, Stable and Barn were constructed during the 18<sup>th</sup> and 19<sup>th</sup> centuries as the farmstead expanded. The Pigeon Cote, Granary and Stable, a 2-storey building, constructed in red brick with a pantile roof. Located at the core of the complex, views of the building are restricted to the upper storey: the Pigeon Cote. Added to the complex in the 19<sup>th</sup> century, the Barn albeit it has some decorative elements, is a large functional red brick building with a pantile roof abutting Bridle Farm Road<sup>3</sup> (BFR).
37. At Grade 2\* HMF is a HA of the highest significance and at Grade 2 the Pigeon Cote, Granary, Stable and Barn is acknowledged as less than the highest significance<sup>4</sup>. The heritage interest of these buildings is architectural and historic. In the case of HMF, the tower is an example of a medieval tower house albeit it has been altered and extended over the years. The historic interest of the Pigeon Cote, Granary, Stable and Barn lies in the physical demonstration of the development and expansion of the agricultural economy, in the 18<sup>th</sup> and 19<sup>th</sup> centuries. Whilst the Prebend is now a matter of historic record rather than a physical manifestation, HMF was the prebendary house, which adds to its historic interest.
38. Given its serpentine nature, the settings of these assets is confined, largely to a short stretch of BFR. Other than from the south and south-west and largely limited to HMF itself there are few, if any, views of this complex of buildings from the solar farm site and its surrounding landscape. Any that may be obtained are limited by topography or heavily obscured by existing woodland and hedgerow and are no more than fleeting glimpses. Thus, medium to long range views do not contribute to the interest of these HAs. Whilst historically, initially, through the Prebend and after its abandonment, the wider agricultural surroundings, including parts of the solar farm site formed part of the setting of HMF, in that produce from the land passed through and was stored on the complex, that link no longer exists. Thus, the contribution that historic link makes to the significance of these assets is limited.
39. Drawing all the above together, given the degree of separation between the solar farm site and these HAs and the nature of existing and proposed screening, the development would result in no harm to the architectural interest of these HAs. That said, given the association with the Halloughton Prebend, I consider there would be some limited harm to the historic interest of these HAs albeit it would fall within the category of less than substantial harm and at the lowest end of that spectrum.

#### Church of St James

40. Although parts date from the 13<sup>th</sup> century, the church was substantially rebuilt in the late 19<sup>th</sup> century under the direction of Ewan Christian an English architect noted for the restoration of Southwell Minster, Carlisle Cathedral, and the design of the National Portrait Gallery. The church, Grade 2 listed, is constructed in course rubble with some ashlar detail. The church is simple in form comprising a nave, chancel, modest windows, and decoration from the 14<sup>th</sup>, 17<sup>th</sup>, and 19<sup>th</sup> centuries. The frontage to BFR is defined by a random

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<sup>3</sup> The street map for Halloughton does not show road having a name. The appellant's submitted documentation variously refers to the village street as either Bridle Farm Road or Cotmoor Lane. More than one document refers to it as Bridle Farm Road and for the purposes of this decision, I have adopted Bridle Farm Road.

<sup>4</sup> Framework paragraph 200.

stone wall backed by several evenly spaced mature trees and the church is set well back into a well-defined plot.

41. The heritage interest of the church is architectural and historic. The architectural interest is grounded in it being a good example of a late Victorian Parish Church. The historic interest relates to its association with HMF and its role as the medieval Prebendal church and the association with Ewan Christian. The churchyard setting with its ubiquitous yew tree and location next to an orchard and agricultural fields immediately to the north adds to the church's heritage interest.
42. It was clear from my extensive walks before and after the inquiry that the church is not experienced from the public footpaths that cross and go around the proposed solar farm nor from any of the fields that would make up the solar farm or its surroundings. Given the deep setback from the road, the church is mainly experienced from a limited stretch of BFR. Whilst there would in wintertime heavily filter views of a limited number of panels, the way the heritage interest of the church is experienced would not be changed. That said, given the association with the Halloughton Prebend, there would be some limited harm to the historic interest of this HA, albeit it would fall within the category of less than substantial and at the lowest end of that spectrum.

#### Barn at Bridle Road Farm

43. The barn is a large functional 2-storey red brick building with limited decorative detail and a steep pantile roof built in the 18<sup>th</sup> century. The farmstead at Bridle Road Farm is tight knit, with the barn, farmhouse and other vernacular buildings forming a courtyard comprising areas of grass and hardstanding. Heritage interest derives from its vernacular architecture and as an example of historic agricultural development. Again, the Prebend, adds to the historic interest of this HA.
44. Views of the barn are from BFR and the public footpath 186/3/1 that runs from the farm entrance, through the yard and branches off to the south-east. Views from BFR are limited due to its serpentine nature. The main area where the barn is experienced is from several points on the public footpath where the farmstead dips in and out of view. In views closer to the farmstead some panels would be seen in the same view as the barn. That said, glimpses of some panels over the roof of the barn would have a limited impact on its heritage interest. That said, given the association of the village with the Halloughton Prebend, there would be some limited harm to the historic significance of this HA, albeit it would fall within the category of less than substantial and at the lower end of that spectrum.

#### Halloughton Conservation Area

45. Halloughton CA was designated in 1972 and is primarily focused on the linear form of the village core and several adjoining fields. The character, appearance and heritage of the CA is largely derived from its sunken serpentine form giving it an enclosed and intimate character, the historic buildings, the open approaches to the village core from the east and west, boundary walling and grass verges. Whilst the agricultural land beyond the CA boundary, does contribute to the interest of the CA, this is, in my view, of less importance than the contribution of the various HAs and features described above. There are few views out towards the solar farm from the CA

and across it to the CA, resulting in only limited change to some views of the wider rural area and of the CA. In this context, the solar farm would have no material impact on the character and appearance of the CA.

46. The only element of the proposal to fall within the CA would be the vehicular access from BFR some 45 to 50m from the junction with the A612 Highcross Hill and a short length of access track running through an area of semi-mature woodland. Whilst this area of BFR forms the entrance to the CA, it is a wide engineered junction with extensive visibility splays that makes a limited contribution to the character of the CA. The start of the CA experience is from where BFR approaches and passes the church and HMF leading into the serpentine and intimate route to the west. During the relatively short construction period, the access and its use would have an impact on the appearance of the CA. However, on completion, the character and appearance of the access would revert to that of an agricultural access of which there are several within the wider CA. Therefore, any harm would be limited and of a short duration.
47. Given my conclusions on the effect of the proposal on the various LBs within the CA, the relevance of the Prebend and the impact of the proposed access, there would be some limited harm to the historic interest of this CA, albeit it would fall within the category of less than substantial and at the lower end of that spectrum.

#### Brackenhurst Hall Complex

48. Brackenhurst Hall as a complex has 4 Grade 2 listed elements. These are (1) Brackenhurst Hall, Coach House, Orangery and Garden Wall; (2) the Gateway and Railings; (3) the Lodge and (4) Garden Walls and Potting Sheds located some 100m to the north-east of the Hall. The Hall and its surrounds are part of the Nottingham Trent University Campus. Since the land was acquired by the University the facilities have been extensively extended to include student accommodation, lecture, and administrative buildings, some of which have been added recently and are interspersed to the north and west of the HAs.
49. Constructed in the early 19<sup>th</sup> century, the Hall is a substantial building that has been extensively remodelled during the late 19<sup>th</sup> century by its various owners. The Hall and its adjacent HAs have architectural and historic interest as, an example of a large 19<sup>th</sup> century country estate house and the former home of Reverend Thomas Coats Cane and the birthplace of Field Marshall Viscount Allenby. There is as far as I am aware no functional, historic, or physical relationship between the Hall and the appeal site. There are only limited glimpses of the upper parts of the Hall's tower from eastern part of the site. In terms of its setting, where it is appreciated this is entirely located within its grounds and to the east and south.
50. Whilst the Hall and its associated assets may be an example of a 19<sup>th</sup> century estate, the appeal site makes no contribution to its setting and significance. Moreover, the setting and significance of the Hall and its associated HAs have been significantly eroded and compromised by the development of the University campus. Some of which are bland functional structures and others "in your face" modern. In this context, the proposed solar farm would result in no harm to the heritage interest of these assets.

### South Hill House

51. South Hill House is 2-storey red brick house constructed at the beginning of the 19<sup>th</sup> century and now forms part of the Nottingham Trent University Campus. The building is Grade 2 listed and has architectural and historic significance as a high status former farmhouse. There appears to be no historical, physical, or functional relationship with the appeal site or its surrounds. Whilst the main facade is orientated to the south, the building is heavily screened from views from the appeal site by dense tree and hedge planting and mostly experienced from the adjacent main road. Given the above, the proposed solar farm would result in no harm to the heritage interest of this asset.

### Other Considerations

#### *Renewable Energy*

52. The Government recognises that climate change is happening through increased greenhouse gas emissions, and that action is required to mitigate its effects. One action being promoted is a significant boost to the deployment of renewable energy generation. The Climate Change Act 2008, as amended sets a legally binding target to reduce net greenhouse gas emissions from their 1990 level by 100%, Net Zero, by 2050. Recently, the Government committed to reduce emissions by 78% compared with 1990 levels by 2035. The Clean Growth Strategy 2017 anticipates that the 2050, targets require, amongst other things, a diverse electricity system based on the growth of renewable energy sources.
53. A material consideration in the determination of planning proposals are 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. Whilst NPSs EN-1 and EN-3 do not specifically refer to solar generated power they reiterate the urgent need for renewable energy electricity projects to be brought forward. Draft updates to NPSs EN-1 and 3 identify that, as part of the strategy for the low-cost decarbonisation of the energy sector, solar farming provides a clean, low cost and secure source of electricity.
54. The December 2020 Energy White Paper (WP) reiterates that setting a net zero target is not enough, it must be achieved through, amongst other things, a change how energy is produced. The WP sets out that solar is one of the key building blocks of the future generation mix. In October 2021, the Government published the Net Zero Strategy: Build Back Greener where under Key Policies it explains that subject to security of supply, the UK will be powered entirely by clean electricity through, amongst other things, the accelerated deployment of low-cost renewable generation such as solar.
55. The development has a capacity of some 49.9Mw, generating a significant amount of electricity from a clean, renewable source. This would provide for a reduction of approximately 20,690t<sup>3</sup> of CO<sub>2</sub> emissions annually and meet the energy needs of approximately 12,000 homes. The lpa acknowledges that this is a substantial benefit that attracts significant weight. There are no physical constraints limiting early development of this site and a grid connection offer is in place. As such, the scheme could make an early and significant contribution to the objective of achieving the statutory Net Zero

target set for 2050 and the commitment to reducing emissions by 78% compared with 1990 levels by 2035. Given this imperative, this benefit attracts significant weight.

*Ecology and Biodiversity.*

56. Subject to the implementation of appropriate mitigation, neither Natural England (NE) nor the Nottinghamshire Wildlife Trust, object to the proposal. The SoCG confirms that, the proposal would not conflict with the relevant sections of CS Policy 12 and LP Policy DM5.
57. The appellant provided an updated BNG assessment of the proposed Biodiversity Management Plan. The mitigation includes additional tree/hedgerow planting and the long-term management of existing trees/hedgerows, sowing a species rich grassland beneath the panels and the provision of bat and bird boxes around the site.
58. The BNG Metric is a tool for measuring and accounting for nature losses and gains resulting from development or changes in land management. The appellant's Metric 2 calculation identifies a net gain of 37%<sup>5</sup> in habitat units and 24% in hedgerow units. Based on the Metric 3 calculation, there would be a net gain of 92% in habitat units and 32% in hedgerow units. The lpa's assessment<sup>6</sup> disputes the extent of the total loss of other neutral grass land placing this at some 7ha whereas the appellant calculates a loss of some 1ha. That said, based on the 7ha figure, the lpa calculates that the net gain would be some 73% in habitat units.
59. Notwithstanding the difference in the figures, the lpa acknowledges that Metric 3 provides a more accurate calculation of BNG. The increase from the Metric 2 figure would result in a significant benefit. The context for the lpa when ascribing weight to this benefit is, that ecological mitigation, management, and enhancement reflects common practice and accords with local and national planning policy, it is a by-product of the development and there would be an overall loss of arable agricultural land for crop production. On this basis, the weight the lpa attaches to BNG is moderate/significant. The appellant submits that significant weight should be attached to the acknowledged BNG. Whilst BNG will be a requirement of the Environment Act 2021, the minimum requirement is currently set at 10%. Thus, even acknowledging that the assessment starts from a low base in terms of the ecological value of the site, a gain of some 73%, is substantial and a benefit that attracts significant weight.

*Access and Highway Safety*

60. Most of the traffic generated would occur during the construction period with deliveries being made by heavy goods vehicles (HGV). Over the 26-week construction period, delivery traffic generation would equate to some 6 vehicles or 12 movements per day. Up to 80 construction workers would be onsite at any one time and depending on their origin most would be transported to the site by minibus. Post construction it is anticipated that the site would be monitored remotely with limited occasional visits of between 10 and 20 vehicles per annum. I have no reason to dispute these figures or consider them to be unrealistic.

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<sup>5</sup> Percentages have rounded up to the nearest whole number.

<sup>6</sup> Carried out for the lpa by an Ecological Consultant from Via East Midlands.

61. Vehicular access would be from BFR, some 45 to 50m from the junction with the A612 Highcross Hill. BFR is a no through road and there would be no need for site traffic to enter the built-up area of the village. The access has been designed to accommodate HGV traffic and visibility to the east and west is acceptable. The immediate road network has a good safety record with no personal injury accidents reported in the vicinity of the site access or the junction with Highcross Hill in recent years. The junction of BFR and Highcross Hill, has adequate visibility to the north and south and it could accommodate the nature and level of traffic generated by the proposal without a material impact on highway safety. Nottingham County Council (NCC) as Highway Authority and the lpa have, subject to the imposition of conditions, no objection to the proposal on highway safety or traffic generation grounds. Drawing the above together, the proposal would not have an unacceptable effect on the safety and free flow of traffic.

#### *Flooding & Drainage*

62. In line with the Framework, CS Policy 9, AD&M Policy DM5 and SNP Policy E2 seeks to steer development away from areas of high flood risk and ensure that proposals manage surface water run-off with Sustainable Drainage Systems (SuDS). Whilst the site is located within Flood Zone 1, a low risk flood area, areas downstream of the site have experienced flooding. Following an independent Flood Risk Assessment (FRA), the Environment Agency and NCC, the Lead Local Flood Authority, have no objection to the proposal subject to the imposition of an appropriate condition.
63. The FRA is a robust assessment, which forms the basis for a SuDs compliant system, the details of which would be covered by a condition. Whilst the extent of potential betterment is not quantified, the lpa acknowledges there is potential for betterment and accepts that the development would not adversely impact on flooding or drainage. In this regard, the proposal would accord with the Framework and development plan policies.

#### *Agricultural Land*

64. Framework paragraph 174 indicates that decisions should recognise the economic and other benefits of best and most versatile (B&MV) agricultural land. PPG<sup>7</sup> defines B&MV agricultural land as Grades 1, 2 and 3a indicating that agricultural land quality is a factor when assessing proposals. These considerations include, whether the use of any agricultural land is necessary and whether a proposal allows for continued agricultural use. AD&M Policy DM8 indicates that proposals resulting in the loss of B&MV agricultural land, will be required to apply a sequential approach to site selection and demonstrate environmental or community benefits that outweigh the loss.
65. The lpa accepts that site is Grade 3b and is not B&MV agricultural land or that it was necessary to consult NE. Moreover, given the assessment was carried out by a suitably qualified professional and the results conform with the NE MAGIC database, the lpa did not consider it necessary to undertake its own analysis given the grading was. That approach is not unreasonable.
66. The SoCG notes that, the land would continue in agricultural use through sheep grazing, that as a time-limited scheme, other than for the electricity

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<sup>7</sup> Natural Environment Paragraph 001 Ref ID 8-001-20190721 & Renewable & Low carbon Energy Paragraph 013 Ref ID 5-013-20150327.

substation, it would not result in the permanent loss of agricultural land and there are no suitable alternative brownfield sites to accommodate the scale of the development. In terms of site selection, one of the elements is the availability of a grid connection. Here, the site is crossed by overhead power lines providing access the national grid easily and economically.

67. NE's Agricultural Land Classification Map shows the site to be located within an area identified as Grade 3 land i.e., good to moderate quality agricultural land. Whether the site is Grade 3a - good quality or Grade 3b - moderate quality can only be determined by site and soil examination. The appellant, using an appropriately qualified agricultural assessor, undertook a comprehensive site and soil assessment that included 98 sample locations involving the excavation of 3 trial pits and augur samples based on one sample per hectare. Assessment of the samples combined with other relevant factors contained in the guidance concludes that the site falls within Grade 3b.
68. Objectors submit that the report is deficient in that it does not account of the presence of Grade 2 - very good quality land in the locality, include a consideration of economics or any account of the application of husbandry. This last point is regarded as important, given that maize, a cereal crop dependent on good soil condition, has been grown locally.
69. The Grade 2 land shown on the NE Classification Map is some distance to the north of the site and is not indicative of the potential quality of the appeal site. Experience indicates that soil quality can vary dramatically over a small area and obtaining a clear differentiation between grades can only be achieved through site and soil examination.
70. The NE classification notes that Grade 3b land can produce moderate yields of cereal crops. Thus, the reference to maize being grown is not, on its own, and indication that the land falls to be considered as B&MV. There is no indication as to the extent of the yield achieved. Moreover, as I understand it, yield data and financial assessment of the farm business are explicitly excluded from the classification methodology. This is because, unlike site and soil examination, it is not possible to make allowances for variables such as management skill, levels of input and short term weather factors.
71. It is suggested that the net value of the solar farm should be measured in terms of national energy production and security against the net value of arable crop production and UK food security. Given that agricultural land is a finite commodity and food security is equally important as energy security, superficially this appears to reasonable. However, in my experience, this is not something that an individual appellant or lpa could realistically or reasonably undertake for any one proposal. Even if it is possible to undertake such an assessment, it strikes me it is one that would have to be carried out at a national level and involve high level political decisions/choices that are outside the remit of an individual decision maker in a planning appeal.
72. Drawing all this together, the appellant has undertaken a robust and appropriate agricultural land classification assessment that shows the land falls outside the definition of B&MV agricultural land. Only a very small proportion of the site would be permanently lost from agricultural use and the remainder would continue to be used for agriculture in the form of sheep grazing. There is no evidence that the minor, permanent loss, and the change from arable to pasture farming would unacceptably affect the viability

of the individual holding. Accordingly, the proposal would not conflict with the objectives of the Framework or AD&M Policy DM8.

### Issue 3 – Planning Balance

73. A material consideration is the time limited nature of the proposal. I acknowledge that 40 years is a long time and materially longer than many references to the life of a solar farm in national and industry guidance where 25 years appears. However, I am aware that technical advances have improved the longevity of solar panels. Accordingly, given the contribution the Government expects solar generated electricity energy to make to the national energy supply, it would be unreasonable to limit the life of a solar farm to an arbitrary figure based on older and less efficient equipment. That said, I recognise that the proposed 40-year life of the solar farm is significantly more than a generation and I accept that a child born today in the village would reach middle age by the time the solar farm would be decommissioned. Thus, in coming to my conclusion I have these factors/concerns uppermost in my mind.
74. Both national and development plan policy recognise that large scale solar farms may result in some landscape and visual impact harm. However, both adopt a positive approach indicating that development can be approved where the harm is outweighed by the benefits. This is a planning judgement. Here, through a combination of topography, existing screening and landscape mitigation, the adverse effect on landscape character and visual impact would be limited and highly localised. Moreover, as the existing and proposed planting matures, adverse effects, would be progressively mitigated and once decommissioned there would be no residual adverse landscape effects. Rather the scheme would leave an enhanced landscape consistent with the objectives of development plan policy and the SPD. In these circumstances, whilst there would be some localised harm to landscape character and some visual harm in conflict with the relevant development plan policies, the imperative to tackle climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh the limited harm.
75. Sections 66 and 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged. Section 66 requires the decision maker to pay special regard to the desirability of preserving LBs, their settings, and any architectural features they may possess. Section 72 requires the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of a CA.
76. Whether a proposal results in substantial or less than substantial harm to the significance of a HA, Framework Paragraph 199 requires the decision maker to attach great weight to its conservation. Framework paragraph 200 says that where a proposal would lead to less than substantial harm to the significance of a HA, this harm is to be weighed against the public benefits of the proposal.
77. The proposal would result in less than substantial harm at the lower/lowest end of that spectrum to the heritage significance of several HAs albeit that harm would be temporary until the solar farm was decommissioned. In relation to the CA as a whole, the proposal would, on balance, preserve its character and appearance. In this context, recognising the great weight that is required to be attached to the conservation of a HA, I consider the

imperative to tackle climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh the temporary and less than substantial harm to the HAs involved.

