IN THE MATTER OF

LONGHEDGE SOLAR FARM

APPEAL REFERENCE: APP/P3040/W/23/3330045

CLOSING SUBMISSIONS

ON BEHALF OF THE APPELLANT

Introduction

1. These Closing Submissions on behalf of the Appellant, Renewable Energy Systems Limited, ("**RES**") provide a summary of the Appellant's case at the close of this inquiry.

2. As explained in opening, RES, the world's largest independent renewable energy company, has the experience, resources and capacity to help meet the immediate and pressing need for the deployment of renewable energy (and solar energy in particular) throughout the UK, including in this borough. There is a climate emergency which requires the rapid delivery of solar developments throughout the UK as part of the Government's strategy to address that crisis. Policy expressly recognises the numerous benefits of renewable energy developments, and particularly solar farm developments such as the Appeal Scheme. These weighty benefits include the fact that they offer huge potential to assist in the decarbonisation of the power sector and the fact that solar is one of the cheapest forms of electricity generation and readily deployable at scale.

3. That is why the government has designated solar farm developments with a capacity just slightly above that of the Appeal Scheme as "Critical National Priority Infrastructure", for which the starting point will be that they will meet a number of policy tests such as, for example, the Very Special Circumstances test for development in the Green Belt.[1] It is precisely the same need as that identified in the applicable National Policy Statements which the Appeal Scheme will meet. Recent policy developments have again emphasised the importance of solar energy. On 30 July 2024, the Deputy Prime Minister issued a

[1] **CD 3.3A,** EN-1

Written Ministerial Statement; a consultation on revisions to the NPPF and draft amendments to the NPPF. The Written Ministerial Statement is a statement of policy which carries full weight as a recent expression of Government policy; the consultation material is an expression of intent from the Government which is a material consideration in the determination of this appeal;[2] and the draft revisions to the NPPF represent the Government's current view as to how its objectives for renewable energy should be achieved. While the draft NPPF is subject to consultation and so carried limited weight, the same is not true of the consultation material. That material expresses the Government's objectives and while the means by which those objectives may be subject to change, the objectives themselves remain.

4. The Written Ministerial Statement[3] confirms that "boosting the delivery of renewables will be critical to meeting the Government's commitment to zero carbon electricity by 2030" and the Government's intention to "boost the weight that planning policy gives to the benefits associated with renewables". The consultation material[4] explains that "Ensuring the transition to clean power will help boost Britain's energy independence, reduce energy bills, support high-skilled jobs and tackle the climate crisis" and confirms that solar energy is a "cheap, efficient and quick to build" technology that is an "important part of the energy mix".

5. The Appeal Site offers a valuable opportunity to make a significant contribution to meeting the established urgent need for solar generating capacity which should not be squandered. That is particularly so in a local authority area which is significantly constrained by Green Belt designation (covering some 42% of the borough). The Appeal Site does not lie in a designated landscape; is not a valued landscape; is not in the Green Belt; is not subject to any ecological designation; and would not result in any substantial harm to any heritage assets. Importantly, it benefits from an existing grid connection offer which means it is capable of rapid deployment which is highly beneficial given the urgency of the need for renewable energy. The Appeal Site is available, technically

[2] *Cala Homes (South Limited) v Secretary of State for Communities and Local Government* [2011] EWHC 97 (Admin) at paras 51 – 54 (as endorsed by the Court of Appeal in [2011] EWCA Civ 639
[3] **INQ 46.1**
[4] **INQ 46.2**

suitable and a relatively unconstrained site which can, and should, play an important role in meeting the urgent need for more renewable energy generation.

6. The Council has now recently published its Solar Farm Landscape Sensitivity and Capacity Study ("**the Study**"),[5] which recognises that "The benefits of renewable energy production and storage are well known and widely accepted".[6] The Study identifies that out of the 14 areas considered, LAU K: Aslockton Village Farmland ("**LAU K**"), within which the Appeal Site lies, is one of only three which it has a high capacity to accommodate large scale solar farm development of the type proposed here.[7]

7. When set against the scale, importance and urgency of need, very good reasons would be needed to turn down the opportunity presented by this Site. No such reasons have been demonstrated to exist here. The Council's case in this appeal has been built on shaky foundations and ever shifting sands.

8. It refused planning permission for two reasons: landscape and visual amenity and heritage impacts. Yet less than four weeks before the exchange of evidence and a year after the Decision Notice was issued, it sought to significantly expand its case to identify additional reasons for refusal based on Best and Most Versatile ("**BMV**") agricultural land and flood risk, effectively jumping on the band-wagon of concerns raised by the Rule 6 Party. The only apparent explanation for that significant departure from the reasons for refusal was the suggestion advanced by Mr Garvey that the Council's decision had been made in ignorance of national policy in respect of BMV and that its conclusions on flood risk had been an "error".[8] That is, with respect, an extraordinary position for a local planning authority to adopt. Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires local planning authorities to state clearly and precisely the full reasons for refusal, specifying all policies and proposals in the development plan that are relevant to the decision. This is intended to impose a discipline on local planning authorities to ensure carefully considered and robust decision-making, and to allow disappointed applicants a fair opportunity to understand why their proposals have been rejected and decide how to respond.

[5] **INQ 41**
[6] **INQ 41**, Introduction.
[7] **INQ 41**, p41.
[8] **INQ 2**, Council's Opening Submissions, paras 8, 13 and 15

Unfortunately, the Appellant has been denied that opportunity. It has done its best to address those belatedly raised issues through further assessments, in the short amount of time that remained available, which the Council has dismissed as inadequate with no recognition of the circumstances in which they had to be produced.

9. To further compound the issue, on the working day before the inquiry began, once again the Council opportunistically aligned itself with a position adopted by the Rule 6 Party to allege confusion and surprise that the connecting infrastructure to the National Grid was not included as part of the Appeal Scheme. That position was frankly bizarre in circumstances where all of the Council's witnesses, consistently with the Appellant's and Rule 6 Party's witnesses understood that the connection infrastructure was not part of the Scheme and so had not assessed its impacts in their written evidence.

10. In the event, it is clear that none of the Council's original or expanded reasons for refusal are borne out by the evidence. While a vast amount of ground has been covered over the course of this appeal, standing back, it is clear that the residual impacts of the Appeal Scheme will be both limited and acceptable and more than outweighed by the substantial benefits of the Scheme. Neither the Council nor the Rule 6 party have advanced any cogent reasons why the opportunity to deliver an important renewable energy scheme on this relatively unconstrained site with an existing grid connection should be squandered. No substantive conflict with the development plan has been established, and no harm would arise that could come close to outweighing the very significant benefits that the Appeal Scheme would deliver.

Nature of the proposed development

11. The Appellant's primary position as to the nature of the development for which it seeks permission is as set out in its Note on Connection to the National Grid, submitted on the first day of the inquiry.[9] That Note was submitted in response to an email from the Council on the working day before the inquiry opened, in which it alleged for the first time that the connecting infrastructure to the National Grid (a) was included as part of the application because two tower options were shown on drawings 12a and 12b and (b) that the towers should be included because they are required to connect the appeal scheme to the Grid.

[9] **INQ 4**

12. The Appellant considers that the concerns raised by the Council were entirely opportunistic in nature given that (a) all of the Council's witnesses confirmed that they had not understood the tower options shown on the drawings to be part of the appeal scheme and on that basis, none of them had assessed the impacts of those towers in their evidence and (b) it is entirely commonplace for connecting infrastructure to be consented and delivered separately, following the grant of consent for generation infrastructure. Both the Council and Secretary of State can be satisfied that there is a legally binding contractual agreement with the Distribution Network Operator ("**DNO**") to provide the appeal scheme with a connection to the Grid. No party to this appeal has identified any reason why that grid connection would not be forthcoming.

13. The common understanding of all parties to this appeal that the connecting infrastructure did not form part of the application is reflective of the fact that the application documents submitted to the Council, including the application form[10] and the planning statement, did not mention the connection infrastructure as part of the description of development or the infrastructure for which planning permission was sought.[11] It was not expressly included in the development description set out in the Decision Notice.[12] Nor does the Officer's Report makes any reference to a need to consider the impacts of the connection infrastructure.[13]

14. The DNO has a legally binding commitment pursuant to the connection agreement which has been secured to provide the Appeal Scheme with a connection to the national grid. There is, therefore, no uncertainty in this appeal about whether or not the Appeal Scheme will be connected. It is the DNO who is responsible for securing any necessary consent and any land rights necessary to construct that infrastructure.[14] That might be, for example, pursuant to section 37 of the Electricity Act 1989.[15] It will also be the DNO who will own and operate the connection infrastructure over its lifetime.[16]

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[10] **CD 1.1**, pdf 2
[11] See **CD 1.3**, para 1.31 and **CD 7.10.2**, p161 – 172.
[12] **CD 2.2**
[13] **CD 2.1**
[14] **INQ 4** Note on Connection to the National Grid, para 5
[15] **INQ 31** Electricity Line Consenting Note.
[16] **INQ 4** Note on Connection to the National Grid, para 5

15. There are a number of ways in which a connection to the national grid can be delivered by the DNO. At the time of making an offer of terms for connection, the DNO will offer a preliminary connection design based on a desktop study. The preliminary designs provided by the DNO[17] were used to inform the tower options shown on drawings 12a and 12b. The final detailed design for a grid connection will be informed by detailed studies and site investigations, including route and tower surveys, which require significant engineering resource from the DNO. As such, DNOs do not generally commit to tower surveys and the detailed design process until the generation project (i.e. the appeal scheme, in this instance) has secured planning permission. The connection offer between the Appellant and the DNO is subject to conditions which permit the DNO to vary the connection design to take account of the detailed design process.[18]

16. The Council argues in its closing submissions that there is nothing on the face of the drawings which shows that they were for illustrative purposes and the consequence must therefore be that they are both drawings for approval but a scheme could not be constructed in accordance with both drawings such that the only solution is for permission to be refused.[19] That argument is both opportunistic and entirely misplaced. It is plain on the face of the drawings that a Scheme could not be constructed in accordance with the towers shown in both drawings, which is why they were identified as two different options – Option 1 and Option 2. The drawing showed that there were two alternative means, or options, of connecting the solar farm to the distribution network. Plainly, the drawings could not be interpreted to suggest that both options would be delivered. The Council and Appellant have now agreed a draft condition which provides that details of the grid connection tower shall be submitted and approved in writing by the Council and shall accord "either" with Figure 12a or 12b.[20] That ensures that if the Inspector considers the connecting infrastructure to form part of the Appeal Scheme, any decision would ensure delivery in accordance with one or other of the drawings and no inconsistency would arise of the type that was found to be problematic in *Choiceplate Properties Ltd v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 1070 (Admin).

[17] **INQ 27** and **28**
[18] **INQ 22**
[19] Council's closing submissions, paras 9 and 12 - 15
[20] Draft condition 4, **INQ 49.1**

17. To the extent that an amendment is required to clarify the position, on the first day of the inquiry, the Appellant submitted versions of drawings 12a and 12b which clarified, by way of annotation, that the tower options were "preliminary" and "subject to change at the detailed design stage" and that the "tower structure [is] shown for illustrative purposes and not for approval" as it is "to be consented by National Grid Electricity Distribution".[21] While recognising that it would perhaps have been clearer if the drawings had always contained that annotation, it is apparent that all of the parties to the inquiry understood that the tower options did not form part of the appeal scheme.

18. None of the parties, or their respective experts, had assessed the impacts of the connection infrastructure as they all clearly understood that it did not form part of the Appeal Scheme. As Ms Temple confirmed in XX, it was clear to the Council, and its witnesses, that the tower options formed no part of the Appeal Scheme. Mr Browne has confirmed he did not consider "the effects of either additional infrastructure item".[22] Ms Temple confirmed that she did not consider, in preparing her evidence, that the connection infrastructure formed part of the Appeal Scheme as it was not, she said, referred to "in the application documents, in the Statement of Common Ground or in the assessments". Ms Temple said it was "quite clear that you [the Appellant] did not intend for it to form part of scheme".[23] She is plainly correct. There can be, therefore, no question of any *Wheatcroft* issue arising. No party will suffer prejudice by an amendment to indicate that the tower options are not for approval. Any future application for permission for the connecting infrastructure will be subject to consultation in the normal way and parties will have the opportunity to comment at that stage. Nor, for the avoidance of doubt, does it give rise, as gamely suggested by the Council, to any *Hillside* issues.[24] The Appellant has allowed space for connecting infrastructure to be accommodated within the appeal site, and panels are shown indicatively such that they could be further flexed, in the unlikely scenario that this was necessary. There will be no physical incompatibility between the approved scheme and the connecting infrastructure.

19. The understanding of all parties throughout this appeal (and the Council in determining the application) is plainly consistent with the general approach to the consenting of the

[21] **INQ 4.1** and **INQ 4.2**
[22] **INQ 44.2** Council's Note on Additional Landscape & Visual Effects, para 1.4
[23] Ms Temple XX, 14.06.24.
[24] **INQ 4** Note on Connection to the National Grid, paras 16 – 17

connection infrastructure required to connect solar farm schemes to the national grid. It is entirely common place for developments such as the Appeal Scheme to be consented first with connecting infrastructure promoted subsequently by the DNO or National Grid, both under the Planning Act 2008 ("**the 2008 Act**") and the 1990 Act. The development proposal in the Kingston Appeal did not, for example, include the connection infrastructure.[25] Many other schemes successfully promoted by the Appellant have not included the connection infrastructure as part of the development for which planning permission was granted.[26] Equally, numerous DCO projects, including projects of the scale and complexity of Hinkley Point C and the Richborough Connection, have been consented on the basis that a separate consent will subsequently be obtained for connecting infrastructure to the electricity network.[27] The Council's own Landscape Sensitivity and Capacity Study[28] does not make any reference to that infrastructure, indicating that the authors of the Study implicitly acknowledge that it will be subject to a separate consenting process.[29]

20. Notwithstanding the fact that the Council had always understood that the connecting infrastructure did not form part of the application, in her oral evidence Ms Temple belatedly sought to argue that the weight afforded to the benefit of renewable energy generation ought to be reduced if the connecting infrastructure is to be consented separately. The argument is, with respect, nonsensical. If the grid connection is not secured, and the benefits are not achieved, this means no harm will ever arise because plainly the Appellant will not build the Appeal Scheme without certainty there will be a grid connection. It is not, therefore, logical to seek to reduce the weight attached to the benefits of the Appeal Scheme as the Council invites the Inspector to do. Ms Temple's evidence on this point was, at best, muddled, given her confirmation that she had always understood that the connecting infrastructure was not part of the Appeal Scheme. It is also at odds with the example of Hinkley Point C where the Examining Authority concluded that where there is uncertainty about the precise arrangements of the grid connection, in the absence of any obvious reason why a grid connection would not be possible, this was no reason why that factor should adversely influence the Secretary of

[25] **INQ 4** Note on Connection to the National Grid, para 9
[26] **INQ 4** Note on Connection to the National Grid, para 10
[27] **INQ 4** Note on Connection to the National Grid, para 11
[28] **INQ 41**
[29] **INQ 43** Appellant's Supplementary Statement, para 3.5

State's decision.[30] Yet that is the erroneous approach the Council invites the Inspector to adopt here.

