



LPA Planning Ref No: 22/02241/FUL

PINS ref No: APP/P3040/W/23/3330045

Proof of Evidence
of
James Bate (RBC - Heritage)

Section 78 Planning Appeal

Against Refusal of Planning Permission for installation of renewable energy generating solar farm comprising ground-mounted photovoltaic solar arrays, together with substation, inverter stations, security measures, site access, internal access tracks and other ancillary infrastructure, including landscaping and biodiversity enhancements

Land East of Hawksworth and Northwest of
Thoroton

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Introduction

- 1.1 This proof of evidence has been prepared by myself, Mr James Bate, and represents my true and professional opinions, based on my professional knowledge and experience. This is given in accordance with the guidance of my professional institute.
- 1.2 I am a graduate of the universities of Derby (BSc Hons – Heritage/Architectural Conservation, 2007), York (MSc – Building Conservation, 2015) and Leicester (CertArch – Archaeology, 2020). I am a professionally qualified conservation specialist and full member of the Institute of Historic Building Conservation (IHBC), to which I was elected in 2010. As with all members of the IHBC, I am bound by a Code of Professional Conduct which applies to my professional activities and requires that I act with competence, honesty and integrity, and exercise independent professional judgement at all times.
- 1.3 I have worked continuously in local government as a Conservation Officer, and more recently as a manager within the Planning Department with line management responsibility for the Conservation Officer, since January 2008 in a variety of settings from Devon and Staffordshire to Nottinghamshire and as such have some 16 years of professional experience.
- 1.4 I have been providing conservation advice to Rushcliffe Borough Council since November of 2013, with a brief hiatus between 2019 and 2021. My work has included acting as a case officer for applications as well as providing design advice outside of historic environment settings to planning colleagues.
- 1.5 In addition to work for local authorities I have undertaken limited amounts of private consultancy work as a self-employed sole trader.
- 1.6 All photographs contained within this document were taken by the author during a site visit in March 2023.

Heritage Assets

- 2.1 The application site sits between two adopted conservation areas, those of Thoroton and Hawksworth.
- 2.2 These two settlements are relatively close neighbours to the extent that there are several vantage points within Hawksworth from which it is possible to see the spire of the Parish Church in neighbouring Thoroton.
- 2.3 There are also multiple footpaths and bridleways which serve to connect the two villages, and again from these there are locations where it is possible to view both of the villages from a single vantage point.

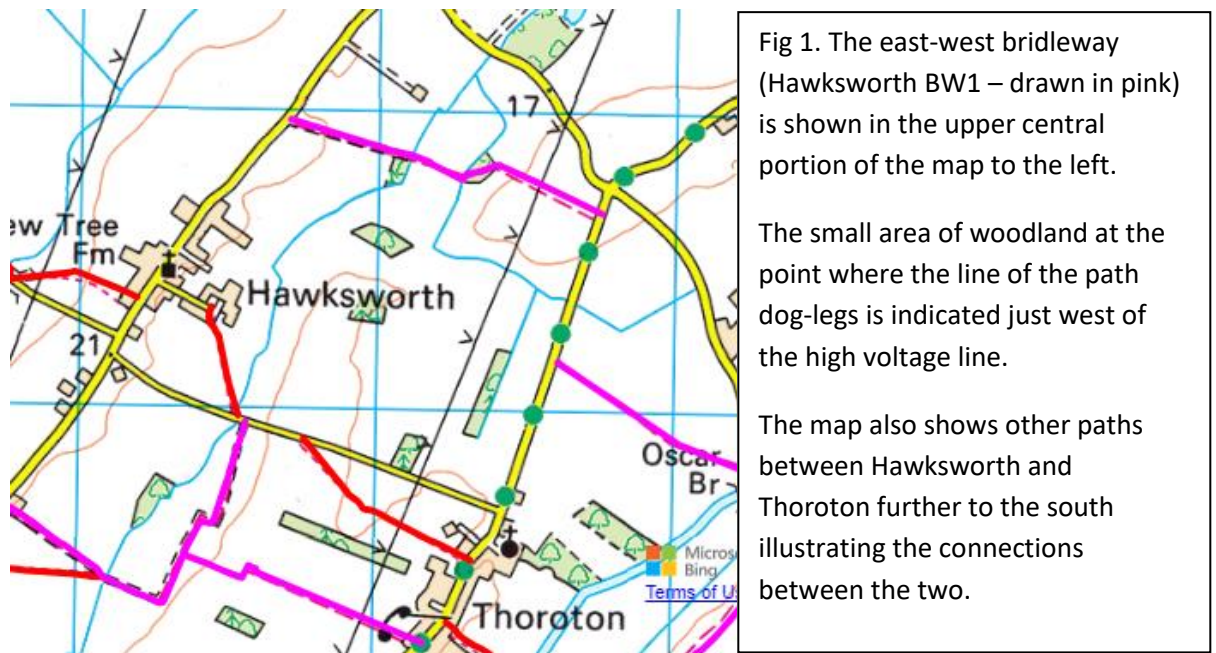
- 2.4 In addition to the conservation areas each of the villages also feature a number of listed buildings with examples at each of the three listing grades.
- 2.5 The most notable are the two Parish Churches:
- St Mary and All Saints (Hawksworth) GII*
 - Church of St Helena (Thoroton) GI
- 2.6 There are also a number of grade II listed buildings, a total of 5 in Hawksworth and 4 in Thoroton, of which the only the following are affected to be worth further consideration:
- Hawksworth Manor and Adjoining Pidgeoncote (Hawksworth) GII
 - Model Farm Buildings at Top Farm in Hawksworth (Hawksworth) GII