78. Drawing the above together, I conclude the proposal would make a material and early contribution to the objective of achieving the decarbonisation of energy production and that to allow the proposed solar farm would not conflict with the objectives of relevant development and national planning policy when read as a whole. Accordingly, and having taken all other matters into account, the appeal is allowed.

### **Conditions**

*(The numbers in brackets refer to the conditions listed in Annex A)*

79. A list of conditions, including 5 pre-commencement conditions, were agreed by the parties. The solar farm is required for a period of 40 years with the DNO Substation retained permanently. Conditions are necessary to confirm the extent of the temporary period, to provide for removal of the solar farm when the permission expires or if it ceases to operate (2, 3 4 & 5). In the interests of certainty, a condition listing the approved plans is imposed (6).
80. In the interests of the appearance of the area, conditions and pre-commencement conditions relating to, the finish of the solar panels, ancillary structures, details of tree and hedgerow planting, the protection of retained trees/hedgerows including areas identified on the margins of the site, implementation of landscape mitigation and external lighting are reasonable and necessary (7, 8, 9, 10, 11 & 16 & 18). In the interests of protecting living conditions, conditions specifying construction hours and limits on noise generation are reasonable and necessary (12 & 24).
81. In the interests of enhancing and protecting biodiversity, conditions and pre-commencement conditions relating to a Biodiversity Management Plan, the submission of details relating to the protection of Great Crested Newts, the timing of vegetation clearance and external lighting are all reasonable and necessary (13, 14, 15, 17, & 18). In the interests of highway safety, conditions relating to the construction of the access and compliance with a Construction Management Plan are reasonable and necessary (19 & 20). The site potentially contains archaeological remains and conditions to provide for appropriate site works and recording are reasonable and necessary (21 & 22). In the interests of water management and the flood mitigation, a condition relating to surface water management is reasonable and necessary (25).

*George Baird*

Inspector

## **ANNEX A – SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall not begin later than 3 years from the date of this permission.
2. The planning permission hereby granted shall be for a temporary period only, to expire 40 years and 6 months after the first export date of the development, except for the DNO substation, which will remain on the site in perpetuity. Written confirmation of the first export date shall be provided to the local planning authority within one month after the event.
3. If the solar farm hereby permitted ceases to operate for a continuous period of 12 months, then a scheme for the decommissioning and removal of the solar farm and ancillary equipment, except for the DNO Substation, shall be submitted within 6 months of the end of the cessation period to the local planning authority for its written approval. The scheme shall make provision for the removal of the solar panels and associated above ground works approved under this permission. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures.
4. Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the first export date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, except for the DNO substation, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to and agreed in writing by the local planning authority.
5. The solar farm and its ancillary equipment, except for the DNO substation, shall be dismantled and removed from the site and the land restored in accordance with the approved Scheme and, in any event shall be removed within a period of 40 years and 6 months following the first export date.
6. The development hereby permitted shall not be carried out except in complete accordance with the following approved plans reference:

P18-2917\_02 – Rev E - Site Location Plan (deposited 8th January 2021).  
HLG-01-2001 Rev 01 - Indicative WPD and Customer Compound Layout.  
HLG-01-2002 Rev 01 - Indicative WPD and Customer Compound Elevations.  
BHA\_665\_03 - Tree Protection Plan – Highways Access.  
P18-2917 Figure 1 Rev A - Site Access Visibility Splays.  
JBM-HALLOU-SD-02 - Typical Fence, Track & CCTV Details.  
JBM-HALLOU-SD-03 - Typical Trench Section Details.  
JBM-HALLOU-SD-04 - Typical Inverter Substation Details.  
JBM-HALLOU-SD-05 - Typical Spares Container Details.  
JBM-HALLOU-SD-06 Rev A - Typical Battery Storage Systems Details.

JBM-HALLOU-SD-07 Rev A - Typical Customer Switchgear Details.  
P18-2917\_12 Rev M - Site Layout and Planting Proposal.  
Typical PV Table Details 3P Rev A - Typical PV Table Details (x 3).  
Typical PV Table Details Rev A - Typical PV Table Details (x 6).  
P18-2917 Figure 2 Rev A - Swept Path Analysis: Proposed Site Access 15.4m  
Articulated Vehicle.

7. Notwithstanding the approved plans contained in Condition 6, prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.
8. No works or development shall take place until the local planning authority has approved in writing the full details of the tree, shrub, and hedgerow planting (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards. The landscaping scheme should be based on the Species List for the Mid Nottinghamshire Farmlands Landscape Character Type included within the Newark and Sherwood Landscape Character Assessment.
9. The approved landscaping scheme shall be carried out within the first planting season following the date when electrical power is first exported ("first export date"). If within a period of 7 years from the date of planting any tree, shrub, hedgerow, or replacement is removed, uprooted, destroyed, or dies then another of the same species and size of the original shall be planted at the same place.
10. Notwithstanding the submitted details, no works or development shall take place until an Arboricultural Method Statement and scheme for protection of the retained trees/hedgerows has been agreed in writing with the local planning authority. This scheme shall include:
  - a. a plan showing details and positions of the ground protection areas.
  - b. details and position of protection barriers.
  - c. details and position of underground service/drainage runs/soakaways and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site.
  - d. details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g., in connection with foundations, bridging, water features, hard surfacing).
  - e. details of construction and working methods to be employed for the installation of access tracks within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
  - f. details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.

All works/development shall be carried out in accordance with the approved arboricultural method statement and tree/hedgerow protection scheme.

11. The following activities must not be carried out under any circumstances:
  - a. no fires to be lit on site within 10 metres of the nearest point of the canopy of any retained tree/hedgerow on or adjacent to the proposal site.
  - b. no equipment, signage, fencing etc shall be attached to or be supported by any retained tree on or adjacent to the application site.
  - c. no temporary access within designated root protection areas without the prior written approval of the local planning authority.
  - d. no mixing of cement, dispensing of fuels or chemicals within 10 metres of any retained tree/hedgerow on or adjacent to the application site.
  - e. no soakaways to be routed within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
  - f. no stripping of topsoil(s), excavations or changing of levels to occur within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
  - g. no topsoil, building materials or other to be stored within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
  - h. no alterations or variations of the approved works or protection schemes shall be carried out without the prior written approval of the local planning authority.
12. Except for emergency works, construction works on the site shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1400 hours on Saturdays and at no time on Sundays or Bank Holidays.
13. The development hereby permitted shall be carried out in strict accordance with the pre, post and during construction mitigation, enhancement and management measures outlined within the Biodiversity Management Plan (V2 09/07/2020 by Avian Ecology). For the avoidance of doubt, this shall include compliance with the Ecological Mitigation Measures set out in Section 3, the Ecological Enhancement Measures in Section 4, and the Habitat Management Measures in Section 5 in addition to the Management Schedule set out in Section 7. Save for the installation of the bird boxes (which should be installed in the autumn, September to November) the Wildlife Enhancement Measures should be installed in accordance with the timescales embodied within the management schedule following the cessation of construction works. The Biodiversity Management Plan shall be implemented for the lifetime of the development.
14. The development hereby permitted shall be carried out in strict accordance with the Ecological Assessment Report V2 09/07/2020 (including Appendices 2, 3 and 4) by Avian Ecology. For the avoidance of doubt, this shall include the pre-construction survey work and/or mitigation measures as summarised in Table 5.1. The measures shall be undertaken in accordance with the timescales embodied within the report.

15. Prior to the commencement of development, a methods statement of Reasonable Avoidance Measures (RAMs) for Great Crested Newts (GCN) shall be submitted to and approved in writing by the local planning authority. All works shall thereafter be carried out in accordance with the approved details. If RAMs are not sufficient to safeguard GCN, proof of a Low Impact Class Licence or full European Protected Species Mitigation License from Natural England (whichever is applicable), supported by a detailed Method Statement shall be submitted to and approved in writing by the local planning authority.
16. Prior to the commencement of development, a Scheme for the retention, ongoing maintenance, and replacement of any trees and/or hedgerows which die within the areas indicated with green notation on "Areas of Existing Planting" which are within the land edged in blue and red (drawing number P18-2917\_30) shall be submitted to and approved in writing by the local planning authority. The approved Scheme shall be implemented in accordance with the approved details until the solar farm hereby approved is decommissioned.
17. No tree works or vegetation clearance shall take place during the bird nesting period (beginning of March to end of August inclusive) unless a precautionary pre-start nesting bird survey has been carried out by a qualified ecologist/ornithologist and the findings have been submitted to and approved in writing by the local planning authority.
18. No external lighting (other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits) shall be erected/used on site unless precise details of any lighting are first submitted to and approved in writing by the local planning authority. The lighting shall be installed and thereafter maintained in accordance with the approved details of the lifetime of the development.
19. No part of the development hereby permitted shall otherwise commence until the access to the site has been completed (as shown on approved plan ref. P18-2917 Figure 1A) and surfaced in a bound material for a minimum distance of 10m behind the edge/extent of the public highway and the crossing of the highway and footway verge is available for use, in accordance with details to be first submitted to and approved in writing by the local planning authority.
20. Development shall take place in strict accordance with all the mitigation measures set out in the Construction Traffic Management Plan (July 2020) by Pegasus Group. For the avoidance of doubt, this shall include i. that deliveries shall not take place outside 1000 hours to 1600 hours or 1800 to 2000 hours and at no time on Sundays or Bank Holidays; ii. compliance with the mitigation measures details at Section 7 in the Construction Traffic Management Plan (July 2020).

21. No development shall take place until an archaeological Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. This scheme shall include the following:

1. an assessment of significance and proposed mitigation strategy (i.e., preservation by record, preservation in situ or a mix of these elements).
2. a methodology and provisional timetable of site investigation and recording.
3. provision for site analysis.
4. provision for publication and dissemination of analysis and records.
5. provision for archive deposition and
6. nomination of a competent person/organisation to undertake the work.

The scheme of archaeological investigation must only be undertaken in accordance with the approved details.

22. The archaeological site work must be undertaken only in full accordance with the approved Written Scheme of Investigation. The developer/site operator shall notify the local planning authority of the intention to commence at least 2 working weeks before the start of archaeological work to facilitate adequate monitoring arrangements. No variation to the methods and procedures set out in the approved Written Scheme of Investigation shall take place without the prior written consent of the local planning authority.

23. The post-investigation assessment and final report must be completed in accordance with the programme set out in the approved Written Scheme of Investigation and shall include provision for analysis, publication, dissemination of results, submission of the final report to the local planning authority and Nottinghamshire HER and deposition of the archive being secured.

24. The rating level of sound emitted from any fixed plant and/or machinery associated with the development shall not exceed a rating level of 35 dB LAeq,15 minute at the nearest sound-sensitive premises. All measurements shall be made in accordance with the methodology of BS4142 (2014) (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound-sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property.

25. No part of the development hereby permitted shall commence until a detailed surface water drainage scheme based on the principles set out in the approved Calibro Flood Risk Assessment (FRA) ref. BR-629-007 dated 2 July 2020, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development. The submitted scheme shall:

1. provide detailed design (plans, network details and calculations) in support of the surface water drainage system required to manage runoff from the proposed building associated with the substation in accordance with the approach discussed in Section 7 and presented in drawing BR-629-0007-100\_02 Surface Water Drainage Proposals (Appendix D of the FRA).
2. provide detailed design (plans and calculations) in support of the proposed bunded storage areas and associated cut-off swales proposed to reduce flow in the Potwell Dyke as presented in Section 6.3 of the FRA.
3. provide a maintenance schedule for the attenuation basin and bunded storage areas to ensure their performance over the lifetime of the development.
4. provide a maintenance schedule to ensure run-off from solar panels is managed to reduce any detrimental impacts on the natural formation of the agricultural land beneath and around the panels.

## **ANNEX B – APPEARANCES & DOCUMENTS**

### **FOR THE APPELLANT**

Thea-Osmund Smith of Counsel, instructed by Paul Burrell, Executive Director, Pegasus Group.

She called:

Paul Burrell BSc (Soc Sci) Hons, Dip UP, MRTPI.  
Executive Director, Pegasus Group.

Andrew Cook BA (Hons) MLD, CMLI, MIEMA, CENV.  
Executive Director, Pegasus Group.

Laura Garcia BA (Hons) MCIfA.  
Associate Heritage Consultant, Pegasus Group.

### **FOR THE LOCAL PLANNING AUTHORITY**

Ruchi Parekh of Counsel, instructed by Newark and Sherwood District Council.

She called:

Adam Partington, BA (Hons), MSc.  
Director, Locus Consulting Limited.

Cathy Gillespie, BSc, Dip LM, CMLI, Assoc RTPI.  
Head of Environmental Management and Design, VIA East Midlands Limited.

Honor Whitfield, BSc (Hons) MSc, MRTPI.  
Planning Officer, Newark and Sherwood District Council.

### **INTERESTED PERSONS**

Professor M McCaskill	-	Local Resident.
Professor S Bamford	-	Local Resident.
Ms H Hanmer	-	Local Resident.
Ms B Cast	-	Honorary Secretary, Thoroton Society of Nottinghamshire.
Mr B Haigh	-	Chairman, Southwell Civic Society.

### **DOCUMENTS SUBMITTED TO THE INQUIRY**

Doc 1 - Statement by Professor McCaskill.  
Doc 2 - Statement by Professor Bamford & Email dated 13/12/2021.  
Doc 3 - Statement by Ms B Cast, Thoroton Society of Nottinghamshire.  
Doc 4 - Statement by Mr B Haigh, Southwell Civic Society.  
Doc 5 - Agreed Landscape Summary Comparison Schedule.  
Doc 6 - Agreed Landscape & Visual Impacts Summary Comparison Schedule.  
Doc 7 - Biodiversity Net Gain Note & Metric 3 Schedule dated 8 December 2021.  
Doc 8 - Agreed list of suggested conditions.  
Doc 9 - Email dated 13 December 2021, Appellant's agreement to pre-commencement conditions.

Doc 10 - Revised Biodiversity Net Gain calculation using Biodiversity Metric 3.

**DOCUMENTS SUBMITTED FOLLOWING THE ADJOURNMENT OF THE INQUIRY**

Doc 11 - Submission by Professors McCaskill & Usherwood on the Environmental Statement.

Doc 12 - Submission by Mr Struggles on behalf of the Southwell Civic Society on the Environmental Statement.

Doc 13 - Appellant's response to submissions on the Environmental Statement.

Doc 14 - Lpa comment on the revised Biodiversity Net Gain Metric 3 Statement.

Doc 15 - Appellant's response to lpa's Biodiversity Net Gain Metric 3 Statement.



Department for Levelling Up,  
Housing & Communities

Paul Burrell  
Pegasus Group  
Querns Business Centre  
Whitworth Road  
Cirencester  
GL7 1RT

Our ref: APP/Y1138/W/22/3293104  
Your ref: 19/01679/MFUL

5 December 2022

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY JBM SOLAR PROJECTS 2 LTD  
LAND EAST OF LANGFORD MILL AND TYE FARM, LANGFORD, DEVON  
APPLICATION REF: 19/01679/MFUL**

*This decision was made by Minister of State for Housing and Planning, the Rt Hon Lucy Frazer KC MP, on behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of Phillip J G Ware BSc DipTP MRTPI, who held a public local inquiry commencing on 14 June 2022 into your client's appeal against the decision of Mid Devon District Council to refuse your client's application for planning permission for the construction of ground-mounted solar PV panels to generate up to 49.9MW (site area 60.78 ha) and battery storage facility together with all associated works, equipment and necessary infrastructure, in accordance with application Ref. 19/01679/MFUL, dated 2 October 2019.
2. On 18 May 2022, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

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

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

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

5. A list of representations received by the Secretary of State since the close of the inquiry is at Annex A. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.
6. On 10 November 2022, the Secretary of State wrote to the main parties to afford them an opportunity to comment on and confirm the latest revision of the Proposed Layout Plan that was considered at inquiry. A list of representations received in response to this letter is at Annex A. The appellant confirmed in the representation dated 14 November 2022 that the latest revision of the Proposed Layout Plan is Rev K and provided a copy of the plan and provided detail of the difference between Rev J and Rev K of the plan. The representations were circulated to the main parties on 17 November 2022.
7. Further representations were received in response to the circulation of the representations from the appellant and Devon CPRE. The appellant, in their response of 18 November 2022, re-confirmed that the proposed site layout plan for approval is drawing number P18-1820 14 Rev K dated 16 June 2022 entitled 'Site Layout and Planting Proposals', which was submitted to the Inspector on the final day of the inquiry and explained to the inquiry in the appellant's Evidence in Chief on the final morning. Devon CPRE's response of 21 November 2022 made additional representations relating to a number of other plans that were considered at Inquiry, including reference to the withdrawal of drawing number JBM1035-101, Rev K (which was not the subject of the reference back to the main parties) and consider that no details now exist of the proposed Battery Storage facility (BESS). The two representations were circulated to all parties on 28 November 2022.
8. The Secretary of State is satisfied that the considerations in the IR are based on the latest revision of the proposed layout plan (drawing number P18-1820\_14 Rev K). He further notes that the appellant confirmed in their letter of 14 November 2022 that JBM1035-101, Rev K is not a document which is for approval as it is inconsistent with later layout plans. This was also explained at the inquiry. With respect to the new issue raised by Devon CPRE regarding no details existing of the proposed BESS, this point is addressed in paragraph 19 below. The Secretary of State considers that the issues raised do not affect his decision. He is satisfied that no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
9. An application for a full award of costs was made by the JBM Solar Projects 2 Ltd (the appellant) against Mid Devon District Council (the Council) (IR8). This application is the subject of a separate decision letter.

## **Policy and statutory considerations**

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the Mid Devon Local Plan 2013-2033 (2020) and the Cullompton Neighbourhood Plan 2020-2033 (2021) (CNP). The Secretary of State considers that relevant development plan policies include those set out at IR21.

12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those documents listed at IR23-24, IR26 and IR107.
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

#### *Emerging plan*

14. Mid Devon District Council has begun a review of the current Mid Devon Local Plan adopted in 2020 with consultation on the 'Plan Mid Devon 2023-2043 Regulation 18 Issues Paper' taking place from January to March 2022.
15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given the early stage of the plan the Secretary of State has not afforded it any weight.

#### **Main issues**

##### *Effect of the proposal on the character and appearance of the landscape*

16. For the reasons given at IR112-126 and 155, the Secretary of State agrees with the Inspector that in landscape terms a solar farm of this size would have some adverse landscape character effect and further agrees that due to topography and screening this would be very limited and would be mitigated increasingly as planting matures (IR121). The Secretary of State agrees that the area is well endowed with extensive tree and hedge cover which limits views to short to medium range, and the opportunity for sequential views is limited (IR122). The Secretary of State agrees that the overall visual effect of the proposal would maintain the quality of these brief views, and any very limited adverse effect would be offset by new planting (IR123). For the reasons given, the Secretary of State agrees with the Inspector that overall the proposal would cause some very limited and highly localised visual effects, which would be progressively mitigated by additional planting (IR155). He further agrees that the development would therefore not conflict with Local Plan policies DM1, DM2 or S9, nor with the CNP or the Framework (IR126). For the reasons given, the Secretary of State agrees with the Inspector and affords the landscape and visual effects very limited weight against the proposal (IR155).

##### *The effect on Langford Court – a designated heritage asset*

17. For the reasons given at IR127-134, the Secretary of State agrees with the Inspector that given the degree of separation between the appeal site and Langford Court, and the nature of existing and proposed screening, the appeal site makes no contribution to the setting and significance of Langford Court (IR134). He further agrees the proposal would therefore accord with Local Plan policies S9, DM2, DM25, and with the Framework (IR134). The Secretary of State agrees with the Inspector and affords the effect on Langford Court neutral weight in the planning balance (IR154).