21. As to the relevance of the judgment in *R (Ashchurch Rural Parish Council) v Teksbury Borough Council* [2024] EWCA Civ 101 ("***Ashchurch***"), upon which the Council relies,[31] key to the Court's conclusion was a finding that if the wider development which was envisaged by the masterplan was not permitted, the bridge the subject of the planning application would be rendered otiose and left standing in the middle of a field with no purpose.[32] It was, therefore, irrational to take into account the benefits of constructing the bridge and enabling that wider development without also taking into account any adverse impact to the extent that it was possible to do so.[33] The Court did not find that the wider development had to be consented together with the bridge. Equally, there is no reason here why the connecting infrastructure must be consented together with the Appeal Scheme. Further to the additional evidence that has now been provided by all parties, the Inspector has all the information he needs to take account of any impacts arising from the connecting infrastructure and no *Ashchurch* issue arises.

22. The Appellant's secondary position is that if the Inspector considers that the connection infrastructure does form part of the appeal scheme and is not willing to accept the amendments to drawings 12a and 12b to confirm that the tower options are not for approval, he could grant planning permission for that infrastructure as part of the Appeal Scheme. The Inspector made clear at the inquiry that he considered that once he had further evidence as to, for example, the landscape and heritage impacts of the connection before him, if he needed "to use that evidence" in reaching his decision "he would have all the information he needs" to make a decision.[34] All parties agree that the Inspector does have all the information that he needs to grant consent for the connecting infrastructure.[35]

23. Drawings of each of the two potential options have been produced, together with additional ZTVs and visualisations.[36] All parties have had the opportunity to provide their

[30] **INQ 4** Note on Connection to the National Grid, para 14
[31] Mr Garvey, 11.06.24.
[32] **J1**, *Ashchurch*, para 54
[33] **J1**, *Ashchurch*, para 64
[34] Inspector, 11.06.24.
[35] As confirmed by all parties at the round-table discussion on 1 August 2024
[36] **INQ 43** Appellant's Supplementary Statement, para 1.14

views as to the likely effects of the tower options.[37] The Appellant has adduced evidence as to landscape and visual impact, heritage, ecology and flood risk.[38] The Inspector now has before him all the information necessary to make an assessment of the impact of the connection infrastructure and can, therefore, properly grant planning permission for it as part of the Appeal Scheme. As it turns out, following the adjournment to allow for all parties to submit additional evidence as to the impacts of the connecting infrastructure, neither the Council nor the Appellant consider it will give rise to any material changes to their previous assessments. While the Council suggests that tower option 1 would result in minor visual harm to two additional viewpoints, Mr Browne's evidence for the Council was that it was only harms that were moderate or above that would give rise to any policy conflict,[39] so on his evidence even the minor harm he identifies does not give rise to any policy conflict.

Capacity

24. The capacity of the Appeal Scheme falls below the threshold of 50MW in sections 14 and 15 PA 2008 and is appropriately determined under the TCPA 1990.

25. As explained in NPS EN-3, the maximum combined capacity of the installed inverters (measured in alternating current ("**AC**")) should be used for the purposes of determining solar site capacity.[40] As such, provided a scheme has an AC capacity of less than 50MW, it will fall below the NSIP threshold.

26. It it is agreed between all parties that the generating capacity can suitably be controlled through a planning condition which ensures that the Scheme will fall below the NSIP threshold and appropriately be determined pursuant to the TCPA 1990.[41] On that agreed basis, there is no need to go on to consider the second of the Inspector's "What If" questions which assumes that capacity cannot suitably be controlled below the NSIP threshold by condition.[42] Furthermore, on the basis of the agreed position, the question

[37] See, for the Appellant, **INQ 43, INQ 43, NQ 43.5, INQ 43.6** and **INQ 43.7**
[38] **INQ 43** Appellant's Supplementary Statement, para 2.3
[39] **CD 7.14,** Mr Browne's proof, para 6.3.15
[40] **CD3.4**, EN-3, para 2.10.53
[41] **INQ 43**, para 4.6 (on behalf of the Appellant); **INQ 44.1** (on behalf of the Council); **INQ 45.1**, para 48 (on behalf of the R6 party)
[42] **INQ 35.1** "If the answer is no - would the proposed development then meet the criteria for an NSIP scheme that would require development consent, and if so would that preclude granting planning permission?"

of whether the installed DC capacity exceeds 50MW is irrelevant to the NSIP threshold which all parties agree should be assessed by reference to AC, rather than DC, capacity.[43]

27. The effect of the connection agreement with the DNO is that the export capacity of the Appeal Scheme is contractually limited to 49.9MW.[44] Contrary to the allegation at paragraph 23 of the Rule 6 Party's closing submissions, Mr Urbani did not confirm (or even suggest) that this was not part of the novation agreement between the DNO and the Appellant. The Appellant's consistent evidence has been that this is an operative part of the agreement with the DNO. This contractual limit is actively monitored and controlled by the DNO using a local control panel. If the output of the Appeal Scheme were to exceed 49.9MW, the DNO can trip off the Appeal Scheme.[45] The Appellant will, therefore, install inverters to ensure that the maximum AC capacity of the Appeal Scheme will not, and cannot, exceed 49.9MW.[46] This is secured through a draft condition which ensures that the combined capacity of the inverters shall not exceed 49.9MW AC.[47]

28. Leaving aside the threshold question, which is resolved through the imposition of a suitable condition, the Appellant has explained and justified the rationale for installing DC capacity in excess of the 49.9MW AC. In summary, the Appeal Scheme has been designed to optimise the energy output from the Scheme, reflecting the fact that (a) panels will not achieve their Standard Test Conditions in the real-world meteorological conditions at the Appeal Site; (b) panels will degrade over time and (c) so as to maximise the energy output within the maximum export capacity (i.e. achieving higher energy outputs for longer periods of time).[48] The impact of designing the scheme to account for those factors will result in an increase in MW hours produced by the scheme of circa 22,776[49] - 31,886[50] per annum. This is a benefit to be weighed in favour of the scheme. Plainly, any adverse impacts arising from the installed DC capacity also fall to be weighed in the planning balance. However, all parties have assessed the scheme based

[43] **INQ 35.1** "If the answer is yes – would it be the case that 'overplanting' would no longer be a consideration that was relevant to answering the NSIP question – irrespective of he dc/MEC ratio for a scheme"
[44] **CD 7.10.2,** Appendix B to the Technical Note (which itself is Appendix 5 to Mr Cussen's proof) confirms the contractual limit of 49.9MS. See also **INQ 43** Appellant's Supplementary Statement, para 4.6
[45] **CD7.10**, Technical Report by Mr Urbani p179.
[46] **CD7.10**, Technical Report by Mr Urbani p181.
[47] **INQ 43** Appellant's Supplementary Statement, [4.6] and **INQ 49.1** (draft conditions)
[48] **INQ 40** (Longhedge DC Sizing Breakdown Note) and **INQ 43**, section 4 (Appellant's Supplementary Statement)
[49] i.e. 5,922 + 11,338 + 5,466 – **INQ 43**, para 4.22 and following table
[50] i.e. 5,922 + 15,943 + 10,021 – **INQ 43**, para 4.22 and following table

on the buildable area that reflects the whole of the scheme so there is no "additional" harm beyond that which has already been assessed.

29. There is nothing in EN-3 or any other policy statement which precludes the design of a scheme to maximise energy generation to account for those factors. The letter to the R6 Party from the Minister for Energy Security and Net Zero[51] does not and could not change the meaning of the policy in EN-3, which is to be interpreted objectively and in accordance with the language used in the policy. Indeed, given that solar generation is a critical national priority, the design of such schemes so as to maximise energy output within appropriate AC limits is a matter which should weigh in favour of the scheme.[52] Notably, the Appeal Scheme falls within all of the parameters identified in EN-3 for a scheme of this size. EN-3 recognises that "a solar farm requires between 2 to 4 acres for each MW of output" and states that "A typical 50MW solar farm will consist of around 100,000 to 150,000 panels and cover between 125 to 200 acres. However, this will vary significantly depending on the site, with some being larger and some being smaller".[53] The Appeal Scheme, with an indicative number of 128,752 panels sitting across a buildable area of 157 acres sits squarely within the parameters envisaged by EN-3 for a development of this nature.[54]

Need

30. There is an established and urgent need for new solar energy generating capacity. Mr Cussen has provided a fair and balanced description of the need, its scale and urgency both at national and local level[55]. It would appear from the XX of Ms Temple that very little of that appears to be controversial.

31. This is reflected in national planning policy which is clear that a step change in the deployment of solar development is needed in order to facilitate the Government's commitment to fully decarbonise the power system by 2035, and to meet the legally binding net zero target for 2050. The Government is seeking a five-fold increase in combined ground and rooftop solar deployment by 2035 (up to 70GW)[56]. In order to

[51] **CD 3.54**
[52] As explained in **INQ 43**, section 4
[53] **CD 3.4**, EN-3 [2.10.17].
[54] **CD 7.10.2** Appendix 5 Capacity Note, p189.
[55] **CD 7.10**, Mr Cussen's proof section 7.
[56] **CD 3.18**, British Energy Security Strategy p19.

deliver that, a corresponding increase in the number of such schemes that are given planning permission and development consent will be needed. These are important considerations when striking the planning balance in cases such as this. Ms Temple agreed that solar is a key part of the strategy for the low-cost decarbonisation of the energy sector and reaching Net Zero and that efforts by renewable energy companies to produce solar energy in a way that is quick and cost efficient are to be welcomed.[57] The urgency of the need is plainly important in this case. It reflects the fact that delay in shifting to renewable sources of energy production will make the challenge of meeting the net zero target more difficult. As Ms Temple accepted, schemes such as this which have the benefit of a grid connection offer, and so are capable of rapid deployment, provide a particular benefit given the lengthy delays in securing grid connections and the urgency of need for solar generation.

32. EN-3 states that "solar is a key part of the government's strategy for low-cost decarbonisation of the energy sector" and that it "also has an important role in delivering the government's goals for greater energy independence…".[58] EN-3 recognises that "Solar farms are one of the most established renewable electricity technologies in the UK and the cheapest form of electricity generation" and that "Solar farms can be built quickly".[59] The low cost and speed of deployment are plainly benefits of solar schemes such as the Appeal Scheme.

33. So urgent is the need that the Government has designated schemes over 50MW, i.e. schemes only slightly larger than the Appeal Scheme as Critical National Priority Infrastructure ("**CNPI**") . This reflects the importance attached by the Government to meeting the urgent need for more renewable energy generation and more solar farm developments. Ms Temple accepted that the Appeal Scheme would "help to meet" the "same urgent need" as those schemes which have been expressly designated in policy as Critical National Priority Infrastructure.[60] While the capacity of the Appeal Scheme is just below the threshold for it to be labelled CNPI, the fact it would make a significant contribution to meeting the same urgent need means that it is relevant to take account of

[57] Ms Temple XX, 14.06.24.
[58] **CD3.4**, EN-3 [2.10.9] – [2.10.10].
[59] **CD3.4**, EN-3 [2.10.13] – [2.10.14].
[60] Ms Temple XX, 14.06.24.

the policy implications of such designation in the NPS and what it signifies for the weight to be attached to that benefit.

34. Consistent with national energy policy in the NPS and elsewhere, the NPPF requires local planning authorities to put in place a positive strategy that maximises the potential for suitable such development while ensuring that adverse impacts are addressed appropriately.[61]

35. It is also imperative that each local authority must play its part in helping to meet that need by maximising the potential within its area, and that the Council must take responsibility for balancing its own emissions and contributing towards meeting the climate crisis and not simply leave it to others. The Council plainly recognises the scale and the urgency of the climate crisis, having published a Climate Change Strategy in November 2021 in response to Parliament's declaration of a national climate emergency in May 2019.[62]

36. The Council has acknowledged the need for urgent and effective actions to reduce emissions and to increase the generation of renewable energy. It has committed to making the borough a carbon neutral borough by 2050 and to making the Council's operational services carbon neutral by 2030.[63] It has also acknowledged that the global impacts of climate change require transformative change and immediate and dramatic action at local level by the Council.[64]

37. Meeting the urgent need to decarbonise the energy sector is undoubtedly challenging. At both national and local level there is evidence that insufficient progress is being made. The Climate Change Committee has identified in its June 2023 Report to Parliament that "The UK has lost its clear global leadership position on climate action", "Action is needed in a range of areas to deliver on the Government's emissions pathway" and that "there is now a danger that the rapid deployment of infrastructure required by the Net Zero transition is stymied or delayed by restrictive planning rules".[65] In particular, the

[61] **CD 3.1**, NPPF para 160(a)
[62] **CD 7.10**, Mr Cussen's proof, para 13.15
[63] **CD 7.10**, Mr Cussen's proof, para 10.141
[64] **CD 4.5** Council's Climate Change Strategy, November 2023.
[65] **CD 3.41**, pp13, 15

Climate Change Committee has lamented the slow progress in solar deployment which is "significantly off-track to meet the Government's target" by 2035.[66]

38. Locally, the Council has not been proactive in increasing the supply of renewable energy. The NPPF requires local authorities to put in place positive strategies to maximise renewable and low-carbon energy, and the Council's Core Strategy explained that suitable sites for renewable energy generation would be identified in the Local Plan Part 2 ("**LPP2**") or in Supplementary Planning Documents ("**SPD**").[67] Unfortunately, in the ten years since the Core Strategy was adopted, no suitable sites have been identified by the Council either in the LPP2 or in any SPD.

39. Furthermore, since 2013, the Council has granted permission for so few ground-mounted solar schemes as to only amount to a net additional generating capacity of approximately 194MW (amounting to just 0.05% of the borough's 2019 energy consumption).[68] Ms Temple did not dispute those figures.[69] Of course the demand for electricity is ever increasing, with EN-1 indicating that the demand is likely to more than double by 2050.[70]

40. The Council has chosen, therefore, as its positive strategy for maximising the potential for suitable solar development an approach that depends entirely on speculative schemes coming forward. That requires a positive approach being taken to the consenting of such schemes. Indeed, it is agreed that Policy 16 of the LPP2 is intended to be supportive of renewable energy development.[71] Unfortunately, that is not the approach the Council has adopted in this appeal. Rather, it has used Policy 16 as a barrier to a scheme. If schemes such as this, on land that is not constrained by any designation, and whose effects are undoubtedly limited and localised, are to be refused on the basis of Policy 16, it is difficult to comprehend how the local and national need for renewable generation will ever be met.

Main issue 1: The effect of the development on landscape character and appearance of the area

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[66] **CD 3.41**
[67] **CD 4.1**, para 3.2.11
[68] **CD7.10**, Mr Cussen PoE [7.66].
[69] Ms Temple XX, 14.06.24.
[70] **CD 3.3A**, paras 2.3.7 and 3.3.3
[71] **CD7.9**, SoCG with the Council, para 7.1(b) and XX Ms Temple, 14.06.24

Policy

41. In considering the impacts of the Appeal Scheme on the landscape character and appearance of the area, it is important to bear in mind the following points:

    a. The NPPF contains a hierarchy of protection based on different levels of landscape value, with national landscapes at the top; then landscapes of local value; and valued landscapes that do not warrant designation. Ordinary countryside sits at the bottom of the hierarchy.[72]
    b. The Appeal Site is not within a designated landscape and nor is it a valued landscape in NPPF terms.[73]
    c. In the *Bramley* decision,[74] the policy in the NPPF was summarised as follows: "*The* [NPPF] *in recognising the intrinsic character and beauty of the countryside, does not seek to protect all countryside from development, rather focusing on the protection oof valued landscapes".* Ms Temple agreed that this was a fair summary of the relevant paragraphs of the NPPF with which the Local Plan policies were consistent.[75]
    d. It is almost inevitable that any large-scale solar farm development, such as the Appeal Scheme, will give rise some adverse landscape and visual effects, as recognised by EN-1.[76] The policy recognises that such effects will be minimised by appropriate site selection and mitigation.