Conservation Areas

- 3.1 The closely co-located villages of Hawksworth and Thoroton are the nearest settlements to the appeal site, with the boundaries of the proposed development closely related to each village. Thoroton has its nearest properties near bordered to the southeast of the site and Hawksworth to the West and South West of the site.
- 3.2 Both Hawksworth and Thoroton have adopted conservation areas. Rushcliffe is currently in the process of reviewing conservation area appraisals and boundaries as part of a review over a 3 year period. The officer leading on the review of appraisals is solely tasked on this work and is not involved in wider DM work or decision making. Reviews for Hawksworth and Thoroton have led to updated appraisals both being adopted in July 2023 (**CD 8.1 and CD 8.2**). These replaced earlier appraisal adopted in 2010 and 2009 (respectively). Neither area has had its boundaries altered as part of the recent review, save for a minor amendment to the northern boundary of Thoroton to better follow a property boundary and include the driveway to Hawthorne Cottage which was previously outside of the conservation area despite the property it serves being inside the boundary.
- 3.3 Both villages have an agricultural basis historically, each features a number of former farms, several of which are also listed buildings and each has a positive relationship with the wider agricultural landscape which serves as a reminder of this historic link with agriculture.
- 3.4 The two villages are also well connected and linked by a number of footpaths and bridleways.
- 3.5 The adopted conservation area appraisals (**CD 8.1 and 8.2**) for both conservation areas make reference to these characteristics as follows *“a group of small villages, including Hawksworth, Thoroton, Screveton, Car Colston, Orston and Scarrington,*

which are within close proximity to each other and share similar characteristics and historic rural context with open countryside between which is accessible by a network of public footpaths.”.

- 3.6 The only reference to conservation area appraisals within the Cultural Heritage Impact Assessment (**CD 1.23**) submitted in support of the original application was where such documents are mentioned in local plan policies which are quoted in full within the document, outside of quotes from policy these appraisals are not referenced by the author of that report.
- 3.7 There are positions within the boundary of the Hawksworth Conservation Area, mostly to its southeast extent, where it is possible to view the spire of St Helena's Church in Thoroton. Views of the spire can be maintained on the majority of the journey by foot between the two villages along either the unnamed road which runs south of Hawksworth from Main Road, or from the footpath which runs alongside to its south.
- 3.8 From along this route either the roadside hedges (if walking along the road), or a combination of roadside hedges and bands of woodland obscure the majority of the expanses of the proposed development from view, although the topography of the landscape is such that it would be possible to see solar panels extending up the slopes to the north from these routes. I am not of the view that this gives rise to the greatest harm in terms of the character of the conservation areas, mostly because any appreciation of the conservation areas from these routes can be had by looking to the east and west, whilst the solar farm would only be apparent in northerly views which do not feature either of the two conservation areas. The viewer would be aware of the solar farm out to the north, however in viewing the visible conservation area elements this would be out to one side and could, to a degree, be filtered out in the mind of the observer.
- 3.9 The harm from this vantage point is to the landscape setting within which it is possible to experience both conservation areas and, most significantly, to appreciate their relationship to the agricultural landscape which surrounds them. It is that appreciation of wider agricultural context and setting which would be eroded by the proposed solar farm.
- 3.10 From the north the situation is slightly different. The bridleway (Hawksworth BW1) that runs roughly east-west to the north of both villages and south of Longhedge Lane is on more elevated ground and affords views back towards the two villages.



- 3.11 There is a small wedge of woodland which this bridleway passes through, and the roughly liner path changes line slightly across the span of the wooded area.
- 3.12 From the east of this wooded area views are almost exclusively of Thoroton, when emerging from the woodland to the west it is possible to see the built form of Hawksworth whilst also maintaining views of the spire of Thoroton Church, again highlighting the proximity of the two villages in the landscape.
- 3.13 The views to Hawksworth tend to focus on agricultural buildings located around the north and east edges of the village, again highlighting the historic agricultural focus of the village and illustrating its relationship with its surrounding agricultural landscape.
- 3.14 Whilst the route of the bridleway itself would be preserved through a corridor between panels these views, and appreciation of both the agricultural setting and proximity of both villages, would either be lost or would be dominated by the landscape scale array of panels visible between the viewer and the villages.
- 3.15 From the more westerly end of the Bridleway views of the tower of Hawksworth Parish Church become possible, as shown in Figure 2, this tower is the tallest structure in the village, but is noticeably shorter than the spire of the church in Thoroton and doesn't have so notable a presence in the wider landscape. As such the vantage points from where it is visible at a distance are perhaps individually more significant given that there are fewer such views at a distance. These views from the Bridleway would be altered by becoming views across an array of solar panels which cannot help but attract the eye and diminish the prominence of more distant structures in the view. The best of these views from the bridleway are also highlighted within the Conservation Area Character Appraisal (**CD 8.1**) as a significant view into the village from its surrounding agricultural landscape.