### *The effect on and potential loss of agricultural land*

18. The Secretary of State notes that the Agricultural Land Classification of the site was disputed by Devon CPRE, although they did not put forward any technical evidence on land classification. He further notes that neither of the reports submitted by the appellant suggested that any of the appeal site was Best and Most Versatile (BMV) agricultural land. For the reasons given at IR135-139, the Secretary of State agrees with the Inspector that based on the unchallenged evidence of the appellant, the highest some parts of the site could aspire to is 3b, and it is most likely to be lower than that. He further agrees that the loss of this land, even if it were a permanent and total loss, would not receive policy protection (IR137). The Secretary of State agrees with the Inspector that there is nothing to demonstrate that sheep grazing would be unlikely to occur, and this approach forms part of the proposal in line with national guidance (IR138). For the reasons given, the Secretary of State agrees with the Inspector that the proposal would not result in a harmful loss of agricultural land and that it would not conflict with Local Plan policy DM2, S1 or S9, or with the Framework (IR139). The Secretary of State affords the effect on and potential loss of agricultural land neutral weight in the planning balance.

### *The safety of the Battery Storage facility (BESS)*

19. For the reasons given at IR140-147, the Secretary of State agrees with the Inspector that there is nothing in relation to the safety of the BESS which should weigh against the proposal in the planning balance (IR147). He therefore agrees with the Inspector in affording the safety of the BESS neutral weight in the planning balance (IR154). In reaching this conclusion, he has taken account of Devon CPRE's representation of 21 November 2022, which raised concerns that, following withdrawal of drawing number JBM1035-101, Rev K by the appellant, no details exist of the proposed BESS. In respect of this point, the Secretary of State agrees with the Inspector's conclusions at IR145.

### *Other matters*

20. For the reasons given at IR148-151, the Secretary of State agrees with the conclusions of the Inspector on the other matters raised by objectors.

### *The benefits of the proposal*

21. For the reasons given at IR156, the Secretary of State agrees with the Inspector that the scheme is for a renewable energy proposal which is fully in accordance with the economic, social and environmental dimensions set out in the Framework and that the scheme has strong national and local policy support (IR156). The Secretary of State affords the production of electricity significant weight in favour of the proposal.

22. For the reasons given at IR157, the Secretary of State agrees with the Inspector that the financial investment and the direct and indirect jobs during the construction phase, with a smaller number of jobs when the development is operational, would be a benefit of the scheme. No evidence has been put forward of where the benefits of the financial investment would accrue, and the Secretary of State affords the economic benefits moderate weight in favour of the proposal.

23. For the reasons given at IR157, the Secretary of State notes that the Inspector considers that the acknowledged benefit of the additional planting, which would remain after the end of the limited period, should be afforded significant weight and that the unchallenged

Biodiversity Net Gain (BNG) is a further substantial benefit. The Secretary of State considers that the additional planting proposed would contribute to the overall BNG and therefore collectively affords the additional planting and BNG significant weight.

### **Planning conditions**

24. The Secretary of State has given consideration to the Inspector's analysis at IR152-153, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of his decision. Following receipt of representations from the main parties on the latest revision of the Proposed Layout Plan that was considered at inquiry, the Secretary of State is satisfied that the recommended conditions set out at the end of the IR, in particular conditions 3 and 15, should refer to the 'Proposed Layout Plan, drawing number P18-1820\_14, Rev K'.

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

25. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.

26. Weighing in favour of the proposal is the production of electricity which is afforded significant weight; the economic benefits which are afforded moderate weight; and the additional planting and BNG, which are together afforded significant weight.

27. Weighing against the proposal are the very limited landscape and visual effects which together are afforded very limited weight.

28. Overall, the Secretary of State considers that the accordance with the development plan and the material considerations in this case indicate that permission should be granted.

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

### **Formal decision**

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for the construction of ground-mounted solar PV panels to generate up to 49.9MW (site area 60.78 ha) and battery storage facility together with all associated works, equipment and necessary infrastructure, in accordance with application ref. 19/01679/MFUL, dated 2 October 2019.

31. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

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

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

33. A copy of this letter has been sent to Mid Devon District Council and Devon CPRE, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*MA Hale*

Mike Hale  
Decision officer

*This decision was made by the Minister of State for Housing and Planning, the Rt Hon Lucy Frazer KC MP, on behalf of the Secretary of State, and signed on her behalf*

## Annex A Schedule of representations

### SCHEDULE OF REPRESENTATIONS

#### General representations

<b>Party</b>	<b>Date</b>
JBM Solar (the Appellant)	14 November 2022
Helen Hitt	29 November 2022
Ian & Kim Wood	30 November 2022
HB & PR Chattey	30 November 2022

#### Representations received in response to the Secretary of State's letter of 10 November 2022

<b>Party</b>	<b>Date</b>
Pegasus Group on behalf of the Appellant	14 November 2022
Devon CPRE	14 November 2022
Mid Devon District Council	16 November 2022
Pegasus Group on behalf of the Appellant	18 November 2022
Devon CPRE	21 November 2022

## Annex B List of conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The permission hereby granted shall be limited to a period of 40 years (with the exception of the DNO Substation which is to be retained on the site in perpetuity) from the date when electricity is first exported from the solar panels to the electricity network (The First Export Date). Written notification of the First Export Date shall be given to the Local Planning Authority within 14 days of the event occurring.
3. The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Site Location Plan, drawing number P18- 1820\_18, Rev B, prepared by Pegasus Group.
  - Gantry Site Elevations, drawing number P2763-150-03, Rev O, prepared by G2 Energy.
  - DNO Substation Elevations, drawing number P2763-(01)-25-01-0, Rev 0, prepared by G2 Energy.
  - DNO Substation Plan, drawing number P2763(01)-25-01-0, Rev 0, prepared by G2 Energy.
  - Client Substation Elevations, drawing number P2763-(02)-25-01-0, Rev 0, prepared by G2 Energy.
  - Side Elevation Layout, drawing number JBM1035-201, Rev A, prepared by JBM Solar
  - Central Inverter Elevations, drawing number JBM1035-203, prepared by JBM Solar.
  - Control Room Elevations, drawing number JBM1035-209, prepared by JBM Solar.
  - Customer Cabin Elevations, drawing number JBM1035-210, prepared by JBM Solar.
  - Spare Parts Building Details, drawing number JBM1035-212, prepared by JBM Solar.
  - Client Substation (in 132kVa Compound and Site), drawing number JBM1035-222, prepared by JBM Solar.
  - 132kVa Compound, drawing number JBM1035-220, Rev A, prepared by JBM Solar.
  - Road Cross Section, drawing number JBM1035-216, prepared by JBM Solar.
  - Cable Trench Cross Section, drawing number JBM1035-215, prepared by JBM Solar.
  - Deer Fence Details, drawing number JBM1035-214, Rev A, prepared by JBM Solar.
  - CCTV Pole Details, drawing number JBM1035-213, prepared by JBM Solar.
  - Switchgear Elevations, drawing number JBM1035-204, prepared by JBM Solar.
  - PCS Inverter Elevations, drawing number P2763-(04)-25-01-0, Rev 0, prepared by G2 Energy.
  - Battery Container Elevations, drawing number P2763-(03)-25-01-0, Rev 0, prepared by G2 Energy.
  - Proposed Layout Plan, drawing number P18- 1820\_14, Rev K, prepared by Pegasus Group.
  - P18-1820 Figure 2 Primary Site Access Visibility Splay (CTMP), prepared by Pegasus Group.
  - P18-1820 Figure 4 Swept Path Analysis B3181 to Main Site Access 15.4m Articulated HGV (CTMP), prepared by Pegasus Group.

- P18-1820 Figure 5 Swept Path Analysis Area A to Areas B & C 10m Rigid Vehicle (CTMP), prepared by Pegasus Group.
  - P18-1820 Figure 7 Swept Path Analysis Area A to Area C 15.4m Artic HGV (CTMP), prepared by Pegasus Group.
  - In general accordance with P18-1820 Figure 6 Area B Indicative Access Design (CTMP) and P18-1820 Figure 8 Area C Access Indicative Improvements Including Swept Path Analysis 15.4m Artic HGV (CTMP).
  - Additional Planting Inset Plan, drawing number P18-1820\_24, dated 2nd February 2022.
4. If the solar farm hereby permitted ceases to operate for a continuous period of 12 months, then a scheme for the decommissioning and removal of the solar farm and ancillary equipment, except for the DNO Substation, shall be submitted within 6 months of the end of the cessation period to the local planning authority for its written approval. The scheme shall make provision for the removal of the solar panels and associated above ground works approved under this permission. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures.
  5. Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the first export date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, except for the DNO substation, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to and agreed in writing by the local planning authority.
  6. The solar farm and its ancillary equipment, except for the DNO substation, shall be dismantled and removed from the site and the land restored in accordance with the approved Scheme and, in any event shall be removed within a period of 40 years and 6 months following the first export date.
  7. The Solar PV Panels hereby permitted shall not be erected until samples of the materials to be used in the construction of the solar panel array have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved materials and retained as such thereafter.
  8. Prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.
  9. Prior to the commencement of the proposed development, the site access roads shall be formed in a sound bound material for the first 20.00m back from its junction with the public highway and drained to prevent no surface water onto the public highway. The site access roads shall be hardened, surfaced, drained and maintained thereafter hardened, surfaced, drained and maintained.

10. Prior to the commencement of the proposed development, visibility splays shall be provided, laid out and maintained for that purpose at the primary site access where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 43.0 metres in a southern direction and as identified on the access plan in the other direction.
11. Visibility splays shall be provided, laid out and maintained for that purpose at the other site accesses in accordance where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 33.00 metres in on coming direction and 33.00 metres to the centre line in the offside direction.
12. No other part of the development hereby approved shall be commenced until the access, parking facilities, commercial vehicle loading/unloading area, visibility splays, turning area and access drainage have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times.
13. No development shall take place until off site highway condition surveys have been undertaken and the details submitted and approved in writing by the Local Planning Authority.
14. No development shall take place until:

EITHER

- i) A programme of archaeological work has been carried out in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority.

OR

- ii) A construction methodology for the development that avoids any below ground impact within the area of Archaeological sensitivity in the vicinity of the 7th/8th century iron furnace has been submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved scheme (under either part i) or part ii) or such other details as may be subsequently agreed in writing by the Local Planning Authority.

15. No development shall take place until a detailed scheme of ecological mitigation and enhancement measures, in accordance with the recommendations of the submitted documentation (below) has been submitted to and approved in writing by the Local Planning Authority:

- a) The Biodiversity Management Plan by avian ecology v4 (Dated 20/07/2020), has been submitted to and approved in writing by the Local Planning Authority.
- b) The Biodiversity Enhancement Note and Addendum Note Dated 3/12/2020)
- c) The updated Site Layout Plan (drawing number P18- 1820\_14, Rev K)

Notwithstanding the details included in the above documentations, the details shall include the details to be submitted including planting plans, specification of species, sizes, planting centres, number and percentage mix and details of seeding or turfing.

Ecological mitigation and enhancement measures shall be implemented in accordance with the detailed scheme.

16. The Solar PV Panels hereby permitted shall not be erected until details, on a suitably scaled plan, of the soft landscape works have been submitted to, and approved in writing by, the local planning authority. The details to be submitted shall include planting plans, including specifications of species, sizes, planting centres, number and percentage mix, and details of seeding or turfing. The development shall not be carried out other than in accordance with the approved details.
17. All approved landscaping shall be carried out in the first planting and seeding season following the erection of the panels, and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards 8545: 2014 or any subsequent re-enactment.
18. The Solar PV Panels hereby permitted shall not be erected until the full details of the works to the hedges including species adjacent to the residential properties, as shown on Figures 11 and 12 of the Glint and Glare Study Page Power Ltd v 4 dated 16th August 2019, have been submitted and approved in writing by the Local Planning Authority. The works shall then be carried out in the first planting season after the written approval is received and thereafter retained and maintained.
19. The development hereby approved shall not be brought into use until the surface water drainage arrangements have been provided in full, in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall thereafter be retained for the life of the development.
20. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) report v5 prepared by Calibro, and issued on 30th November 2020, including the level for floodplain compensation outlined in paragraph 7.6.6 of the FRA. The mitigation measures shall be fully implemented in accordance with the timing/phasing arrangements detailed within the Flood Risk Assessment. The approved measures shall thereafter be retained for the life of the development.

21. No external lighting (other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits) shall be erected/used on site unless precise details of any lighting are first submitted to and approved in writing by the local planning authority. The lighting shall be installed and thereafter maintained in accordance with the approved details for the lifetime of the development.
22. Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority.

The CEMP shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise; vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development; manage Heavy/Large Goods Vehicle access to the site. It shall include details of the hours of operation and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways.

The following specific details should also be included in respect to highway safety:

- a) The timetable of the works;
- b) Daily hours of construction;
- c) Any road closure;
- d) Hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays; 9.00am to 1.00pm Saturdays, and no such vehicular movements shall take place on Sundays and Bank/Public Holidays unless agreed by the Local Planning Authority in advance;
- e) The number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
- f) The compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
- g) Areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
- h) The means of enclosure of the site during construction works;
- i) Details of wheel washing facilities and road sweeping measures with the respective obligations;
- j) The proposed route of all construction traffic exceeding 7.5 tonnes;

- k) Details of the amount and location of construction worker parking;
  - l) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.
23. No development shall take place until a Landscape and Ecological Management Plan (LEMP) is submitted and approved in writing by the Local Planning Authority. The LEMP shall provide details of the following:
- a) Retained Ecological and Landscape features;
  - b) Proposed Habitat Ecological and Landscape Features;
  - c) Habitats and Landscape Management Measures;
  - d) Monitoring and Review of Plan.
24. Development of the battery storage compound shall not commence until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP must prescribe for measures to facility safety during the construction, operation and decommissioning of the battery storage facility, including the transport of new, used and replacement battery cells both to and from the authorised development. The Local Planning Authority must consult with the Health and Safety Executive and the Devon Fire and Rescue Service before approving the BSMP. The BSMP must be implemented as approved.



The Planning Inspectorate

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# **Report to the Secretary of State for Levelling Up, Housing and Communities**

**by Phillip J G Ware BSc DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Date 5 September 2022**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**MID DEVON DISTRICT COUNCIL**

**APPEAL BY JBM SOLAR PROJECTS 2 LTD**

Inquiry held on 14 – 17 June 2022

Land east of Langford Mill and Tye Farm, Langford, Devon

File Ref: APP/Y1138/W/22/3293104

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<https://www.gov.uk/planning-inspectorate>

**File Ref: APP/Y1138/W/22/3293104**

**Land east of Langford Mill and Tye Farm, Langford, Devon**

- 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 JBM Solar Projects 2 Ltd against the decision of Mid Devon District Council.
- The application Ref 19/01679/MFUL, dated 2 October 2019, was refused by notice dated 23 September 2021.
- The development proposed is the construction of ground-mounted solar PV panels to generate up to 49.9MW (site area 60.78 ha) and battery storage facility together with all associated works, equipment and necessary infrastructure.

**Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.**

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**Procedural matters**

1. A Screening Opinion was obtained from the Council in January 2019 confirming that the proposal fell within category 3a of Schedule 2 as described in the Regulations. The Screening Opinion considered that, given the nature of the proposal, whilst there may be effects on the environment, none of these are considered to constitute significant effects which cannot be mitigated against by the proposed application. As such, the proposal is not EIA development. There is no reason to disagree with that Opinion.
2. The Council refused planning permission for the proposal in September 2021<sup>1</sup>. The reasons for refusal related to landscape impact, the effect on a heritage asset and the loss of agricultural land<sup>2</sup>. The description of the proposal on the planning application form did not refer specifically to the generating capacity, but this was obviously the subject of discussions and was referenced on the refusal notice (and is used above). All parties to the Inquiry dealt with the matter on that basis.
3. On 15 March 2022 Devon CPRE<sup>3</sup> (CPRE) were given Rule 6 status.
4. By emails dated 31 March 2022<sup>4</sup> and further clarified on 27 April 2022<sup>5</sup>, the Council confirmed that the authority was conceding the appeal on all grounds and would not be providing any evidence.
5. A virtual Case Management Conference (CMC) was held on 25 April 2022 to discuss arrangements for the Inquiry. The CMC was attended by the appellant, the Council and CPRE.
6. The appeal was recovered for decision by the Secretary of State on 18 May 2022. The reason for recovery was that the proposal was of major significance for the delivery of the Government's climate change programme and energy policies.

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<sup>1</sup>

<sup>2</sup> CD A51

<sup>3</sup> Formerly The Campaign to Protect Rural England, now 'The Countryside Charity'

<sup>4</sup> CD C14

<sup>5</sup> CD C15

7. The Inquiry sat for three days, commencing on 14 June 2022. An accompanied visit was undertaken to properties adjoining the site on 17 June 2022, after which a further unaccompanied visit was undertaken to agreed viewpoints around the area.
8. At the Inquiry an application for costs was made by JBM Solar Projects 2 Ltd (the appellant) against Mid Devon District Council (the Council). This application is the subject of a separate Report.

### **The site and the surrounding area**

9. The appeal site comprises two parcels totalling some 61 ha of agricultural land to the east and north-east of the village of Langford<sup>6</sup>. Within and around the appeal site are existing field boundaries, hedgerows and vegetation. The landscape is generally undulating, falling to the River Weaver, which runs from the north-east to the south-west across the site, although there are a few steep slopes within the site.
10. There is an unnamed road running in a north to south direction close to the western boundary of the appeal site.
11. The wider area is overwhelmingly rural and undulating in character, with sporadic housing and small settlements. It is open countryside in both policy terms and when viewed on the ground, and is not allocated for development. The area is not subject to any statutory designations related to landscape, ecology or historical value.
12. Langford Court lies to the south of the site. It is a Grade II\* farmhouse dating from the early 16th-century. No party argued that there was any effect on the other heritage assets in the wider area<sup>7</sup>.

### **The proposal**

13. The proposal is for the construction of solar photovoltaic panels laid out in rows on an east-west axis facing south. They would be orientated 15 degrees from the horizontal to maximise efficiency. The maximum height of the panels will not exceed 3m.
14. The application refers to the generation of "...up to 49.9MW for a temporary period of 40 years from the date of the first export of electricity".
15. Various plant and other equipment and access tracks will be located around the site, including inverter cabins. The battery storage facility (BESS) would be located in the south-eastern corner of the site. The BESS facility would largely comprise battery units within shipping containers, a storage container and an inverter cabin and a DNO substation.
16. The proposal includes a 2m high deer fence around the edge of the site. This would include badger/small mammal friendly access points. There would be 4m high pole mounted CCTV security cameras along the perimeter.

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<sup>6</sup> Location plan at LVIA Figure 1. CD A7.

<sup>7</sup> Set out at CD A12B

17. Three access points are proposed – two into the southern side of the site and a third into the north-western area. There are no public footpaths within the appeal site.
18. The solar farm would be unmanned and remotely controlled. The appellant's position is that once constructed the solar farm would require infrequent visits for the purposes of maintenance or cleaning. Such work would typically amount to 10-20 visits per year.
19. At the end of the 40-year operational lifespan of the solar farm it is estimated that decommissioning would take around six months. The site would be restored back to full agricultural use with all equipment and below ground connections removed (with the exception of the Distribution Network Operator (DNO) substation). Landscape enhancement measures which form part of the appeal scheme would remain.

### **Planning policy**

20. The development plan comprises the Mid Devon Local Plan 2013-2033 (2020) (LP)<sup>8</sup> and the Cullompton Neighbourhood Plan 2020-2033 (2021) (CNP)<sup>9</sup>.
21. The LP policies referenced in the Council's decision notice were:
  - Policy S1 – which sets out broad Sustainable Development Priorities.
  - Policy S9 – which aims to sustain the distinctive quality, character and diversity of the area's environmental assets, whilst minimising the impact of development on climate change.
  - Policy S14 – which provides that, outside settlements, development should preserve and enhance the character of the countryside.
  - Policy DM1 – which requires high quality design.
  - Policy DM2 – deals with Renewable and Low Carbon Energy. It provides that the benefits of renewable and low carbon energy development will be weighed against its impact. Proposals will be permitted where they do not have significant adverse impacts on the character, amenity and visual quality of the area, including cumulative impacts. Proposals must demonstrate that impacts are or can be made acceptable in relation to landscape character and the character and setting of heritage assets.
  - Policy DM18 – which supports and deals with rural employment development.
  - Policy DM25 – which sets a presumption in favour of preserving or enhancing all designated heritage assets and their settings.
22. The CNP was not referenced in the Council's decision notice. The parties agree that it is supportive of the increased use of renewable energy, subject to controlling the visual impact of installations.

