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 TO THE WEST OF WOOD LANE AND STOCKING LANE, KINGSTON ESTATE, GOTHAM

Inquiry opening 20 May 2024

APPEAL REFERENCE: APP/P3040/W/23/3329235

LPA APPEAL REFERENCE: 22/00319/FUL

COUNCIL'S CLOSING SUBMISSIONS

Abbreviations used below

AC	Andrew Cook
ET	Emily Temple
GB	Green Belt
LVIA	Landscape and Visual Impact Assessment
NC	Nigel Cussen
NSIP	Nationally Significant Infrastructure Project
NPPF	National Planning Policy Framework
PCPA	Planning and Compulsory Purchase Act 2004
PoE	Proof of Evidence
PROW	Public Rights of Way
SoCG	Statement of Common Ground
VSC	Very Special Circumstances

Appendix E	The Grid Capacity Analysis found at Appendix E of the Statement of Case at CD 7.6E
XX	Cross examination
Re-XC	Re-Examination

Introduction

1. These closing submissions follow the main issues that have remained throughout this appeal.

(a) THE EFFECT OF THE PROPOSAL ON THE OPENNESS AND PURPOSES OF THE GREEN BELT

2. It is common ground that the Appeal Site is entirely within the GB[1] and amounts to inappropriate development[2]. Therefore, the default position, derived from paragraph 152 of the NPPF, is that permission should not be approved except in VSC.

3. There is, therefore, in principle harm through the development proposal, which must be afforded substantial weight by virtue of paragraph 153 of the NPPF.

4. Further, it is agreed that there would be harm to purpose C of the GB (ie. para 143 of the NPPF), namely that the GB is there to assist with safeguarding the countryside from encroachment. The Appellant accepts that there would be moderate harm in this respect.

5. As regards the openness of the GB, it is well established that the concept of openness relates to freedom from development. This has been recognised to have both a spatial and visual component.

[1] SoCG para 2.7
[2] SoCG para 4.1(a)

6. The Site is currently open and undeveloped. The development proposal will introduce development for a period of 40 years- ie. an entire generation will experience development in this part of the GB. The Appellant recognises that this will introduce moderate adverse harm to the openness of the GB.

7. In spatial terms, the proposal involves 40 acres of land being covered by solar panels. This is a substantial area in terms of ground cover. Further, the associated access track, substation, inverter stations, fencing and CCTV facilities would result in additional built form that would further diminish the openness of the Green Belt spatially.

8. In visual terms, there will also be an adverse effect on the openness of the GB, which is closely aligned to main issue (b) below.

(b) THE EFFECT OF THE PROPOSAL ON THE CHARACTER AND APPEARANCE OF THE LANDSCAPE

9. The harm to the character and appearance of the area relates to harm in terms of landscape character and separately visual harm.

10. The Appellant sought to make heavy weather concerning a pleading point that landscape character was not specifically raised in the decision notice. But the point was flagged in the Council's Statement of Case, it was within the evidence of both parties and all parties have been able to address it. Moreover, the paucity of this point is self-evident when it became clear that Mr Cook did not disagree that there would be harm in terms of landscape character, which he identified overall as being minor adverse[3]. Thus, if all parties agree that this harm will result from the development proposal, it is unclear what the Appellant seeks to gain in arguing that it was not specifically mentioned in the decision notice. Indeed, given it is common ground, plainly it needs to be taken into account in the decision.

[3] AC PoE para 11.18

11. The real area of dispute concerns the extent of visual harm. This appeal might be unprecedent, insofar as the dispute here is not between two competing experts on either sides of the inquiry, but rather with Mr Cook seeking to depart from the LVIA[4] produced by Neo through the application.

12. Ms Temple did not seek to challenge the findings within Neo's LVIA submitted with the application. Thus, it is curious and somewhat unattractive that through this appeal the Appellant has wanted to downgrade the harm it was conceding at the application stage in visual terms.