42. It follows that any approach which treats an adverse impact on the ordinary countryside as unacceptable would make it very difficult to approve any large-scale solar development and would not constitute a positive strategy to maximise the potential for suitable development (as required by the NPPF).

43. As to Local Plan policy, the Council's case was both confused and confusing. The Decision Notice alleged conflict with policies 22, 34 and 16 of the LPP2.[77] By contrast, Ms Temple's proof did not allege any conflict with policy 22 of the LPP2 but identified

[72] Ms Temple XX, 14.06.24
[73] Ms Temple XX, 14.06.24
[74] **CD 5.17**
[75] Ms Temple XX, 14.06.24
[76] **CD 3.3A**, para 3.1.2 and para 5.10.5
[77] **CD 2.2**

a new conflict with Core Strategy policy 10. In her oral evidence, she alleged but then abandoned conflict with Core Strategy policy 16. She went on to say that her failure to identify conflict with policy 22 of the LPP2 was an omission and sought to resurrect a case based on conflict with that policy. In reality, no conflict arises with any of the identified policies.

Policy 16 LPP2

44. Policy 16 LPP2 is the Council's positive strategy to maximise the potential for suitable renewable and low carbon energy.[78] It is intended to be supportive of renewable energy development.[79] Its objective of supporting renewable energy generation can only be achieved by taking a positive approach to consenting proposals for renewable energy on non-allocated sites.

45. It provides that proposals for renewable energy schemes will be granted planning permission where they are acceptable in terms of landscape and visual effects.[80] If Policy 16 were to be interpreted to mean that *any* adverse landscape or visual effects were unacceptable, that would preclude almost any large-scale solar scheme from coming forward in Rushcliffe. That could not be described as a positive strategy for maximising renewable energy generation and cannot be the correct interpretation of Policy 16. If Policy 16 is intended to provide the positive strategy to support renewable energy schemes, its proper interpretation must be that only impacts over and above those likely to arise from such schemes would be 'unacceptable' – otherwise it would not be a positive strategy at all.

46. Ms Temple accepted in XX that *any* level of landscape or visual harm would not be sufficient to bring a scheme into conflict with Policy 16 LPP2. She suggested that Policy 16 directed the decision-maker to other relevant policies and if there was conflict with those policies, that in turn would trigger conflict with Policy 16 LPP2. Her interpretation begs the question why Policy 16 LPP2 is necessary at all, if its sole purpose is to direct decision-makers to other existing policies.

[78] Ms Temple XX, 14.06.24
[79] **CD 7.9**, Planning SoCG, para 7.1(b)
[80] **CD 4.2**, LPP2, p.81

47. Ms Temple's evidence was that Policy 16 LPP2 directs the decision maker to Policy 16 of the Core Strategy, which requires *inter alia,* that landscape character should be protected, conserved or enhanced in line with the recommendations of the Greater Nottingham Landscape Character Assessment.[81] Her evidence was that because the Appeal Scheme conflicts that Core Strategy Policy 16, that in turn results in conflict with Policy 16 LPP2. One of the difficulties with that evidence was that neither the Decision Notice,[82] nor the Council's Statement of Case,[83] nor Mr Browne's evidence,[84] nor Ms Temple's evidence[85] alleged any conflict with Core Strategy Policy 16. Faced with that realisation, Ms Temple abandoned any alleged conflict with Core Strategy Policy 16.

48. The agreed position, confirmed by Ms Temple in XX, is therefore that the Appeal Scheme accords with the requirement in Core Strategy Policy 16 to protect, conserve and enhance the landscape character of the Appeal Site in line with the recommendations of the Greater Nottingham Landscape Character Assessment. That is hardly a surprising conclusion given that the LCA recommends the enhancement of hedgerows to restore historic field patterns and create habitat linkages and considerably increase the number of hedgerow trees to enhance landscape diversity and ecosystem services,[86] both of which are delivered through the Appeal Scheme.

Core Strategy Policy 10

49. The Decision Notice alleges no conflict with Core Strategy Policy 10. However, in yet a further expansion of the Council's case, Ms Temple's evidence alleged conflict with the policy. Policy 10 is entitled "Design and Enhancing Local Identity".[87] It is clear beyond any doubt from the terms of the policy that it is a design, rather than a landscape policy, as acknowledged by Ms Temple in XX.[88]

50. Neither Mr Browne, nor Ms Temple, have raised any concerns about the design process that has informed the Appeal Scheme. Assuming the Site is appropriate for solar development, they do not say, for example that the Scheme has failed to respond

[81] **CD 4.1**, Core Strategy, p.97
[82] **CD 2.2**, Decision Notice
[83] **CD 7.7**, Council's Statement of Case
[84] **CD 7.14**, Mr Browne's proof
[85] **CD 7.13**, Ms Temple's proof
[86] **CD 3.30**, Greater Nottingham Landscape Character Assessment, p.18
[87] **CD 4.1**, Core Strategy, p.71
[88] Ms Temple XX, 14.06.24

appropriately to the opportunities and constraints presented by the Site. The concerns raised by Mr Browne would apply to any large-scale solar farm in the countryside rather than the particular design of this Scheme.

51. To test the strength of the Council's case in relation to this policy, it is relevant to consider the Officer's Report into the application. That report was prepared following external advice from a landscape consultant and recorded those concerns in a section addressed to landscape and visual effects.[89] It contains a separate section, addressing "Form and siting" which assesses the Scheme against Policy 10.[90] Ms Temple agreed in XX that neither she nor Mr Browne had expressed any disagreement with the analysis in the Officer's Report as to the design of the Scheme. She further accepted that none of the following findings in the Report were disputed by the Council:

    a. The proposed development would consist primarily of solar panels mounted on a treated metal framework. This is considered the minimal level of development necessary to ensure that the site performs effectively with regard to its main purpose of generating renewable electricity.
    b. All of the panels and associated infrastructure buildings on the site would be no higher than single storey in height. This would ensure that they would not be significantly visible from most viewpoints outside of the site.
    c. Even when viewed from nearby vantage points, it is considered that the scale of development would not be overbearing due to its low profile.
    d. The situation would take on a further positive direction when proposed screen planting matures.
    e. The inverters would be set within the rows of panels to reduce visual impact
    f. The scale of the proposed development is appropriate to the location.
    g. The containers/cabins and other small buildings would be appropriately coloured or clad to minimise any visual impact and comply as far as practicable with the local vernacular.
    h. The proposed development has been designed to respect the character of the landscape and uses the strong field pattern to integrate the scheme as far as practicable.

[89] **CD 2.1**, Officer's Report, pdf 9 - 12
[90] **CD 2.1**, Officer's Report, pdf 8

i. Existing landscape features would be retained, protected and strengthened including the retention of all existing field margins (hedgerows and ditches) except where necessary for access and standoffs from boundary habitats.

j. All trees on the site would be retained and additional planting provided, where necessary, to fill gaps in the existing boundary planting.

k. The landscaping and planting proposals associated with the proposed development would bring about significant ecological benefit when compared to the present situation, including upgrading lower-value, biodiversity-poor, arable land to higher value habitats.

l. In design terms, the Appeal Scheme accords with Core Strategy Policy 10.

52. The acceptance by Ms Temple that the Council has no complaint relating to the design of the Scheme is significant. In circumstances where national policy acknowledges that all large-scale renewable energy schemes are likely to have some adverse impacts on landscape and visual amenity, the focus should be on ensuring appropriate design and mitigation to minimise those impacts as far as is practicable. That is precisely what has happened in this case.

53. As to part (5) of Policy 10, that provides that "Outside of settlements, new development should conserve or where appropriate, enhance or restore landscape character. Proposals will be assessed with reference to the Greater Nottingham Landscape Character Assessment". As discussed above, the Council accepts, by reference to Core Strategy Policy 16 that the Appeal Scheme *will* protect, conserve and enhance the landscape character of the Appeal Site in line with the recommendations of the Greater Nottingham Landscape Character Assessment so there can be no separate conflict with Part (5) of Policy 10.

Policy 22 of the LPP2

54. While Ms Temple's written evidence did not allege any conflict with Policy 22 of the LPP2, in XX she sought to resurrect a case based on conflict with this policy. Policy 22 explains that all land outside the Green Belt and beyond the edge of settlements is defined as countryside.[91] Part (2) identifies certain types of development which will be permitted in the countryside, including renewable energy schemes. It is agreed between the Council

[91] **CD 4.2**, LPP2, p.96

and the Appellant that Policy 22 is intended to be supportive of renewable energy schemes such as this.[92] The policy recognises that developing greenfield sites in the countryside for solar farms is not objectionable in principle, even though such schemes will inevitably have some adverse impacts on landscape character.

55. There is nothing in this particular scheme which takes the adverse impacts beyond those that would arise from any large-scale solar development in the countryside. Indeed, it is agreed by reference to Core Strategy Policy 16 that the Appeal Scheme will appropriately conserve and enhance the landscape character of the Site. In those circumstances, it is untenable to suggest that there is any conflict with Policy 22 of the LPP2.

Policy 34 of the LPP2

56. Policy 34 relates to green infrastructure and open space assets.[93] It explains that specified Green Infrastructure assets, including rights of way ("**RoW**") will be protected from development which adversely affects their function. The objective of the policy is directed at protecting the *function* of RoW. The Appeal Scheme will not affect the function of any existing RoW and will deliver two additional permissive RoW within the Site, linking up to existing footpaths and providing circular routes within the Site which give pedestrians the opportunity to move away from the road network. The Nottinghamshire County Council Public Rights of Way Officer raised no objection to the Scheme.[94] The Ramblers acknowledged the retention of a 6m Bridleway through the Site, which is, in fact, to be retained at a width of 10m; supported the proposed permissive footpaths and raised no objection to the Scheme.

57. The Appeal Scheme would protect and enhance the RoW network. While a number of local residents raised concerns with what they described as the creation of a "tunnel" along the bridleway route, that is a gross mischaracterisation of the Appellant's proposals. As shown on the landscape masterplan,[95] as the bridleway passes through the north-eastern part of the Appeal Site, there will be no hedgerow planting to the north and the proposed hedgerow to the south will be set back at a distance of c.30 – 40m. Thereafter, as the bridleway continues to the west, there will be a gap of 10m between the proposed

[92] **CD 7.9**, SoCG, para 7.1(b)
[93] **CD 4.2**, LPP2, p.128 - 129
[94] **CD 2.1**, Officer's Report, pdf 4 (under para 50)
[95] Appendix 2 to Mr Cook's proof, **CD 7.11.2**

hedgerows on either side and a further set-back of 5m either side for the fencing, allowing a distance of 20m from fence-to-fence.[96] Far from a "tunnel", this is a generous green lane, much wider than many of the existing roads in the locality which horse riders currently use without apparent difficulty to access the network of bridleways in the area.

58. Furthermore, there is nothing uncharacteristic about views being restricted by vegetation. The bridleway currently passes through an area of woodland and routes to the bridleway along local roads are characterised by hedges which restrict views to the fields beyond. The network of routes that pass through or close to the Site alternate between a sense of openness and enclosure where they pass through or between hedgerows and areas of woodland.

59. In light of the above, it is clear that the Appeal Scheme does not give rise to any conflict with Policy 34 of the LPP2.

Impacts

Landscape impacts

60. In accordance with the advice in the Guidelines for Landscape and Visual Impact Assessment ("**GLVIA**"),[97] Mr Cook's evidence identifies the relevant landscape receptors including the overall landscape character and individual elements of features in the landscape. The high point of the Council's criticism of Mr Cook's case appears to be that his judgments differ in some respects from that of a previous consultant engaged by the Appellant.[98] With respect, that point goes nowhere. It is entirely unremarkable for professional judgments to differ and Mr Cook has explained and fully justified the conclusions that he has reached.

61. It is agreed between the Council and Appellant that the appeal site is of medium value and sensitivity.[99] Mr Cook's view is that it is also of medium susceptibility to the proposed development,[100] whereas the Council alleges the Site to be highly susceptible.[101] Notably, Mr Cook's assessment of susceptibility accords with that of the

[96] See cross-section at Appendix 14 to AC's proof of evidence, **CD 7.11.2**
[97] **CD 3.21**, para 5.34
[98] Council's closing submissions, para 24
[99] **CD 7.9C**, landscape SoCG with LPA, para 2.6
[100] **CD 7.11** Mr Cook's proof, para 5.4
[101] **CD 7.9C**, Landscape SoCG with LPA, para 2.18

recently published Solar Farm Landscape Sensitivity and Capacity Study commissioned by the Council,[102] which explains that the modern agricultural landscape and urban influences decrease the susceptibility of Landscape Character Area K, within which the appeal site lies. The "urban influences" referred to in the Study for this character area include pylons and the modern scale of agriculture,[103] both of which are characteristic features of the Appeal Site and its immediate surroundings.

62. The impacts of the Scheme on the landscape elements within the appeal site are described and assessed in Mr Cook's evidence.[104] There is no comparable exercise in the assessment of Mr Browne or Ms Tinkler. In summary, and for the reasons he gives, the impacts on trees, hedges and public rights of way ("**PROW**") will be moderate beneficial; on topography will be negligible (adverse); on water features, negligible (beneficial) and on land use/land cover/openness will be moderate adverse. Overall, and having regard to both the adverse impacts and aspects of enhancement to the landscape character, the impact of the scheme on the character of the site will be minor adverse.[105]

63. As Mr Cook explained, even with the Appeal Scheme in place, the legibility of the landscape will remain.[106] The panels sit lightly in the landscape and are set within the fields such that the field pattern is retained and will prevail even with the Appeal Scheme in place.[107] While there will inevitably be some temporary impacts on openness as a result of the solar array, there is nothing in the Landscape Character Assessments which seeks to conserve the openness of the landscape as a characteristic feature of the landscape character.

64. The Council and Appellant agree that the impacts on both landscape and visual receptors will be localised and reversible.[108] NPS EN-3 explains that a typical upper limit for a solar farm is 40 years,[109] which is what is proposed here. It notes that time limited consents are appropriately described as "temporary" because there is a finite period for

[102] **INQ 41**, p.42
[103] **INQ 41**, p.21, table 25
[104] **CD 7.11** Mr Cook's proof, paras 4.1 – 4.31
[105] **CD 7.11** Mr Cook's proof, para 5.4
[106] Landscape Roundtable, 10.06.24.
[107] Landscape Roundtable, 10.06.24.
[108] **CD 7.9C**, landscape SoCG, paras 2.2 and 2.3
[109] **CD 3.4A**, EN-3, para 2.10.65

which it exists[110] and that the time limited nature of a solar farm is likely to be an important consideration in weighing harms against benefits of such schemes.[111] Ms Tinker's assertion, on behalf of the Rule 6 party, that, somehow, the Appeal Scheme was "permanent"[112], belies not only national policy but also the plethora of appeal decisions which accept that point.[113]

65. As to the impacts arising from the connection infrastructure, Mr Cook's explains in the Landscape and Visual Addendum,[114] that neither of the tower options would alter his conclusions on the effects of the Scheme on landscape elements, landscape character or on visual amenity, either alone or in conjunction with the Appeal Scheme. He also concludes that there would be no cumulative landscape or visual effects arising from either option along with other schemes.[115] There appears to be common ground with the Council on this issue as Mr Browne has explained that he does not consider that there will be any "material increase in landscape character effects" arising from either of the potential options.[116]

66. As to any wider impacts, the character of the landscape beyond the immediate boundaries of the appeal site will be unchanged and the impacts within the site would give rise to only a minor impact on the Aslockton Village Farmlands Landscape Character Area, of which the Appeal Scheme forms a very small part, even prior to the establishment of mitigation planting. That there will be no more than a minor impact on the Aslockton Village Farmlands LCA at completion and no impact at all on any of the wider LCAs was agreed with Mr Browne.[117]

67. It is further agreed between the Council and the Appellant that the Appeal Scheme would result in a net gain in hedgerow and tree resources within the Site.[118] This is important in circumstances where all of the published landscape strategies emphasise the importance of hedgerow and tree planting as a means of conserving and enhancing the landscape.