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<sup>8</sup> CD E1

<sup>9</sup> The majority of the site falls within the area of the CNP

23. The Solar PV Developments in the Landscape SPD (May 2016) (SPD) was referenced in the Council's reasons for refusal<sup>10</sup>. The parties agree that it is a material consideration.
24. At the local level, the Mid Devon Landscape Character Assessment (2011) is a material consideration in the determination of the appeal<sup>11</sup>.
25. In terms of national planning policy and guidance, the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) are material considerations.
26. A number of other national guidance and policy documents were referred to by the parties, all of which are agreed to be material considerations. In particular:
- National Policy Statement for Energy (EN-1) (2011). (A draft EN-1 was published in September 2021.)
  - National Policy Statement for Renewable Energy Infrastructure (EN-3) (2011). (A draft EN-3 was published in September 2021.)
  - UK Government Solar Strategy (2014).
  - Written Ministerial Statement on Solar Energy: protecting the local and global environment (2015).
  - Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (2021).
  - Managing Significance in Decision-Taking in the Historic Environment. Historic England Good Practice Advice (2015).
  - The Setting of Heritage Assets Historic England Good Practice Advice in Planning 3 (2017).

### **Agreed matters between the appellant and the Council**

27. A Statement of Common Ground (SOCG) has been concluded between the appellant and the Council<sup>12</sup>. Various background matters such as the characteristics of the appeal site and the surrounding area, and the policy position are set out. The following main matters are agreed (other matters are also set out in the SOCG):
- There are no previous relevant planning applications on the site.
  - The proposal was not considered to constitute EIA Development having regard to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. As such, an Environmental Statement was not required.
  - The site is in open countryside in policy terms, outside any settlement boundary.

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<sup>10</sup> CD E5

<sup>11</sup> CD E7

<sup>12</sup> CD C9

- The application was recommended for approval, but was refused following a Members' site visit.
- LP policies S9 and DM2 allow for renewable energy development where there is an acceptable local impact, balanced with the wider sustainability benefits of such installations.
- The CNP is supportive of the increased use of renewable energy, subject to controlling the impact of such installations.
- The EN-1 and EN-3, together with the draft EN-1 and draft EN-3, are material considerations. These set out how the energy sector can help deliver the national climate change objectives.
- There is no requirement for the appellant to demonstrate need for the proposal.
- The proposal is a low carbon, renewable energy source that would contribute towards meeting national renewable energy targets.
- The proposal would provide no more than 49.9MW of electricity, which is equivalent to meeting approximately the annual needs of in excess of 10,000 houses.
- Substantial weight should be attached to the benefit of renewable energy production.
- The proposal would result in a substantial public benefit of £40,000,000 in financial investment, would support between 70 and 80 direct and indirect jobs during the construction phase, and a smaller number of jobs when the solar farm is operational.
- The officer's report acknowledged that the proposal would have a moderate/minor impact on the landscape. Existing tree growth, mature hedgerows and generally flat topography help to mitigate the development.
- In terms of general visual amenity, the opportunity to observe the proposal is very limited.
- There was no residential amenity reason for refusal.
- Historic England did not raise a formal objection to the proposal<sup>13</sup>.
- The Council has never offered evidence that the proposal would cause any harm to the significance of Langford Court. In any event, were there to be such less than substantial harm this would be outweighed by public benefits.
- In terms of operational safety the proposed installation can be suitably managed outside the planning process.
- The original Agricultural Land Classification Report (ALC)<sup>14</sup> (dated October 2019) confirmed that the site constitutes a total of 15no. fields of Grade 3b, 1no. field of Grade 4 and 1no. field of Grade 5 Agricultural Land. The

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<sup>13</sup> CD B11

<sup>14</sup> CD A9

updated ALC<sup>15</sup> shows that the entirety of the site comprises Grade 4 agricultural land. It is agreed that the site comprises very poor quality agricultural land.

- The solar panels would be secured to the ground with steel piles with limited soil disturbance, which means that the panels can be removed in the future with no permanent loss of agricultural land quality.
- The grazing of animals between and under the panels would allow for continued agricultural use during the 40 year operation of the solar farm.

### **Agreed and disagreed matters between the appellant and CPRE**

28. A separate SOCG has been concluded between the appellant and CPRE<sup>16</sup>. As well as agreeing various background matters similar to those agreed with the Council, this SOCG records agreement on the following main matters (other matters are set out in the SOCG):

- The site is in open countryside in policy terms.
- LP and CNP policy allow for renewable energy development where the local impact is acceptable.
- There is no requirement for need to be demonstrated.
- National energy policy is a material consideration.
- Trees and hedgerows, along with generally flat topography, help to mitigate the overall scale of the development.
- Historic England did not raise a formal objection to the proposal.
- Any harm to the setting of Langford Court must be seen in the context of the newer agricultural buildings.

29. The main matters which are in dispute between the appellant and CPRE are (other matters are in the SOCG):

- The level of harm on the landscape character and the extent of the visibility of the site.
- Whether sheep grazing will occur and whether maintenance of the panels will be necessary.
- Whether harm would occur to the setting of Langford Court.
- The adequacy of the ALC reports and the level of impact on agricultural land.
- Whether the BESS is properly described, and whether it is beneficial for this to be sited with the solar farm.
- Whether the BESS would give rise to risk of fire and explosion.

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<sup>15</sup> CD C7

<sup>16</sup> CD C10

- How the annual reduction CO2 is calculated and whether a whole life carbon assessment is necessary.
- Whether there would be a considerable loss of food production.

### **The case for the appellant**

30. This section is based substantially on the closing submissions<sup>17</sup>, together with the evidence at the Inquiry.

#### *Background*

31. Climate change is considered by many to be the greatest threat faced by humanity. The Government's 2021 Net Zero Strategy<sup>18</sup> points to stark consequences already being felt and stresses the internationally agreed consensus that things could get much worse. At the local level, the Council declared a climate change emergency in 2019.
32. The existence of the climate change issue which is rarely contentious at planning appeals. But at the start of the Inquiry Dr Bratby (for Devon CPRE) stated that he does not accept that there is a climate change emergency, has not seen evidence to suggest that this is the case, and stated that he does not accept that the consequences of global warming will be negative. That position obviously influences the entirety of the CPRE evidence. Dr Bratby agreed that he is asking the Secretary of State to make a finding in conflict with Government policy and that he would do the same faced with any greenfield solar scheme in Devon. He has similar in principle objection to any BESS system.
33. In answer to questions from the appellant and the Inspector, Dr Bratby confirmed that his views do not reflect the approach of CPRE nationally, an organisation which describes itself as "a passionate advocate for climate action" that has "clearly stated our support for renewable energy"<sup>19</sup>. It was stated that Devon CPRE took a decision earlier in the year to reject the national CPRE position.

#### *Landscape character and appearance*

34. National and LP policies S9 and DM2 renewable energy policies adopt a supportive approach towards renewable energy, and provide that development will be approved where any harm would be outweighed by the benefits. Draft NPS EN-3 also makes it clear that any harm must be set in context of the time limited nature of solar schemes<sup>20</sup>. However, although the Council accepts that there is support for renewable facilities in the open countryside and has confirmed that there is no in principle objection to the proposal in this location, it has not allocated any land for renewable energy developments<sup>21</sup>.
35. The proposal is a large solar farm on an unallocated greenfield site. It needs to be the size proposed in order to deliver its substantial energy benefits. The

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<sup>17</sup>Doc 5

<sup>18</sup> CD D17 page 14

<sup>19</sup> CD C16 Appendix 1

<sup>20</sup> CD D4-B

<sup>21</sup> CD C9 paragraph 8.5

appellant has always acknowledged there will be some landscape harm – but this does not mean that the scheme should be refused. The particular features of the appeal site and its surroundings, including its topography and enclosure, mean that the adverse landscape and visual impacts are limited and highly localised.

36. The only professional landscape evidence before the Inquiry was that of Mr Cook for the appellant<sup>22</sup>, which should be read together with the appellant's Landscape and Visual Impact Assessment<sup>23</sup>. CPRE has provided no landscape evidence, other than to say that it upholds the Council's now conceded objection on landscape grounds – the only CPRE witness did not hold any landscape qualification and has not carried out any separate assessment.
37. The Devon Landscape Character Assessment (LCA)<sup>24</sup> identifies distinctive characteristics of this landscape and provides that the strategy should be to reinforce field patterns through restoration and management of characteristic hedgerows, and to manage and expand wet grasslands along watercourses to help prevent downstream flooding. It seeks the extension of species rich meadows and grasslands through appropriate grazing and traditional land management regimes. This is evidently achieved by this proposal.
38. There would be an inevitable adverse change in the existing land cover of the site. Aside from the presence of a 132kv overhead line and pylons the proposal would reduce the existing sense of openness and cause some landscape harm – although this would be fully reversed on decommissioning. There would be no physical effect on public rights of way, some notable positive landscape effects and a moderate beneficial effect on the tree resource. The existing tree cover would be retained and there would be new tree planting including a woodland copse. There would be a major beneficial effect on hedgerows with an additional 1.2 planted and a moderate beneficial effect on watercourses and waterbodies due to the incorporation of a sustainable urban drainage system with a series of small balancing basins and swales. Overall, there would be a beneficial effect on landscape elements within the site, and the effect on openness would be reversed after 40 years<sup>25</sup>.
39. In terms of landscape character all parties accept that this is not a valued landscape in NPPF terms and that it is not designated for its landscape beauty<sup>26</sup>. The National, East Devon, and Mid Devon Character Areas beyond the site would be unchanged with the proposed solar farm in place and the site would be fully restored (with the exception of the DNO substation)<sup>27</sup>. The baseline value, sensitivity, and susceptibility of the land is dealt with by the appellant<sup>28</sup> and no other party has provided an alternative analysis.
40. CPRE relied on the Council's 'Solar PV Developments in the Landscape Supplementary Planning Document' (2016) ("SPD")<sup>29</sup>, which refers to high

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<sup>22</sup> CD C11B

<sup>23</sup> CD A7

<sup>24</sup> CDE6-B

<sup>25</sup> CD C11-B para 4.12

<sup>26</sup> CD C10 6.10, CD C9 8.23

<sup>27</sup> CD C9 8. CD C10 6.11

<sup>28</sup> CD C11-B

<sup>29</sup> CD E5, CD C12 paras 11/12

sensitivity of the landscape to large scale solar development. But the SPD ascribes the same sensitivity to a very large area and includes the caveat against it being "*interpreted as a definitive statement of the suitability of a certain location for a particular development*"<sup>30</sup>. It therefore provides a very limited understanding of any individual site. The appellant has assessed the features of this particular site against each of the criteria in the SPD. Using these criteria a medium value, susceptibility and sensitivity is ascribed and the landscape is described as "*quite unremarkable*" in landscape character terms<sup>31</sup>. There is a strong sense of visual enclosure as a result of hedges and tree cover, there is a modern field pattern, and the site accommodates pylons and overhead cables.

41. The appellant's assessment of the magnitude of change, which is the only one before the Inquiry, finds a medium magnitude of change to the site itself. But the general agricultural character of the fields would remain.
42. By combining medium sensitivity with medium magnitude of change, the uncontested evidence is that there would be a moderate adverse effect on the site for the life-time of the scheme and no change to the wider landscape.
43. In relation to visual impact, due to the low profile of the panels, the low level topography, and the existing tree and hedgerow cover, the visibility from the surrounding area would be very limited. The Council and CPRE agree that these factors mitigate visual impact<sup>32</sup>. The Council also agrees that view from surrounding Public Rights of Way is "*very limited*"<sup>33</sup> with only a very short section of a footpath to the south of the site from Langford Green where an appreciation of the scheme could be gained.
44. All other viewpoints are taken from highways locations – the network in the area comprises a number of narrow, hedgerow-lined unclassified roads. Viewpoints are generally not from the lanes themselves, but from gated accesses on the side of the road. One exception is the unclassified road between Plymtree and Langford which passes adjacent to the site. From a few short sections of that road, users could see some solar panels in adjacent fields, but even these views are limited by hedgerows.
45. The selection of the viewpoints is not controversial. Most of the viewpoints (six of the nine) will have a negligible visual effect, and the remaining three will have a minor-moderate or moderate effect (viewpoints 2, 5 and 7). These are the viewpoints for which photomontages have been prepared<sup>34</sup>. Viewpoint 5 was a particular concern for CPRE – but though small elements of the solar farm would be distinguishable in the mid-ground amongst the tree and hedge cover, it would be largely obscured by intervening topography and vegetation, such that the magnitude of change is only low overall.
46. CPRE was initially concerned that the BESS had been left out of the photomontages. However the entire proposal - including the BESS, substation,

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<sup>30</sup> CD E5

<sup>31</sup> CD C11-B paras 5.15-5.16

<sup>32</sup> CD C10 para 6.9, CD C9 para 8.20

<sup>33</sup> CD C9 para 8.26

<sup>34</sup> CD A7 and CD C11-B paras 6.14-6.48

and fencing has been modelled<sup>35</sup>. This was explained in detail at the Inquiry and can be appreciated on site. In addition the viewpoints are from August 2019, and there has subsequently been notable growth of the existing vegetation.

47. Overall, the visual effect of the proposal would be minor and localised. There has never been a residential amenity objection although a number of private views would change. Given the position of the solar panels and the distances and intervening vegetation, this is acceptable.

#### *Heritage – Langford Court*

48. The only expert heritage assessment before the Inquiry was that from the appellant, which concludes that there would be no harm to Langford Court. The building is a 16<sup>th</sup> century farmhouse that was enlarged and remodelled in the 17<sup>th</sup> century and restored extensively after a fire in the 1990s. It is common ground that it has a range of heritage interests, in particular historic, architectural and archaeological, and that its primary significance is embodied in its physical form. The proposal would not touch the physical fabric or form of the building.
49. The setting contributes to the significance of the asset, but to a lesser degree than the physical fabric. The part of the setting from which the asset derives significance comprises the historically associated gardens, the modern eastern gardens and lake, and the areas of the historically associated contiguous landholding visible from the asset. The most important views are from the gardens and across the lake to the house. The proposal would not affect any of these features, areas or views.
50. Turning to the heritage significance of the wider setting, the first stage in the analysis must be to assess the contribution the appeal site currently makes to significance. While the appeal site may be visible from Langford Court, that is not the test. Visibility between an asset and a given area is not enough to engender a contribution to heritage significance. In the wider landscape, views that do not illustrate architectural or historic interest, and do not allow the significance of an asset to be appreciated, are merely incidental views that neither contribute nor detract from heritage significance. Support for this approach can be derived from the Court of Appeal in *Catesby Estates Ltd. v Steer* [2018] EWCA Civ 1697<sup>36</sup>, which emphasised that if a proposal is to affect the setting of a listed building “*there must be a distinct visual relationship of some kind between the two .... which is more than remote or ephemeral, and which in some way bears on one’s experience of the listed building in its surrounding landscape or townscape.*”
51. In this case, the historic documentary evidence demonstrates that the appeal site was not part of the consolidated contiguous historic landholding experienced in conjunction with the asset in the mid 19th-century. There is a small amount of historic coincidence of ownership, but this was at some distance from the main landholding, and does not survive today. While there are also distant and partially screened views to Langford Court from the appeal site, the architectural and historic interest of the house cannot be readily understood in those views. The appeal site has only filtered intervisibility with the asset, with views largely

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<sup>35</sup> CD C16 paras 3.4-3.7

<sup>36</sup> CD I1

screened by topography and vegetation. None of these views are of any particular significance, and they have experienced notable change already in the 20th century, including the construction of more modern buildings close to the Court.

52. The easterly views in which the proposal would be visible do not appear to have been historically designed, as demonstrated by the former presence of a range of outbuildings (now removed). The landscape in this direction contains elements of modern infrastructure in the form of two lines of large pylons.
53. Turning to the position of CPRE, it is noted that the original comments from that organisation did not object on the basis of heritage harm. The only witness for CPRE had no heritage expertise and provided no heritage evidence. But CPRE continued to assert that there would be heritage harm to Langford Court. In particular the concern appeared to focus on the BESS – however the BESS area including the gantries would be obscured. As to visibility of the BESS in views to the asset, photomontage of viewpoint 7 demonstrates that the area will not be prominent, and the glimpsed view of Langford Court from that location where co-visibility is possible does not reveal historic significance.
54. Overall while the solar panels would be visible from some views, the appeal site does not contribute to the significance. CPRE implied that Historic England (HE) also found a level of harm, but that is not correct. HE identified the potential for harm, but deferred to the assessment of the Council’s heritage consultee (who appears to have confused visibility and harm), and stated that HE need not be consulted again<sup>37</sup>. HE did not visit the site, and does not appear to have had access to historic mapping that could allow an understanding of the historic connection (or rather lack of) between the asset and the appeal site.
55. The proposals cause no heritage harm, and as such are compliant with all relevant law, policy and guidance, including section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires special regard to be paid to the desirability of preserving listed buildings and their settings.

#### *Agricultural land*

56. An Agricultural Land Classification Report (ALC) (2019)<sup>38</sup> was submitted with the application and identified a range from grade 3b to 5 land). With rebuttal evidence (to CPRE) the appellant submitted an updated ALC (2022)<sup>39</sup>. The appellant explained why this was done - partly because such reports had evolved significantly since the original report and the new report included improved accuracy, format, and detail<sup>40</sup>.
57. The updated ALC found that that the appeal site comprises Grade 4 quality land. The Planning Practice Guidance defines Best and Most Versatile (BMV) agricultural land as Grades 1, 2 and 3a, and therefore the proposal would not result in the loss of any BMV land. This is agreed with the Council<sup>41</sup>.

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<sup>37</sup> CD B11 and CD C9 para 8.32

<sup>38</sup> CD A9

<sup>39</sup> CD C7

<sup>40</sup> CD C16 Appendix 2

<sup>41</sup> CD C9 paras 8.57-8.58

58. CPRE has not provided any alternative ALC or review of the methodology of either ALC. Their only aim was stated to be to “*cast doubt*” on the appellant’s assessment<sup>42</sup>.
59. The Council and appellant agree that the proposal complies with local and national policy<sup>43</sup>. Although there would be inevitable change over the 40 year lifetime of the scheme, much of the site will remain in agricultural use as pasture throughout.
60. CPRE has raised concerns about the feasibility of sheep grazing during the operational period, suggesting that herbicide application and heavy machinery would still be required to manage the grass. In fact 95% of the site will remain accessible for vegetation growth and will be able to support wildlife and agricultural activity<sup>44</sup>. This is in line with BRE Agricultural Good Practice Guidance for Solar Farms (2014)<sup>45</sup>, which provides guidance and case studies (including successful sheep grazing at other Devon solar farms), and demonstrates that the sheltered area under the panels forms a microclimate which allows vegetation to establish successfully and which the sheep enjoy for shade and rain protection. The equipment required to maintain the panels is likely to be substantially lighter than the agricultural machinery that currently accesses the land.
61. There would be long term benefits of the scheme in terms of the quality of the soil, as shown in the Assessment of Impact on Agricultural Land and Soils Report<sup>46</sup>. Once the scheme was operational, much of the soil would be under perennial cover with no ploughing and only non-intensive grazing. This would lead to a soil which would be less vulnerable to wind and water erosion.