13. Ultimately, these will be matters settled through your site visit. But, insofar as the experts are concerned, the evidence from Neo is far more comprehensive. Indeed, it is common ground that one of the important aspects of any landscape and visual assessment is that the analysis is transparent and set out. This is not some fussy expectation, but rather, if you are being invited to disagree with Neo, it needs to be understood specifically why this is the case.

14. But, whilst the Neo report provides a narrative description explaining what impacts will arise in respect to each viewpoint, in contrast, Mr Cook simply provided his summary of effects within his Appendix 12. There is no proper competing analysis in respect to each viewpoint. Thus, you are faced with Neo's report detailing their analysis in respect to each impact, compared with Mr Cook simply providing conclusions on magnitude, susceptibility etc. Plainly the former should be preferred as an objective evidence base.

15. The only area where a deviation from the Neo LVIA is justified is in respect to certain views towards fields 15 and 16, where development has been scaled back since the Neo LVIA was produced. However, save for these specific viewpoints, the findings within that report ought to be preferred. Moreover, the balance of professional views favours this. Indeed, Ms Temple, the Council's case officer, the Council's landscape officer and the experts at Neo

[4] CD 1.22

all reached the same conclusions in this respect. Mr Cook's much lower findings of harm make him the outlier here.

16. Further, Mr Cook's arguments as to why the impacts would be negligible all rely on the Appeal Site being screened from development. However, there are a few issues with this.

17. Firstly, the notion of simply hiding development behind screening is an inherently 'old-fashioned' approach to landscape mitigation. Indeed, the modern ambition is to integrate development effectively into a landscape, as opposed to simply hiding it from view and thereby claiming it causes no harm. Furthermore, even if the Appeal Site is hidden from view, this still amounts to reducing the openness that the Appeal Site currently offers. Indeed, currently the Appeal Site offers long expansive views across open fields from the PROW, but these will be lost and turned into green corridors. Even if people walking the PROW will not be able to see built form, the open expansive views they previously experienced will be lost and thus this interferes with the experience of openness.

18. Secondly, the screening will take time to be formed. Whilst the Appellant sought to rely on advance planting and the opportunity for 3 seasons of growth, this is fanciful given there are no obligations on them to do so.

19. Thirdly, naturally any screening relies on trees and hedges being in leaf, which will be reduced during winter views.

20. Fourthly, it is doubtful that any such screening will be capable of screening all aspects of the development in any event. Indeed, the substation plans[5] disclose that some structures will be 15m in height and thus will likely be visible above the proposed 3 – 4m landscape screening along the PROW.

21. Thus, this over-reliance on screening is misplaced.

[5] CD 1.16

22. It is also worth noting that the Appellant spent time asserting that there has been a loss of hedgerow in this location and thus this underscores the benefit of providing hedgerow here. However, no evidence has been provided as to this and certainly the historical field patterns of the Site do not support this assumption.

23. Finally, it ought to be acknowledged that the PPG[6] considers that with renewable schemes one can get to a state of zero zone of influence. However, on any view, this is not the case, given the impacts on adjacent PROWs beyond the Site. Thus, this underscores that the harms associated with the Appeal Site are not inherent to any solar development, as the PPG is explicitly contemplating less harmful schemes as being achievable.

(c) THE EFFECT OF THE PROPOSAL ON USERS OF THE PUBLIC RIGHTS OF WAY NETWORK

24. The Appellant acknowledges some harm to the PROW, albeit seeks to narrow the extent of harm beyond that of the Council. Again Ma'am, this will largely call for you to make subjective assessments through your Site visit. The debate does not turn on methodological or technical disputes, but rather the extent to which users of the PROW will be affected. The Council say that irrespective of your conclusions on the extent of harm on these subjective elements, it is ultimately common ground that this amounts to harm that is in addition to the in principle harm to the Green Belt.

25. The Appellant seeks to reduce this harm by relying on the addition of a permissive path. The permissive path is not unwelcome, but its benefits cannot be overstated. The path does not provide any benefit in terms of accessibility. Indeed, it is not a situation where the path will shorten any walk

[6] Paragraph 013 of the renewable energy section of the PPG

or provide users of the PROW with any greater degree of convenience. It is, at best, just another option for users of the PROW.