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[110] **CD 3.4A**, EN-3, para 2.10.66
[111] **CD 3.4A**, EN-3, para 2.10.150
[112] Landscape Roundtable, 10.06.24.
[113] See, for example, **CD 5.1; 5.3; 5.7; 5.8; 5.15**
[114] **INQ 43.5**
[115] **INQ 43** Appellant's Supplementary Statement, para 2.18
[116] **INQ 44.2** Council's Note on Additional Landscape & Visual Effects, paras 3.5 and 4.2
[117] **CD 7.14** Mr Browne's proof, Table 2, p.23 (minor adverse impacts on Aslockton Village LCA); and para 4.4.1, p.15 where he identifies the relevant landscape receptors which do not include any of the wider LCAs
[118] **CD 7.9C**, Landscape SoCG, para 2.4

While the Council's closing submissions disparage the proposed hedgerow and tree planting as "old-fashioned",[119] a consistent theme of the landscape studies is the acknowledgement that the landscape has degraded over time as a result of the increased mechanisation of agriculture,[120] which has resulted in the removal of hedgerows; the enlargement of fields and the loss of smaller and more intimate pastoral character. The strategies *all* recommend additional hedgerow and tree planting as a means of conserving and enhancing landscape character.[121] None of the studies suggest that tree and hedgerow planting will only conserve and enhance the landscape if they are on precise historic alignments.

68. In light of those landscape strategies, it is clear that Mr Cook was right to explain that there has been a time depth change as fields which were small, pastoral and enclosed have been enlarged to create the large, modern, arable fields which are apparent on site today.[122] His evidence is based on a careful analysis of those studies and reflects the fact that all the strategies at all levels seek to restore a more traditional landscape character and advocate the reinstatement of smaller pastoral fields with hedgerows and hedgerow trees.[123]

69. The evidence of both Mr Browne and Ms Tinkler fails to take account of this degradation of the landscape character and its distinctive features over time, simply assuming that all features that are currently present are positive and beneficial. From that false baseline, they assess the proposed native tree and hedgerow planting as harmful rather than beneficial because it reduces openness, without proper consideration of how this openness has arisen as a result of the degradation of the landscape associated with the pressures of modern agricultural practices. The emphasis in the landscape appraisals on tree and hedgerow planting will inevitably have some effect on openness but nonetheless is treated as a key means of conserving and enhancing landscape character. Notably, none of the landscape appraisals contain any objective of maintaining or increasing openness.

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[119] Council's closing submissions, para 25
[120] **CD 3.28**, NCA Area Profile, 48 Trent and Belvoir Values, p.3 'Summary'; **CD 3.29**, East Midlands Landscape Character Assessment, p.140, final paragraph in left-hand column and p.142 second paragraph in the left-hand column; **CD 3.30**, South Nottinghamshire Farmlands, pdf 2, 11th bullet point;
[121] **CD 3.28**, NCA Area Profile, 48 Trent and Belvoir Values, p.4, Statement of Environmental Opportunities SEO2; **CD 3.29**, East Midlands Landscape Character Assessment, p.142, both paragraphs on left-hand column; final paragraph on right-hand column; **CD 3.30**, South Nottinghamshire Farmlands, pdf 3,bullet points 1 – 3, 6, 7 and 8; **CD 3.30**, Aslockton Village Farmlands, pdf 6, bullet points 1 - 6
[122] Landscape Roundtable, 10.06.24.
[123] Landscape Roundtable, 10.06.24.

70. It would be a mistake to assume intensive arable use is the only characteristic land use or that its influence on the landscape character and condition is necessarily positive. It has clearly caused harm to landscape character and condition through the pressures of intensification including associated loss of trees and hedgerows. That in turn has led to a loss of distinctiveness and a consequent increase in openness. Restoring that which is distinctive and characteristic in this landscape is likely to reduce the more recent increase in openness. The woodland and hedgerow planting associated with the Appeal Scheme would be in accordance with the landscape appraisal guidelines.

71. The proposed hedgerow planting are landscape benefits which will prevail beyond the operational lifespan of the Appeal Scheme. Mr Browne accepted that a significant amount of new planting is proposed which would have a "net moderate beneficial effect".[124] He agrees, therefore, with Mr Cook's view that the landscape planting would have a "moderate beneficial impact".[125] These benefits will remain after any harms from the Appeal Scheme have long since being forgotten, leaving a positive and beneficial contributor to the character and appearance of the area. As Mr Cook explained, once the hedgerows have been established for over 30 years, planning permission would be required for their removal, ensuring that the Council would have an appropriate mechanism available to secure their retention. For the reasons discussed above, any suggestion that the proposed planting is somehow harmful in its own right must be rejected in circumstances where all of the landscape strategies positively encourage tree and hedgerow planting as a means of conserving and enhancing the landscape character of the area.

Visual impacts

72. NPS EN-3 explains that with effective screening and appropriate topography, the area of visual influence from ground-mounted solar panels can be appropriately minimised.[126] That is precisely what has happened here. The Council and Appellant agree that any

[124] Landscape Roundtable, 10.06.24.
[125] Landscape Roundtable, 10.06.24.
[126] **CD 3.4A**, EN-3, para 2.10.95

visual impacts will be reversible and localised to the Appeal Site itself and limited points on its immediate boundaries.[127]

73. The Appeal Scheme is well contained as a result of topography and the low visual profile of the solar arrays. It will be set within existing fields and within a wider field pattern and woodland landscape where field boundaries are demarcated by mature hedgerows and pockets of woodland.

74. As will have been apparent on the site visit, the roads surrounding the Appeal Site are generally narrow and bounded by hedgerows and hedgerow trees. The views from these roads are channelled along the lanes themselves, in the direction of travel with limited opportunities to view the countryside beyond the existing vegetation.

75. Where views into the Appeal Site are available, they are generally perpendicular to the direction of travel, through gaps in mature hedgerows which are proposed to be "gapped up" through tree and hedgerow planting. Where visible, only small elements of the Scheme would be apparent and there will be no opportunity to experience the full extent of the proposal from any one location.

76. The parties' positions as to the visual impacts from View-Points 1 – 8 are set out in Appendix 1 to the Landscape SoCG.[128] Neither Mr Cook nor Mr Browne consider that the impacts from the grid connection infrastructure would result in any change to their assessments of impacts from those View-Points.[129] It is apparent from that document that Ms Tinkler's assessment on behalf of the R6 party puts her significantly at odds with both other landscape experts in that she consistently exaggerates the magnitude of impacts. Where differences arise between the Council and the Appellant, it is apparent from Mr Browne's evidence that this is largely a result of the importance he places on the openness of existing views. As explained above, his analysis fails properly to acknowledge that the openness is the result of the pressures of intensive, modern agricultural practices. The Landscape Character Assessments identify this as a feature which degrades the landscape

[127] **CD 7.9C**, Landscape SoCG, paras 2.2 - 2.3
[128] **CD 7.9C**
[129] At most, Mr Browne identifies a minor adverse visual impact from Footpath 2, south of the appeal site; and Bridleway 3, running eastwards from the eastern boundary of the appeal site at **INQ 44.2** Council's Note on Additional Landscape & Visual Effects, paras 3.5 and 4.2.

and encourage the restoration of a more intimate landscape through tree and hedgerow planting. If the landscape is to be conserved and enhanced through such planting, it will inevitably affect the openness of some existing views but there is nothing inherently unattractive or unappealing about views of hedgerows and trees demarcating smaller field parcels and Mr Browne's assessment of visual impacts must be considered in light of the landscape strategies which encourage such planting.

Mitigation of impacts

77. It is important to bear in mind, in considering whether the landscape and visual impacts of this scheme are "unacceptable" that the Council has:
    a. Made no suggestions that there should be further or different mitigation.
    b. Not suggested that if the development is allowed it would be better to have no mitigation or lesser mitigation.
    c. Not alleged that the proposed planting mix is inappropriate, and EN-3 positively encourages screening solar development with native hedges, trees and woodlands.[130]
    d. Not provided any evidence that the type, location and extent of mitigation planting ought to be different, if the development is allowed.

Other point raised by R6 party

78. Turning to other matters raised by the Rule 6 party, and firstly to glint and glare, the Inspector can have confidence in the fact that the Appellant and the Council both agree that this is a non-issue as the proposed landscaping has been designed to mitigate this impact.[131] Ms Tinkler's bald assertion that the Appellant has failed to consider that issue[132] needs to be considered against the context that there is a glint and glare assessment which the Council considers adequate.[133]

79. As to noise, again the Inspector can have confidence that the Appellant and the Council both agree that this is "not a noise intensive form of development".[134] As to any noise from the inverters, as Mr Cook explained, you would have to be standing very close in

[130] **CD 3.4A**, EN-3, para 2.10.131
[131] **CD7.9**, SoCG, para 7.1
[132] Landscape Roundtable, 10.06.24.
[133] **CD7.9** SoCG, para 7.1
[134] **CD7.9** SofCG, para 7.1

order to hear that slight noise but they are all set back from public locations such that they will not be discernible.[135]

80. As to the assertion by the Rule 6 party that different fencing to the deer fencing proposed in the application might be erected on the Appeal Scheme, and that this would have a greater, and more adverse effect, as we explained, there is a condition agreed between the Appellant and the Council which would remove the Appellant's ability to rely on permitted development rights. Any change to that fencing would require, therefore, a further application for planning permission to the Council at which stage those impacts, if any, would be fully assessed and a balanced judgment reached in determining that application would be reached by the Council.

Conclusion on main issue 1

81. In conclusion on this issue, the impacts of the Appeal Scheme have been appropriately mitigated and the proposed planting would deliver a number of benefits for the receiving landscape, restoring some of the characteristic elements and structure, and sense of enclosure.

82. The residual impacts are acceptable, do not give rise to any conflict with national or local policy, and do not justify the refusal of planning permission either considered alone or together with any other impacts.

83. RfR1 has not been substantiated.

Main issue 2: The effect of the development on heritage assets, including the Thoroton and Hawksworth Conservation Areas and associated listed buildings

Policy

84. It is common ground that if harm is identified to heritage assets but the public benefits are such to outweigh that harm, approval would not be in conflict with the NPPF. It was also agreed as common ground with Ms Temple that the heritage impacts in this case do

[135] Landscape Roundtable, 10.06.24.

not trigger a requirement to consider and discount alternative sites,[136] albeit the Council's closing submissions fail to acknowledge that agreement.[137] It is further agreed, having regard to the High Court decision in *Palmer,* that although the statutory duty requires special regard to be paid to the desirability of preserving Listed Buildings and their settings and the character and appearance of Conservation Areas, that does not mean that any harm, however minor, would necessarily require planning permission to be refused.[138]

85. In a bizarre approach from the Council's planning witness, Ms Temple's evidence did not identify any alleged policy conflict arising from the heritage impacts of the Scheme. Without any analysis of her own, in her oral evidence she relied on the development plan conflicts identified in the Decision Notice, namely Core Strategy Policy 11; Local Plan Policies 16 and 28.

Core Strategy Policy 10

86. Importantly, it is no part of the Council's case that the Appeal Scheme's heritage impacts conflict with Core Strategy Policy 10. While Ms Temple originally sought to allege in her oral evidence that the Appeal Scheme was in conflict with Policy 16 of the LPP2 because its heritage impacts were unacceptable by reference to Policy 10 of the Core Strategy, she subsequently accepted that part of her oral evidence should be struck out[139] in circumstances where no conflict with Policy 10 was alleged in the Decision Notice; or her written evidence and in light of the Planning Statement of Common Ground which recorded the Council's agreement that Policy 10 was not engaged by the heritage impacts of the Appeal Scheme.[140]

87. Part (2) of Policy 10[141] provides that development will be assessed in terms of its treatment of a number of elements, including (h) the potential impact on important views and vistas, including townscape, landscape and other individual landmarks and (i) the

[136] Ms Temple XX, 14.06.24 – where she disavowed the evidence of Mr Bate (the Council's heritage witness) at paras 6.1 – 6.11 of his proof as to the need to rule out alternative sites in order to demonstrate a "clear and convincing" justification for the Scheme
[137] Council's closing submissions, para 29
[138] **CD 7.9**, SoCG, para 7.1(mm)
[139] Ms Temple XX, 14.06.24
[140] **CD 7.9**, SoCG, para 7.1(kk)
[141] **CD 4.1**, p.71

setting of heritage assets. Part (4) of Policy 10 provides that "Development must have regard to the local context including valued landscape/townscape characteristics, and be designed in a way that conserves locally and nationally important heritage assets and preserves or enhances their setting".

88. It is therefore agreed between the Council and the Appellant that the development has been assessed and found to be acceptable in terms of its impacts on important views and vistas, including individual landmarks and that it has been designed in a way that conserves locally and nationally important heritage assets and preserves their setting. That acknowledgement sounds the death knell to the Council's second reason for refusal.

Core Strategy Policy 11

89. Core Strategy Policy 11 is expressed in positive terms: it provides that proposals will be supported where heritage assets and their settings are conserved or enhanced in line with their interest and significance.[142] When asked whether this policy should be interpreted to mean that any development which causes any level of heritage harm would conflict with its terms, Ms Temple said it was "silent on that point" and that she could not read those words into it.[143] She went on to say that a scheme which caused any harm to a heritage asset would be in conflict with the policy which was (a) impossible to reconcile with her previous answer and (b) an approach which would not allow public benefits to be weighed against heritage harm in assessing compliance with the policy.

90. If Ms Temple is correct that any heritage harm generates conflict with Policy 11, without allowing for a balance of benefits and harms, then the policy is not consistent with the NPPF, which reduces the weight it attracts.[144] If she is incorrect, and the policy does allow for such a balancing exercise then it adds no separate policy test beyond that contained in the NPPF. In either case, the alleged conflict with Policy 11 is flatly contradictory to the Council's acceptance that the Appeal Scheme accords with Core Strategy Policy 10 which itself requires the conservation of heritage assets and preservation of their setting.

[142] **CD 4.1**, p.75
[143] Ms Temple XX, 14.06.24
[144] **CD 3.1A**, NPPF, para 225

Policy 28 of the LPP2

91. Part (1) Policy 28 of the LPP2 provides that proposals affecting heritage assets will be required to demonstrate an understanding of the significance of the assets and their setting; identify the impact of development and provide a clear justification for development so that a decision can be made as to whether the public benefits outweigh any harm.[145]

92. As Ms Temple accepted, if the Inspector is satisfied that such an assessment has been undertaken and that the public benefits of the scheme decisively outweigh any harm, there would be no conflict with the policy.[146]

93. Part (2) of Policy 28 identifies a number of factors that should be taken into account. It is agreed that the Inspector has sufficient information before him to take account of those matters and that the Policy does not direct refusal or grant of permission, but simply says those matters should be taken into account.[147] The two matters relied upon by the Council are whether the proposal would conserve or enhance heritage assets and whether it would respect the relationship of such assets to views and landmarks.[148] As explained above, it is agreed in the context of Core Strategy Policy 10 that the development is acceptable, both in its impacts on important views and vistas, including landmarks, and that it conserves heritage assets and preserves their settings. As such, no conflict with policy 28 arises.

