

**ON BEHALF OF RUSHCLIFFE BOROUGH COUNCIL**

**Town and Country Planning Act 1990, Section 78 Appeal**

**PROOF OF EVIDENCE**

**PUBLIC INQUIRY**

**PINS Appeal ref:** APP/P3040/W/23/3330045

**LPA ref:** 22/02241/FUL

**Location:** Land East of Hawksworth and northwest of Thoroton,  
Thoroton, Nottinghamshire, NG13 9DB

**Appellant:** Renewable Energy Systems (RES) Ltd

**Description:** 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

**Date:** May 2024

All documents referred to within this statement and originally submitted with the planning application can be viewed on the Council's website.

Statement prepared by: Emily Temple [BSc \(Hons\) MSc MRTPI](#)  
[Executive Director and Founder](#) | ET Planning

## **CONTENTS**

Section 1 – Introduction	3
Section 2 – The site and surrounds	4
Section 3 – Planning History	4
Section 4 – Description of the Proposal	4
Section 5 – National and Local Planning Policy	4
Section 6 –Case on behalf of the Local Planning Authority	5
Section 7 – Planning Balance and Conclusion	13

## **1. INTRODUCTION**

1.1 This is my Proof of Evidence in respect of an appeal by Renewable Energy Systems (RES) Ltd against the Local Planning Authority's refusal of Full planning application reference 22/02241/FUL for the 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.

1.2 I, Emily Temple, have been appointed by Rushcliffe Borough Council to give evidence in support of their case in this appeal. I hold over 19 years of professional planning experience, both in the public and private sector. I am the Founding Director at ET Planning Ltd, an independent planning consultancy established in March 2017 which is registered with the RTPI. I have held this position for over 6 years. Prior to this, I was for five years a Principal Planner and later Associate Director for national planning consultancy Pegasus Group. I also hold seven years' experience working for two different Local Planning Authorities, up to Senior Planning Officer level. I have appeared as a professional expert witness in numerous Public Inquiries for both private and public sector clients. I hold a Bachelor of Science Honours degree in Environmental Protection awarded by Surrey University, a Master's Degree in Spatial Planning awarded by Oxford Brookes University, and am a Chartered Member of the Royal Town Planning Institute. I am familiar with the appeal site and the surrounding area and have made myself aware of the planning policy background and relevant issues to this appeal. The evidence which I have prepared and provide for this appeal in this Proof of Evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

### *Statement of Common Ground and conditions*

1.3 A statement of common and uncommon ground has been agreed with the Appellant, along with a list of conditions. These have been submitted separately as part of the appeal proceedings.

## **2. THE SITE AND SURROUNDS**

2.1 Please refer to section 2 of the Council's statement of case (CD7.7).

## **3. PLANNING HISTORY**

3.1 Please refer to section 3 of the Council's statement of case (CD7.7).

## **4. DESCRIPTION OF THE PROPOSAL**

4.1 Please refer to section 4 of the Council's statement of case (CD7.7).

## **5. NATIONAL AND LOCAL PLANNING POLICY AND LEGISLATION**

5.1 Please refer to section 5 of the Council's statement of case (CD7.7). Of note since the planning decision was issued is the update to the National Planning Policy Framework in December 2023 (CD3.1) and the National Policy Statement for renewable energy published in November 2023 which came into effect on 17/01/24 (CD3.3).

## **6. THE CASE ON BEHALF OF THE LOCAL PLANNING AUTHORITY**

6.1 The planning application subject to this appeal was refused under delegated powers on 20<sup>th</sup> March 2023. A copy of the Decision Notice is attached at Appendix 1 of the Council's Statement of Case (CD7.7 and at CD2.2). The application was refused for the following reasons:

1. *The magnitude of the scale and nature of the ground mounted solar proposals would have a significant adverse impact on landscape character and visual amenity, contrary to Policy 22 (Development in the Countryside), Policy 34 (Green Infrastructure, Landscape, Parks and Open Spaces) and Policy 16 (Renewable Energy) of LPP2 which both seek to ensure that new development does not have an adverse impact and that any adverse effects can be adequately mitigated and paragraphs 155 and 180 of the National Planning Policy Framework, which seek to support the use and supply of renewable and low carbon energy provided the adverse impacts are addressed satisfactorily (including cumulative landscape and visual impacts).*

2. *The proposed development does not contribute to the preservation or enhancement of the setting of the Hawksworth and Thoroton Conservation Areas and does not contribute to the preservation of the setting of a number of listed buildings within these conservation areas. The harm to the heritage assets would be 'less than substantial. Whilst the significant benefits of the proposal in terms of renewable energy are acknowledged the public benefits do not outweigh the harm to the assets of national and local heritage value. As such the proposal is contrary to Policy 11 (Historic Environment) and Policy 28 (Conserving and Enhancing Heritage Assets) of LPP1 that seeks to ensure that there is no significant adverse effect on any historic sites and their settings including listed buildings, buildings of local interest, conservation areas, scheduled ancient monuments, and historic parks and gardens. The proposals would also be contrary to Policy 16 which requires that renewable energy schemes must be acceptable in terms the historic environment and paragraphs 200 and 202 of the NPPF which require that any harm to, or loss of, the significance of a designated heritage asset (from its alteration, or destruction, or from development within its setting) should require*

*clear and convincing justification and that this harm should be weighed against the public benefits of the proposal.*

- 6.2 Two further matters were raised with PINS, the Appellant and the Rule 6 party by email on the 9<sup>th</sup> April 2024. These were lack of a sequential test, in respect to flood risk, and the loss of Best and Most Versatile (BMV) Agricultural Land. The Council's Statement of Case explains the inclusions of these considerations. This proof assesses those considerations.
- 6.3 The delegated officer report is also attached at Appendix 2 of the Council's Statement of Case (CD7.7 and at CD2.1). This sets out why the appeal scheme is unacceptable. The officer report should be read in connection with the Council's Statement of Case and this Proof of Evidence.
- 6.4 The following main issues are identified for assessment;
- Effect on Landscape Character and Appearance
  - Heritage Effects
  - Loss of BMV and alternative sites assessment
  - Lack of sequential test
  - Planning balance

*Effect on the Landscape Character and Appearance of the Area*

- 6.5 Policy 10 of the Core Strategy (CD4.1) requires "*new development to conserve or where appropriate, enhance or restore landscape character. Proposals will be assessed with reference to the Greater Nottingham Landscape Character Assessment.*" Policy 16(2e) of the Local Plan part 2 (CD4.2) confirms the same; "*Landscape Character is protected, conserved or enhanced where appropriate in line with the recommendations of the Greater Nottingham Landscape Character Assessment*". Policy 22 relating to land beyond the Green Belt adds further support at section 3 where developments will be permitted where "*the appearance and character of the landscape.....is conserved and enhanced*".
- 6.6 I refer to the Proof prepared by the Council's landscape witness, Mr Bobby Browne (CD7.11). Mr Browne is a chartered landscape architect. The appeal site consists

of nine fields located to the east of Hawksworth and northwest of Thoroton within a wholly arable landscape interspersed with small pockets of woodland. The Appellant in their appeal statement paragraph 4.1 describe the surrounding area as 'semi-rural' whereas my assessment is rural; rural does not mean devoid of any development but is about the overall character presented. I note the Council's landscape witness Mr Browne agrees with this assessment and his Proof paragraph 4.3.2.