- 3.16 I have provided some images taken by myself during my site visit. These are not intended as being read as part of the landscape comments provided by Mr Browne and are provided specifically to illustrate the presence of, and views of, various heritage assets within the public realm around the two conservation areas. The paired images at figure 5 are specifically included to show how it is possible to view the two conservation area villages from a single vantage point, across the agricultural land between them where the development would take place. I would be clear that the way in which these images are provided here are not in accordance with best practise for images within LVIA reports, primarily because that is not the purpose for which they are provided.



Fig 2 – View to Hawksworth Church tower form the western end of the Bridleway

- 3.17 At the time of my site visit and walkover in March of 2023 the fields to the northeast had been recently ploughed and yet the line of the bridleway was already well trodden, as such it appears to me that this route is well used and would represent a real vantage point from which people experience the two conservation areas. Whilst the route of the footpath to the south of the villages was not recently ploughed at that time it was also very well compacted suggesting regular use.
- 3.18 Similarly to the north of Thoroton the continuation of Main Street rises steadily towards its junction with Longhedge Lane. The elevated view point this offers on approaches to Thoroton from the north keeps the spire of St Helena's Church in almost constant view along the length of the lane, as illustrated in Figure 3 the elevated position also affords views across the agricultural landscape to either side of the lane.



Fig 3 – Thoroton Spire from outside the conservation area to the north

- 3.19 Thoroton is not tremendously prominent on approaches via road, the linear nature of the village presents its 'narrow' sides on the main road approaches from the northeast and southwest. As such it is not particularly surprising that in approaches from this direction it is only the tall spire of the parish church which stands out at any distance.

- 3.20 Whilst the view of the spire would remain possible along the road from the north, the presence of a significant expanse of solar panels in the landscape to the west would draw the eye and would significantly affect the appreciation of the agricultural landscape within which the village sits, as illustrated by way of examples in Figure 4.



Fig 4 – Longer range view showing Thoroton Church and visibility across site

- 3.21 Best practice guidance on assessing setting (Historic Environment Good Practice Advice in Planning Note 3 - REF **CD 3.36**) also highlights the need to consider diurnal and seasonal changes. Often seasonal changes manifest with views being more or less prominent in winter and summer (respectively) as trees and hedges in the landscape come into and out of leaf. In this instance, considering the agricultural context of heritage assets on a large scale, particularly where the fields are largely arable, there is an obvious expectation for agricultural land to change with the seasonal as fields are ploughed, sown, tended and harvested throughout the course of the year.
- 3.22 Solar development of this type and at this scale not only obscures views of the land and introduces out of character built form across a wide area, but also establishes a static year-round appearance very different from the character of a dynamic agricultural landscape with its seasonal changes. This in turn will have notable adverse impacts on the settings of heritage assets (the two conservation areas, Hawksworth Manor Farm and to a minor extent Top Farm) which have their significance contributed to by an agricultural context in which they can be experienced and understood. This would extend to the brief periods of intense

activity and noise associated with harvest as non-visual aspects, much changed from traditional practise but still an unmistakable part of the farming year.

- 3.23 The assessment of heritage which was submitted as part of the planning application insofar as it addressed conservation areas seemed to suggest that it had considered conservation areas as the settings in which the listed buildings which they contain are experienced.
- 3.24 In the case of both Thornton and Hawksworth the Cultural Heritage Impact Assessment (**CD 1.23**) submitted with the application addresses each in a single paragraph limited to consideration of the conservation areas as the settings within which the listed buildings within them are experienced and suggests that in assessing setting of listed buildings no further consideration of the conservation areas is required.
- 3.25 Conservation Areas are heritage assets in their own rights and are separately subject to the requirements contained within the framework at Paragraphs 205-208 which requires great weight to be given to their conservation and this includes through impacts upon their settings. I am aware that the wording of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not make reference to the setting of conservation areas and specifically applies as a duty only where the proposed development is itself within a designated conservation area, however the settings of conservation areas must still be assessed and weighed in accordance with the requirements of local and national planning policy as '*designated heritage assets*'.
- 3.26 There also appears to have been no consideration given to the inter-relationship between the two conservation areas and vantage points from which the two can both be seen simultaneously across the agricultural landscape which separates them, the pair of images provided as Figure 5 illustrate such views from one position along the bridgeway just west of Main Street and east of the power line which runs through the site.
- 3.27 It is my opinion that the harm to the significance of the two conservation areas is notably greater than that concluded by the appellants at the time of the application, however this is likely owing to the failure to properly consider the conservation areas as heritage assets in their own rights and that as such they have settings of their own independent and different from those of the listed buildings within their boundaries.