26. But, whilst users might have another option, the quality of the PROW is compromised. Indeed, users of the PROW will have their recreational experience compromised and thus, any increase in the quantity of paths is at the cost of the quality of the experience.

27. Furthermore, to the extent that the Appellant argues that the experience to users of the PROW will only be compromised to a limited degree, for the reasons already stated, the reliance on entirely screening the development means that the experience along these PROW will be significantly compromised. Indeed, one rather thinks that the Appellant's case is, provided one cannot see built form, there is no harm to be concerned with, irrespective of the change on the ground.

(d) WHETHER THE HARM BY REASON OF INAPPROPRIATENESS, AND ANY OTHER HARM, IS CLEARLY OUTWEIGHED BY OTHER CONSIDERATIONS, SO AS TO AMOUNT TO THE VERY SPECIAL CIRCUMSTANCES NECESSARY TO JUSTIFY IT

Policy

28. *Core Policy 2*[7] - Paragraph (5) of this policy only supports renewal energy development, *'where these are compatible with environmental, heritage, landscape and other planning considerations'*. Owing to the landscape, visual and GB harm caused by the development proposal, there would be conflict with the policy.

[7] CD 4.1 page 17

29. *Core Policy 10*[8] - Whilst not stated in the decision notice, the Council have raised conflict with this policy since its Statement of Case and thus the Appellant has been forewarned of its relevance. Paragraph (5) of the policy says:

> *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.*

30. The Appellant argues that the words 'should' denotes some degree of flexibility, unlike if the policy said 'must'. The dictionary[9] definition of the word says (with **emphasis**):

> *used to indicate **obligation**, duty, or correctness, typically when criticizing someone's actions.*
> *"he should have been careful"*

31. Accordingly, the word does not suggest flexibility. The Appellant also suggests that conserve here allows for some harm. But again, the dictionary defines the word as meaning[10]:

> *to keep and protect from waste, loss, or damage; preserve: In order to conserve fuel, they put in extra insulation.*

32. Accordingly, the word conserve is clearly envisaging protection from harm, as opposed to allowing some degree of permissive harm. Thus, the policy is expecting as a minimum no harm is caused and, where appropriate, enhancement or restoration should also be delivered. Thus, a scheme such as this, which all parties agree does cause harm to landscape character, does not conform with the policy.

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[8] CD 4.1 p.74
[9] Google Oxford Languages Online Dictionary
[10] *Ibid.*

33. *LPP Policies 16[11] and 21[12]* - It was agreed that both of these policies are aligned with the NPPF policies on GB.

34. *LPP Policy 34[13]* - This policy protects Green Infrastructure assets from development, 'which adversely affects their green infrastructure function'. The assets include PROW. It is agreed that there is harm to the PROWs around the Appeal Site. The visual harm will compromise their recreational enjoyment, which is a part of the function of the PROWs. Thus, their green infrastructure function is adversely affected and thus there is conflict with this policy.

35. *Paragraph 156 of the NPPF* – It is acknowledged that paragraph 156 of the NPPF notes that VSC for renewable energy, *'may include the wider environmental benefits associated with increased production of energy from renewable sources'*. This does not provide a presumption in favour of such schemes. Indeed, the NPPF does not change the starting point that such schemes remain inappropriate development in the GB. It would have been open to the Secretary of State to list renewable schemes as being a form of appropriate development, but this has not occurred. The Council acknowledge that the benefits of renewable energy can contribute to a finding of VSC in line with paragraph 156 of the NPPF, however, on the facts of this case, particularly having regard to the fact that these same benefits can be achieved outside the GB, the case for VSC is not made out.

Benefits and Harms

36. The Council acknowledge that the benefits of renewable energy provision are significant. However, the benefits of the development proposal have been significantly overstated by the Appellants.

[11] CD 4.2 p.81
[12] CD 4.2 p.94
[13] CD 4.2 p.128

37. NC curiously sought to argue that various neutral factors (such as the lack of a highways issue) point positively in favour of the grant of permission[14]. These are factors which ought to neither point in favour or against the proposal and certainly do not amount to VSC.