- 6.7 The appeal site lies within the South Nottinghamshire Farmlands Regional Character Area. Appendix 9 of the GNLCA (CD3.30) identifies certain Draft Policy Zones ('DPZ') within the Regional Character Areas and identifies the site as being within the DPZ known as SN06 Aslockton Village Farmlands. Key characteristics include a rural, remote and tranquil character comprising arable farmlands and a regular dispersal of small rural settlements, mostly arable land use, and expansive long distance views. The landscape strategy is to **Conserve and Enhance**.
- 6.8 I note Mr Browne's Significance of Landscape Effects at 5.3.2. Furthermore, the various visual effects are described at section 6.3 and the conclusions at paragraph 5.3.4 and section 7 that the appeal development does not conserve the setting of Hawksworth or Thoroton Conservation Areas nor is sympathetic to the local character and landscape setting of the area. As such, whilst there is some agreement with the Appellant that the effect on SN06 is Minor Adverse, the landscape actions as identified by the GNLCA clearly cannot said to be followed and by definition even Minor Adverse harm does not achieve the landscape strategy to Conserve and Enhance.
- 6.9 Visual harm is further explained by Mr Browne at his Proof paragraph 7.1.8 as adversely impacting the users of Bridleways BW1 and BW6, with proposed hedgerow corridor planting resulting in a loss of long distance views, an appreciation of the two settlements of Thoroton and Hawksworth and perception of the undulating topography. Further harm is identified by the high degree of change to two 'significant views' identified in the Hawksworth and Thoroton Conservation Area Appraisals, and users of Footpath 3 as explained at paragraph 7.1.9.

### *Cumulative Effect*

6.10 No cumulative landscape effects are identified.

### *Landscape Conclusions*

6.11 In summary, the appeal site forms an important landscape and visual element in the locality and there is harm upon it. The appeal site adds positively to the rural character of the area, representing the key characteristics for which the landscape character area is so defined, and contributing to the setting of nearby settlements. Moreover, it is an attractive area of countryside as part of a wider region that is enjoyed by many users of the network of PRow and Bridleways in the locality. The scale and broad spread of development with associated infrastructure would result in an urbanising form of development which does not achieve the policy requirements to conserve the landscape character of the area; the harm is material and significant. Proposed landscaping measures exist to mitigate harm resulting from the visual effect of development yet would not totally screen the development and will take 10 years (25%) of the lifespan of the development to mature, and would provide less screening during winter months even as the vegetation grows. Furthermore such screening when mature would adversely change the visual experience of the locality in perpetuity as planting would remain after the development is decommissioned.

6.12 Mr Browne finds at his 5.2.10 a high magnitude of landscape effects at the appeal site itself and medium on the settlement edges of Hawksworth and Thoroton. The Appellant does not assess these impacts. The significance of landscape effect is judged by Mr Browne to be Major/Moderate adverse at the site itself after 10 years, Moderate at the settlement edges and Minor Adverse within the SN06 Receptor Area. Mr Browne concludes as his Proof paragraph 5.3.4 "*the proposals do not make a positive contribution to the sense of place, they do not reinforce valued local characteristics, nor do they conserve the setting to the Hawksworth and Thoroton Conservation Areas*". Consequently, the appeal development is contrary to policy LPP1 Policy 10, LPP2 Policy 16(1b and 1i) and 34 and the Framework paragraph 135c, 160a and 180b.



*Heritage Effects*

6.13 The Inspector is referred to the Proof of Evidence of Council Officer Mr James Bate (CD7.12). Mr Bate is fully qualified as a conservation specialist and is a member of the IHBC. Mr Bate concludes the effect of the development upon heritage assets in his Proof section 2.2 copied as follows:

<b>Asset</b>	<b>Grade/Class</b>	<b>Harm – Less than substantial</b>
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 end
Top Farm – Model Farm Buildings	G II Listed	Low, near Almost No Harm

6.14 I do not seek to duplicate Mr Bate’s explanations of the above harms here but I have taken account of Mr Bate’s conclusions on the harm identified. In accordance with the Framework paragraph 205 and the case of Faherty (2023) (CD5.32) Great Weight against must be attributed to the identified harm across each of the different heritage assets listed above. This harm and whether public benefits outweigh the harm are considered further in the planning balance in my section 7.

*Loss of Best and Most Versatile (BMV) and Assessment of Alternative sites*

6.15 The PPG on renewable energy (CD3.2), paragraph 13 requires that when a proposal involves Greenfield Land, that the Appellant show “*whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land*”.