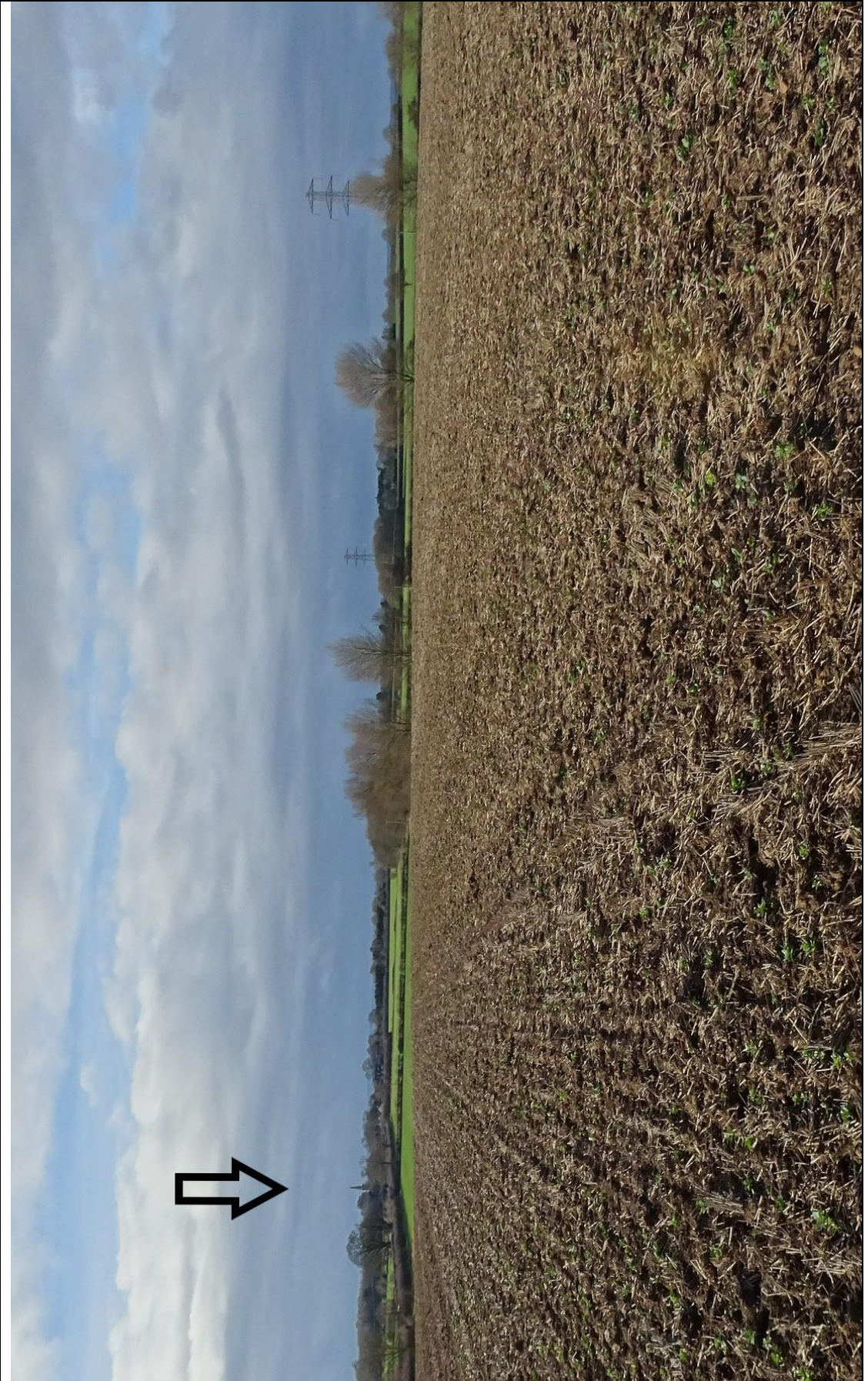




Fig 5 – 2 views from the same position on the Bridleway just east of the power lines. The first (left if bound) image shows Thoroton church Spire as the visible landmark of the Thoroton Conservation Area and the above image shows visible properties in Hawksworth Conservation Area.

Listed Buildings

- 4.1 Some reference has already been made in the previous section to listed buildings within the two village conservation areas, most notably the two churches.
- 4.2 As well as being components of the conservation areas, and owing to their scale components most readily visible at range within distant views, these are also heritage assets in their own rights.
- 4.3 Church Buildings tend to be the tallest structures within their settlements, partly as a visual illustration of the glory of God, partly to be a prominent focal landmark highlighting the importance of religion in daily life in the medieval period and partly as a way of wealthy patrons of church buildings demonstrating their own wealth and dedication to their religion.
- 4.4 Some reference has already been made to how the way in which these two listed buildings are appreciated within their settings would be affected by the proposed development.
- 4.5 The general prominence and legibility of these buildings within the landscape would also be affected and this would have a harmful effect upon the ability to appreciate and perceive these aspects of their special significance intrinsically linked to their architecture and visual prominence both within the streetscapes of their settlements and in views within the wider landscape. Whilst prominence within streetscape will not be affected in any meaningful way wide prominence will be in the manner described in the conservation area section above.
- 4.6 Hawksworth Manor is a grade II listed 17th Century Manor House with accompanying cotemporaneous pigeoncote (dated 1665) with ground floor adaptations for stabling, 19th Century Service range and former agricultural outbuildings to the north. This complex of buildings would suffer some harmful impact from the development and this was acknowledged within the heritage statement submitted with the planning application.
- 4.7 The heritage statement suggested a conscious choice to omit the nearest fields from the proposal was to mitigate impact upon setting of this building, but it did acknowledge that impacts would remain. I consider that there would be some harm to significance via setting, however given distance and the limited parts of the site that would be visible I would agree that this is a less than substantial level of harm at the lower, but not lowest, end of the scale. I am of the view that the harm is greater than identified by the appellants chiefly because the agricultural history of Hawksworth Manor, which found itself acting as a farmhouse by the 19th century, as it remains today, ties it more closely to its agricultural context. It is this context which would be impacted by the proposed development which would in turn diminish the

way in which the history of the listed building can be understood and perceived through its context.