38. The Appellant relies on landscaping remaining after the 40 year period. However, in the recent Secretary of State called in appeal in Graveley Lane, the inspector[15] and Secretary of State[16] did not regard landscaping remaining after the solar farm being removed as a benefit of the proposal. Indeed, there is no condition that requires the maintenance of such landscaping here (nor could there sensibly be one for after the development has been removed). Thus, there is no reason to regard this as a benefit of the proposal and disagree with the Graveley Lane decision in this respect.

39. The Appellant sought to argue for moderate weight to farm diversification, in accordance with paragraph 88(d) of the NPPF. This policy says that decisions, *'should enable the development and diversification of agricultural and other land-based rural businesses'*. The Appellant argues that the income generated by the farmer from the solar farm will allow for agricultural diversification. However, that would be tantamount to suggesting that the solar farm itself will become part of the business.

40. The solar farm is entirely divorced from the agricultural business. Indeed, the solar farm will be operated by the developer, not the farmer. The solar farm does not 'enable' the farmer to do anything additional with their land that they could not otherwise do, rather they are restricted with what they can do with this land. The fact that they are generating an additional revenue stream does not lead to diversification of the farmer's business. Indeed, the analogy would be the farmer renting out the site to gypsy and travellers and claiming that the income generated is part of the diversification of their agricultural

[14] NC PoE para 11.88
[15] CD 5.20 digital page 5.20 para 12.24
[16] CD 5.20 digital page 4 para 21

business. The Council say that this misreads what paragraph 88(b) of the NPPF is directed towards and thus no weight ought to be given to this claimed benefit.

41. The Appellant claims moderate weight to the use of best available technology. However, the scheme has been designed as using either 580W or 610W columns[17]. The Appellant notes that no specific panel power rating has been given in the planning application, which is correct. However, the scheme has been designed to accommodate these solar panels, as opposed to the more recent 750W panels. Mr Cussen's contention was that the use of higher wattage panels means that less land is required, which is a positive of the scheme. However, it would appear that the Appellant is not intending on using the best technology, as higher 750W panels would be available and would presumably result in an even smaller footprint. Thus, no weight ought to be given to this claimed benefit, given that better available technology is not intended to be used.

42. The Appellant claims moderate weight to 'good design'. However, good design is a minimum expectation, not a positive of the scheme. The fact that the scheme has been designed to reduce harm speaks to the extent of harm, rather than a positive of a scheme. There will be occasions where the design of a scheme is so commendable that it is itself a positive – for example the Sydney Opera House. However, this is not one of those occasions. Ultimately, the design approach has not mitigated the harm to zero – there still remains harm in landscape and visual terms and to the GB. Thus, the design is not a positive of the scheme, but rather a minimum requirement that should not generate any positive weight.

43. It is also notable that Mr Cussen has sought to sub-divide renewable energy, climate emergency and energy security into 3 separate 'substantial weights'. They are all parts of the same benefit and should not be sub-divided. Indeed,

[17] See Appendix 1 to NC PoE – Kingston Solar Farm Capacity Note footnote 1

the fact that there is a climate emergency is not a positive in and of itself – it is plainly undesirable. Rather, the fact that there is an emergency speaks to why a renewable energy development is a positive.

44. As regards the suggestion that there is some sort of standardized approach to affording renewal energy substantial weight, this point does not withstand scrutiny. The Appellant sought to rely on EN1 to this end, but this says that substantial weight applies to NSIPs, which this scheme is not. As Ms Temple observed, it is unattractive for the Appellant to forcefully argue as to why the scheme does not fall within the NSIP procedure and yet seek to rely on policy only relating to such schemes. There is no policy prescribing weight to such schemes in this appeal, nor is there a consistent thread in the appeal decisions. Ultimately it is a matter for your judgment Ma'am, but it is wrong to suggest that there is any precedent, policy or otherwise which fetters your discretion in this regard.