Policy 16 of the LPP2

94. As discussed above, Policy 16 provides that renewable energy schemes will be granted permission where they are "acceptable" in terms of the historic environment. Ms Temple agreed that policy did not require nil detriment to heritage assets. To decide if a scheme is acceptable, it is necessary to weigh any harms against any benefits.[149]

<u>Approach</u>

[145] **CD 4.2**, LPP2, p.111
[146] Ms Temple XX, 14.06.24
[147] Ms Temple XX, 14.06.24
[148] Ms Temple XX, 14..06.24
[149] Ms Temple XX, 14.06.24

95. Ms Garcia's assessment of heritage impacts followed the staged approach recommended by Historic England,[150] as acknowledged by Mr Bate.[151] She identified the significance of each heritage asset; assessed the contribution made to significance by its setting; considered whether the Appeal Site formed part of the setting that contributes to the significance of the asset; and assessed whether the significance of the asset would be harmed by the Scheme, including the proposed mitigation planting (and if so, to what extent).[152]

96. By contrast, Mr Bate has not followed that recommended approach, as he accepted in XX.[153] His assessment is highly generalised in nature which makes it very difficult to pinpoint his conclusions as to the significance of each asset; the way in which setting contributes to significance and what harm to significance is said to arise from the Scheme.[154] He agreed in XX that it was important to:

a. Identify the relevant asset that has the potential to be affected and the features which make it significant;
b. Identify the extent of the extent to which the setting contributes to its significance; and
c. Assess and explain how a proposed development in the setting of a HA would affect the significance of that asset or the ability to appreciate it in order to assess any impacts on significance of a heritage asset through development in its setting.[155]

97. Yet this was precisely what he did not do, meaning his evidence is of little, if any, assistance to the Inspector.

98. Furthermore, Mr Bate sought to argue that where there is an impact on heritage assets, it is incumbent on a developer to consider and rule out alternative sites which might avoid or reduce the heritage harm.[156] In XX he expressed the view that NPPF paragraph 206 created a free-standing test separate from the balancing exercise in paragraph 208 of the NPPF and so imported a duty to consider alternative sites which might reduce or avoid

[150] Ms Garcia EiC, 11.06.24.
[151] Mr Bate XX, 11.06.24.
[152] **CD 7.12** Ms Garcia's proof, para 3.1 explains her approach
[153] Mr Bate XX, 11.06.24
[154] Ms Garcia EiC, 11.06.24.
[155] Mr Bate XX, 11.06.24.
[156] **CD 7.15,** Mr Bate's proof, paras 6.4 – 6.9

the harm.[157] His evidence is flatly contrary to established caselaw[158] and was disavowed by Ms Temple.

99. Ms Garcia's evidence is plainly to be preferred to that of Mr Bate. Mr Garvey's attempts in XX to make much of the small differences between Ms Garcia's judgements and the earlier conclusions in the earlier NEO assessment were wholly unconvincing.[159] It is entirely unremarkable, as Ms Garcia explained, for professional judgments to differ and she has explained and fully justified the conclusions that she has reached.

100. Following Mr Bate's XX, it is agreed that the Inspector should proceed on the basis that setting is not itself a heritage asset; the simple fact of change within a setting is not necessarily harmful; and intervisibility between an asset and a development does not equate to harm.

Impacts

101. It is agreed between the Council and the Appellant that the Appeal Scheme will not give rise to any direct impacts to any heritage assets; that the duty in s.72 of the Planning (Listed Building and Conservation Areas) Act 1990 is not engaged because the Scheme is not within a Conservation Area;[160] that the Council only alleges harm to 6 heritage assets; all impacts fall within the less than substantial harm range and that, within that range they would, at most, be in the lower-middle quartile or the range and mostly within the lower end of that range and in every case, the harm will be reversible.

102. While it may be difficult for Mr Bate to conceive of how short 40 years is,[161] in the context of the lifespan of these particular heritage assets, 40 years is but a blink of the eye. The relevant assets have existed for many hundreds of years and will remain long after the Appeal Scheme's operational life. Indeed, Mr Bate, eventually accepted that in the context of the age of the Church of St Helena and the Church of St Mary and All Saints, the impacts would be "short term".[162]

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[157] Mr Bate XX, 11.06.24.
[158] *Bedford v SofS* [2013] EWHC 2847 (Admin) at [29], **CD 5.22**
[159] Ms Garcia XX, 11.06.24.
[160] At paragraph 29 of the Council's closing submissions, is an erroneous assertion that s.72 is engaged. This is both wrong, as the development is outwith the Conservation Areas, and contrary to the agreed position in the SoCG, **CD 7.9,** para 7.1 (ll)
[161] Mr Bate XX, 11.06.24.
[162] Mr Bate XX, 11.06.24.

Thoroton and Hawksworth Conservation Areas

103. Ms Garcia's evidence is that the harm to the Thoroton Conservation Area would be less than substantial harm at the lowermost end of the scale. Mr Bate accepts that the harm is less than substantial but suggests that it is in the lower middle quartile of that range.

104. As to the Hawksworth Conservation Area, Ms Garcia assesses the harm as less than substantial, at the low end of the range, whereas Mr Bate assesses it as less than substantial harm at the lower-middle quartile of the range.

105. Ms Garcia's assessment of impacts on the Conservation Areas is set out at sections 6 and 10 of her proof of evidence and is commended to the Inspector as a thorough, transparent and objective assessment of the likely impacts of the Scheme.

106. In summary, she finds that the Appeal Site makes a very small contribution to the significance of both Conservation Areas. In both instances, the contribution arises through the historic association between the settlements and the agricultural land within the same parish which gives some legibility and understanding to the historic agricultural origins of the settlements.

107. In her assessment of impacts on Thoroton Conservation Area, Ms Garcia explains that:

    a. There would be no impact on the intrinsic character and appearance of the Thoroton Conservation Area from which it derived its special interest.[163]

    b. The nearest solar arrays will be located over 160m from the Conservation Area, beyond an intervening field parcel and mature hedgerows such that the settlement's immediate agricultural setting will be unaffected.[164]

    c. The experience of the Scheme when leaving or approaching the Conservation Area will be restricted by mature hedgerows and enhanced boundary planting.[165]

    d. There will, therefore, be no "change from any of the key views within the Conservation Area which are identified in the Conservation Area appraisal".[166]

[163] **CD 7.12** Ms Garcia proof, para 6.31
[164] **CD 7.12** Ms Garcia proof, para 6.32
[165] **CD 7.12** Ms Garcia proof, para 6.33
[166] **CD 7.12** Ms Garcia EiC, 11.06.24.

e. The ability to appreciate the former agriculture landscape will be retained as the panels are on top of the land".[167]

f. The "lowermost" less than substantial harm arose due to the change of views towards the settlement, primarily the views of the spire of St Helena from the bridleway in the north-east part of the Appeal Site, and the slight change in an element of agricultural land for a temporary period.[168]

g. This level of harm was appropriate and justified in circumstances where the route of the bridleway is only shown on historic mapping from 1921; it is not within the parish of Thoroton; does not provide a direct access to the Church or Thoroton Conservation Area; and the Church spire is not the focal point of the view but instead part of a wider, peripheral view.[169] The new hedgerow proposed to the south of the bridleway would partially reinstate a historic field boundary and help screen views of the panels without blocking any part of the spire from the views.[170]

108. In her assessment of impacts on the Hawksworth Conservation Area, Ms Garcia explains that:

a. The Appeal Scheme would have no impact on the intrinsic character or appearance of the Conservation Area, from which it derives most of its significance.[171]

b. The nearest solar arrays would be c.150m north-east of the Conservation Area beyond a buffer of undeveloped agricultural land and behind a new hedgerow which partially reinstates a historic field boundary.[172]

c. There would be some low-level harm arising from the slight perception of panels when entering the Conservation Area from the north and consequent impact on the perception of agricultural land in the immediate vicinity and parish of Hawksworth, which slightly reduces the sense of isolation; character of the journey and historic understanding of the agricultural origins of the settlement.[173]

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[167] **CD 7.12** Ms Garcia proof, para 6.35 and Thaxted appeal decision (**CD 5.28**), paras 65 - 66
[168] Ms Garcia EiC, 11.06.24.
[169] **CD 7.12** Ms Garcia proof, para 5.20
[170] **CD 7.12** Ms Garcia proof, para 5.21
[171] **CD 7.12** Ms Garcia proof, para 10.37
[172] **CD 7.12** Ms Garcia proof, para 10.38
[173] **CD 7.12** Ms Garcia proof, para 10.44

d. There are extensive swathes of agricultural land surrounding Hawksworth that will not experience any change and which will continue to contribute to the agricultural origins of the settlement.[174]

109. Mr Bate's assessment of a marginally higher level of harm is derived from his views as to a number of factors which did not bear scrutiny. In particular, he relied on the fact that (i) the two Conservation Areas where physically close to one another; (ii) the fact there was some physical and visual connections between them; (iii) the alleged impacts on views of the Churches of St Helena and St Mary's; and (iv) the fact they both had rural settings which were said to be harmed by the Appeal Scheme, including the proposed landscape planting.

110. Taking those issues in turn, the physical proximity of the Conservation Areas does not contribute to the heritage significance of either asset. Thoroton and Hawksworth developed as individual medieval settlements under separate manors and different Lordships. They are in separate parishes, each with their own separate churches. They were not deliberately developed in proximity to one another for any aesthetic, functional, ceremonial or religious reason. All of those matters were agreed with Mr Bate in XX. He further agreed that the fact they are physically proximate to one another is simply incidental to their historic development. Nor is there anything in the Conservation Area Appraisals for either Conservation Area to suggest that the physical proximity between them is a feature that contributes to their character, appearance or heritage significance. The Rule 6 Party has sought through its closing submissions to adduce entirely new evidence to the effect that Hawksworth and Thoroton Manors were owned by the same family during the 18th and 19th centuries.[175] It is entirely inappropriate to seek to adduce new evidence through a closing statement, which the Appellant's witnesses have no opportunity to respond to. The new evidence must therefore be rejected.

111. To the extent that the physical proximity *is* a feature which contributes to their significance, the Appeal Scheme will not affect that proximity. Nor will it adversely affect any perception of their proximity. In fact, there are very few locations where they can be perceived together in a single view, and where they can, the settlements appear distant and only vaguely perceptible. Mr Bate has identified only one view where the spire of St

[174] **CD 7.12** Ms Garcia proof, para 10.45
[175] Rule 6 Party's closing submissions, para 54

Helena can be seen in conjunction with Hawksworth[176] which is plainly not a clear illustration of the elements of Hawksworth that it is desirable to conserve, given that the buildings which can most readily be made out at the modern sheds associated with the WB Stubbs manufacturing site. Mr Bate accepted that any impact on the perception of proximity would only be a matter of heritage concern if the Inspector finds that the physical proximity between the settlements is of heritage significance,[177] which is firmly disputed by Ms Garcia.

112. As to the physical connections between the Conservation Areas, Mr Bate identified two PROW connections: the footpath running south-east from Hawksworth to Thoroton and the bridleway running through the north of the Appeal Site. The footpath is not shown on the 1820s Henry Stevens map and first appears in the 1883 Ordnance Survey Map.[178] The footpath does not provide a direct link between Thoroton and Hawksworth in that users have to traverse along Main Road to get from one part of the footpath to another, albeit they do provide the most direct route available between the settlements. Mr Bate accepted in XX that there would be no harm arising from the Appeal Scheme along this route because the occasional glimpses of the Scheme that might be available would not interfere with the appreciation of either heritage asset.[179]

113. As to the bridleway crossing the north-eastern part of the Appeal Site, again, that PROW was not shown on its current alignment in the 1820s Henry Stevens Map,[180] or in the 1921 map.[181] The PROW that did exist, on a different alignment, in the 1820s passed through a landscape that was much more enclosed with field boundaries that at present.[182] The PROW on the current alignment appears for the first time in the latter half of the twentieth century.[183] As to the extent that the modern bridleway connects Thoroton to Hawksworth, Mr Bate accepted that it was a tortuous route, across fields between the villages which could not be described as a direct or designed approach to the historic core of either settlement. The fact that residents can currently walk between the two

[176] **CD 7.15** Mr Bate, figure 5, p.12 - 13
[177] Mr Bate XX, 11.06.24
[178] Mr Bate XX, 11.06.24
[179] Mr Bate XX, 11.06.24
[180] **CD 7.12** Ms Garcia's proof, plate 4, p.30
[181] **CD 7.12** Ms Garcia's proof, plate 22, p.58
[182] **CD 7.12** Compare the field boundaries shown in Ms Garcia's plate 22 (p.58) to the current field boundaries shown in plate 23, p.59
[183] **CD 7.12** Ms Garcia's proof, paras 8.17 and 10.26, as accepted by Mr Bate in XX, 11.06.24

Conservation Areas on a modern PROW is simply not relevant to the heritage significance of either Conservation Area.

114. The impact of the Appeal Scheme on the Churches of St Helena (in Thoroton) and St Mary's (in Hawksworth) is considered in more detail below, save to note here that there will be no adverse impact on the Church of St Mary's which could be said to cause any harm to Hawksworth Conservation Area; and the impact on the spire of St Helena has already been taken into account in Ms Garcia's assessment of harm to Thoroton Conservation Area and does not justify any further increase to the level of harm she has identified.

115. As to the rural setting of the Conservation Areas, while Ms Garcia accepts that this factor makes some contribution to their significance and accounts for it in the harm she has identified, it is important to recognise the Appeal Site currently exhibits a modern agricultural landscape, subject to intensive agricultural farming, which is very different than the farming which would have related to the origins of the settlement.[184] Indeed, Mr Bate agreed that there is no particular heritage magic about the current intensive arable farming around both Conservation Areas as the reality is that the nature of farming has changed.[185]

116. The introduction of arrays within the Site will constitute a change to one part of the Conservation Areas' wider rural settings and both Conservation Areas will continue to be set within a landscape of agricultural fields. The Site itself will remain rural in character, used for three purposes (mitigation planting, solar arrays and grazing) which are commonly (indeed, almost exclusively) associated with the countryside.

Grade I Listed Church of St Helena

117. Ms Garcia assesses the impacts on the Church of St Helena to be less than substantial harm at the lower end of the scale. Again, the difference is relatively minor, with Mr Bate identifying a less than substantial level of harm in the lower middle quartile, towards the middle of that quartile.

118. Ms Garcia's assessment of impacts on the Church of St Helena is at section 5 of her proof and is commended to the Inspector.

[184] Ms Garcia EiC, 11.06.24.
[185] Mr Bate XX, 11.06.24.