- 4.8 In the case of the model farm buildings at Top Farm the effect on these is limited to views from inside the building. It is certainly possible that long range views from the second-floor tower windows could feature the solar farm within the landscape, however the windows on this level of the tower face north and south, the solar farm would be to the northeast such that any views would be distant and tangential. The impact on this asset is likely minor, however the purpose of the tower perhaps warrants some consideration.
- 4.9 What is now Top Farm was historically the farm buildings to 'Rectory Farm'. Rectory Farmhouse (unlisted) was built c.1859 by the then rector (George Hunt) to provide housing for his farm manager. The farm buildings, which are now Top Farm, already existed before Rectory Farmhouse was built (the buildings appear largely contemporaneous, and one has an 1837 datestone).
- 4.10 This might explain the orientation of the tower windows as those to the north face towards the church and rectory, and those to the south overlook the yard of what is now Top Farm. The ability for wider overview of surrounding landscape and fields may be more coincidental, and if this was the primary intention of the tower it is more likely that there would have been openings in the east (and possibly west) side of the tower.
- 4.11 For that reason, I am of the view that any adverse impact on the setting of the listed farm buildings at Top Farm would be minor and at the lowest end of the 'less than substantial' scale. I would, however, find the use of the term 'negligible' inherently unhelpful when assessing and identifying harm in relation to heritage assets as it implies that there is some level of harm which can simply be set-aside or dismissed. It should be very clear that any level of harm must, by definition, fail to 'preserve', with preservation having the established meaning in this context of "causing no harm" such that no degree of harm can be dismissed as negligible.

Heritage Impacts

- 5.1 From the above I have identified harmful impacts to the significance of both conservation areas through their settings, to the significance of two churches (grade II* and Grade I Listed), to the significance of Hawksworth Manor (GII) and a very minor impact to the significance of Top Farm (GII – discussed briefly in section 3 of this report – paras 3.7-3.10).
- 5.2 I have been mindful of the temporary nature of the proposed development in assessing scale of harm, however I must be equally mindful that a 40 year permission will have what is effectively a generational impact on the setting of heritage assets. To the extent that any of the proposed landscape screening could

be held in favour of the development as providing some ongoing biodiversity or other benefits beyond the direct impacts of the development if these planting features were to be retained then they would equally have a permanent and ongoing impact upon legibility of the agricultural landscape between the villages which will continue to effect the significance of their conservation areas and some of the listed buildings within them which are more visible within the wider landscape, as well as the ability to understand and perceive that significance.

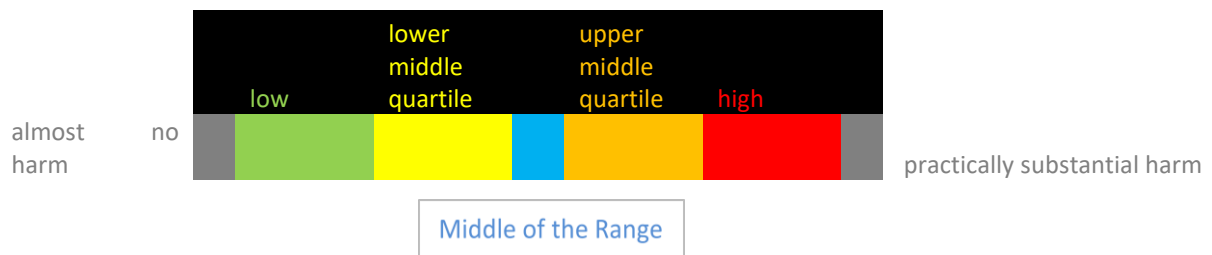
- 5.3 It should be noted that allowing any harm to the significance of Grade II listed buildings and conservation areas should be an exceptional outcome, and allowing harm to the significance of Grade II* and Grade I listed buildings should be 'wholly exceptional' according to paragraph 206 of the framework. Whilst legislation in the form of the Planning (Listed Buildings and Conservation Areas) Act 1990 recognises no difference between the various grades of listing (indeed it does not mention them at all) the framework clearly suggests that harm to the more highly graded listed buildings should be considered more sensitively and require greater justification than harm to grade II listed buildings.
- 5.4 Of the listed buildings affected those most greatly affected are the Grade II* and Grade I listed churches, which are also the most highly graded heritage assets in the vicinity of the application site. Both would face less than substantial harm to their significance through setting.
- 5.5 The two conservation areas both have an agricultural basis and feature a number of farms, both listed and unlisted, within their boundaries several of which continue to operate today.

The scale of the proposed development combined with its position between the two conservation areas having an added impact on context and intervisibility between the two areas which affects the ability to perceive the agricultural character of the two village conservation areas and the listed Hawksworth Farms at Top Farm and Hawksworth Manor Farm. The scale of the proposal also means that it is not possible to simply suggest that only a specific view in one direction is affected such that the vast majority of views remain unaffected.

- 5.6 In terms of the language used within the Planning (Listed Buildings and Conservation Areas) Act 1990 the proposals fail to preserve or enhance the special significance through setting of 4 listed buildings (section 66) and also fail to preserve or enhance the special architectural and historic character and appearance through settings of 2 conservation areas. The failure in respect of listed buildings engages a 'strong and statutory presumption against granting planning permission' as described in *Regina (on behalf of Forge Field Society et al) v Sevenoaks DC (CD 5.26)*, and in respect of conservation areas engages the considerations for the settings of heritage assets within the framework.
- 5.7 In the language of the framework beyond simply identifying harm/failure to preserve policy requires some quantification of harm. For determining which of the tests apply this simply involves a choice between 'substantial' and 'less than substantial

harm' with the former being subject of a high threshold test that the degree of harm should be tantamount to the complete loss of the asset or of its special significance. In this case the scale of harm would be less than substantial, both collectively and for each individual heritage asset affected.