#### *Battery storage*

62. The provision of the BESS was not a matter to which the Council objected when it was in overall opposition to the scheme. As was made clear at the Inquiry CPRE regard the provision of the BESS as a fundamental objection to the scheme – but this is not opposition to this specific BESS but to the principle of battery storage - which it considers to be a risk to local communities and to the environment generally. CPRE acknowledged that this position is not supported in national policy or guidance<sup>47</sup>.
63. The point of the BESS is to provide flexibility and security for the energy system, storing off-peak energy and deploying it during peaks throughout the day<sup>48</sup>. This should be given positive weight in the planning balance. Three recent policy statements explain national policy:
- The British Energy Security Strategy explains that the Government will encourage “*all forms of flexibility*” in the energy system and will develop

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<sup>42</sup> Dr Bratby in EIC and XX

<sup>43</sup> CD C9 paras 8.58 and 8.62

<sup>44</sup> CD C16 Appendix 2 and paras 2.13-2.15

<sup>45</sup> CD C16 Appendix 3

<sup>46</sup> CD C8

<sup>47</sup> Dr Bratby in xx

<sup>48</sup> CD C 11-D Figures 1 and 2

policy to enable investment in “sufficient large-scale, long-duration electricity storage”. It sets out support for solar that is co-located with other functions, including storage, to maximise land use efficiency<sup>49</sup>.

- Draft NPS EN-1 highlights that storage has “a key role” to play in achieving net zero, and that it is needed to reduce costs and increase the reliability of the electricity system by storing surplus in times of low demand and supplying electricity when demand is higher<sup>50</sup>.
- The Net Zero Strategy makes it clear that as we rapidly decarbonise energy systems, we must also provide flexibility in order to integrate renewables and balance their intermittency. Doing so will involve pursuing innovative solutions, including new storage technologies.<sup>51</sup>

64. With that background the appellant provided extensive technical evidence<sup>52</sup>. The benefits of BESS were set out and it was explained that this approach will be critical to reaching a secure low carbon energy system. The benefits include:

- Enabling the integration of intermittent renewables into the electricity system by creating a more balanced grid.
- Increasing efficiency (conventional generators can only supply power, whereas BESS can both charge and discharge).
- Replacing carbon-heavy generators and reducing fossil fuel pollutants.
- Ensuring security of supply and reducing blackout exposure, due to BESSs’ fast response to supply/demand gaps.
- Co-location, which was supported by the Examining Authority at Cleve Hill,<sup>53</sup> facilitates sharing of grid and generation infrastructure leading to significant construction and operation efficiencies, load shifting and reduced transmission.

65. In terms of safety the appellant has explained that BESS is not an inherently unsafe technology, that it operates in large scale installations up and down the country, and that their safety is controlled by a number of non-planning regulatory regimes. Conversely CPRE has only pointed to one utility-scale incident in the UK, a lithium ion battery fire in Liverpool in 2020<sup>54</sup>. However CPRE accepted that all the national policy support for BESS was published after that incident and safety technology. Gas detection sensors which prevent thermal runaway by detecting faults early have moved on greatly since 2020.

66. The chemistry of the batteries in this scheme here has not yet been decided, and the final choice will depend on progress in technology. This is in line with the approach at Cleve Hill<sup>55</sup>.

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<sup>49</sup> CD D18

<sup>50</sup> CD D3-B paras 3.3.24-3.3.25

<sup>51</sup> CD D17, para 43

<sup>52</sup> CD C11-D and CD C16

<sup>53</sup> CD I4-A 5.6.1

<sup>54</sup> CDH4 and CD C11-D

<sup>55</sup> CD I4-A and CD I4-B para 4.172

*Summary of benefits of the scheme and planning balance*

67. The scheme is a renewable energy project with carbon savings – especially important in the light of the energy security crisis. There is a presumption that such schemes should be allowed where impacts can be made acceptable. This matter is of substantial weight, as was found in the decision at Halloughton<sup>56</sup>. The following policies, along with the agreed lack of any requirement on the appellant to demonstrate need, are wholly supportive:

- The Energy White Paper (2020) sets out that achieving net zero rests on a “*decisive shift*” away from fossil fuels to clean energy and describes solar as a “*key building block*” of the future energy generation mix<sup>57</sup>.
- The NPPF has a presumption in favour of renewables and states that the planning system should support the transition to a low carbon future in a changing climate, by supporting renewable and low carbon energy and associated infrastructure.
- Draft NPS EN-1 (2021) states that wind and solar are the lowest cost ways of generating energy and that a secure, reliable, net zero system in 2050 is likely to be composed “*predominantly*” of wind and solar<sup>58</sup>.
- Draft NPS EN-3 (2021) describes solar as “*a key part*” of the government’s strategy for low-cost decarbonisation of the energy sector and renewables as an “*essential*” element of the transition to net zero<sup>59</sup>.
- Net Zero Strategy establishes that the UK will be powered entirely by clean energy by 2035 (infrastructure needs to be deployed at an “*unprecedented scale*”), with the Government forecasting a 40-60% increase in demand over the same period<sup>60</sup>.
- The British Energy Security Strategy (2022) anticipates a five-fold increase from the current 14GW of solar capacity in the UK by 2035<sup>61</sup>.
- LP policy S9 supports renewable energy generation development where the impacts are satisfactorily addressed<sup>62</sup>, and policy DM2 represents a further presumption in favour of renewable energy proposals, provided any adverse effects on character, amenity or the visual quality of the area are not significant<sup>63</sup>. The CNP is supportive.

68. The proposed solar farm in this case would generate substantial savings of carbon dioxide emissions during its anticipated lifetime (approx. 25,321 tonnes of

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<sup>56</sup>CD I16

<sup>57</sup> CD D12 page 46

<sup>58</sup> CD D3-B paras 3.3.21

<sup>59</sup> CD D4-B paras 2.47.1 and 1.1.1

<sup>60</sup> CD D17 pages 98 and 102

<sup>61</sup> CD D18

<sup>62</sup> CD C9 para 8.6

<sup>63</sup> CD C9 para 8.7

CO<sub>2</sub> per annum will be avoided). It would power 10,369 typical Mid Devon homes annually with clean energy – this is a standard calculation derived from using government figures for carbon emissions and the energy capacity of the scheme<sup>64</sup>.

69. The scheme has the further substantial benefit of providing a Biodiversity Net Gain of 179.25% in area derived units and 9.82% in linear derived units<sup>65</sup> - well beyond mitigation or any policy requirement. A gain of 73% was considered substantial in the Halloughton case. This includes more than 1km of planting of native species trees and hedgerow; the provision of bird, bat, and dormouse boxes; and the provision of hectares of species rich meadow and grassland<sup>66</sup>.
70. The scheme would generate significant economic benefits in the form of around £40,000,000 in financial investment, between 70 and 80 jobs during the construction phase, and a smaller number of jobs when the solar farm is operational<sup>67</sup>. The scheme would contribute up to £2,700,000 gross value added to the economy and business rates would be paid to the Council of around £190,000 p.a.
71. Overall the proposal accords with the development plan and is supported by further material considerations. There are no material considerations which indicate permission should be refused. Conflict with part of a policy does not necessarily mean conflict with the whole policy and should not automatically be considered a conflict with the development plan as a whole.
72. The LP includes a presumption in favour of renewable energy proposals where there is an acceptable local impact. The key question in terms of development plan is whether the impacts of the scheme are acceptable. In terms of landscape and visual effects, whilst there would be some adverse effect on landscape character and visual amenity, these would not be significant, would be localised, and would be reversible.
73. In heritage terms the proposed scheme will cause no harm to the significance of Langford Court through changes to its setting. Even if, contrary the expert evidence, a degree of less than substantial heritage harm was found, any limited harm would be substantially outweighed by the public benefits of the scheme, in accordance with NPPF and LP policies.
74. The site does not comprise BMV and though there would be some loss of general agricultural land during the operation of the scheme, with arable uses precluded during the lifetime of the scheme and approximately 5% of the overall site taken up with solar infrastructure, but pastoral uses could continue throughout, and a full return to farming is possible in 40 years. The loss would be minimal and reversible.
75. The scheme accords with development plan policies and the key renewable energy policy benefits far outweigh any adverse impact. Therefore, in accordance with the NPPF, planning permission should ordinarily be approved

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<sup>64</sup> CD C16

<sup>65</sup> CD C6

<sup>66</sup> CD A18 – C and CD A27-C

<sup>67</sup> CD C9 para 8.13

without delay. There are also no material considerations that indicate that permission should be refused. The main objections by CPRE to the principle of solar and of BESS are not specific to this scheme and are unsupported by any policy.

76. Although not required, the detailed technical evidence supports the national approach and has demonstrated the clear benefits of both solar and BESS technology. No technology is ever risk free, but any risks can be appropriately mitigated, and a condition is proposed to do that in line with the NPPF.
77. Even if, contrary to the evidence, it was found that there were a conflict with the development plan, then it is clear that this is a case where the benefits are so substantial that material considerations indicate that permission should nonetheless be granted: they clearly and demonstrably outweigh any harm. There are also a number of neutral matters: setting of the heritage asset; residential amenity; highways and transport; and noise. All technical matters have been resolved: highways, drainage, and flood risk.

### **The case for CPRE**

78. This is based in part on CPRE's closing submissions<sup>68</sup>, but as this did not cover all aspects of the objection, parts related to heritage and landscape are also drawn from evidence.
79. It was CPRE Devon's position that there is no definition of a climate emergency and that no evidence has been produced to lead to the conclusion that there is a serious climate change issue. CPRE Devon referenced and agreed with the work of Sir David Mackay, which included the position that the idea of renewables powering the UK as an "appalling delusion"<sup>69</sup>. The proposal for a solar farm and BESS would be unreliable, harmful to the stability of the grid and would lead to increasing electricity prices.

#### *Lack of information*

80. As the appellant accepts, the precise design of the solar farm is not known and the design and performance of the solar panels has not yet been specified. The proposal was based on documents which are now outdated, as is the principle of the BESS. But this is not an outline application. It is not acceptable that the Council and the public should be asked to give – in the words of CPRE national policy – 'carte blanche' to the appellant to construct a huge, complex and risk-sensitive installation such as this without providing any detailed information about what it will be made of or what its precise output will be.
81. The two solar cell and module manufacturers mentioned to date – Longi and Jinko – are both on the list of manufacturers identified as profiting from the Chinese government's forced labour programme<sup>70</sup>. According to UK government policy (January 2021)<sup>71</sup> it is the appellant's responsibility to ensure that no products of slavery appear in their supply chain.

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<sup>68</sup> Doc 4

<sup>69</sup> CD C12 paras 3/4

<sup>70</sup> Sheffield Hallam University & the Helena Kennedy Centre for International Justice (not submitted)

<sup>71</sup> Not amplified or submitted

82. The question of detailed design applies particularly to the BESS, because of the very real risks associated with large-scale lithium-ion battery arrays.

*Safety of the BESS*

83. The appellant acknowledges the theoretical risk of thermal runaway leading to explosion or severe fire, but does not acknowledge the actual risk, stating simply that no-one would invest millions of pounds in a technology that was dangerous, and that anyway the as-yet-unspecified safety systems which would be in place would snuff out any potential conflagration in the short interval between initial failure and the onset of thermal runaway. That approach is not good enough.

84. Other BESS operators– who have presumably thought that they had adequate safety systems and a protected investment – have experienced severe failures in their BESS systems<sup>72</sup>. Yet no detailed design has been produced, no provision for on-site cooling water has been specified, and no discussions have been held with the Devon & Somerset Fire & Rescue Service regarding these very real risks.

*Carbon emissions*

85. Another area in which information is lacking is in the assessment of the proposed array's effect on carbon emissions. The appellant has produced some formulaic figures regarding the emissions from other electricity generating sources which would be theoretically obviated by this array. But there is no analysis of the carbon emissions of the manufacture, construction and whole-life operation of the array. This would be needed to present an accurate net benefit assessment of carbon emissions.

*Landscape effect*

86. There is also a significant discrepancy between the appellant's LVIA and that produced by the independent local consultancy David Wilson Partnership, which concluded a major adverse impact on the landscape.

87. The Council's Solar PV Developments in the Landscape Supplementary Planning Document' (2016) (SPD)<sup>73</sup> identifies the site in Landscape Character Area DCA12 (Clyst Lowland Farmlands) and in Landscape Character Type LCT3E (Lowland Plains). This has a high sensitivity to very large solar farms.

88. The proposal would be a major development that would result in the introduction of uncharacteristic elements into the rural, farmed landscape. It is inevitable that there would be substantial landscape and visual effects as a result.

89. Field 13 would include 21 arrays of solar panels and the 100m by 40m battery storage facility consisting of 13 industrial containers containing the batteries, six inverters, one spare parts container, one customer container, one control room, one client substation, one DNO substation and an array of gantries 25m by 10m and up to 10m in height. This would have a major adverse impact on the landscape. The photomontage shows arrays of solar panels, but the industrial facilities forming the battery facility at the south end of field 13 are not shown.

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<sup>72</sup> CD C12 Para 42 onwards

<sup>73</sup> CD E5, CD C12 paras 11/12

90. It is concluded that the adverse impact on the landscape is a valid reason for refusal and should be given great weight in the planning balance.

*The effect on Langford Court*

91. The appellant's Heritage Statement concludes that there will be no harm to any heritage assets, including the Grade II\* Langford Court. Historic England disagreed with this conclusion and requested that the Council's heritage specialist made an independent assessment of the setting of Langford Court, to judge the level of potential harm that might be caused to its setting and whether that harm could be avoided or minimised to an acceptable level<sup>74</sup>.

92. The Council's Conservation Officer was critical of the appellant's Heritage Statement, highlighted some of its shortcomings and considered the impact that all of the industrial infrastructure in the battery storage area would have on the views into and out from Langford Court and its setting. He concluded that "The heritage assessment of the Grade II\* building has failed to take into account the long views of the building which relate to the experience of the asset. The proposal would result in registerable harm to the significance and setting of Langford Court which must be given considerable weight and importance by statute and be contrary to the NPPF and Policy DM27."

93. The adverse impact on the Grade II\* Langford Court must be given great weight in the planning balance.

*Loss of agricultural land*

94. Much importance is placed by the appellant on the lack of BMV on the site. But there is no independent report, and a discrepancy in the appellant's studies.

95. The appellant's 'Agricultural Land Classification' report by Davis Meade (October 2019), parcelled the land into three sites consisting of 17 enclosures. The result of that study was that 14 enclosures were grade 3b, two were grade 4 and one was grade 5. The report was not detailed and the findings were not independently verified before permission was refused. The appellant subsequently submitted a report by Amet Property (February 2022) – the purpose of this report (which concluded that all of the site was grade 4) is not known.

96. There is a clear difference between the appellant's two assessments. And neither Davis Meade nor Amet Property have significant expertise in Agricultural Land Classification. Davis Meade describes itself as a "specialist in property and land sales" and Amet Property is a real estate agency. The reports by Davis Meade and Amet Property are unreliable. In view of the fact that the site has been used for both grazing and arable CPRE believe that much of the land is grade 3a. Independent verification should have been carried out.

97. The site may not all be BMV, but it is the sort of land which, coupled with Devon's mild climate and high rainfall, produces high quality grass and fodder, which in turn results in the production of the finest quality meat and dairy products in the world.

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<sup>74</sup> CD B11

98. The appellant claims that the land may continue to be grazed by sheep with the solar panels in place. It is the experience of CPRE members that this does not happen - grass grown in the shade is poor quality and difficult to manage. The grass would need mowing at least twice a year, with the application of herbicides. The solar panels would need cleaning, also probably twice a year. Heavy machinery is required to carry out these maintenance activities, resulting in soil compaction. After 40 years of these maintenance activities and following decommissioning, the soil would be in a very poor condition.
99. Devon CPRE and CPRE nationally are committed to opposing large-scale solar sites on valuable and productive farmland which should be used to meet urgent food production needs at a time of rising food insecurity, as well as fulfilling its role as potentially the foremost means of sequestering carbon.

### **The case for residents appearing at the Inquiry**

100. Mrs J Jones read her email/statement on the appeal. Public opinion has been side-lined by the process – in particular she drew attention to the fact that permission had been refused by the Council on a 7:3 vote, and this should not have been overturned. There are already two solar farms in the area, and there should not be another.
101. Ms C Winteson expressed her opposition to the proposal, and in particular did not agree with the appellant's statement that there was a need for the development.
102. Mr R Smith has objected to the proposal on a number of occasions. The development would not generate power when it was needed and would take land out of agricultural production. Solar generation should take place on the roofs of commercial buildings. The BESS element of the proposal was a fire risk, exacerbated by the lack of water on site.

### **Written representations**

103. A number of objections were lodged to the proposal at the application<sup>75</sup> and appeal stages. In addition to the main issues considered in this report, a number of other concerns were raised. These include a loss of trees, harm to wildlife, the loss of prime agricultural/grazing land, harm to human health as a result of radiation, harm to highway safety, noise nuisance during construction and during operation, noise and disturbance, flood risk and surface water run-off.

### **Conditions**

104. A discussion was held at the Inquiry between the appellant and the Council regarding potential conditions if planning permission were to be granted. CPRE took part in these discussions on a without prejudice basis. These conditions are discussed below.

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<sup>75</sup> CD A47A

## Inspector's conclusions

[Numbers in square brackets denote source paragraphs]

### Policy and guidance context

105. The development plan comprises the Mid Devon Local Plan 2013-2033 (2020) (LP) and the Cullompton Neighbourhood Plan 2020-2033 (2021) (CNP) [20,21, 22]. No party has suggested that these plans are out of date, and both deal with the considerations raised by this appeal.
106. The relevant policies are largely raised in the Council's former reasons for refusal, prior to its decision not to contest the appeal and are set out above [4].
107. The NPPF and National Planning Practice Guidance (NPPG) are clearly material considerations, as accepted by the parties. The parties agreed that a range of other national policy and guidance documents are material considerations. In particular the parties made reference to the National Policy Statements (NPS) for the delivery of major energy infrastructure, and to the emerging updates [27, 28].

### Agreed matters

108. There are two Statements of Common Ground (SOCG) which have been concluded respectively between the appellant and the Council [27], following its decision not to contest the appeal, and between the appellant and Devon CPRE [28]. These provide useful background to the main considerations in this case.
109. The key agreed matters are as follows (where CPRE have not agreed this is indicated):
- The site is in open countryside in policy terms, outside any settlement boundary.
  - LP policies S9 and DM2 allow for renewable energy development where there is an acceptable local impact, balanced with the wider sustainability benefits of renewable energy.
  - The CNP is supportive of the increased use of renewable energy, subject to controlling the impact of such installations.
  - National energy policy is a material consideration.
  - There is no requirement for the appellant to demonstrate need for the proposal.
  - Trees and hedgerows, along with generally flat topography, would help to mitigate the overall scale of the development.
  - The proposal is a low carbon, renewable energy project that would contribute towards meeting national renewable energy targets. (This is not agreed by CPRE.)

- Substantial weight should be attached to the benefit of renewable energy production. (This is not agreed by CPRE.)
- In terms of operational safety the installation could be suitably managed outside the planning process. (This is not agreed by CPRE.)
- The site comprises poor quality agricultural land. (This is not agreed by CPRE.)

### Main considerations

110. Based on the evidence, policy, and the areas of dis/agreement, the main considerations in this case are:

- The effect of the proposal on the character and appearance of the landscape
- The effect on Langford Court - a designated heritage asset
- The effect on and potential loss of agricultural land
- The safety of the Battery Storage facility (BESS)

111. It should be additionally noted that Devon CPRE made it clear that they do not agree with the existence of a climate emergency or that climate change is a proven problem [79]. Particularly given the agreed national and local policy context, this matter is dealt with briefly below.

### The effect of the proposal on the character and appearance of the landscape

112. It is important to note that the only expert evidence on landscape matters presented to the Inquiry was that from the appellant, and no contrary expert evidence was given.

113. Bearing in mind the extent of the site and the coverage of the proposal (though not necessarily its general height above ground) it is inevitable that a large scale solar farm such as this is likely to cause a degree of landscape harm. With that background, and given the policy support for solar energy, both national and local policy take a positive approach in principle towards solar development, providing that schemes will be approved where the harm would be outweighed by the benefits of a development. The extent of any harm to the landscape must therefore be assessed.

114. National policy, whilst recognising the intrinsic character and beauty of the countryside, does not seek to protect all countryside from development. The focus is more on the protection of valued landscapes. However this term is not precisely defined in the NPPF, although reference is made to statutory status or identification in the development plan. In this case the parties agree that the site does not form part of a valued landscape and there is no reason to disagree.

115. Turning to the existing character of the area, the Devon Landscape Character Assessment sets out distinctive characteristics of the area's landscape [37]. The strategy is to reinforce field patterns through the restoration and management of characteristic hedgerows, and to the management and

expansion of wet grasslands along watercourses. It looks to extend species rich meadows and grasslands through appropriate grazing and traditional land management regimes.