119. As Ms Garcia explained, there is no evidence of any functional relationship between the Appeal Site and the Church and there is no perception of the Appeal Site from the immediate setting of the Church.[186] The spire of the Church is visible from the PROW to the northeast of the Appeal Site, where the spire is visible but only distantly and vaguely in south facing views.[187] She concludes, therefore, that, overall, the Appeal Site makes only a very small contribution to the significance of the Church through its setting.[188]

120. As to the impacts of the Appeal Scheme on the significance of the Church, Ms Garcia explained that:

    a. The nearest solar arrays would be located over 340m from the Church and separated by the northern edge of Thoroton settlement by a field and existing woodland planting.[189]

    b. The physical fabric of the Church, which is the primary factor contributing to its heritage significance, would be unaffected by the Scheme;[190]

    c. The Scheme would not affect the most important views of the Church, from within the churchyard and historic settlement core.[191]

    d. Views from most PROW surrounding the Church will be unaffected because the Appeal Scheme will not be visible or will be behind the viewer, as they look towards the Church.[192] As Mr Bate accepted, there will be no impacts on views, or the setting of the Church from the north-east; east; south-east; or south-west. As such, views of the Church spire from most points of the compass will be unaffected by the Appeal Scheme.[193]

    e. When travelling south, along Cliffhall Lane towards Thoroton, views of the Church spire do not over-sail the Appeal Site; existing views of the spire will remain unaffected and any view of the Appeal Scheme would be peripheral to views of the Church spire and heavily filtered by existing and proposed landscape planting. There would be no diminishing of the ability to understand the approach to

[186] **CD7.12** Ms Garcia's proof, paras 5.16 – 5.17
[187] **CD7.12** Ms Garcia's proof, para 5.20
[188] **CD7.12** Ms Garcia's proof, para 5.26
[189] **CD7.12** Ms Garcia's proof, para 5.27
[190] Ms Garcia EiC, 11.06.24
[191] **CD 7.12** Ms Garcia's proof, para 5.28
[192] **CD 7.12** Ms Garcia's proof, para 5.30
[193] Which was considered to be a relevant factor in the Marnhull appeal decision (**CD 5.29**), para 20

Thoroton signalled by the Church spire.[194] Mr Bate agreed that there would be very few gaps along Chiffhall Lane from which the Appeal Scheme would be visible, and where they were, the panels would be set back from the eastern boundary, where a new permissive footpath is proposed to be created.[195]

f. Views of the Church spire from the PROW in the north-eastern part of the Appeal Site are distant and peripheral. The fabric of the tower that is visible in the view today will remain unaffected with the Appeal Scheme in place from all viewpoints.[196] The PROW is not a designed or deliberate historic view of the Church and its destination is not the Church. Given the sloping topography, the set-back of the appeal scheme by c.30 – 40m and the low-lying nature of the solar arrays, the Appeal Scheme will not block, impede, interrupt or dominate views of the spire from the PROW. Its value as a historic landmark would therefore remain unaffected by the Scheme.

121. The spire of the Church is viewed in the context of overhead power lines and tall pylons. No party to the appeal has suggested that this detracts from the significance of the Church. Mr Bate's suggestion that Ms Garcia's evidence entails some implicit recognition that the existing pylons degrade the significance of the Church[197] is entirely misplaced. While she, quite properly, acknowledges the presence of the pylons in her description of the baseline position, there is no suggestion at all in her evidence that their presence somehow degrades the significance of the Church.

122. Further, and as identified by Ms Garcia in her evidence, Historic England's guidance on setting explains that the heritage significance a church spire is unlikely to be affected by small-scale development unless it competes with it, such as, for example, the way in which a wind turbine development and/or a tower block might.[198] That will plainly not be the case here. Mr Bate said he would not accept that the Appeal Scheme is small scale[199] but plainly Historic England meant scale in terms of height rather than extent.

Grade II Listed Church of St Mary's and All Saints*

[194] **CD 7.12** Ms Garcia's proof, para 5.34, as accepted by Mr Bate in XX, 11.06.24
[195] Mr Bate XX, 11.06.24
[196] **CD 7.12** Ms Garcia's proof, para 5.36.
[197] **INQ 44.3**
[198] **CD7.12** Ms Garcia PofE, para 5.15
[199] Mr Bate EiC, 11.06.24.

123. Ms Garcia considers that there would be no harm to the Church of St Mary's and All Saints, in Hawksworth. Mr Bate suggests less than substantial degree of harm which he says is in the lower middle quartile of that range.

124. Again, it is Ms Garcia's judgment which is to be preferred.[200] She explained that the immediate setting of the Church is its churchyard and it is from there, and along the surrounding roads, that the external fabric of the Church, which primarily contributes to its significance, can be best appreciated.[201]

125. As to the impacts of the Scheme, she explained that:

a. The nearest solar arrays will be located over 400m north-east and 600m east-south-east of the Church and separated by intervening built form within the settlement as well as by intervening agricultural land.[202]

b. The Appeal Scheme would not affect the most important views of the Church from the churchyard of historic settlement core.[203]

c. The surrounding built form of Hawksworth and the squat nature of the tower means that it is not readily visible in conjunction with the agricultural hinterland of the village.[204] The Church was not designed to afford views out across the wider landscape but to be chiefly visible from within the settlement.[205]

d. The PROW do not approach the Church directly and views which do exist are generally incidental, long-distance, oblique and filtered. Certainly, the Church was not intended as a way-marker of landmark from those PROW.

e. There is no evidence of any functional relationship between the Church and the Appeal Site, and the Site makes no meaningful contribution to understanding the Church's location or significance within a historic farming settlement.[206]

f. Views of the Church tower from the PROW within the Appeal Site are not key views and do not contribute to the Church's significance. The PROW is a modern creation from the late twentieth century, which provides views that are not a

[200] **CD 7.12** See section 8 of Ms Garcia's proof for her assessment of impacts on St Mary's Church
[201] **CD7.12** Ms Garcia PofE, paras 8.6 and 8.13
[202] **CD7.12** Ms Garcia's proof, para 8.22
[203] **CD7.12** Ms Garcia's proof, para 8.23
[204] **CD7.12** Ms Garcia PofE, para 8.10
[205] **CD7.12** Ms Garcia PofE, para 8.11
[206] **CD7.12** Ms Garcia PofE, para 8.15

reflection of the historic landscape surrounding the Church, which was subject to a far high degree of sub-division.

126. The chief difference between Ms Garcia and Mr Bate arises from his suggestion that because there are so few views of the Church from outside the Conservation Area, that somehow makes the views all the more significant.[207] There is no support in Historic England guidance for that proposition. The Church does not and was not intended to have a visual presence within the surrounding landscape.[208] As Mr Bate accepted in XX, it was deliberately designed to be prominent in the settlement it served but not in the wider landscape.[209] Mr Garcia was right to say that the view of the tower from parts of the PROW was no more than a happenstance view, in winter, of the top of the tower which makes no contribution to its significance as a heritage asset.

127. It light of the above, together with the fuller analysis in Ms Garcia's evidence, it is plain that the Appeal Scheme will give rise to no harm to the significance of the Church through a change in setting.

Grade II Listed Hawksworth Manor

128. Ms Garcia considers there would be no harm to Hawksworth Manor and the adjoining pigeoncote.[210] By contrast, Mr Bate identifies less than substantial harm at a low level.

129. Ms Garcia explained that the significance of the asset arises primarily from its physical fabric with setting contributing to a lesser extent.[211] The immediate surrounds of Hawksworth Manor, including the domestic grounds within which it is set, have been significantly domesticated and modernised.[212] The wider agricultural surrounds contribute to the setting of the manor to a far lesser degree than the gardens, driveway or the settlement of Hawksworth.[213]

130. As Ms Garcia explains, the asset was designed as a domestic building with no direct functional association with the agricultural land surrounding it.[214] There is no evidence

[207] **CD 7.15** Mr Bate's proof, para 3.15
[208] **CD7.12** Ms Garcia PofE, para 8.20
[209] Mr Bate XX, 11.06.24
[210] **CD 7.12** Ms Garcia assesses the impact on Hawksworth Manor in section 7 of her proof
[211] **CD7.12** Ms Garcia PofE, para 7.16
[212] **CD7.12** Ms Garcia PofE, paras 7.6 - 7.7
[213] **CD7.12** Ms Garcia PofE, para 7.16
[214] **CD7.12** Ms Garcia PofE, para 7.17

of any historic association with the Appeal Site, which is within a separate parish.[215] Mr Bate was not able to provide any evidence of such an association beyond saying that it was "unlikely or unclear".[216]

131. As to the impacts of the Appeal Scheme, Ms Garcia's conclusion of no harm is justified in circumstances where:

a. The nearest solar arrays will be located at a distance of c.400m east-south-east, beyond intervening fields and vegetation as well as enhanced mitigation planting.[217]

b. The agricultural land closest to the Manor will be unaffected by the Scheme.[218]

c. The nearest solar arrays would be screened from the Manor by retained and enhanced hedgerow planting and intervening topography.[219]

d. Any historical association between the Manor and surrounding agricultural land has been severed and is not tangible.[220]

e. The ability to experience and appreciate the significance of the Manor will be unaffected by the Scheme, as Mr Bate accepted.[221]

132. It light of the above, together with the fuller analysis in Ms Garcia's evidence, it is plain that the Appeal Scheme will give rise to no harm to the significance of Manor through a change in setting.

Grade II Listed Model Farm Buildings at Top Farm

133. Ms Garcia considered that there would be no harm to the Model Farm buildings at Top Farm.[222] By contrast, Mr Bate identified a low degree of less substantial harm which he says is so low as to almost be no harm. Indeed, he conceded that the low level of harm to this asset was unlikely to be a determining issue.[223]

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[215] **CD7.12** Ms Garcia PofE, para 7.17
[216] Mr Bate EiC, 11.06.24.
[217] **CD 7.12** Ms Garcia's proof, para 7.24
[218] **CD 7.12** Ms Garcia's proof, para 7.25
[219] **CD 7.12** Ms Garcia's proof, para 7.26
[220] **CD 7.12** Ms Garcia's proof, para 7.27
[221] XX Mr Bate, 11.06.24
[222] **CD 7.12** Ms Garcia assesses the impacts on Top Farm in section 9 of her proof
[223] **CD 7.15** Mr Bate's proof, para 8.3

134. As Ms Garcia explained, the significance of Top Farm is displayed primarily through its built fabric which displays architectural and historic interest.[224] Aspects of its setting which contribute to its significance were identified by Ms Garcia[225] and agreed by Mr Bate[226] to be the historic boundary walls; access points; the immediate elements of the historic settlement and agricultural land to the south.

135. The building was designed as an agricultural building and was not intended to afford views over the wider landscape. It has no windows on its eastern side, facing the appeal site and no designed views towards it.[227] Equally, there are no views of Top Farm from the Appeal Site.[228] There is no evidence of any historical association between Top Farm and the Appeal Site, which lie at opposite extremities of the settlement, separated by intervening built form and vegetation. Even if there has once been some historical association, it has now been severed as Top Farm and the Appeal Site are not in common ownership.[229] The agricultural land to the south of Top Farm, which contributes to its significance, will remain unchanged with the Appeal Scheme in place.

136. It light of the above, together with the fuller analysis in Ms Garcia's evidence, it is plain that the Appeal Scheme will give rise to no harm to the significance of Manor through a change in setting.

Other matters

137. As to the question of the connection infrastructure, Ms Garcia's Heritage Addendum confirms that there would be no harm to the significance of any of the identified heritage assets from either of the two grid connection options and that her conclusions as to the levels of harm, where identified, to heritage assets remain unchanged even where the connection infrastructure is included as part of the scheme.[230] There appears to be common ground with Mr Bate who confirms that any additional harm would be relatively modest cumulatively and would not change the degree of harm he has identified to any heritage assert.[231]

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[224] **CD 7.12** Ms Garcia's proof, paras 9.11 – 9.12
[225] **CD 7.12** Ms Garcia proof, para 9.13
[226] Mr Bate XX, 11.06.24
[227] Mr Bate XX, 11.6.24
[228] Mr Bate XX, 11.6.24
[229] Mr Bate XX, 11.6.24
[230] **INQ 43** Appellant's Supplementary Statement, para 2.20
[231] **INQ 44.3** RBC Comments on Grid Connection Tower Options & Study.

Conclusion on Main Issue 2

138. In light of the evidence before the inquiry, the Appellant invites the Inspector to accept Ms Garcia's evidence that there will be less than substantial harm to just three heritage assets at the low (Hawksworth Conservation Area); lower (St Helena's Church) and lowermost (Thoroton Conservation Area) range of the scale.

139. It is trite that the weight attached to less than substantial harm is not uniform and will vary dependent on where on the spectrum the harm sits and the relative importance of the heritage asset. That is reflected in the requirement set by the PPG to clearly articulate the extent of harm within the less than substantial category. In this case the Council's evidence – if accepted in full – is that there would be harm at the lower-middle quartile or below of the less than substantial spectrum to six heritage assets (albeit one would experience almost no harm) that the harm would be temporary and reversible.

140. Set against any such harm, this is a case in which very substantial positive weight should be given to the principal benefit delivered by the scheme of making a significant and rapid contribution to the urgent need for more solar generating capacity. In striking the heritage balance that must surely outweigh level of harm alleged by the Council. To find otherwise would be very difficult to reconcile with the critical importance given by Government policy to meeting the urgent need and the weight that must therefore attach to the benefit associated with helping to meet that need. If the significant additional generating capacity delivered by a large-scale renewable energy development such as this is not considered to be sufficiently beneficial to outweigh even such minor harm, it is hard to conceive of what could. Moreover, it would be hard to see how the UK could hope to meet the ambitious targets it has set for the development of solar power as an important element of the drive to achieve the binding legal commitment to net zero.

141. There is, therefore, no basis upon which planning permission should be refused on the grounds of heritage harm. Even if the Council is right on each and every asset, the level of heritage harm would be very low indeed and clearly outweighed by the significant benefits the Appeal Scheme would bring (including heritage benefits).

Main issue 3: The effect of the development on BMV agricultural land

142. As Mr Cussen and Mr Kernon explained, planning policy does not require or encourage the use of land (BMV land or otherwise) for food production and/or intensive arable use.

Nor does it seek to prevent the use of BMV agricultural for non-food uses or to prohibit the development of solar schemes on BMV agricultural land.[232] Indeed, various government policies and initiatives encourage and incentivise the use of agricultural land (including BNV) for non-food uses such as biodiversity planting and the production of biomass.

143. NPS EN-3 makes clear, under the heading of "Factors influencing site selection and design" that "land type should not be a predominating factor in determining the suitability of the site location" and that the use of BMV land should only be avoided "where possible".[233] It expressly states, therefore, that "the development of ground mounted solar arrays is not prohibited on Best and Most Versatile agricultural land" and makes clear that all that is required is a consideration of the impacts of using BMV agricultural land.[234] Far from requiring a sequential approach, EN-3 states in terms that one should not be used in the consideration of renewable energy projects.[235]

144. The language of "preference" within EN-3 is consistent with national policy and also with Rushcliffe's local plan policy. Policy 1(12) of the LPP2 states that "development should have regard to the best and most versatile agricultural classification of the land, with ***a preference*** for the use of lower quality over higher quality agricultural land" (emphasis added).[236] This is reinforced by the supporting text to policy 22 which, albeit not policy, states that "Where appropriate the Council shall seek the use of areas of poorer quality land ***in preference*** to that of agricultural land of a higher quality" (emphasis added).[237]

145. That means that the conclusions of the High Court in *Bramley Solar Farm Residents Group v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 2842 (Admin) ("***Bramley***") as to the meaning and implications of national policy on this issue are equally applicable when considering the use of that same language in local policy. In that case, the claimants unsuccessfully sought to challenge the Inspector's

[232] **CD7.10**, para 10.43
[233] **CD3.4**, EN-3, para 2.10.29
[234] **CD3.4**, EN-3, para 2.10.30
[235] **CD3.4**, EN-3, para 2.3.9
[236] **CD4.2**, p20.
[237] **CD4.2**, para 6.15, p102.

reasoning on the issue of site selection and alternatives to the use of BMV land by reference to the (then emerging) EN-3 and the PPG.