- 5.8 For the application of the less than substantial harm test some further refinement on 'less than substantial' is required, given that this alone will be of limited use to a decision maker – spanning the wide range from any harm marginally above preservation, all the way to harm which is only marginally short of substantial harm.
- 5.9 A matrix addressing impact against sensitivity is sometimes used as a way to identify and illustrate the degree of harm caused. These matrices tend to output only a very limited range of 'harms', perhaps as few as 3 (minor, moderate and high) and oversimplify the assessment down to sensitivity v impact with much of the nuance being lost by boiling the exercise down to this degree.
- 5.10 Any suggestion that a fine scale of harm within less than substantial could be formulated and defended as robust and reliable needs to be avoided – it isn't possible to convincingly suggest that the range could be split into 100 divisions on a percentile basis and for that to be a reliable and repeatable exercise, but splitting such a wide range as less than substantial harm into just 3 sub-divisions will offer limited help to the decision maker.
- 5.11 There are very clearly marginal positions, at the extreme ends of the scale nearest 'no harm' and 'less than substantial harm' which could perhaps be described in that way. Beyond these extreme ends of the scale my approach is to split what remains into 4 main divisions, with a central 'middle' range giving a scale something akin to the below:



- 5.12 This allows a reasonable balance providing helpful input to the decision maker, without any pretence of exaggerated precision that an assessment with so much subjectivity could never produce.
- 5.13 In my view the harm to the conservation areas, given that their agricultural setting is very much an important component of their significance, and that there is some appreciation of the relative proximity of the two villages across the agricultural landscape between them I would be of the view that the harm to the significance of the two conservation areas would sit in the lower middle quartile of the range, if anything nearer the middle of the range than the lower end.

- 5.14 For Hawksworth St Mary and All Saints (Grade II*) I am mindful of its lesser prominence in the wider landscape than St Helena, but need to balance this against the implication that this makes the smaller range of views in which it is visible of slightly greater significance. For this grade II* listed building I would be of the view that the impact on the part of its significance which derives from its setting will again be in the lower middle quartile of the range.
- 5.15 For Thoroton St Helena (Grade I) I am mindful of the wide range of views from the north, northwest and west in which the solar farm proposal would sit in the same views as the church spire, I am also mindful that in wider landscape terms from the south of the village views of the church are less readily available owing to both distance and the other development and trees within the village of Thoroton itself. For this highly significant grade I listed building I would be of the view that the harm which it faces from the proposal on the part of its significance which derives from its setting will be within the lower middle quartile, but towards the middle, of the range. This is acknowledging that the character of the churchyard will be unchanged and views outward from the churchyard itself at ground level will also be unchanged, but that wider visibility in the local landscape is, nevertheless, a significant aspect of the setting of this asset.
- 5.16 For the two listed farms, Top Farm and Hawksworth Manor Farm I would find the impact on Top Farm (Grade II) to be at the lowest end of the scale, at the interface between low and almost no harm, such that the scale of impacts upon this heritage asset are unlikely to be a determining factor in any decision.
- 5.17 For Hawksworth Manor Farm (Grade II) there would be adverse impacts through setting, particularly given the long history of the building and site as a farm which gives it an intrinsic link to the agricultural character of, and agricultural activity within, the wider landscape. For this grade II listed heritage asset I would suggest that harm via setting would fall within the 'low' portion of the range.
- 5.18 It should be noted that Paragraph 205 of the framework makes clear that *“great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”*.
- 5.19 Any level of harm to the lowest status asset must, therefore, at least be afforded *“great weight”* within the decision making process, this recognises other comments within the framework acknowledging that heritage assets are an *“irreplaceable resource”* (Paragraph 195) and is affirmed in recent case law, notably *R(Faherty) v Bournemouth, Christchurch & Pool Council [2023] (CD 5.32)*. In the sense of paragraph 205 a quantum of harm to a grade I listed building would engage greater weight in the balance against granting planning permission than an equal degree of harm to a grade II* or Grade II listed building.