116. From the evidence to the Inquiry – almost exclusively from the appellant – and from the extensive site visit, the key elements of the existing landscape are the rolling topography, rural land use, the presence of trees and boundary hedgerows and small watercourses. Taking these elements together the site and the surrounding area has no more than a medium landscape value and medium sensitivity to change.
117. In coming to that view it is noted that the Solar PV Developments in the Landscape SPD [23, 40, 87] locates the site in Landscape Character Area DCA12 (Clyst Lowland Farmlands) and in Landscape Character Type LCT3E (Lowland Plains). This is stated to have a high sensitivity to very large solar farms. However, as will be explained below, this wide designation is of limited assistance in assessing the effect of this specific proposal in this location.
118. All parties agree that the proposal would have no significant harmful effect on the wider surrounding landscape. Any effect would therefore be very localised.
119. The BESS and related facilities, along with fencing and CCTV installations, would certainly have an effect on the landscape. More so than the solar panels themselves which, even allowing for their wide coverage, have a limited height and relatively slender design. There would be no change to the characteristic rolling topography arising from the scheme.
120. About a hundred metres of hedge would be removed to provide access, and this would obviously diminish this important element of the landscape. But this would be more than compensated for by filling gaps with indigenous shrubs and hedgerow planting. The appellant's uncontested estimate is that there would be a net gain of some 1.2kms [38] and this would mitigate the landscape effect of the proposal and would be a significant benefit. The effect on watercourses would also be slightly beneficial.
121. Overall in landscape terms, it is self-evident that a solar farm of this size would have some adverse landscape character effect. However, due to topography and screening this would be very limited and would be mitigated increasingly as the planting matures. After decommissioning there would be no residual adverse landscape effects, but rather the remaining benefit of the landscape mitigation.
122. Turning to visual effects, it is relevant to note that no particularly important or protected views have been suggested by the Council at any stage. All the agreed viewpoints were visited, as well as a number of others around the site, and the visual effects of the development would be very limited. The area is well endowed with extensive tree and hedge cover which limits views to short or medium range, and the opportunity for sequential views is limited.
123. The views which can be achieved are only snapshots. Many of the lanes and footpaths in area are enclosed by hedges and/or banks, and in most cases an observer would have to divert from the road/path to obtain a fleeting view from a field gate. The overall visual effect of the proposal would maintain the quality

of these brief views, and any very limited adverse effect would be offset by new planting.

124. It is noteworthy that, in terms of residential visual amenity, no party has contended that any properties close to the proposal would be so affected such that the properties would be rendered unattractive places in which to live.

125. Two matters are of note before concluding on this matter.

- Firstly CPRE alleged in writing that the viewpoints and photomontages produced by the appellants had deliberately omitted the BESS and related facilities [89]. But the detail of the photomontages was explained and put to the CPRE witness at the Inquiry, who accepted that they were accurate. The relevant views were observed on site, and it is clear that the photomontages are comprehensive.
- Secondly the Council's Solar PV Developments in the Landscape SPD, which CPRE emphasised [87], is of limited assistance in considering a particular proposal. The document identifies a very wide area as being highly sensitive to large scale solar proposals, without differentiating between geographical areas. The document importantly includes a caveat against it being "*interpreted as a definitive statement of the suitability of a certain location for a particular development*". In line with this caution it would be inappropriate to place too much reliance on the SPD in relation to this particular site, and the detailed analysis which has been put forward by the appellant is to be preferred.

126. Overall, the proposal would cause some very limited landscape and visual effects, but this would be mitigated by the additional planting which is integral to the proposal. The development would therefore not conflict with LP policies DM1, DM2 or S9, nor with the CNP or the NPPF.

#### *The effect on Langford Court*

127. Two matters are of note before considering this topic.

- Firstly the only expert evidence on heritage matters presented to the Inquiry was that from the appellant, and no alternative evidence was given. The original objection from CPRE did not include any allegation of heritage harm, and the only witness for CPRE at the Inquiry did not have any heritage expertise and/or qualification. Their approach seemed to focus on the effect of the BESS, although it was accepted by CPRE at the Inquiry that the BESS area would not be visible.
- Secondly, contrary to the statement from CPRE, Historic England did not raise a formal objection to the proposal [27]. Rather they identified the potential for harm, albeit without a site visit or access to historic mapping. It is true that the Council's Conservation Officer considered that there would be intervisibility between Langford Court and the appeal proposal, and therefore harm. But even if a view exists this does not equate to harm to significance. All this is in the context that the overall recommendation of Council officers was to grant permission, and that the subsequent refusal is no longer defended.

128. Langford Court is a 16<sup>th</sup> century farmhouse that was enlarged and remodelled in the 17<sup>th</sup> century and restored extensively after a fire in the 1990s. It is Listed Grade II\*. The parties agree that the asset has a range of heritage interests, particularly historic, architectural and archaeological, but that its main significance is embodied in its physical form. All the evidence to the Inquiry and from the site visit emphasised the importance of the physical form of the building itself [48, 49]. The proposal is set some way from the building and its immediate surroundings and would not touch its physical fabric or form, so any potential for harm would be indirect.
129. The setting of an asset is the surroundings in which it is experienced and, although often expressed with reference to visual considerations, the way in which an asset is experienced in its setting is also influenced by an understanding of the historic relationship between places.
130. In this case the contribution made by elements of the setting to its significance comprise the historically associated gardens, the modern eastern gardens and lake, and the areas of the historically contiguous landholdings visible from the asset. The most important views are from the gardens and across the lake to the house, as these are the least harmed by the modern agricultural buildings nearby on the farm. Further afield the undulating topography and vegetation reduce the contribution made by setting to the significance.
131. The appellant's detailed historic evidence clearly demonstrates that the appeal site was not part of the consolidated contiguous landholding which might have been experienced in conjunction with the asset in the mid 19th-century or earlier. There was a small amount of historic coincidence of ownership, but at a distance from the main landholding, and this does not survive today [51].
132. The proposal would not affect any features or views. Looking further afield there are few, if any, views of Langford Court and its more immediate surroundings from the solar farm site. Any fleeting glimpses that might be obtained are limited by topography or are heavily obscured by existing woodland and hedgerow. The architectural and historic interest of the house cannot be readily understood in those views. The appeal site has only filtered intervisibility with the asset, with views largely screened by topography and vegetation. None of these views are of any particular significance, and they have experienced notable change already in the 20th century with the construction of modern buildings.
133. While the appeal site might be just visible from Langford Court, that is not the test and does not equate to a contribution to heritage significance. A view that does not illustrate architectural or historic interest and does not allow the significance of an asset to be appreciated is merely an incidental view that neither contributes to nor detracts from heritage significance.
134. In conclusion, given the degree of separation between the appeal site and the asset and the nature of existing and proposed screening, the appeal site makes no contribution to the setting and significance of Langford Court. The proposal would therefore accord with LP policies S9, DM2, and DM25, and with the NPPF.

*The effect on agricultural land*

135. National policy in the NPPF states that decisions should recognise the economic and other benefits of Best and Most Versatile (BMV) agricultural land. This is defined as grades 1, 2 and 3a of the Agricultural Land Classification. LP policy DM2 adopts the same approach towards the protection of BMV land. The Planning Practice Guidance also considers whether the use of agricultural land is necessary and whether a proposal allows for continued agricultural use.
136. With this background the main area of dispute between the appellant and CPRE is the classification of the appeal site. The appellant's original 2019 Land Classification Report identified a mix of Grades 3b, 4 and 5, whilst the updated report shows the entirety of the site as comprising Grade 4 agricultural land. In terms of national and local policies it is of little consequence which report was more accurate in that neither suggested that any of the appeal site was BMV. The appellant convincingly explained why the update had been considered necessary [56, 95].
137. The position of CPRE was that the reports should have been independently verified – although the Council considered that the first report had been undertaken by a suitably qualified professional. The view of CPRE, who did not put forward any technical evidence on land classification, was that both the appellant's reports were unreliable and that neither of the report's authors had significant expertise in land classification [96]. However the appellant convincingly explained the background of the reports' authors. CPRE maintained (without evidence) that much of the land is grade 3a [96]. Based on the unchallenged evidence of the appellant, it is clear that the highest some parts of the site could aspire to is 3b – and it is most likely to be lower than that. On that basis, the loss of this land, even if it were a permanent and total loss, would not receive policy protection.
138. CPRE also argued that even were the land not considered to be BMV it could produce high quality grass and fodder. But it is agreed between the appellant and the Council that the majority of the land would continue in agricultural use for sheep grazing during the operation of the solar farm [27]. In addition, at the end of the limited period, the majority of the site would revert to potential agricultural use. CPRE stated, without evidence, that sheep grazing below and between solar panels does not happen and that the grass beneath is poor quality and compacted [98]. Overall, there is nothing to demonstrate that sheep grazing would be unlikely to occur, and this approach forms part of the proposal in line with national guidance [60].
139. Overall the proposal would not result in a harmful loss of agricultural land. It would not conflict with LP policy DM2, S1 or S9, or with the NPPF.

*The safety of the proposed BESS*

140. The issue of the safety of the proposed BESS was never a matter which was of concern to the Council in its planning considerations. For that reason it was not a reason for refusal even before the authority changed its stance.
141. The safety of the BESS was raised by CPRE in its evidence as a major source of concern [83, 84]. It became clear from that the evidence and from answers in cross-examination the CPRE's concern was founded on opposition to battery

storage systems in general, which they consider to be a risk to local communities and to the environment generally, and was only related to this proposal to a limited extent. CPRE acknowledged at the Inquiry that their approach is not supported by policy or guidance at any level.

142. The appellant submitted extensive evidence on this matter, including that from an expert in the field, who explained the benefits and operation of BESS systems [64]. The rationale for a BESS system is to provide flexibility for the grid, storing off-peak energy and deploying it during peaks. Co-location with the solar farm is sensible in terms of economies of scale and minimising land take. The convincing evidence, supported by numerous policy references, was that BESS is a critical element in reaching a secure low carbon energy situation. This position is wholly in line with national policy.
143. CPRE was particularly concerned with the safety of such a system, and pointed in particular to two instances of catastrophic failure of such systems [84]. However the appellant correctly pointed out that these events, one of which was in the UK, were some time ago, and gave uncontested evidence to the effect that BESS technology and safety measures had moved on since those events [65]. Perhaps most tellingly, it is clear that national policy and guidance supporting that technology was produced subsequently – no doubt in full awareness of the incidents. This was accepted by CPRE.
144. From the evidence it is clear that this is not untested technology and although the detail of the systems is doubtless still evolving, there is very little to suggest that there is a substantial risk of thermal runaway leading to explosion or fire.
145. There was criticism from CPRE that no detail of the BESS has been fixed at this stage and the chemistry of the batteries has not yet been decided [80-82]. However in the context of evolving technology, this is not an unreasonable approach, and the proposal considered at the Inquiry is for solar panels to generate up to 49.9MW and a battery storage facility. It is reasonable that the final choice of technology will be fixed later.
146. Underlying all these matters is the fact that other regimes operate in this field to regulate the safe operation of such installations. National policy is clear that the focus of planning decisions should be on whether a proposal is an acceptable use of land, rather than the control of processes where these are subject to separate regimes. Planning decisions should assume that these regimes will operate effectively.
147. For the above reasons there is nothing in relation to the safety of the BESS which should weigh against the proposal in the planning balance.

*Other matters raised by objectors*

148. CPRE contested the appellant's approach to the effect of the scheme on emissions and suggested that a whole life carbon assessment is necessary [85]. However the appellant has produced evidence regarding the emissions from other electricity generating sources which could be obviated by this proposal [64]. This, coupled with the national policy approach, is sufficient to lend support to the sustainability credentials of the proposal.
149. As referenced above, Devon CPRE made it clear that they do not agree with the existence of a climate emergency or that climate change is a proven problem.

At the Inquiry it was made clear that this was a local decision of Devon CPRE and did not reflect national CPRE policy. No evidence was submitted regarding the reasons for Devon CPRE's position, and it was stated that the local branch would not be producing its own policy. The Council declared a climate change emergency locally in 2019 and it is Government policy that the UK will need to be entirely powered by clean energy by 2035. Devon CPRE is therefore at odds with the local and national position. In any event, decisions on land use planning matters must be taken in the light of the development plan and other material considerations including national policy.

150. Devon CPRE stated that the solar cell manufacturers mentioned to date are on a list of companies profiting from the Chinese government's forced labour programme [81]. This list was not submitted nor was the government policy to which CPRE referred. In any event, even if this were a land use planning matter, this level of detail is not part of the appeal proposal.
151. Local residents also raised concerns on a number of grounds, most of which relate to the main considerations above. In addition, there was concern that the solar panels would not generate power when it was needed. However that would be addressed by the BESS. Other matters, particularly suggested traffic and disturbance during the construction phase, could be addressed by conditions.

#### Conditions

152. Before and during the Inquiry the appellant, the Council and Devon CPRE cooperated (without prejudice) in a discussion of potential conditions to be considered if permission were granted.
153. These agreed conditions (including those with pre-commencement requirements), with only minor typographical alterations, are appended to this report. For simplicity the reason for each condition is included beneath the condition.

#### Planning balance

154. Three of the main considerations discussed above are neutral in the overall planning balance, for reasons already explained. These are the heritage issue, the effect on agricultural land and the safety of the BESS.
155. The only matter potentially causing an element of harm is the effect on the landscape, which is unsurprising given that national and local policy recognise that large scale solar farms may result in some landscape and visual harm. But in this instance the topography, existing screening and landscape mitigation lead to very limited and highly localised landscape and visual effects, and these would be progressively mitigated by additional planting. These factors lead to the conclusion that the proposal would not conflict with local or national policy.
156. The scheme is for a renewable energy proposal which is fully in accordance with the economic, social and environmental dimensions of sustainable development set out in the NPPF. In addition EN-1 and subsequent draft policies state that the Government is committed to cutting greenhouse gas emissions and need for a move away from fossil fuel and towards renewable sources of energy production is supported. The scheme therefore has strong national and local policy support. This matter weighs very heavily in favour of the proposal.

157. Added to this is the unchallenged substantial benefit of £40,000,000 in financial investment, and the provision of between 70 and 80 direct and indirect jobs during the construction phase, with a smaller number of jobs when the development is operational. In addition the acknowledged benefit of the additional planting, which would remain after the end of the limited period, should be accorded significant weight. The unchallenged Biodiversity Net Gain is a further substantial benefit [69].
158. In dealing with this appeal the time limited nature of the proposal is a material consideration. Obviously 40 years is a long time and longer than some references to the life of a solar farm in national and industry guidance. However in this case the factors weighing in favour clearly outweigh the very limited negative factors, and consideration of the potential benefit of a limited period is unnecessary.
159. Overall, the conclusion that the appeal is in accordance with policy and that planning permission should be granted.
160. However, it might be considered by the decision maker that the very limited landscape effect of the proposal is not mitigated by the positive landscape factors, and that there is a conflict with some elements of policy. Under these circumstances it is considered that the importance of addressing climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh any very limited harm.

### **Recommendation**

161. It is recommended that the appeal be allowed and planning permission be granted subject to conditions.

*P. J. G. Ware*  
Inspector

### Recommended Conditions and Reasons

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

Reason: As required by statute.

2. The permission hereby granted shall be limited to a period of 40 years (with the exception of the DNO Substation which is to be retained on the site in perpetuity) from the date when electricity is first exported from the solar panels to the electricity network (The First Export Date). Written notification of the First Export Date shall be given to the Local Planning Authority within 14 days of the event occurring.

Reason: As sought by the application.

3. The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Site Location Plan, drawing number P18- 1820\_18, Rev B, prepared by Pegasus Group.
  - Gantry Site Elevations, drawing number P2763-150-03, Rev O, prepared by G2 Energy.
  - DNO Substation Elevations, drawing number P2763-(01)-25-01-0, Rev 0, prepared by G2 Energy.
  - DNO Substation Plan, drawing number P2763(01)-25-01-0, Rev 0, prepared by G2 Energy.
  - Client Substation Elevations, drawing number P2763-(02)-25-01-0, Rev 0, prepared by G2 Energy.
  - Side Elevation Layout, drawing number JBM1035-201, Rev A, prepared by JBM Solar
  - Central Inverter Elevations, drawing number JBM1035-203, prepared by JBM Solar.
  - Control Room Elevations, drawing number JBM1035-209, prepared by JBM Solar.
  - Customer Cabin Elevations, drawing number JBM1035-210, prepared by JBM Solar.
  - Spare Parts Building Details, drawing number JBM1035-212, prepared by JBM Solar.
  - Client Substation (in 132kVa Compound and Site), drawing number JBM1035-222, prepared by JBM Solar.
  - 132kVa Compound, drawing number JBM1035-220, Rev A, prepared by JBM Solar.
  - Road Cross Section, drawing number JBM1035-216, prepared by JBM Solar.
  - Cable Trench Cross Section, drawing number JBM1035-215, prepared by JBM Solar.
  - Deer Fence Details, drawing number JBM1035-214, Rev A, prepared by JBM Solar.
  - CCTV Pole Details, drawing number JBM1035-213, prepared by JBM Solar.

- Switchgear Elevations, drawing number JBM1035-204, prepared by JBM Solar.
- PCS Inverter Elevations, drawing number P2763-(04)-25-01-0, Rev 0, prepared by G2 Energy.
- Battery Container Elevations, drawing number P2763-(03)-25-01-0, Rev 0, prepared by G2 Energy.
- Proposed Layout Plan, drawing number P18- 1820\_14, Rev K, prepared by Pegasus Group.
- P18-1820 Figure 2 Primary Site Access Visibility Splay (CTMP), prepared by Pegasus Group.
- P18-1820 Figure 4 Swept Path Analysis B3181 to Main Site Access 15.4m Articulated HGV (CTMP), prepared by Pegasus Group.
- P18-1820 Figure 5 Swept Path Analysis Area A to Areas B & C 10m Rigid Vehicle (CTMP), prepared by Pegasus Group.
- P18-1820 Figure 7 Swept Path Analysis Area A to Area C 15.4m Artic HGV (CTMP), prepared by Pegasus Group.
- In general accordance with P18-1820 Figure 6 Area B Indicative Access Design (CTMP) and P18-1820 Figure 8 Area C Access Indicative Improvements Including Swept Path Analysis 15.4m Artic HGV (CTMP).
- Additional Planting Inset Plan, drawing number P18-1820\_24, dated 2nd February 2022.

Reason: In the interests of clarity.

4. If the solar farm hereby permitted ceases to operate for a continuous period of 12 months, then a scheme for the decommissioning and removal of the solar farm and ancillary equipment, except for the DNO Substation, shall be submitted within 6 months of the end of the cessation period to the local planning authority for its written approval. The scheme shall make provision for the removal of the solar panels and associated above ground works approved under this permission. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures.

Reason: To ensure the removal of the equipment and decommissioning in the interests of the character of the area.

5. Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the first export date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, except for the DNO substation, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to and agreed in writing by the local planning authority.

Reason: To ensure the removal of the equipment and decommissioning in the interests of the character of the area.

6. The solar farm and its ancillary equipment, except for the DNO substation, shall be dismantled and removed from the site and the land restored in accordance with the approved Scheme and, in any event shall be removed within a period of 40 years and 6 months following the first export date.

Reason: To ensure the removal of the equipment and decommissioning in the interests of the character of the area.

7. The Solar PV Panels hereby permitted shall not be erected until samples of the materials to be used in the construction of the solar panel array have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved materials and retained as such thereafter.

Reason: To control the appearance of the development in the interests of the character of the area.

8. Prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.

Reason: To control the appearance of the development in the interests of the character of the area.

9. Prior to the commencement of the proposed development, the site access roads shall be formed in a sound bound material for the first 20.00m back from its junction with the public highway and drained to prevent no surface water onto the public highway. The site access roads shall be hardened, surfaced, drained and maintained thereafter hardened, surfaced, drained and maintained.

Reason: In the interests of highway safety.

10. Prior to the commencement of the proposed development, visibility splays shall be provided, laid out and maintained for that purpose at the primary site access where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 43.0 metres in a southern direction and as identified on the access plan in the other direction.