146. At paragraphs 179 to 181 of the Judgment, the Court held that neither policy nor guidance mandate the consideration of alternatives, still less do they require a sequential test to be adopted.[238] As the Court noted, where national policy requires a sequential test to be adopted, it does so explicitly. EN-3 could not be read as mandating a sequential search for alternatives, as it only applies "where possible" and states that "land type should not be a predominating factor in determining the suitability of the site location".[239]

147. In *Bramley,* the Court also upheld the lawfulness of the approach of the Inspector who had treated the following factors as identified in the PPG as being relevant to his decision:

    a. The finding that there would be not harm to BMV agricultural land;
    b. The fact that not all of the BMV agricultural land would be covered by panels;
    c. The fact there would be ongoing opportunities for pasture grazing;
    d. The fact that soil and biodiversity would be improved as a result of the scheme;
    e. The temporary nature of the development;
    f. The appellant's reasons for selecting the site including the importance of an available grid connection.[240]

148. The conclusions in *Bramley*, are consistent with the well-established principles that consideration of alternative sites will only be required in exceptional circumstances.[241] There can be no sensible suggestion that the recent Written Ministerial Statement ("**WMS**") altered that position. As Ms Temple accepted, the WMS repeats and reiterates the guidance already found in paragraph 013 of the PPG. It does not create any new policy test.[242] In those circumstances, the reasoning and conclusions of the Court in *Bramley* apply equally to the recent WMS.

149. The approach of the Rule 6 Party which suggests that the use of BMV land can only be justified through a sequential approach whereby lower quality land is first discounted is

[238] **CD 5.17**
[239] **CD5.17** *Bramley,* [179] – [180].
[240] **CD5.17** *Bramley,* [179]
[241] **CD 7.10** Mr Cussen's proof, para 8.4
[242] Ms Temple XX, 14.06.24

wholly at odds with national and local planning policy and guidance and with the High Court judgment in *Bramley*. It is wholly unreasonable, albeit characteristic, for the Council to pounce on that issue late in the day to suggest that impacts on BMV provide a further reason for refusal, contrary to the assessment in its own Officer's Report and the absence of any such allegation in the Decision Notice.

150. Both the R6 party and the Council have therefore sought to treat land type as a "predominating factor" in this appeal, failing entirely to consider whether the actual impact of the proposed use would give rise to any significant harm when judged against the objectives of the policy, and instead treating the simple fact that part of the appeal site is BMV as sufficient to give rise to policy conflict and justify the refusal of permission.

151. Where, as here, a proposed development involves the use, but no permanent loss of some BMV land, it is appropriate to have regard to the effects by reference to the objectives of national policy. All of the factors identified as justifying the use of BMV land in *Bramley*[243] apply equally in this case:

    a. In *Bramley,* 53% of the appeal site was BMV. Here, just 38% of the Appeal Site comprises BMV. Of that, 36% is Grade 3(a) (good quality) and just 2% if Grade 2 (very good quality). There is no Grade 1 (excellent quality) land within the Appeal Site.[244]
    b. In both cases, the proposal was for a temporary 40 year period;
    c. In both cases, the BMV land would not be permanently or irreversibly lost, particularly given both sites would continue to be used for the grazing of sheep (i.e. pasture, which is a type of agricultural use);
    d. In both cases, the solar farm together with grazing would allow the land to recover from intensive use and allow soil condition and structure to improve;
    e. In both cases, it was accepted by relevant parties that any risk to soil compaction could appropriately be controlled by a soil management plan to be agreed in writing with the local planning authority. In the present case, Mr Kernon and Mr Franklin

[243] **CD 5.17**, para 169
[244] These figures are common ground with the Council (**CD 7.9**), para 7.1(dd) and R6 Party (**INQ 12**), para 7.1(r)

have agreed a condition which both consider will suitably protect the soil from compaction.

152. As Mr Kernon explained, the proportion of BMV in England is around 42% and in Rushcliffe is around 58.5%.[245] The proportion of BMV land comprised in the Appeal Site (38%) is therefore below district and national averages.

153. In response to the suggestion that alternative sites of lower agricultural quality must first be discounted, all parties agreed that it would not be appropriate to rely only on ALC maps which were never intended to be used as a replacement to site-specific assessments. To assess the quality of agricultural land, individual sites would have to be subject to soil sampling.[246] The area of Rushcliffe Borough Council is approximately 38,837ha.[247] Based on an average soil sampling of 25 points per day, agreed between Mr Kernon[248] and Mr Franklin,[249] it would take over 8 years to survey the land quality in Rushcliffe, assuming that permission was granted by landowners to carry out intrusive ground surveys. That would be a wholly disproportionate and unreasonable exercise, as recognised by the Inspector in the Thaxted appeal.[250]

154. EN-3 provides that "Where sited on agricultural land, consideration may be given as to whether the proposal allows for continued agricultural use".[251] Consideration has been given to that issue by the Appellant, which has indicated that it will accept a condition that requires the Appeal Site to be used for sheep grazing. As to the realism of sheep grazing in conjunction with solar farms, Mr Kernon's evidence was that this was both practical and commonplace.[252] Contrary to Mr Franklin's assumption that the clearance between the panels and the ground would be 14cm,[253] he agreed in XX that the minimum clearance would, in fact, be 80cm which would pose no restriction on the ability to graze sheep. Indeed, his written evidence accepted that sheep grazing may be achievable on the

[245] **CD 7.10.2** Mr Kernon's evidence in response to the Council, para 5.11
[246] Mr Franklin XX, 12.06.24
[247] **CD 7.10.2** Mr Kernon's evidence in response to the Council, Table 3
[248] **CD 7.10.2** Mr Kernon's evidence in response to the Council, para 5.4
[249] Mr Franklin XX, 12.06.24
[250] **CD 5.28**, para 124
[251] **CD3.4**, EN-3 [2.10.32].
[252] Mr Kernon EiC, 12.06.24
[253]**Cd 7.16** Mr Franklin's proof, para 7.16

site.[254] There are numerous other appeal decisions before this inquiry which have accepted the realism of sheep grazing in conjunction with solar farms.[255]

155. The Rule 6 Party's concerns in respect of food security are equally ill-founded. Rather surprisingly, Mr Franklin was reluctant to concede in XX that the biggest medium-long term risk to the UK's domestic food production comes from climate change, given that he himself had made that point in his written evidence.[256] The Appeal Scheme will generate renewable energy and thereby contribute towards addressing climate change with consequent beneficial impacts on food production. Mr Kernon has carried out an assessment of the impact on food production of removing all BMV land from the appeal scheme. While he acknowledges that this is a crude measure, it is the only assessment before the Inspector in the absence of any research that records the difference in production between BMV and non-BMV land or consequent impacts of developing BMV land on food security.[257] His evidence reveals that, at most, the effect of moving the panels from BMV to non-BMV land would have the effect of maintaining just under 50 tonnes of cereal per year, in the context that the UK produced 22 million tonnes of cereal in 2023.[258] Furthermore, it is relevant to note that the Government's consultation on the revisions to the NPPF propose to delete the following words from footnote 64 of the NPPF, on the basis that the words give no indication of how authorities are to assess and weigh the availability of agricultural land in making planning decisions:[259] "*The availability of agricultural land used for food production should be considered, alongside other policies in this Framework, when deciding what sites are most appropriate for development.*"[260]

156. As Mr Franklin accepted in XX, there are a number of Government initiatives that actively encourage the use of agricultural land, including BMV land, for non-food uses such as biodiversity planting and the production of biomass. As of 1 April 2023, around 161,000ha of agricultural land was funded under the Countryside Stewardship Scheme for non-agricultural uses and in August 2023, the Government published a biomass

[254] **CD 7.16** Mr Franklin's proof, para 7.17
[255] Including those at **CD 5.1; 5.2; 5.11; 5.13; 5.19; 5.20** and **5.28**
[256] **CD 7.16** Mr Franklin's proof, para 8.4
[257] **CD 7.10.2** Mr Kernon's evidence in response to the R6 Part, para 5.40
[258] **CD 7.10.2** Mr Kernon's evidence in response to the Rule 6 party, Table 4 and paras 5.42 – 5.44
[259] **INQ 46.2**
[260] **INQ 46.3**

strategy to encourage increased biomass from agricultural land, including BMV land. As accepted by previous Inspectors in the context of solar farm proposals,[261] there is simply no evidence that taking c.30ha of BMV land out of agricultural production for a 40 year duration would have any material impact on food security.

157. Importantly in this case, the consultation response from Natural England confirmed that the scheme is unlikely to lead to any significant loss of BMV land as a resource for future generations given that the panels would be secured to the ground by steel piles with limited soil disturbance and could be removed with no permanent loss of land quality.[262]

158. In light of the above summary and the evidence of Mr Kernon and Mr Cussen, it is plain that there is no requirement in planning policy for a sequential approach to BMV land; that the impacts on BMV land will be "acceptable" under Policy 16(1)(d) of the LPP2 and so no conflict arises with policy 22(2)(i)[263] which simply directs decision-makers to Policy 16 of the LPP2. Nor will the scheme give rise to any conflict with the NPPF; the PPG; the NPSs or WMS in respect of its impacts on BMV agricultural land.

Main issue 4: Whether flood risks have been appropriately addressed

Policy

159. Paragraph 165 of the NPPF provides that development should be directed away from the areas at highest risk of flooding and that, where it is necessary to locate development in such areas, the development should be made safe without increasing flood risk elsewhere. Paragraph 168 reaffirms that the aim of the sequential test "is to steer new development to areas with the lowest risk of flooding" such that planning permission should not be granted "if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding".

160. It is important to note that even where policy is expressed in mandatory or unqualified language, it permits of exceptions. As the Court explained in *Secretary of State for Communities and Local Government v West Berkshire District Council* [2016] EWCA

[261] e.g. **CD 5.7** and **5.28**
[262] As summarised in the Officer's Report, **CD 2.1**
[263] As alleged by Ms Temple

Civ 441 (at paragraphs 16 – 21) a decision-maker must not blindly follow policy without considering matters that may persuade him to depart from that policy. The rule against fettering discretion means that in every case, a decision-maker must bring his mind to bear on the circumstances of the case in deciding whether there is reason to depart from policy.

161. Policy 2 of the Core Strategy refers, within criterion 7, to the need to consider development proposals within flood zones 3 and 3 "on a sequential basis in accordance with national planning policy on flood risk" whilst the relevant flood risk policy, Policy 17 in the Local Plan, refers to the need to apply and satisfy the sequential and exception tests where development in proposed for areas with a risk of flooding or issues with surface water disposal.[264]

Alternatives

162. Following the Council's belated concerns in respect of flood risk, the Appellant commissioned an alternative site assessment which reveals that there is no sequentially preferable sites that are suitable to accommodate the proposed development.[265] As explained in that assessment, there is no national or local policy or guidance which is prescriptive of how applicants should approach the assessment of alternatives.

163. The High Court in *Mead Realisations Limited v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 279 (Admin) ("***Mead***"), confirmed that the sequential preference set out in the NPPF is "a broad, open-textured policy" and that "There is no additional language indicating how the issue of "appropriateness" should be approached or assessed" such that "On the face of it, the question of appropriateness is left open as a matter of judgment for the decision-maker".[266]

164. The High Court in *Mead* concluded that "a broad, non-specific approach by planning authorities to sequential assessments which generally disregards development requirements could lead to inappropriate business decisions being imposed on developers or the market" and held that "There is a need for realism and flexibility".[267] The Inspector

[264] **CD7.10.2** Appendix 2 Flood Risk Technical Note, paras 2.9 – 2.16
[265] **CD 7.10.2** Appendix 2 to Mr Cussen's proof
[266] **J2** Mead, [97].
[267] **J2** Mead, [98].

needs to consider, therefore, "whether flexibility has been appropriately considered" by the Council.[268]

165. It is plain that the Council has been neither realistic nor flexible in its approach to the assessment of alternative sites. Its request, for example, that the search area be "borough wide"[269] is illustrative of a non-specific approach to the assessment. As we explained in opening, while it will always be possible for an objector to suggest that the search area should have been broader; or that land ownership constraints could be overcome; or that separation distances and buffers from sensitive receptors could be reduced on the alternative sites, it is important not to lose sight of realism. Unfortunately, the Council's approach reveals a distinct lack of realism.

166. In *Mead*, the High Court recognised that the need for a particular type of development may be relevant in considering alternatives and that need may include a temporal dimension. [270] In the present case, the urgency of the need for renewable energy generation is highly relevant. Any alternative site that could not make use of the existing grid connection would mean a significant delay in deployment given the length of the grid connection queue, as explained by Mr Smart.

167. As to the question of alternatives comprising a series of smaller sites and/or part of a larger site, the High Court in *Mead* confirmed that the word "series" connotes a relationship between sites appropriate for accommodating the type of development which the decision-maker judges should form the basis for the sequential assessment. This addresses the concern that a proposal should not automatically fail the sequential test because of the availability of multiple, disconnected sites across a local authority's area. The issue is whether they have a relationship which makes them suitable in combination to accommodate any need or demand to which the decision-maker decides to attach weight.[271]

168. The Appellant's assessment has considered 11 alternative sites within an appropriate search area, comprising a corridor of 2km either side of the 132kV line in Rushcliffe.[272]

[268] **J2** Mead, [103].
[269] **CD7.13** Ms Temple's proof, paras 6.24 – 6.25
[270] **J2** Mead, [106].
[271] **J2** Mead, [109] – [110].
[272] **CD7.10.2** Appendix 2 Flood Risk Technical Note, para 4.14

The Council's response has been to denigrate the assessment on the basis that a similar approach was rejected in the Kingston appeal.[273] Indeed, its closing submissions appear to recycle parts of its submissions in that case.[274]

169. As to the relevance of the Kingston appeal decision, as explained in the round-table session on 1 August 2024: (i) the issue of alternatives arose in very different circumstances in that case; (ii) there are material differences between the alternative site assessments in the two cases and (iii) in any event, the Inspector is not bound by the findings of the Inspector in Kingston but must form his own judgment in light of the circumstances and evidence in this case.

170. Taking those issues in turn, in Kingston the circumstances in which alternatives were considered were that the appeal scheme was found to constitute inappropriate development in the Green Belt;[275] to diminish the openness of a significant area of Green Belt;[276] to cause moderate harm to the openness of the Green Belt, both visually and spatially, which added to the harm caused by reason of its in appropriateness;[277] and to encroach into the countryside, contrary to one of the Green Belt purposes.[278] The harm to the Green Belt was afforded substantial weight against the scheme[279] and even then, the Inspector found to decision to be one that was finely balanced.[280] By contrast, in the present case, the issue of alternatives arises in the context of flood risk, in circumstances where it is agreed with the Council that the scheme will not give rise to any risk to people or buildings on the site; will not increase the risk of flooding off-site; will include a sustainable drainage strategy which will provide a form of betterment; neither the Lead Local Flood Authority nor the Environment Agency have raised any objection in respect of flood risk;[281] and Ms Temple agreed in cross examination that the Scheme would not give rise to any *actual* flood risk harm.