6.16 The Appellant’s Technical Appendix 9: Agricultural Quality of Land dated 30/11/2022 (CD1.29) identifies on page 12 the following development areas over the different agricultural land grades:

<b>Grade/Subgrade</b>	<b>Area (Ha)</b>	<b>Land %</b>
2	1.7	2
3a	33.7	36
3b	54	58
Other	3.9	4
Total	93.3	100

6.17 The above table reveals 38% of the developed site constitutes Best and most Versatile Agricultural Land in grade 2 and 3a classification. The document is factual only and does not seek to justify the use of such land for the appeal development. The Planning Statement dated 30<sup>th</sup> November 2022 (CD1.3) refers at paragraph 1.62 to the development site being in 'dual-use' as small livestock such as sheep may graze the land. At paragraph 1.89 the development is described as being returned to its former agricultural state following decommissioning. Paragraph 1.119 onwards addresses the NPPG directly, referring again to sheep grazing and the temporary nature of the development.

6.18 Natural England were a statutory consultee to the application and did not object (CD6.19). However PPG guidance on the [www.gov.uk](http://www.gov.uk) website dated 5<sup>th</sup> February 2021 provides a helpful assessment tool. Grade 2 agricultural land is identified as land where a wide range of agricultural and horticultural crops can usually be grown (section 4.2). Grade 3a is identified as yielding a narrow range of arable crops such as cereals, potatoes, oilseed rape, sugar beet. It is clear from the development proposals that whilst some sheep grazing is proposed, the appeal proposal would result in the loss of productive agricultural land for the 40 year duration of the development. The Planning Statement (CD1.3) acknowledges the existing use is 'intensive arable farming, which will be ceased' at paragraph 1.187.

6.19 Section 6 of the PPG online advice refers to the loss of under 20Ha of BMV land as 'small'. The appeal proposal results in a 35.4Ha loss, which I conclude is significant. Section 1 seeks to protect BMV land from 'significant, inappropriate or unsustainable development proposals. Section 6 requires decision makers to

'avoid unnecessary loss of BMV land'. The Framework paragraph 180 adds a further requirement to recognise the economic and other benefits of BMV land.

6.20 It does not appear the Appellant has undertaken such an economic assessment; no arable farming economic loss details are included, nor explanation as to why the site was not reduced in scale to remove BMV land from the proposal. Sheep grazing does not maintain the productive use of the land, resulting in a 40 year loss of BMV land. The Appellant's planning statement refers at paragraph 1.211 to the economic benefits of the solar farm development, but this is not set against the economic loss of BMV land. The development is therefore contrary to Policy 16(1d) and Policy 22(2i) of the Core Strategy Part 2, the PPG and The Framework paragraph 180b.

#### *Flood Risk Sequential Test*

6.21 At the time of writing and as per the 9<sup>th</sup> April email to PINS and the Appellant, the Appellant has failed to carry out a sequential test or exception test in accordance with the National Policy (CD3.2), which is clear that a Sequential Test is necessary for sites in flood zones 2 or 3. For the avoidance of doubt the PPG (last updated 28/02/2017) states:

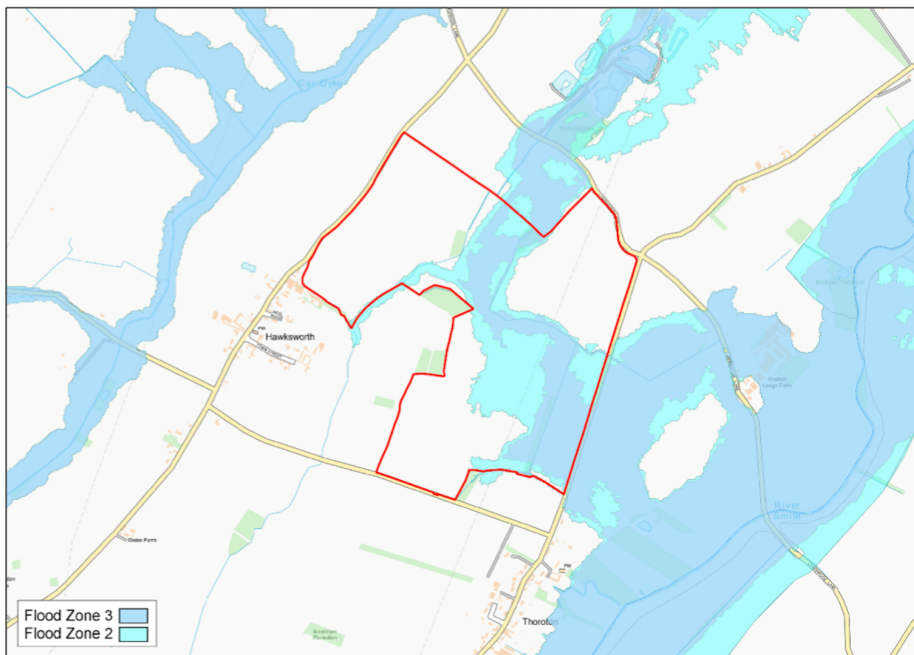
#### **Developments that need a sequential test**

You need to do a sequential test if both of the following apply:

- your development is in [flood zone 2 or 3](#) - [find out what flood zone you're in](#)
- a sequential test hasn't already been done for a development of the type you plan to carry out on your proposed site - check with your local planning authority

6.22 The Appellant's Technical Appendix 4 Flood risk and Drainage Impact Assessment dated 30/11/22 (CD1.24) identifies that the appeal sites is located across Flood Zones 1, 2 and 3. Appendix 4A provides a helpful overview of these zones; an extract is provided overleaf;

Figure 4.1 EA Flood Map for Planning



6.23 The Appellant’s Technical Appendix 4 Flood risk and Drainage Impact Assessment dated 30/11/22 (CD1.24) even acknowledges the requirement to undertake a Sequential Test at paragraph 4.2, that the Council’s pre-app advice required such a test at paragraph 4.26 and that a Sequential Test is properly based on the NPPG at their paragraph 4.42.

6.24 The Appellant’s Technical Appendix 4 Flood risk and Drainage Impact Assessment dated 30/11/22 (CD1.24) states at paragraphs 4.5, 4.31, 4.43 table 4, paragraph 4.77 and 4.143 the taking of a ‘sequential approach’ to development within the appeal site, but this is an incorrect interpretation of the National Policy and is not the same as undertaking a ‘sequential test’ which requires an assessment of the appeal site against *other* development site location alternatives within the Borough, not just within the site itself.

6.25 The Council understands a Sequential Test may be submitted by the Appellant at the Proof of Evidence stage, and if so the Council will correspondingly respond as to whether the sequential test is passed at the Proof rebuttal stage. The search area for the sequential test is requested to be Borough-wide, noting the scale of development proposed. At the present time, the lack of such a test weighs against the Appeal development and is a clear reason for dismissal.

6.26 In addition, paragraph 4.39 of the Appellant's Technical Appendix 4 Flood risk and Drainage Impact Assessment dated 30/11/22 (CD1.24) identifies that the majority of the site has a 50-75% chance of groundwater flooding classed as Medium-High Risk (paragraph 4.85). The report recommends at 4.86 this is a matter for the detailed design stage conditionally controlled. In the absence of such control, additional flood risk harm from groundwater flooding is identified.

## **7. PLANNING BALANCE AND CONCLUSION**

7.1 In accordance with paragraph 12 of the Framework, the statutory status of the Development Plan is the starting point for decision-taking. Paragraph 12 advises that "where a planning application conflicts with an up-to-date development plan permission should not usually be granted". Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that "where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise'.