Reason: In the interests of highway safety.

11. Visibility splays shall be provided, laid out and maintained for that purpose at the other site accesses in accordance where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of

the public highway (identified as Y) shall be 33.00 metres in on coming direction and 33.00 metres to the centre line in the offside direction.

Reason: In the interests of highway safety.

12. No other part of the development hereby approved shall be commenced until the access, parking facilities, commercial vehicle loading/unloading area, visibility splays, turning area and access drainage have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times.

Reason: In the interests of highway safety.

13. No development shall take place until off site highway condition surveys have been undertaken and the details submitted and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

14. No development shall take place until:

EITHER

i) A programme of archaeological work has been carried out in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority.

OR

ii) A construction methodology for the development that avoids any below ground impact within the area of Archaeological sensitivity in the vicinity of the 7th/8th century iron furnace has been submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved scheme (under either part i) or part ii) or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure that any potential archaeology is investigated and that no damage is caused to any archaeological interests.

15. No development shall take place until a detailed scheme of ecological mitigation and enhancement measures, in accordance with the recommendations of the submitted documentation (below) has been submitted to and approved in writing by the Local Planning Authority:

(a) The Biodiversity Management Plan by avian ecology v4 (Dated 20/07/2020), has been submitted to and approved in writing by the Local Planning Authority.

(b) The Biodiversity Enhancement Note and Addendum Note Dated 3/12/2020)

(c) The updated Site Layout Plan (drawing number P18- 1820\_14, Rev K)

Notwithstanding the details included in the above documentations, the details shall include the details to be submitted including planting plans, specification of species, sizes, planting centres, number and percentage mix and details of seeding or turfing.

Ecological mitigation and enhancement measures shall be implemented in accordance with the detailed scheme.

Reason: In the interests of biodiversity in the area and to ensure that enhancements forming part of the proposal are approved and implemented.

16. The Solar PV Panels hereby permitted shall not be erected until details, on a suitably scaled plan, of the soft landscape works have been submitted to, and approved in writing by, the local planning authority. The details to be submitted shall include planting plans, including specifications of species, sizes, planting centres, number and percentage mix, and details of seeding or turfing. The development shall not be carried out other than in accordance with the approved details.

Reason: In the interests of the character of the area and to ensure that the planting which forms part of the scheme is carried out.

17. All approved landscaping shall be carried out in the first planting and seeding season following the erection of the panels, and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards 8545: 2014 or any subsequent re-enactment.

Reason: In the interests of the character of the area and to ensure that the planting which forms part of the scheme is carried out and maintained.

18. The Solar PV Panels hereby permitted shall not be erected until the full details of the works to the hedges including species adjacent to the residential properties, as shown on Figures 11 and 12 of the Glint and Glare Study Page Power Ltd v 4 dated 16th August 2019, have been submitted and approved in writing by the Local Planning Authority. The works shall then be carried out in the first planting season after the written approval is received and thereafter retained and maintained.

Reason: In the interests of the character of the area.

19. The development hereby approved shall not be brought into use until the surface water drainage arrangements have been provided in full, in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall thereafter be retained for the life of the development.

Reason: To ensure that the scheme is properly drained.

20. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) report v5 prepared by Calibro, and issued on 30th November 2020, including the level for floodplain compensation outlined in paragraph 7.6.6 of the FRA. The mitigation measures shall be fully implemented in accordance with the timing/phasing arrangements detailed within the Flood Risk Assessment. The approved measures shall thereafter be retained for the life of the development.

Reason: To avoid flood risk.

21. No external lighting (other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits) shall be erected/used on site unless precise details of any lighting are first submitted to and approved in writing by the local planning authority. The lighting shall be installed and thereafter maintained in accordance with the approved details for the lifetime of the development.

Reason: To avoid excessive lighting in the interests of the rural character of the area.

22. Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority.

The CEMP shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise; vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development; manage Heavy/Large Goods Vehicle access to the site. It shall include details of the hours of operation and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways.

The following specific details should also be included in respect to highway safety:

- (a) The timetable of the works;
- (b) Daily hours of construction;
- (c) Any road closure;

(d) Hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays; 9.00am to 1.00pm Saturdays, and no such vehicular movements shall take place on Sundays and Bank/Public Holidays unless agreed by the Local Planning Authority in advance;

(e) The number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;

(f) The compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;

(g) Areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;

(h) The means of enclosure of the site during construction works;

(i) Details of wheel washing facilities and road sweeping measures with the respective obligations;

(j) The proposed route of all construction traffic exceeding 7.5 tonnes;

(k) Details of the amount and location of construction worker parking;

(l) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.

Reason: To minimise all forms of pollution in the surrounding area.

23. No development shall take place until a Landscape and Ecological Management Plan (LEMP) is submitted and approved in writing by the Local Planning Authority. The LEMP shall provide details of the following:

a) Retained Ecological and Landscape features;

b) Proposed Habitat Ecological and Landscape Features;

c) Habitats and Landscape Management Measures;

d) Monitoring and Review of Plan.

Reason: In the interests of the appearance and ecology of the area.

24. Development of the battery storage compound shall not commence until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP must prescribe for measures to facility safety during the construction, operation and decommissioning of the battery storage facility, including the transport of new, used and replacement

battery cells both to and from the authorised development. The Local Planning Authority must consult with the Health and Safety Executive and the Devon Fire and Rescue Service before approving the BSMP. The BSMP must be implemented as approved.

Reason: To ensure that the battery storage compound is constructed and operated in a safe manner.

**\_\_\_\_\_End of conditions\_\_\_\_\_**

**APPEARANCES****JBM SOLAR PROJECTS 2 LTD**

Thea Osmund-Smith of Counsel, instructed by Paul Burrell, assisted by Odette Chalaby
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She called:
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Gail Stoten BA(Hons) MCIFA FSA	Heritage Executive Director, Pegasus Planning Group
Greg Triantafyllidis MSc MIET	Technical Director, JBM Solar
Andy Cook BA(Hons) MLD CMLI MIEMA CENV	Joint Head of the Environmental Planning Division, Pegasus Group
Paul Burrell BSc(Soc Sci) Hons DipUP MRTPI	Executive Director, Pegasus Group

**DEVON CPRE and RESIDENTS GROUP (Rule 6 party)**

Dr Philip Bratby BSc PhD ARCS M Nuc I	Trustee and energy spokesman Devon CPRE
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**MID DEVON DISTRICT COUNCIL (Conditions session only)**

Angharad Williams BSc(Hons), MSc, MRTPI	Development Management Manager
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**INTERESTED PERSONS**

Jan Jones	Local resident
Roland Smith	Local resident
Cora Winterson	Local resident

**INQUIRY DOCUMENTS**

Doc 1	Appellant's opening statement
Doc 2	Photos of solar farm (CPRE)
Doc 3	Viewpoint 7 photomontages (Appellant)
Doc 4	CPRE's closing statement
Doc 5	Appellant's closing statement

## CORE DOCUMENTS

Core Documents are available at:

[https://www.dropbox.com/sh/bujdo61by2mg5k5/AABkT\\_B8VmKEI7jimCvnKPD3a?dl=0](https://www.dropbox.com/sh/bujdo61by2mg5k5/AABkT_B8VmKEI7jimCvnKPD3a?dl=0)

<b>A – Planning Application</b>		
A1		Application Form, including Ownership Certificates
A2	A	Covering Letter, prepared by Pegasus Group, dated 2 <sup>nd</sup> October 2019
	B	Covering Letter, prepared by Pegasus Group, dated 7th December 2020
A3		Planning Statement, prepared by Pegasus Group, dated October 2019
A4		Design and Access Statement, prepared by Pegasus Group, dated October 2019
A5		Statement of Community Involvement, prepared by Pegasus Group, dated October 2019
A6		Construction Traffic Management Plan, prepared by Pegasus Group, dated October 2019
A7		Landscape and Visual Impact Assessment (LVIA), prepared by Pegasus Group, dated August 2019
A8		Arboricultural Impact Assessment, prepared by Barton Hyett Associates, dated August 2019
A9		Agricultural Land Classification Report, prepared by Davis Meade, dated October 2019
A10		Geophysical Survey Report, prepared by Magnitude Surveys, dated October 2019
A11		Glint and Glare Assessment, prepared by PagerPower, dated August 2019
A12	A	Heritage Statement, prepared by Pegasus Group, dated December 2019
	B	Heritage Statement Addendum, prepared by Pegasus Group, dated December 2019 and accompanying Covering Email from Simon Chamberlayne
A13		Interim Report on the Results of an Archaeological Trench Evaluation, prepared by AC Archaeology, dated November 2019
A14	A	Flood Risk Assessment and Drainage Strategy, prepared by Calibro, dated 21 <sup>st</sup> July 2019
	B	Flood Risk Assessment Revision 04, prepared by Calibro, dated October 2019
	C	Flood Risk Assessment Revision 05, prepared by Calibro Consulting, dated November 2020
A15		Letter Responding to Environment Agency, prepared by Calibro, dated 2nd December 2019
A16		Technical Note – Response to DCC Objection: Langford Solar Farm

		(Rev01), prepared by Calibro, dated 2nd February 2021
A17		Ecological Impact Assessment, prepared by Grassroots Ecology, dated October 2019
A18	A	Biodiversity Management Plan (v2), prepared by Avian Ecology, dated January 2020
	B	Biodiversity Management Plan (v3), prepared by Avian Ecology, dated March 2020
	C	Biodiversity Management Plan (v4), prepared by Avian Ecology, dated July 2020
A19	A	Technical Note: Ecology – Response to Council Comments, dated 9th January 2020
	B	Technical Note 2: Ecology – Updated Response to Council Comments, dated 11 <sup>th</sup> March 2020
A20		Addendum Note: Biodiversity Enhancements – New Scrape Enhancements, prepared by Avian Ecology, dated 3rd December 2020
A21		Breeding Bird Survey Report, prepared by Avian Ecology, dated July 2020
A22		Email from Simon Chamberlayne, Pegasus Group, dated 14th April 2020 including Officer Report Examples where solar farms have been approved within Flood Zones 3: <ul style="list-style-type: none"> <li>• Stroud Local Planning Authority (Planning Ref. 14/1800/FUL)</li> <li>• Bristol City Council (Planning Ref. 15/00502/F)</li> <li>• Newark and Sherwood Council (Planning Ref. 19/01408/FULM)</li> </ul>
A23		Site Selection Note, dated 1 <sup>st</sup> March 2021
A24		Alternatives to Langford Solar Farm Site, dated 3rd March 2021
A25		Leaflet Distributed to Planning Committee by Applicant, dated March 2021
<b>Drawings</b>		
A26		Site Location Plan, drawing number P18- 1820_18, Rev B, prepared by Pegasus Group
A27	A	Proposed Layout Plan, drawing number P18- 1820_14, Rev E, prepared by Pegasus Group
	B	Proposed Site Layout Plan, drawing number P18-1820_14, Rev J
	C	Proposed Site Layout Plan, drawing number P18-1820_14, Rev J – With Field Numbers (no other changes)
A28		PV Layout, drawing number JBM1035-101, Rev J, prepared by JBM Solar
A28	A	PV Layout, drawing number JBM1035-101, Rev K, prepared by JBM Solar
A29		Side Elevation Layout, drawing number JBM1035-201, Rev A, prepared by JBM Solar
A30		Control Room Elevations, drawing number JBM1035-209, prepared

		by JBM Solar
A31		Customer Cabin Elevations, drawing number JBM1035-210, prepared by JBM Solar
A32		Central Inverter Elevations, drawing number JBM1035-203, prepared by JBM Solar
A33		Switchgear Elevations, drawing number JBM1035-204, prepared by JBM Solar
A34		Spare Parts Building Details, drawing number JBM1035-212, prepared by JBM Solar
A35		CCTV Pole Details, drawing number JBM1035-213, prepared by JBM Solar
A36		Deer Fence Details, drawing number JBM1035-214, Rev A, prepared by JBM Solar
A37		Road Cross Section, drawing number JBM1035-216, prepared by JBM Solar
A38		Cable Trench Cross Section, drawing number JBM1035-215, prepared by JBM Solar
A39		132kVa Compound, drawing number JBM1035-220, prepared by JBM Solar
A39	A	132kVa Compound, drawing number JBM1035-220, Rev A, prepared by JBM Solar
A40		Client Substation (in 132kVa Compound and Site), drawing number JBM1035-222, prepared by JBM Solar
A41		Client Substation Elevations, drawing number P2763-(02)-25-01-0, Rev 0, prepared by G2 Energy
A42		Battery Container Elevations, drawing number P2763-(03)-25-01-0, Rev 0, prepared by G2 Energy
A43		DNO Substation Elevations, drawing number P2763-(01)-25-01-0, Rev 0, prepared by G2 Energy
A44		DNO Substation Plan, drawing number P2763(01)-25-01-0, Rev 0, prepared by G2 Energy
A45		PCS Inverter Elevations, drawing number P2763-(04)-25-01-0, Rev 0, prepared by G2 Energy
A46		Langford Battery Park (Gantry Site Elevations), drawing number P2763-150-03, Rev 0, prepared by G2 Energy
<b>Committee Reports</b>		
A47	A	Committee Report 31 <sup>st</sup> March 2021
	B	Committee Report Updates 31 <sup>st</sup> March 2021
A48	A	Committee Report 14 <sup>th</sup> July 2021
	B	Committee Report Updates 14 <sup>th</sup> July 2021
A49		Committee Report 18 <sup>th</sup> August 2021
A50	A	Committee Report 22 <sup>nd</sup> September 2021
	B	Committee Report Updates 22 <sup>nd</sup> September 2021

<b>Decision Notice</b>	
A51	Decision Notice, dated 23 <sup>rd</sup> September 2021
<b>B – Application Consultation Responses</b>	
B1	Blackdown Hills AONB, dated 5 <sup>th</sup> November 2019
B2	A Brandich Town Council, dated 21 <sup>st</sup> October 2019
	B Brandich Town Council, dated 30 <sup>th</sup> July 2020
B3	Clyst Hydon Parish Council, dated 14 <sup>th</sup> November 2019
B4	A Conservation Officer, dated 18 <sup>th</sup> November 2019
	B Conservation Officer, dated 21 <sup>st</sup> January 2020
B5	A Cullompton Town Council, dated 25 <sup>th</sup> October 2019
	B Cullompton Town Council, dated 17 <sup>th</sup> July 2020
B6	Devon County Council Flood Risk Management, dated 4 <sup>th</sup> February 2021
B7	A Environment Agency, dated 30 <sup>th</sup> October 2019
	B Environment Agency, dated 31 <sup>st</sup> January 2020
	C Environment Agency, dated 21 <sup>st</sup> December 2020
	D Environment Agency, dated 22 <sup>nd</sup> December 2020
B8	Exeter Airport, dated 21 <sup>st</sup> October 2019
B9	Flood and Coastal Risk Engineer, dated 29 <sup>th</sup> January 2021
B10	Highway Authority, dated 25 <sup>th</sup> October 2019
B11	Historic England, dated 4 <sup>th</sup> November 2019
B12	A Historic Environment, dated 18 <sup>th</sup> February 2021
	B Historic Environment Team, dated 17 <sup>th</sup> October 2019
	C Historic Environment Team, dated 16 <sup>th</sup> December 2019
B13	Kentisbeare Parish Council, dated 16 <sup>th</sup> October 2019
B14	A Lead Local Flood Authority, dated 23 <sup>rd</sup> October 2019
	B Lead Local Flood Authority, dated 30 <sup>th</sup> October 2020
B15	Natural England, dated 18 <sup>th</sup> October 2019
B16	Plymtree Parish Council, dated 7 <sup>th</sup> November 2019
B17	Public Health, dated 10 <sup>th</sup> October 2019.
B18	RSPB, dated 15 <sup>th</sup> October 2019
B19	Willand Parish Council, dated 18 <sup>th</sup> November 2019
B20	A CPRE, dated 28 <sup>th</sup> October 2019
	B CPRE, dated 14 <sup>th</sup> November 2019
	C CPRE, dated 7 <sup>th</sup> January 2020
	D CPRE, dated 21 <sup>st</sup> May 2020
	E CPRE, dated 10 <sup>th</sup> May 2021
	F CPRE, email dated 24 <sup>th</sup> May 2021
B21	David Wilson Partnership, dated November 2019

<b>C – Planning Appeal</b>		
C1		Planning Appeal Form dated 17 <sup>th</sup> February 2022.
<b>Statements of Case</b>		
C2		Appellant
C3	A	CPRE
	B	CPRE Addendum
C4		LPA Statement of Case
C4 – A		LPA Statement of Case, updated 12 <sup>th</sup> May 2022
<b>Additional Documents Submitted as part of Appeal</b>		
C5		Additional Planting Inset Plan, drawing number P18-1820_24, dated 2nd February 2022.
C6		Biodiversity Net Gain Metric 3.0 Report and Calculation Tool Spreadsheet, prepared by Avian Ecology, dated 9th February 2022
C7		Updated Agricultural Land Classification Report, prepared by Amet Property, dated February 2022
C8		Assessment of Impact on Agricultural Land and Soils, prepared by Amet Property, dated February 2022
<b>Statements of Common Ground</b>		
C9		Statement of Common Ground with LPA
C10		Statement of Common Ground with CPRE.
<b>Proofs of Evidence</b>		
C11	A	Appellant Planning Proof of Evidence
	B	Appellant Landscape Proof of Evidence
	C	Appellant Heritage Proof of Evidence
	D	Appellant Technical Proof of Evidence
C12		CPRE Proof
<b>Conditions</b>		
C13		Draft List of Conditions
<b>Correspondence</b>		
C14		Email from Angharad Williams, dated 31 <sup>st</sup> March 2022, confirming that the LPA concede reasons for refusal
C15		Email from Angharad Williams, dated 27 <sup>th</sup> April 2022 on the Council's changing position
<b>Rebuttals</b>		
C16		Appellant's Rebuttal to CPRE
<b>D - National Planning Policy, Guidance and Legislation</b>		
D1		National Planning Policy Framework (July 2021)
D2		National Planning Practice Guide ( <i>Electronic Version only</i> )
D3	A	Overarching National Policy Statement for Energy (EN-1) (July 2011)
	B	Draft National Policy Statement for Energy (EN-1) (September 2021)
D4	A	National Policy Statement for Renewable Energy Infrastructure (EN-3) (July 2011)
	B	Draft National Policy Statement for Renewable Energy Infrastructure

		(EN-3)
D5		UK Government Solar Strategy 2014
D6		Written Ministerial Statement on Solar Energy: protecting the local and global environment made on 25 March 2015
D7		Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (February 2021)
D8		Climate Change Act 2008
D9		Climate Change Act (2050 target amendment) Order 2019
D10		Clean Growth Strategy published by the Department for Business, Energy and Industrial Strategy (BEIS) in October 2017
D11		UK Parliament declaration of an Environmental and Climate Change Emergency in May 2019
D12		Energy White Paper: Powering our Net Zero Future published in December 2020
D13		UK Government press release of acceleration of carbon reduction to 2035, dated April 2021
D14		The latest version of the 'Digest of United Kingdom Energy Statistics', July 2021
D15		UK Energy Statistics Press Release published by the Department for Business, Energy & Industrial Strategy, June 2020
D16		'Achieving Net Zero' published by the National Audit Office in December 2020
<u>D17</u>		Net Zero Strategy: Build Back Greener, dated October 2021.
<u>D18</u>		British Energy Security Strategy, updated 7th April 2022
<u>D19</u>		2021 UK Greenhouse Gas Emissions, Provisional Figures, published by Department for Business, Energy and Industrial Strategy, dated 31 <sup>st</sup> March 2022
<u>D20</u>		Subnational Electricity Consumption, Great Britain, 2005-2020, published by the Department for Business, Energy & Industrial Strategy, dated 22 <sup>nd</sup> January 2013
<b>E – Local Planning Policy, Guidance and Documents</b>		
E1		Mid Devon Local Plan 2013-2033
E2		Cullompton Neighbourhood Plan 2020-2033
E3		Mid Devon District Council's decision to become part of the Devon Climate Emergency Response Group, and reference to Devon County Council's declaration of a climate change emergency in May 2019.
E4		An Assessment of the Landscape Sensitivity to Onshore Wind Energy and Large Scale Photovoltaic Development in Mid Devon District, dated October 2013
E5		Landscape Sensitivity for solar PV development SPD supplementary planning document (2016)
E6	A	Devon Landscape Character Assessment – Mid Devon Character Areas
	B	Devon Landscape Character Assessment – East Devon Character

	Areas
E7	Mid Devon Landscape Character Assessment (October 2011)
<b>F – Landscape</b>	
F1	Guidelines for Landscape and Visual Impact Assessment 3rd Edition
F2	Landscape Institute guidance on representative viewpoints and visualisations
F3	National Character Area Profile: 148 Devon Redlands (2013)
<b>G – Heritage</b>	
G1	<u>Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment</u>
G2	<u>Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (Second Edition)</u>
G3	<u>Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment</u>
G4	<u>Statements of Heritage Significance, Analysing Significance in Heritage Assets, Historic England Advice Note 12</u>
<b>H – Technical Information &amp; Other Solar Schemes</b>	
H1	McMicken Battery Energy Storage System Event. Technical Analysis and Recommendations. Arizona Public Service, dated July 2020.
H2	Hambleton District Council. Scruton Solar. Agricultural Land Classification, dated November 2021
H3	Amet Property. Agricultural Land Classification. Land at Leeming Bar, dated December 2020
H4	Merseyside Fire & Rescue Service. Incident Investigation Team, dated September 2020
H5	Merseyside Fire & Rescue Service. Significant Incident Report, dated September 2020
H6	Hazardous Substances Potentially Generated in "loss of control" accidents in Li-on Battery Energy Storage Systems (BESS). Euring Dr Edmund Fordham MA PhD CPhys CEng FInstP, Professor Sir David Melville CBE CPhys FInstP, dated March 2022
H7	Safety of Grid Scale Lithium-ion Battery Energy Storage Systems. Euring Dr Edmund Fordham, Fellow of Institute of Physics, Dr Wade Allison MA DPhil Professor of Physics Fellow of Keble College, Oxford, Professor Sir David Melville CBE FInstP Professor of Physics Former Vice Chancellor University of Kent, dated June 2021
H8	Life Prediction Model for Grid Connected Li-on Battery Energy Storage Kandler Smith, Aron Saxon, Matthew Keyser & Blake Lundstrom National Renewable Energy Laboratory. Ziwei Cao and Albert Roc SunPower Corp, dated May 2017
H9	Solar Energy UK Briefing, Everything Under the Sun, The Facts About Solar Energy, dated March 2022
H10	The evidence is clear: the time for action is now, article published by the IPCC, dated 4th April 2022
H11	Combined Capacity Register
H12	Practical Guide to Realising the Biodiversity Potential of Solar Farms, prepared by Wychwood Biodiversity and Naturesave Insurance, dated April 2022.

