

**STATUTORY PLANNING APPEAL PURSUANT TO SECTIONS 78 OF THE TOWN AND
COUNTRY PLANNING ACT 1990
AGAINST RUSHCLIFFE BOROUGH COUNCIL**

APPEAL BY RENEWABLE ENERGY SYSTEMS (RES) LIMITED

**LAND EAST OF HAWKSWORTH AND NORTHWEST OF THOROTON,
NOTTINGHAMSHIRE NG13 9DB
Inquiry opening 10 June 2024**

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

LPA APPEAL REFERENCE: 22/02241/FUL

COUNCIL'S OPENING SUBMISSIONS

Abbreviations used below

AC	Andrew Cook
ET	Emily Temple
NC	Nigel Cussen
NPPF	National Planning Policy Framework
PCPA	Planning and Compulsory Purchase Act 2004
PoE	Proof of Evidence
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
BMV	Best and Most Versatile Agricultural Land

Introduction

1. Sir, the post case management conference note produced by Inspector Robins identified a number of main issues. On the assumption that they remain the same, these opening submissions address those main issues.
2. However, before turning to those main issues, as a preliminary matter the Council wish to raise its reservations about what the Appellant is seeking permission for. This matter recently came to light, owing to questions about Figures 12a and 12b and the tower (or lack thereof). The Council set out its concerns with this via an email last Friday and have seen your response Sir, wherein you have asked the Appellant to explain this. At this point, the Council reserves its position until it has seen this note. However, naturally, if the plans for approval do not demonstrate a scheme capable of connecting to the grid and this is contingent upon a different overlapping planning application, the Council naturally will more to say about this.

(a) The effect on the landscape character and appearance of the area

3. It is common ground between the Council and Appellant that the site is not subject to any landscape designations, nor is it a valued landscape within the meaning of paragraph 180(a) of the NPPF. However, the harms to the character and appearance of the area are such that the Council contend that they would significantly and demonstrably harm the landscape setting, character and appearance of the site, as well as the settlement edges of Hawksworth and Thoroton.
4. This issue will largely turn on subjective judgments that will be resolved through your site visit and the evidence to be heard later today during the round table.
5. In any event, the Council contend that irrespective of whether you agree with the Council or Appellant on the extent of harm to the character and

appearance of the area, there is still associated policy conflict that weighs against the proposal.

(b) The effect on heritage assets, including the Thoroton and Hawksworth Conservation Areas and associated listed buildings

6. The Council contend that there would be less than substantial harm to 6 designated heritage assets, namely:

- i. Hawksworth Conservation Area;
- ii. Thoroton Conservation Area;
- iii. Thoroton St Helena – a Grade 1 listed building;
- iv. Hawksworth St Mary and All Saints – a Grade 2* listed building;
- v. Hawksworth Manor and Pigeoncote – a Grade 2 listed building; and
- vi. Top Farm – Model Farm Buildings – a Grade 2 listed building.

7. The Council contend that the extent of harms gives rise to a consideration as to whether the same benefits could be achieved via alternative means, including through development on alternative sites. Moreover, they engage the statutory presumption against development by virtue of ss.66 of the Listed Buildings Act.

(c) The effect of the proposal on Best and Most Versatile Agricultural Land

8. The Appellant seems intent on making heavy weather over the fact that this issue was not raised within the Council’s reasons for refusal. That is correct. The Council hold their hands up to the fact that they were not aware of the specific parts of national policy relating to BMV and solar farms at the point of determination. However, having become aware of this, the Council have done the responsible thing and sought to apply national policy properly. Indeed, it would obviously be a mistake for the Council to perpetuate their mistake by seeking to ignore national policy simply because there was no associated reason for refusal.

9. Moreover, it is hard not to ask: so what? Ultimately, the issue was flagged up in the Council's Statement of Case, the Appellant has had sufficient time to deal with it and it is addressed in their evidence. You plainly have to grapple with the point Sir in light of national policy so, despite it not being within the reasons for refusal, it is a rightly a main issue for the appeal.
10. The Council contend that 38% of the site constitutes BMV in grade 2 and 3a classification – 35.4Ha. The development proposal would result in the loss of this agricultural land for the 40 year duration of the development. The PPG says that, *'where a proposal involves greenfield land, 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 ...'*.
11. Thus, this necessitates consideration of whether there are sites of poorer quality. The Council contend that the Appellant's attempts to demonstrate that there are no such sites is insufficiently evidenced.
12. In any event, even if you were satisfied Sir that the Appellant has demonstrated that there are no poorer quality sites, the loss of such a large area of BMV for 40 years still weighs against the proposal.

(d) Whether the flood risks have been adequately addressed

13. The Appellant has also complained about this issue not being in the reasons for refusal. The Council recognises that within the officer report it was suggested that the sequential test was passed. It is unclear how this came about as the relevant officer who wrote this has left the Council. However, clearly the test is not passed when no evidence had been submitted by the Appellant at that time to discharge the sequential test.
14. The Site is within zones 1, 2 and 3. Thus, this engages the sequential test. The Appellant appears to refute this, but has submitted evidence to discharge the

sequential test in any event. The basis of the Appellant's resistance to the sequential test appears to be twofold.

15. Firstly, the Appellant relies on the fact that the Council previously were not raising this point. However, as discussed, that was in error. Ultimately, that provides no justification for bypassing national policy.
16. Secondly, the Appellant relies on the mitigation they can include in the scheme. However, that is relevant to the exception test, not the sequential test. Otherwise, this would be contrary to paragraph 031 of the PPG on flood risk, which says: *'The Exception Test is not a tool to justify development in flood risk areas when the Sequential Test has already shown that there are reasonably available, lower risk sites ...'*
17. Thus, there is no good reason to avoid applying the sequential test. The Appellant's attempts to demonstrate that there are no other reasonably available sites is entirely lacking. Indeed, the evidence is simply not robust to demonstrate that there are no other reasonably available sites at a lower risk of flooding and thus the sequential test is not passed. It follows that the exception test need not be considered.

(e) Planning policy and the planning balance

18. The Council do not deny that renewable energy developments can provide significant benefits. However, despite those benefits, this is insufficient to justify the grant of permission in this instance.
19. The proposal is contrary to the development plan as a whole. The Appellant does not appear to argue that the development plan is out of date and thus the presumption within paragraph 12 of the NPPF ought to apply, namely that the, *'Where a planning application conflicts with an up-to-date development*

plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted ...'.

20. Further, other factors which weigh against the proposal are:
- i. there is a clear reason to refuse permission in respect to the sequential test not having been passed;
 - ii. there is a statutory presumption against development through the harm to designated heritage assets;
 - iii. the fact that the Appellant has failed to demonstrate that there are alternative sites which would cause less harm
 - iv. the loss of a significant area of BMV;
 - v. the harm to the character and appearance of the area.
21. In summary, the Council will respectfully invite you Sir to dismiss the appeal at the conclusion of the inquiry.

Killian Garvey
Kings Chambers
10 June 2024