45. It is also notable, in contrast, that Mr Cussen then sought to lump together the separate impacts to the GB. Indeed, he makes no mention of the in-principle harm to the GB (see his summary table at page 46 of this PoE) and affords substantial weight collectively to openness and purposes of the GB. There is nothing legally deficient with giving substantial weight to harm to the GB collectively. But, this uneven handed approach to the benefits and harms demonstrates a planning balance that is significantly overstated in favour of granting permission. Similarly, the Appellant has sought to advance the lack of conflict with certain purposes of the GB as part of their VSC case in opening for the first time. It is difficult to see how the absence of harm is itself part of a VSC.

46. In addition to these harms to the GB is the harm in terms of landscape character, harm to visual amenity, impacts upon the users of the PROW and conflict with policies in the development plan.

47. The Council contend that the harms are such that the benefits do not clearly outweigh them. This is particularly the case when it recognised that these same benefits could be achieved without needing to develop within the GB at all.

Alternative Sites

48. A significant feature of the Appellant's case is the contention that there are no suitable alternative sites outside of the GB to accommodate the development proposal. It is acknowledged that there is no policy requirement to consider this, however, it is advanced as part of the VSC case and the Appellant seeks to afford it significant weight[18]. Further, it can be seen that this factor has been considered relevant in a number of other appeal decisions. Indeed, if there are sufficient opportunities outside of the Green Belt to accommodate the development, it is hard to conceive how it would be justified to go into the GB.

49. At the outset of this discussion it is worth noting that this entire exercise has been advanced retrospectively. Mr Cussen had no direct knowledge of any site selection exercise having been conducted by the Appellant prior to this being produced within the Appellant's Statement of Case. Thus, the Appellant was not advancing the Appeal Site having exhausted other non-GB sites. Rather, they have advanced their preferred Site and then after the fact sought to demonstrate why no other sites would have been suitable.

2km from the 132kv line

50. The Appellant's site search area within Appendix E only looked at sites within 2km of the 132kv of the Nottingham-East and Ratcliffe-on-Soar network.

[18] NC PoE para 11.46

51. In the Barton in Fabis appeal[19], from this year and within this local authority, the appeal was dismissed for an energy storage facility. The inspector said as follows at paragraph 27:

> *The limitation to the number of alternatives sites available on the Nottingham-East and Ratcliffe-on-Soar 132kV network are acknowledged as are the reasons for discounting the Ratcliffe on Soar Power Station. It is clear that a viable grid connection is a determinative factor in the filtering of feasible sites, and I recognise that the scale of land necessary to provide such infrastructure often necessitates a countryside location. Nevertheless, as the assessment focuses solely on the Nottingham-East and Ratcliffe-on-Soar 132kV network as the agreed point of connection and in the absence of any substantive evidence to indicate why any other sites in the operational area of the provider where discounted, I cannot be certain that there are no alternative sites located in other areas of the district, outside of the Green Belt. Consequently, whilst having had regard to the Alternative Sites Assessment, and mindful that this is not a policy requirement, the evidence does not persuade me that the proposed BESS could not be provided in a less harmful location elsewhere in the locality.*

52. Thus, the inspector was critical of the focus on a single network. There is no reason to take a different view here, particularly having regard for the need for consistency in decision taking. Indeed, whilst it is not doubted that this network has capacity, the point is that other networks might similarly have capacity and thus there might be other available sites outside the Green Belt that could connect to other networks. But, in only considering a single network, the Appellant has erroneously closed their minds to such sites for no proper reason.

53. Mr Cussen's only explanation as to why you ought to take a different view to this appeal is that the opportunity to connect to the network exists here.

[19] CD 5.10

However, that ignores the point that there is no evidence that the same opportunities might exist elsewhere outside the GB.

54. Further, the consideration of the range of 2km from this network is similarly unjustified. The Appellant argues that extending the search area beyond this distance would involve very significant costs and constructions costs. However, this distance is entirely arbitrary. It not doubted that at a certain distance it would become unrealistic owing to how it would affect the viability of a scheme. But there is no proper objective evidence to explain why 2km is where that distance is, as opposed to 2.5km, 4km or otherwise. The Appellant has produced a report from Mr Smart making this point, however, it provides no justification for this beyond bare assertion.