H13		The Natural Capital Value of Solar (2019) Solar Trade Association
H14		Opportunities to Enhance Pollinator Biodiversity in Solar Parks, prepared by A Armstrong, dated 2021
H15		Natural Capital Best Practice Guidance, prepared by Solar Energy UK
<b>I – Relevant Decisions, Legal Judgements and Officer Reports</b>		
I1		<u>Catesby Estates Ltd v. Steer, EWCA Civ 1697, 2018</u>
I2		Bedford Council v Secretary of State and Nuon Ltd [2013] EWHC 2847 (Admin)
I3		Palmer v Herefordshire Council Anr, EWCA Civ 1061 [2016].
I4	A	Examining Authority's Report of Findings and Conclusions – Cleve Hill Solar Park (reference: EN010085)
	B	Application for the Cleve Hill Solar Park Order – Decision Letter (reference: EN010085)
I5		R. (on the application of William Corbett) v The Cornwall Council [2020] EWCA Civ 508.
I6		Land North of Halloughton, Southwell, Nottinghamshire (Appeal Reference: APP/B3030/W/21/3279533)
I7		Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council, English Heritage, Natural Trust, Secretary of State [2014] EWCA Civ 137
I8		Forge Field Society v Sevenoaks District Council [2014] EWHC 1895 (Admin)
I9		Mordue v Secretary of State and South Northamptonshire Council [2015] EWCA Civ 1243.
I10		S/19/1097 – Corner Copse, Swindon Borough, 49.9 MW Collocated Solar and Storage Site
I11		19/04321/STPLF – Scurf Dyke, East Riding of Yorkshire, 49.9 MW Collocated Solar and Storage Site
I12		TWC/2020/0851 – Myttons, Telford & Wrekin / Shropshire, 49.9 MW Collocated Solar and Storage Site
I13		21/00552/FUL – Bunker's Hill, Hart District Council, 49.9 MW Collocated Solar and Storage Site
I14		21/00259/FUL – Claydon, Tewkesbury Borough, 49.9 MW Collocated Solar and Storage Site
I15		20/06840/FUL – Wick Farm, Wiltshire, 49.9 MW Collocated Solar and Storage Site
I16		21/02448/FUL – Eastfields, Stratford-on-Avon DC, 25 MW Collocated Solar and Storage Site
I17		21/0465/FUL – Moreton Lane, Stroud Borough Council, 49.9 MW Collocated Solar and Storage Site
I18		20/03528/FUL – Minety, Wiltshire, 49.9 MW Collocated Solar and Storage Site
I19		21/01363/FUL – Doverdale, Wychavon District, 49.9 MW Collocated Solar and Storage Site
I20		Appeal Decision: APP/Z5630/W/18/3205282 Land opposite Chessington Sub-station, Fair Oak Lane, Chessington



# Department for Levelling Up, Housing & Communities

[www.gov.uk/dluhc](http://www.gov.uk/dluhc)

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

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

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

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

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

### SECTION 2: ENFORCEMENT APPEALS

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

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

### SECTION 3: AWARDS OF COSTS

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

### SECTION 4: INSPECTION OF DOCUMENTS

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



# Appeal Decision

Site visit made on 22 June 2022

**by Tamsin Law BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16<sup>th</sup> August 2022**

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**Appeal Ref: APP/C3430/W/22/3292837**

**Land West of Wolverhampton West Primary Substation, South Staffordshire Railway Walk, Wolverhampton, WV4 4XX**

- 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 Balance Power Projects Ltd against the decision of South Staffordshire District Council.
  - The application Ref 21/00440/FUL, dated 23 April 2021, was refused by notice dated 23 December 2021.
  - The development proposed is the construction, management and operations of a battery based electrical storage scheme with associated infrastructure, together with access improvements, internal access tracks, vehicular parking, herringbone filtered drains, security measures and landscaping works.
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## Decision

1. The appeal is allowed and planning permission is granted for construction, management and operations of a battery based electrical storage scheme with associated infrastructure, together with access improvements, internal access tracks, vehicular parking, herringbone filtered drains, security measures and landscaping works at Land West of Wolverhampton West Primary Substation, South Staffordshire Railway Walk, Wolverhampton, WV4 4XX in accordance with the terms of the application, Ref 21/00440/FUL, dated 23 April 2021, and subject to conditions detailed in the attached schedule.

## Applications for Costs

2. An application for costs was made by Balance Power Projects Ltd against South Staffordshire Council. This application is the subject of a separate decision.

## Main Issues

3. The main issues are:
  - Whether the proposed development would be inappropriate development in the Green Belt;
  - The effect of the proposed development on the openness of the Green Belt, and;
  - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

## Reasons

### *Whether Inappropriate Development*

4. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 149.
5. Paragraph 147 sets out that, by definition, inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to this harm, and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
6. Policy GB1 of the South Staffordshire Local Plan (LP) broadly conforms to the general thrust of national Green Belt policy, supporting limited infilling and changes of use of land. This policy approach also conforms with the provisions of the Framework, in this regard.
7. The appeal proposal would see the introduction of a number of structures, including 28 containerised battery units, 14 inverters, 14 transformers, 2.4-metre paladin fence, welfare units and compounds, to a site that is currently an open field. Consequently, the proposed development would not fall into any of the exceptions listed in paragraph 149 of the Framework. I therefore conclude that it would be inappropriate development in the Green Belt contrary to LP Policy GB1 which covers similar matters.

### *Openness*

8. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects. It can be considered to be the absence of buildings and development. The appeal site forms part of an equestrian paddock associated with buildings to the north of the site. It is currently devoid of any buildings or structures. As such, the introduction of the facility, and all that it would entail, would unavoidably reduce the openness of the Green Belt in both spatial and visual terms.
9. In addition to the introduction of the battery storage facility and all its associated structures into what is currently an open field, the proposal would represent encroachment of development into the countryside. This would be contrary to one of the purposes of including land within the Green Belt, as set out in paragraph 138 of the Framework.
10. Therefore, in addition to the harm arising from the fact that the development would be inappropriate, there is a degree of harm arising from the loss of openness and from being contrary to one of the purposes of including land within the Green Belt.

### *Other Considerations*

11. The proposed scheme is designed to store 50MW within the batteries and would be able to release or absorb energy from the power network.
12. The provision of low carbon energy is central to the economic, social and environmental dimensions of sustainable development set out in the Framework. There is strong national policy support, from the Government's Energy White Paper<sup>1</sup> (EWP) and National Policy Statement EN-1<sup>2</sup> (NPS), for the development of battery storage, which would aid in the storage of energy generated from renewable sources which by their nature, intermittently generate energy. Additionally, the NPS advises that storage is needed to reduce the costs of electricity and increase its reliability.
13. National Grid's Future Energy Scenarios (2021) advises that currently the energy storage capacity in the UK is 4GW and by 2050 it is anticipated that 40GW of capacity would be required in order to meet the UK's target of net zero carbon by 2050. Although the scheme is modest in size, paragraph 158 of the Framework confirms that even 'small-scale projects provide a valuable contribution to cutting greenhouse gas emissions'.
14. The policy support for renewable energy and associated development given in the Framework is caveated by the need for the impacts to be acceptable, or capable of being made so. Nevertheless, the energy storage benefit of the proposal must be accorded substantial weight.

### **Green Belt Balance**

15. The proposal would be inappropriate development in the Green Belt, which, by definition, is harmful. To this must be added further moderate harm arising from the loss of openness, and from being contrary to the purposes of including land within the Green Belt. Paragraph 148 of the Framework indicates that any harm to the Green Belt should be given substantial weight.
16. Paragraph 151 of the Framework accepts that very special circumstances will need to be demonstrated if developments are to proceed in the Green Belt. It states that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. Although modest in scale, the appeal scheme would make a valuable contribution to cutting greenhouse gas emissions, by increasing the opportunity to store energy, and this also attracts substantial weight.
17. National policy advises that developments should be located where impacts are, or can be made, acceptable. I consider that the location of the proposed development, adjacent to an existing substation and agricultural buildings, together with the existing and proposed landscaping means that this would be the case here. Additionally, whilst the proposed development would be located at the site for a number of years, it is reversible and capable of being removed from the site.
18. Therefore, and in my judgement, the environmental benefits of the proposal and the fact that the impacts can be made acceptable, are sufficient to outweigh the harm to the Green Belt. Consequently, the very special

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<sup>1</sup> Energy White Paper Powering out Net Zero Future (2020)

<sup>2</sup> Draft Overarching National Policy Statement for Energy (EN-1) (2021)

circumstances necessary to justify the proposal do exist and the scheme would not conflict with LP Policy GB1 or the Framework.

### **Other Matters**

19. I have had regard to the representations made by local residents regarding the proposed development. The concerns relating to the Green Belt have been addressed above. However, they have raised a number of concerns relating to biodiversity, noise, disturbance, safety and archaeology.
20. With regards to ecology and noise, evidence in the form of an Ecological Impact Assessment and Noise Assessment were submitted with the appeal. These detail how the development would be acceptable in terms of its impact on biodiversity and nearby residents. The Council's Ecologist and Environmental Health team do not object to the proposed development. As such, I consider that, subject to the addition of conditions relating to biodiversity and noise levels and mitigation, that the proposed development would not have a harmful impact in relation to these matters.
21. With regards to disturbance during construction works, a Construction Traffic Management Plan has been submitted with the appeal. Additionally, a condition has been requested limiting the hours of operation. As such, whilst there may be some disturbance to nearby residents during the construction of the proposed development, this would be limited to daytime hours. Whilst a temporary access would be provided to facilitate the construction works, this would be removed once the development is complete, and the Council's Highways Department are content with this. I see no reason to disagree with this conclusion.
22. In terms of battery safety, the appellant has provided information relating to the various standards that are required to be met for a battery storage facility. I have not been provided with evidence that would lead me to believe that such facilities would be unsafe.
23. Representations make reference to the use of the site as a WW2 Gun site. I have no evidence before me that the site is of great archaeological value. I have had regards to the comments made by the Council's Archaeologist that the site has a degree of historic environment interest, however they do not object to the proposed development. The scale of the scheme is modest, and therefore its associated impact on archaeology would be limited. As such, I have no reason to disagree with the Council's Archaeologist on this matter.

### **Conditions**

24. The Council has provided a list of conditions, which I have assessed in regard to the advice provided in the Planning Practice Guidance (PPG). The appellant has provided comments on the conditions proposed by the Council.
25. The condition regarding surface water drainage is necessary to ensure adequate drainage is provided for the proper functioning of the proposed development. Conditions relating to construction environmental management plan, noise mitigation, monitoring, hours of operation and construction traffic plan are necessary in order to ensure that the living conditions of nearby residents are safeguarded. Conditions regarding the cessation of the temporary access track is necessary in the interest of highway safety. Landscaping, lighting, tree and biodiversity conditions are necessary in order to ensure the

proposed landscaping and biodiversity mitigation is completed and maintained. I have altered the wording of some conditions in order to ensure they comply with the PPG. I have also amended the timeframes in some of the conditions in order to make them more reasonable.

26. With regards to the Council's request for a condition requiring further details of external materials, I note that no schedule is included. As such, I consider that this condition should be included. With regards to the condition relating to the temporary nature of the development and its decommissioning, I consider this to be necessary in order to return the land to its current use should the development no longer be required.
27. I do not consider it necessary to include the condition relating to the provision of a proactive maintenance schedule as this will likely vary between the different equipment at the site. Such a condition would therefore be imprecise and unreasonable.

### **Conclusion**

28. I have concluded above that, for this appeal, very special circumstances exist to justify inappropriate development in the Green Belt that would reduce openness. My findings on other matters do not lead me to reach a different conclusion. Consequently, the proposal would comply with the relevant provisions of the Framework and the development plan when considered as a whole. The appeal should therefore be allowed.

*Tamsin Law*

INSPECTOR

### **Schedule of Conditions**

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 050-PL-WV44XX-001 (Rev B), 050-PL-WV44XX-101 (Rev B), 050-PL-WV44XX-201 Proposed Elevation - AA (Rev A), 050-PL-WV44XX-202 Proposed Elevation - BB (Rev A), 050-PL-WV44XX-201 Proposed Elevation - CC (Rev A), 050-PL-WV44XX-202 Proposed Elevation - DD (Rev A), Planning Design and Access Statement, Flood Risk and Drainage Assessment, Noise Assessment, Landscape and Visual Impact Assessment, Construction Traffic Management Plan (October 2021), Ecological Impact Assessment (October 2021), Arboricultural Implications Assessment (October 2021).
3. Within 35 years and six months following completion of construction of the development hereby permitted, within 12 months of the cessation of operational use, or within six months following a permanent cessation of construction works prior to the battery facility coming into operational use, whichever is the sooner, the batteries, transformer units, inverters, all associated structures and fencing approved shall be dismantled and removed from the site. The developer shall notify the Local Planning Authority in writing no later than five twenty-eight working days following cessation of power production. The site shall subsequently be restored in accordance with a scheme and timescale, the details of which shall be first submitted to and approved in writing by the Local Planning Authority no later than six months following the cessation of power production. (Note: for the purposes of this condition, a permanent cessation shall be taken as a period of at least 24 months where no development has been carried out to any substantial extent anywhere on the site).
4. Before the development hereby permitted is commenced, full details of facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained thereafter.
5. Before the commencement of any construction related activity on site, an Arboricultural Method Statement, providing comprehensive details of all underground service/utility runs, ground protection measures, 'No-Dig' construction types, construction methods within the Root Protection Areas of retained trees and a finalised Tree Protection Plan shall be submitted and approved in writing by the Local Planning Authority. Subsequently, all measures within the approved method statement and Tree Protection Plan shall be adhered to until all construction related activity has been completed.
6. Before the development hereby permitted is commenced, a detailed landscape and planting scheme, shall be submitted to and approved in writing by the Local Planning Authority. The approved landscape and planting scheme shall thereafter be implemented within the first available planting season following the development being brought into use.

7. Before the development hereby permitted is commenced, the applicant shall install acoustic mitigation, designed specifically to mitigate the frequencies emitted by the plant and equipment. The proposed solution is to be approved by the Local Planning Authority prior to installation and once installed, shall thereafter be maintained for the life of the development.
8. Before any construction works hereby permitted are commenced, a Construction Environment Management Plan (CEMP) and Habitat Management Plan (HMP) detailing, in full, measures to protect existing habitat during construction works and the formation of new habitat to secure net gain of the site's Biodiversity Value, shall be submitted to and approved in writing by the Local Planning Authority. Within the CEMP/HMP document the following information shall be provided: Descriptions and mapping of all exclusion zones (both vehicular and for storage of materials) to be enforced during construction to avoid any unnecessary soil compaction on area to be utilised for habitat creation; Details of both species composition and abundance where planting is to occur; Proposed management prescriptions for all habitats for a period of no less than 25 years; Assurances of achievability; Timetable of delivery for all habitats; and A timetable of future ecological monitoring to ensure that all habitats achieve their proposed management condition as well as description of a feed-back mechanism by which the management prescriptions can be amended should the monitoring deem it necessary. All ecological monitoring and all recommendations for the maintenance/amendment of future management shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken and thereafter maintained in accordance with the approved CEMP and HMP
9. Before the commencement of any construction related activity on site, a lighting plan for the construction phase of development. shall be submitted to and approved in writing by the Local Planning Authority. All lighting should be designed in accordance with Bat Conservation Trust/ Institution of Lighting Professionals Guidance Note 08/18 Bats and artificial lighting in the UK. Submitted lighting plans should be accompanied by contour diagrams that demonstrate minimal levels of lighting on receptor habitats, including trees and hedges. The construction works shall thereafter be carried out in accordance with the approved details, with lighting removed as necessary, upon the completion of these works.
10. No building hereby permitted shall be first occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; include a timetable for its implementation; and, provide, a

management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

11. Before the commencement of any construction related activity on site, a scheme to monitor dust, noise and water quality, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and shall be complied with for the duration of the construction works
12. Prior to first operation of the development hereby permitted, a lighting plan for the operation phase of development, shall be submitted to and approved in writing by the Local Planning Authority. All lighting should be designed in accordance with Bat Conservation Trust / Institution of Lighting Professionals Guidance Note 08/18 Bats and artificial lighting in the UK. Submitted lighting plans should be accompanied by contour diagrams that demonstrates minimal levels of lighting on receptor habitats, including trees and hedges. Development shall be carried out in accordance with the approved details and retained thereafter.
13. The proposed development must be undertaken in adherence to all recommendations and methods of working detailed within the Arboricultural Impact Assessment (Barton Hyett project ref. 4255).
14. Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site, which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.
15. The development hereby permitted shall be carried out in accordance with the submitted Construction Traffic Management Plan dated October 2021 (reference P21- 0192/TR02).
16. The development hereby permitted shall be carried out in accordance with the requirements of the approved 'Ecological Impact Assessment', produced by Clarkson & Woods Ecological Consultants, dated October 2021.
17. The temporary access and route from Langley Road to the battery compound hereby permitted shall be closed and the area reinstated to its existing condition within 6 months of completion of construction related activity.
18. The noise level from the operation of the battery storage plant and associated plant and machinery between the hours 07:00 and 23:00 shall not exceed 39dB L(A)eq 1- hour as measured 1m from the boundary of nearest residential receptors. The noise level from the operation of the battery storage plant and associated plant and machinery between the hours 23:00 and 07:00 shall not exceed 35dB L(A)eq 15- minute as measured 1m from the boundary of nearest residential receptors.
19. Operational hours of any demolition and construction activity, including vehicle movements to and from the site are restricted to 0800 to 1800

Monday to Friday and 0800 to 1300 Saturday, and at no time on Sundays or Bank and Public Holidays.