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[273] **INQ 42**
[274] See, for example, para 100 of the Council's closing submissions which contains a reference to the Green Belt which is plainly not relevant in this case and to a proposal for a single permissive footpath that was proposed in Kingston, whereas two permissive footpaths are proposed here
[275] **INQ 42,** para 5
[276] **INQ 42,** para 14
[277] **INQ 42,** para 19
[278] **INQ 42,** para 23
[279] **INQ 42,** para 24
[280] **INQ 42,** para 95
[281] **CD 7.9, para 7.1 (rr) – (yy)**, Planning Statement of Common Ground

171. As to the differences between the alternative site assessments, in Kingston the Appellant had only considered sites above 300 acres in size and had only looked at sites in single ownership.[282] By contrast, in the present case, it is entirely apparent that the Appellant has considered sites below 300 acres and has considered sites in more than one ownership.[283]

172. In any event, the Inspector in this case is not bound by the findings in the Kingston appeal and must form his own judgment on the basis of the evidence he has heard. In the Kingston decision, the Inspector does not appear to have been convinced by the benefits of an early grid connection offer. Mr Smart, who did not give oral evidence at the Kingston inquiry, has provided compelling evidence to this inquiry as to the length of the grid connection queue and consequent delay to the deployment of solar energy if the Appellant were unable to make use of the existing grid connection offer. Furthermore, the Kingston Inspector appears to have considered that the Appellant should not restrict its alternative site search to the 132kV line in respect of which is has a connection offer enabling connection from 2024. That betrays a fundamental misunderstanding of the national policy. Plainly there will be alternative sites that can accommodate solar development: there will need to be if we are to have any hope of meeting the Government's ambitious climate change targets. We need solar farms all around the country; we need them at scale and we need them urgently. The fact that a site may exist somewhere else should not be used as a reason for dismissing this appeal when those sites will also be needed, not as alternatives, but as well as this one.

173. As to the search area, the Kingston Inspector found that the fact a connection of more than 2km would make the proposal an NSIP did not justify restricting the search area to 2km.[284] Since that decision, the Government has published its consultation on revisions to the NPPF. The consultation material explains that solar is a cheap, efficient and quick-to-build technology and that it is "vital for developers to use the most efficient planning route to consent their energy projects so that we can make the UK a clean energy superpower".[285] It recognises that the NSIP system can be a "barrier to the accelerated and streamlined deployment" of solar energy schemes and notes the "increases costs and

[282] **INQ 42,** para 68
[283] **CD 7.10.2** Appendix 2 to Mr Cussen's evidence, para 4.16 (pdf 120) and pdf 123
[284] **INQ 42,** para 67
[285] **INQ 46.2**

timeliness associated with determination through the NSIP regime".[286] All of this post-dates the Kingston decision and indicates Government recognition of the very points the Appellant has made to this inquiry. Given the twin benefits of solar energy are their low-cost and capacity for rapid deployment, it would be wholly disproportionate to insist that a developer look for alternative sites that would require development consent through the NSIP regime for the connecting infrastructure when the generating infrastructure falls below the NSIP threshold.

174. It is also worth remembering that NPS EN-3 expressly recognises that both the availability of network capacity and the distance from the solar farm to an existing connection point "can have a significant effect on the commercial viability of a development proposal"[287] and that "To maximise existing grid infrastructure, minimise disruption to existing local community infrastructure or biodiversity and reduce overall costs, applicants may choose a site based on nearby available grid export capacity".[288] Those important policy considerations are not mentioned in the Kingston appeal decision. The accord with the evidence of Mr Smart that the costs of undergrounding connection cables is in the region of ten-times higher than overhead cables and the evidence of Mr Cussen that lengthy connection infrastructure, whether over or under-ground are likely to give rise to additional and avoidable environmental impacts including visual impacts; the sterilisation of land and disturbance to significant areas of ground. Plainly, it is preferable to avoid or minimise such impacts by selecting sites close to the point of grid connection.

175. As to the size of sites considered in the assessment of alternatives, Mr Cussen explained that from an original land parcel of 159ha (395.26 acres) available to the Appellant, initial, high-level assessments and consultation resulted in a reduction of the area to an appeal site of 93.8 ha (232 acres): i.e. a 41% reduction. Following further detailed studies, it became apparent that the buildable area would have to be further reduced to account for additional constraints that became apparent following that process, to 65.9 ha (163 acres. The buildable area is therefore 58.7% smaller than the original landholding available to the Appellant.

[286] **INQ 46.2**
[287] **CD 3,4A,** EN-3, para 2.10.24
[288] **CD 3.4A**, EN-3, para 2.10.25

176. The Appellant has considerable experience in identifying sites for large-scale solar schemes in a way that none of the other parties or witnesses to this appeal do. As Mr Cussen explained, in searching for a site, the Appellant would only ever consider sites of 121 ha (300 acres) or more to be appropriate. This reflects the realities of designing, consenting and constructing solar farms. The Appellant has made it clear that in its extensive experience, it will only even be around 50% of a site will actually comprise the ultimate buildable area. That is borne out both by the Appeal Site and the Kingston site, where the appeal site was 200 acres but the buildable area only 100 acres. [289] In Kingston, the Inspector appears to have been influenced by the fact that there were two alternative sites that were some 50% larger that the buildable area.[290] She considered that with an additional 50% of land, it would be possible to accommodate a buildable area of 100 acres. In the present case, taking the buildable area of 65.3ha (163 acres), a site 50% larger would require a site of 98ha (244 acres). There is no such site available. The largest site identified by the Appellant was Site K which is just 78 ha (193 acres) in size.

177. Even combining sites in more than one ownership, the largest site available was 78 ha (193 acres). In light of the Appellant's experience that only 50% is likely to be developable, that would leave a buildable area of just 39ha, which would certainly not be large enough to accommodate a scheme with comparable energy generation benefits. NPS EN-3 recognises that aa 50MW solar farm is likely to require a buildable area of 50 – 80ha (125 – 200 acres).[291]

178. In summary, the Appellant has carried out a robust and proportionate assessment of alternative sites which reveals that there are no sequentially preferable sites available to accommodate development with comparable energy generation benefits such that the sequential test has been passed.

Impacts

179. Assuming, contrary to the Appellant's primary position, that the Inspector were to find that it has failed to establish that there are no suitable alternative sites at lower risk of

[289] **INQ 42,** para 70
[290] **INQ 42,** para 70
[291] **CD 3.4A**, EN-3, para 2.10.17

flooding, such as to give rise to conflict with relevant paragraphs of the NPPF and PPG in respect of flood risk, that would not dictate a refusal of permission.

180. As in every case where a policy conflict is established, the decision-maker must go on to consider (a) what, if any, harm arises as a result of the conflict and (b) what weight should be afforded to the harm and policy conflict. As explained above, by reference to the judgment in *West Berkshire,* that is so even where a policy is expressed in mandatory terms. It is well-established that decision-makers are not bound to refuse permission even where they find conflict with policies expressed in such terms. Policy is not law – it can always be departed from if a decision-maker considers it appropriate to do so.

181. As accepted by Ms Temple,[292] the agreed position between the Council and the Appellant is that:

a. The Appeal Scheme will not give rise to any risk to people or infrastructure on the Site;[293]
b. The Appeal Scheme will not increase the risk of flooding off-site;[294]
c. Rain falling onto the panels will runoff directly to the ground beneath the panels and infiltrate at the same rate as it does in the site's existing greenfield state, such that there will be no material increase in surface water run-off;[295]
d. The proposed drainage strategy, including swales, will provide a form of betterment in respect of flood risk;[296]
e. Neither the Lead Local Flood Authority nor the Environment Agency have raised any objection in respect of flood risk, subject to suitable conditions which will mean that all infrastructure will be appropriately raised above ground levels such that they are not at risk of flooding;[297] and such conditions have been agreed between the Council and the Appellant.

182. The concern raised by the Rule 6 Party as to the flood risk allowances used in the Appellant's assessment are not shared by the Council. Indeed, it has secured confirmation

[292] Ms Temple XX, 14.06.24
[293] **CD 7.9**, SoCG, para 7.1(rr)
[294] **CD 7.9**, SoCG, para 7.1(ss)
[295] **CD 7.9**, SoCG, para 7.1(tt)
[296] **CD 7.9**, SoCG, para 7.1(uu)
[297] **CD 7.9**, SoCG, para 7.1(yy)

from the Environment Agency that the finished floor levels secured by condition appropriately address current climate change allowances and account for any uncertainties in modelling.[298] The Environment Agency has not suggested that the more recent climate change allowances have affected its overall conclusions; has not suggested any amended conditions or indicated any objection to the proposal in light of those allowances.

183. Ms Temple conceded in XX that the Appeal Scheme would not give rise to any *actual* flood risk harm either on or off-site yet in her evidence she attributes "great weight" to the harm arsing from flood risk, notwithstanding her acceptance that it is non-existent.[299]

184. As example of a pragmatic approach in those circumstances is provided in the appeal decision issued by the Secretary of State in May 2024.[300] In that case, the scheme was found to accord with the sequential test but the Inspector went on to consider the position on the assumption that the sequential test had not been passed. He found that even in those circumstances, the scheme would pass the exception test given that it would not be at risk of flooding and would not cause or worsen flooding in any practical sense. The scheme was for essential infrastructure, would be safe for its lifetime and would provide very considerable sustainability benefits in helping to contribute towards the transition towards renewable energy and reduction in carbon emissions; and none of the relevant consultees, including the Environment Agency and Lead Local Flood Authority had objected to the proposal.

185. Ms Temple accepted that was a sensible approach for the Inspector to take in that case.[301] The Appellant commends it to the Inspector in the present case where all of the same considerations arise. Even if the sequential test has not been passed and resulting conflicts with the NPPF and PPG arise, it is highly relevant here that neither the Council nor any of the relevant consultees responsible for flood risk, have identified any harm arising from the Scheme which will, in fact, assist in combating the risks of climate change.

[298] **INQ 44.5**
[299] **CD 7.13** Ms Temple's proof, para 2.6
[300] **CD 7.10.2** Appended to Mr Cussen's Flood Risk Topic Paper at Appendix 2, paras 35 - 36
[301] Ms Temple XX, 14.06.24

186. The aim of the relevant policies, i.e. to minimise flood risk, will not be undermined by granting planning permission for the Appeal Scheme.

Other matters raised by the Rule 6 Party

187. As to archaeology, the R6 Party erroneously suggests that Ms Garcia has confirmed that there has been no assessment of the significance of archaeological remains on the site.[302] Ms Garcia's evidence confirmed that the application was accompanied by a Cultural Heritage Impact Assessment carried out by members of the Chartered Institute of Archaeologists in accordance with the guidance contained in the Code of Conduct and Standards and Guidance for Desk-Based Assessment from the Chartered Institute of Archaeologists.[303] Neither the NPPF (para 200) nor Policy 29 of the LPP2 require intrusive field surveys in every instance. The Council's archaeologist was satisfied that the assessment was proportionate and contained sufficient information to inform the determination of the application subject to conditions which have been agreed between the Council and the Appellant. As such, there is no reason for refusal relating to archaeological impacts and, as both the Council and Appellant agreed, no merit in the R6 Party's criticisms of the Appellant's approach.

188. As to ecological impacts, again it is agreed between the Council and Appellant that the Appeal Scheme will give rise to no adverse impacts. The application was accompanied by an ecological appraisal[304] which satisfied the Council that all potential impacts were subject to appropriate mitigation and that no reason for refusal was justified on ecological grounds. Neither the Council's ecological officer nor Natural England have raised any concerns in respect of the ecological impacts of the Scheme. Mr Hill provided written[305] and oral evidence to the appeal to confirm that there would be no adverse impacts on any protected or priority species or habitats and that the appeal scheme would deliver very significant biodiversity net gain comprising 187.60% for habitat units; 83.04% for hedgerow units and 11.85% for watercourse units. As to the particular concern raised in relation to bats, the Appeal Site is currently under agricultural cultivation which provides sub-optimal foraging habitat for bats. The Appeal Scheme proposes a significant increase

[302] R6 Party's closing submissions, para 57
[303] **CD 7.12** Ms Garcia's proof, section 11
[304] **CD 1.22.1 – 1.22.7**
[305] **CD 7.10.2** Appendix 6 to Mr Cussen's proof; and rebuttal statement, **CD 10.3**

in hedgerow and woodland habitat that would provide benefit to bats, and will not result in the loss of any trees. The Rule 6 party is wrong to suggest that there was no evidence to support Mr Hill's explanation that the proposed culverting would be of only a small proportion of the watercourses[306] in circumstances where the watercourse crossings are shown on the infrastructure layout plan.[307]

189. As to the alleged traffic impacts, the application was subject to consultation with the Highway Authority who confirmed that they had no objection. Construction traffic will be suitably controlled by draft condition 17 which requires the submission and approval of a Construction Traffic Management Plan, including details of passing places.[308] In light of the above, and the evidence at Appendix 10 to Mr Cussen's proof,[309] there is no merit in the Rule 6 Party's concerns in relation to the traffic impacts of the Scheme.

Main issue 5: Planning policy and planning balance

190. Relevant planning policies have been discussed under the relevant topic headings above. That analysis reveals that the Appeal Scheme accords with all relevant policies of the development plan. Policy 16 of the LPP2 is the most important for determining this appeal. It does not prohibit renewable energy schemes simply because they give rise to some adverse impacts, which are an inevitable result of any large-scale renewable development. Rather, it requires consideration of whether those impacts are "acceptable" against a number of identified factors. To determine whether an adverse impact is acceptable, it must be weighed against the benefits of the Scheme. The explanatory text to Policy 16 explains that if proposals are not acceptable in terms of one or more of the identified factors, a decision will be taken balancing the benefits and impacts of the proposal; and that the more significant the impact, the more likely that planning permission will be refused.[310]

191. It is agreed between the parties that the impacts of the Appeal Scheme are not significant enough to trigger a requirement for EIA. Both the Council and the Planning Inspectorate have screened out the need for EIA on the basis that the Scheme will not give rise to any

[306] Rule 6 Party's closing submissions, para 78
[307] **CD 1.8**
[308] **INQ 49.2**
[309] **CD 7.10.2**
[310] **CD 4.2**, LPP2, para 5.8

likely significant effects on the environment in terms of landscape, heritage or in any other way. That is relevant in considering whether the impacts are so significant as to justify refusal of permission.

192. The impacts on the character and appearance of the area are limited, localised and largely temporary. They have been appropriately mitigated through landscape planting that will leave a lasting benefit and contribute to the conservation and enhancement of landscape character. There is no realistic basis on which the landscape and visual impacts of this Scheme could be deemed unacceptable when weighed against its substantial benefits in contributing to the decarbonisation of the energy sector and security of supply in the UK. Impacts on heritage assets are equally limited to temporary and minor, less than substantial harm to a small number of assets which is plainly outweighed by the benefits of the Scheme. The use of BMV land has been appropriately justified. The Scheme will not result in any permanent loss of, or harm to, agricultural land and indeed, is likely to contribute to any improvement in soil quality together with continued agricultural use, through sheep grazing. The Scheme will not give rise to any risk of flooding that falls to be weighed in the planning balance against the proposal.

193. The Appeal Scheme accords with the development plan, read as a whole, and finds further support in national policy both in the NPPF; the NPSs and a plethora of other non-planning policy documents discussed by Mr Cussen.[311] There are no material considerations that justify the refusal of planning permission: indeed they all weigh heavily in favour of allowing the Scheme.

194. For those reasons, and the reasons given in the Appellant's written and oral evidence, the Appellant respectfully invites the Inspector to allow the appeal and grant permission for this urgently needed renewable energy scheme.

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MARK O'BRIEN O'REILLY

Francis Taylor Building

5th August 2024

[311] **CD 7.10** Mr Cussen's proof, section 7