55. It will also be noted that the Council indicated prior to the inquiry that the contents of Mr Smart's evidence was going to be contested at this inquiry and enquiring as to whether he would be called as a witness. As you know Ma'am, the weight to be afforded to evidence is reduced where the individual is unwilling to be subject to cross examination (whether that be an expert or member of the public). Thus, Mr Smart's absence from this inquiry to explain any of his assertions is conspicuous. Ultimately, Mr Smart provides no explanation as to why 2km is the appropriate distance. It is also of note that the Appendix E document with the Statement of Case asserted that 2km was the appropriate area of search and yet it is not until Mr Smart's later report is this 2km figure sought to be justified.

56. There is a stray reference to it costing an additional £1 million for every kilometer within Appendix E. Nothing is provided to substantiate that figure. However, even assuming that figure is correct (which the Council do not absent any justification), it is entirely unhelpful. Indeed, it remains unclear what the development proposal would be expected to generate so as to understand this figure in context. For all we know, an additional £1 million might be a drop in the ocean compared to what the development proposal is

expected to generate such that, it is no proper reason to discount sites beyond this area.

57. It was suggested that exceeding 2km would result in the proposal being an NSIP. However, that is incorrect, as the Appellant's own evidence is that this is only if the entirety of the 2km involves overhead lines, as subterranean lines are permissible through permitted development rights. Further, it is difficult not to ask: so what? If a proper site search (i.e. extending beyond 2km) means that the proposal would need to be considered as an NSIP rather than under the Town and Country Planning Act, that is not a reason to discount sites. Indeed, it would be entirely inconsistent with those procedures for developers to be artificially constraining their developments and evidence to simply avoid having to proceed down the NSIP route.

58. Neither of these parameters for discounting sites withstand proper scrutiny and thus, on these points alone, the Appellant has not demonstrated that there are no alternative sites outside of the GB.

Single landowner

59. Appendix E also indicates that the site selection only considered sites with single landowners, as opposed to multiple landowners. This is a curious parameter to discount sites. There is plainly no land use impact associated with who owns the Site – whether that be single or multiple owners. Thus, this parameter might result in perfectly suitable sites having been ignored, simply owing to commercial considerations – namely how many people need to be negotiated with. Further, there is no evidence to justify the conclusion that multiple owners are inherently more difficult than single owners. Indeed, this will typically be case specific. There will undoubtedly be some sites with multiple owners where negotiations might be considerably easier (where for example those owners are related) as opposed to a difficult single landowner. Thus, this is no proper basis to discount sites.

Site Size

60. The Appellant's ultimate conclusion in respect to Sites F and G is that at 155 acres and 160 acres, respectively, when one factors in all the alleged further unknown constraints with these sites, apparently they would be too small to accommodate the development proposal. This is notwithstanding the fact that the area required for solar panels within the Appeal Site itself is only 100 acres.

61. With each of these sites the Appellant claims that there would undoubtedly be unknown constraints that would reduce these sites down further (beyond the alleged known constraints) such that these sites would be unable to accommodate 100 acres of solar panels. Thus, apparently, you Ma'am should assume that at a site specific level it can be assumed that a further 55 and 60 acres, respectively, would need to be lost from each of these sites in order to accommodate these unknown constraints. To put that into context, that amounts needing to discount over 34 and 37.5 full football pitches, respectively, from each of these sites on an assumption that there must be further constraints on each site.

62. It will be remembered that the Appellant has sought to argue how unobtrusive solar panel developments are. Indeed, on the Appellant's case, having solar panels will actually improve the use of the Site for agricultural purposes. Thus, for this non-obtrusive development, you are being invited to find Ma'am that substantial tracts of land ought to be assumed to be constrained (absent any evidence) such that even sites that are substantially larger than are needed, will be insufficient in size.