7.2 When assessing all relevant material considerations, it is necessary to weigh the different benefits of the proposal. For ease, I have adopted the following weighting descriptions as follows in order of significance:

- Great
- Significant
- Moderate
- Limited
- Neutral

7.3 These weightings are summarised in the following tables:

<b>Harm</b>	<b>Great</b>	<b>Significant</b>	<b>Moderate</b>	<b>Limited</b>	<b>Neutral</b>
Heritage Harm	x				
Landscape harm		x			
Loss of BMV land		X			
Flood Risk	X				

<b>Benefit</b>	<b>Great</b>	<b>Significant</b>	<b>Moderate</b>	<b>Limited</b>	<b>Neutral</b>
Renewable Energy Generation		x			
Economic benefit				x	
Biodiversity net gain		x			
Policy compliant aspects					x
Temporary length of operation			x		

*Harms*

- 7.4 Great weight against must be given to any harm to the Heritage Assets (Framework paragraph 205 and Faherty, 2023).
- 7.5 Significant negative weight is afforded to the harmful effect of the appeal development on the landscape character and appearance of the area, specifically the the introduction of uncharacteristic and dominant built influence to this rural

area, with a considerable alteration from baseline landscape characteristics and visual harm on users of the local Public Right of Ways.

7.6 Great negative weight is afforded to flood risk, in the absence of a sequential test.

7.7 Moderate negative weight is afforded to the loss BVL through a lack of an alternative assessment as the restrictions advanced by the Appellant appear to be self-imposed rather than dictated by any external parameters or standards.

#### *Benefits*

7.8 Significant positive weight is afforded to the renewable energy generating benefits of the appeal development.

7.9 Subject to conditional control, significant positive weight is given to Biodiversity Net Gain, noting that such benefits would be retained after the development is decommissioned.

7.10 Limited positive weight is given to the economic benefits of the development as most are for temporary time periods of construction and decommissioning. Business rates contribute toward local services rendered by the Council.

7.11 Limited positive weight is afforded to the temporary nature of the appeal proposal as at 40 years, the ability for the temporary nature of the appeal development and reversion to open land to be appreciated by local residents and users of the area is very limited. A 40 year timeframe represents a generation.

7.12 The policy compliant aspects of the development against Council policies relating to sustainability, drainage, highway safety etc are considered to be neutral effects rather than benefits. Individually these aspects are afforded neutral weight.

#### *Heritage Balance*

7.13 I have taken into account the Appellant's evidence, and the evidence of Mr Bate. I note the number of heritage assets affected and degrees of less than substantial harm afforded to the effect of the development on the significance of those heritage assets. I have also taken into consideration the 40 year timeframe for

the appeal development. Nevertheless, for the duration of its operation, the appeal proposal would bring about a noticeable change to the appearance of the two Conservation Area's settings. The degree of harm identified by Mr Bate would adversely impact upon the significance of the setting of the identified Assets. In accordance with paragraph 208 of The Framework I have therefore considered whether public benefits outweigh the Heritage harm. Whilst significant weight is afforded to these benefits (see section 7), I do not find it is sufficient to outweigh the Great weight which must be afforded to the heritage harm identified across six separate heritage assets. The appeal development therefore fails to achieve the Framework's test at paragraph 208 and is therefore unacceptable, such that heritage harm is a clear reason for dismissal of the appeal development. This is the Council's first position. However, even if the Inspector were to find paragraph 208 of the Framework was passed, the heritage harm must still be weighed in the overall balance.

#### *Overall Planning Balance and Conclusion*

- 7.14 For reasons set out in this statement, I find the appeal development is contrary to relevant up to date Development Plan policies in relation to the harm on the landscape character and appearance, the setting of heritage assets, loss of BMV and at the time of writing, a lack of a sequential test. Dismissal is further supported by national guidance in the form of The Framework and the PPG. In accordance with paragraph 12 of The Framework, permission should not be granted where there is conflict with an up to date Development Plan. Independently, both the Heritage harm and Flood Risk harm caused by a lack of a sequential test are contrary to National and Local policy and justify dismissal of the appeal development. Nevertheless, even when weighing all the benefits against the series of harms identified, I do not find that material considerations in favour of "indicate otherwise" that determination should not be made in accordance with the Development Plan. Accordingly, the Council respectfully requests that permission be withheld and the appeal dismissed.