- 5.20 Recent legislative changes within the Levelling Up and Regeneration Act (Section 102(4)b) require that the duty in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of listed buildings and their settings to be read as referring to “preserve or enhance” in England, similar to how section 72 in respect of conservation areas has always been worded, as opposed to simply ‘preserve’. Given the identification of harm, regardless of scale, precludes preservation the higher test of ‘enhance’ cannot be met.
- 5.21 When applying the test for cases of less than substantial harm under paragraph 208 of the framework the balance must be applied as a weighted balance, both in line with the requirement in paragraph 205 that great weight be given in favour of conservation of heritage assets and the fact that the legal duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to “*have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*” establishes a strong and statutory presumption against granting planning permission in cases where preservation is not achieved (ie where any harm is caused) [Regina (on behalf of Forge Field Society et al) v Sevenoaks DC] (**CD 5.26**). For the application of the test under paragraph 208 to succeed public benefits must outweigh harm to such a degree as to justify departure from the statutory presumption arising under the 1990 Act.
- 5.22 The proposal would therefore fail to achieve the ‘desirable’ objective described within section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 of ‘preserving or enhancing’ the special architectural and historic significance of listed buildings, specifically through their setting. This would engage a strong and statutory presumption against granting planning permission.
- 5.23 The failure to avoid harm to heritage assets, both listed buildings and conservation areas, would also be contrary to Development Framework policies, specifically Policy 11 of Local Plan Part 1 (core Strategy) and Policy 28 of Local Plan Part 2.
- 5.24 Policy 11 offers support for proposals which would see “*heritage assets and their settings are conserved and/or enhanced in line with their interest and significance*”. As the proposal fails to conserve or enhance heritage assets this support for the proposal is not engaged.
- 5.25 Policy 28 contains some further clarification of factors and issues to be considered when assessing and weighing impacts on built heritage. There would be particular conflict with section 2 parts c) and d) which relate to matters of setting and context for heritage assets:
- c) whether the proposals would conserve or enhance the character and appearance of the heritage asset by virtue of siting, scale, building form, massing, height, materials and quality of detail;*
- d) whether the proposals would respect the asset’s relationship with the historic street pattern, topography, urban spaces, landscape, views and landmarks;*

- 5.26 Section 2 e) of Policy 28 provides a positive weighting for proposals which would e) whether the proposals would “*contribute to the long-term maintenance and management of*” heritage assets however there is nothing about the proposal which would appear to contribute to the long-term maintenance and management of any particular heritage asset.
- 5.27 Policy 10 of Local Plan Part 1 (Core Strategy) is a strategic design policy, however it does include a number of points which relate to design respecting context, such as section 1 a and c, as well as sections 2 (i) and 4 which specifically reference the setting of heritage assets.
- 5.28 Section 1(a) promotes developments which achieve or contribute to a *positive sense of place*, with conservation areas being unique places with a character worthy of preservation a proposal which fails to preserve the setting in conservation areas is unlikely to be one which contributes to a positive sense of place.
- 5.29 Section 1(c) supports proposals which would reinforce *valued local characteristics*, again the character of the two villages as conservation areas would be a valued local characteristic which is harmed, not reinforced, via this proposal.
- 5.30 Section 4 states that all developments must be designed in a way that conserves locally and nationally important heritage assets and preserves or enhances their settings, which would not be achieved by the proposed development.

NPPF Paragraph 206 – “Clear and Convincing Justification”

- 6.1 The framework sets out that any proposals which result in any level of harm to heritage assets should be supported by a clear and convincing justification, this requirement being set out in paragraph 206. Subsequent paragraphs then set out how decisions should be made in cases where there is less than substantial harm, or substantial harm (paragraphs 208 and 207 respectively).
- 6.2 In the case of the paragraph 208 test for cases of less than substantial harm this is an exercise of whether public benefits would outweigh harm to heritage assets and/or their settings. It is established fact that this test must be applied as a skewed balance, the framework states that great weight should be afforded to the presumption that heritage assets be preserved against harm, and where harm is caused a proposal cannot ‘preserve’ the significance of heritage assets as described in sections 16, 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 – as a consequence public benefits do not need to simply outweigh harm as a direct balance, but must do so sufficiently to justify departure from a statutory presumption against granting planning permission which arises from section 66.

- 6.3 Paragraph 208 does not suggest that public benefits themselves represent a clear and convincing justification in their own rights, and where those benefits could be delivered without causing the associated harm then the argument that the benefits themselves represent justification seems untenable.
- 6.4 Case law in the *Regina (on behalf of Forge Field Society et al) v Sevenoaks DC (CD 5.26)* case provides a judgement including the suggestion that where a proposal causes harm to heritage assets, or their settings (in that case a conservation area), then it is legitimate for the decision maker to consider whether or not the wider public benefits of the proposal (in that case a development of affordable housing) could be secured in an alternative way, including on alternative sites, whilst also avoiding or reducing the harm to heritage assets of their settings.
- 6.5 Whilst not explicit the author takes this as a conclusion linked to the requirement within paragraph 206 of the framework that any proposal which harms heritage assets or their settings should have a '*clear and convincing justification*'.
- 6.6 This requirement for a convincing justification precedes the tests for substantial and less than substantial harm in paragraphs 207 and 208 (respectively) and the judge appears to suggest that even if a scheme does present wider public benefits the first hurdle, and a separate one to overcome, is to establish that there is a convincing justification for causing harm at all.
- 6.7 The judge appears to then take this to the position that if the level of harm could be reduced, or avoided entirely, by development on alternate land, specifying that this would extend to land outside of the appellant ownership, then it would be difficult to present such a clear and convincing justification – essentially that such a justification cannot readily exist where causing the harm is avoidable whilst delivering the same benefits.
- 6.8 Best Practice when considering the settings of heritage assets (Historic Environment Good Practice Advice in Planning Note 3 - **REF CD 3.36**) suggests a 5 step approach (although step 5 is post decision monitoring and reflection) where the 4th step is to consider ways in which a proposal could minimise harm and maximise benefits. Paragraph 39 of the document opens with "*options for reducing the harm arising from development may include the repositioning of a development or its elements*".
- 6.9 As such potential alternatives are legitimate considerations in the determination of a planning application, and this appeal.
- 6.10 Further exploration of alternative sites will be addressed by Mrs Temple in her evidence.
- 6.11 The Borough Council is considering a number of other solar farm proposals, including those which have already been approved, those within the planning process, and others which are at pre-app stage. It would appear untenable to simply

suggest that no alternative sites exist when the Borough Council continues to receive new enquiries relating to solar proposals on other sites.

Alternative Scheme Submitted for Appeal

- 7.1 The proposal as submitted for the appeal omits solar panels from a small portion of the field nearest to the northern boundary of Hawksworth Conservation Area. I note that the appeal scheme has been further modified through the course of the appeal around the time that the appellants statement of case was submitted and this has involved some minor changes to proposed screening measures in parts of the site, the position and route of a hedgerow and a small area of proposed tree planting.
- 7.2 Neither the initial appeal proposal, nor the further amended scheme raised at the case management conference, was ever submitted as part of the application considered by Rushcliffe Borough Council.
- 7.3 I have given consideration to the effect of these amended proposals and am of the view that the change, in terms of its effect upon how the proposal affects heritage assets and their settings, is minor at best. Views from areas in which both conservation areas can be seen in context from the bridleways to the north would still feature panels in the foreground of views back to Hawksworth, views from the western extent of the bridleway back to Hawksworth where glimpses of the church tower are possible would still be views over an extensive area of solar panels, and as land slopes gradually upwards from Hawksworth and Thoroton toward the north views out from the northern limits of the conservation area would still feature panels.
- 7.4 If screening were proposed to restrict views of the panels themselves then the screening itself would remove any appreciation of the agricultural context to the north of the two villages. Setting of Heritage Assets best practice (Historic Environment Good Practice Advice in Planning Note 3 - REF **CD 3.36**) acknowledges that avoiding harm and screening harm are not the same, that screening can only ever be mitigation and that avoiding harm should be the ideal goal, the guidance also acknowledges that screening can be a source of harm in itself and in this case I would be of the view that either the character of views, and the contribution they make to significance, would be altered by the solar farm or screening would result in these views and their contribution being hidden and no longer being appreciated.
- 7.5 Overall I am not of the view that the proposed change makes any significant difference to the assessment of heritage impacts, the harm would be marginally reduced, however the scale of this reduction would be limited and would make no difference to where I find the harm to fall within the less than substantial scale.
- 7.6 It would also seem entirely logical to me that a reduced area for panels to be installed upon would also result in a reduced output and a reduction in the scale of the public benefit from the generation of renewable energy, however I note the

appellants suggestion that despite the reduced area there would be no reduction in stated output.

Conclusion

- 8.1 A summary of my conclusions in terms of heritage harm is provided below, in all cases these are positions on a scale of 'less than substantial' harms:

Asset	Grade/Class	Harm
Hawksworth Conservation Area	Conservation Area (Setting & Key View)	Lower Middle Quartile
Thoroton Conservation Area	Conservation Area (Setting)	Lower Middle Quartile
Thoroton St Helena	G I Listed	Lower Middle Quartile – but Towards Middle
Hawksworth St Mary & All Saints	G II* Listed	Lower Middle Quartile
Hawksworth Manor & Pigeoncote	G II Listed	Low
Top Farm – Model Farm Buildings	G II Listed	Low, near Almost No Harm

- 8.2 It should be remembered that permitting harm to higher graded listed buildings should be more exceptional and therefore should require greater justification than an equal scale of harm to a lower graded listed building, but in all cases the duty to have special regard to the preservation of listed buildings within section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 Applies.
- 8.3 My assessment of harm is higher in all cases than that ascribed by the appellants Cultural Heritage Impact Assessment (**CD 1.23**), with the possible exception of the Grade II listed Top Farm where I would agree that the harm is at the lower end of the less than substantial scale, but feel that the description of this scale of harm as 'negligible' inadvertently and incorrectly suggests that this could simply be set aside, albeit I do agree that the low level of harm to this asset is unlikely to be a determining issue.
- 8.4 In the case of Conservation Areas I am of the view that my higher findings in terms of scale of harm are due to the failure of the author of the Cultural Heritage Assessment (**CD 1.23**) to apparently have reference to the conservation area appraisals for the two settlements and to appreciate the contribution made by their agricultural character and context, and also to undertake an assessment of impacts upon them which appeared to diminish their significance to providing a setting for the listed buildings within them, rather than treating them as separate heritage assets with significance and settings in their own rights.
- 8.5 In the case Hawksworth Manor as a grade II listed building the farming background, and continued farming associations, of the site appear to be unrecognised and not

to factor into consideration of the impacts on the significance of this listed building via its setting, which has led to my finding a greater degree of harm in my assessment.

- 8.6 In the case of the two churches the appreciation of their setting seems to give weight disproportionately to their immediate context within their churchyards and the conservation areas within their site, with prominence in the wider landscape referred to as 'distant views' and seemingly given little weight in the assessment.
- 8.7 The greater scale of harm which I had, and have, identified led the local authority in its role as decision maker to conclude, when determining the application originally, that the public benefits of the scheme did not outweigh the harm to heritage assets.
- 8.8 Further to the balance of harm for the test under paragraph 208 of the framework there is also the issue of a need for a clear and convincing justification under the preceding paragraph 206.
- 8.9 It would not appear that there has been any consideration of whether the benefits of this development could be achieved via alternative means, including through development on alternative sites, whilst securing a reduction to heritage harms, or avoiding such harms entirely. As such it would not appear that a clear and convincing justification for the harm which development on this site would cause has been demonstrated.