63. Mr Cussen's only answer to this was that this aligned with the experience of the Appellant that this was required. However, no evidence has been provided to that effect. These arguments should never have been advanced in reality. Indeed, if we are to assume that one can discount 55/60 acres of land from sites owing to entirely unknown constraints, it would undermine

the entirety of the planning system. Anyone involved in the planning system will be aware that it is unusual to have such substantial tracts of land being discounted as being undeliverable owing to some unknown constraint.

64. In Re-XC of Mr Cussen, it was suggested that on a percentage basis, the Appeal Site's useable area was reduced down to 50% from the red line boundary. This was being suggested as some sort of evidence of how much land needs to be taken off and, therefore, demonstrating that large tracts of land need to be avoided. However, the Appellant ignores the fact that they have already sought to remove large areas from Sites F and G already. Indeed, if one looks at the areas of land required for these sites by reference to their total area, it can be seen from the below that this does not bear fruit:

	Total Site Area	Site Area Needed	Percentage of Total Site
Appeal Site	200 acres	100 acres	50.8%
Site F	420 acres	100 acres	23%
Site G	295 acres	100 acres	33.9%

65. Thus, if we entertain the Appellant's notion of sites needing to be assumed as being smaller, the fact is that with both Sites F and G the Appellant has sought to reduce their allegedly useful areas way beyond what they have assumed in respect to the Appeal Site. Put another way, both sites are substantially larger than the Appeal Site, but you are being invited on extremely thin evidence to agree that neither site could accommodate as many solar panels as the Appeal Site and thus they are not legitimate alternatives.

66. Furthermore, just as a matter of common sense, it is an entirely unrealistic argument to suggest that 77% of Site F and 66.1% of Site G would need to be lost owing to constraints.

67. It is also worth noting that Appendix E has only looked at sites that are a minimum of 300 acres. However, this minimum figure is entirely unjustified. Indeed, the Appeal Site is 200 acres in total. It is nonsensical to suggest that as a minimum one needs to find a 300 acre site as an alternative to a 200 acre site.

68. Furthermore, Appendix E suggests that landholdings of 170 acres were considered. However, there is no justification as to what this figure relates to and thus a further parameter has been introduced with no provenance.

69. Ultimately, the Appellant has sought to discount smaller sites for entirely unjustified reasons so as to prefer the Appeal Site.

Site F

70. Site F is 420 acres in size, which the Appellant has sought to 'chop down' to 155 acres. As stated, it is then alleged that of this 155 acres, further unknown constraints would likely exist, such that it would not be able to accommodate 100 acres of solar panels. The justification for chopping this site down so substantially does not withstand scrutiny upon inspection.

71. The Appellant has discounted 170 acres of the Site owing to it being in the GB. However, if that is an insurmountable constraint, it is unclear why the Appellant has left the Appeal Site as entirely unconstrained, being it is entirely within the GB.

72. The Appellant has removed land within Flood Zone 3. However, in a matter of weeks the Appellant will again be at appeal promoting a Site where solar panels are being placed directly within Flood Zone 3.[20] The merits of that are not for this appeal. But it is plainly unattractive that in this appeal, the Appellant argues that Flood Zone 3 is reason alone to discount land, whereas in a few weeks they are proposing land within this Flood Zone.

[20] See NC's PoE for that appeal at CD IQ9

73. The Appellant has also removed land owing to alleged impacts upon Widmerpool. However, this would suggest that it is preferable to develop the GB over having an impact on Widmerpool.

74. Thus, none of these are legitimate reasons for discounting such huge portions of Site F.

75. The Appellant then suggests that the distance from the grid (at 1.8km) would lead to additional construction costs and impact the local community/environment. As regards the additional construction costs, this is immaterial. Indeed, the Appellant accepts the Site as being potentially viable, especially given it is within their theoretical 2km area where it is viable to develop sites. Thus, the fact it will cost the Appellant more is not a reason to discount it, as this has no relevance in land use planning terms.

76. It is acknowledged that if the costs of developing a site would compromise the viability of a scheme, this becomes a relevant consideration. For example, with brownfield sites and the site regeneration involved with them, it is often acknowledged that the costs of developing such a site might make it undeliverable. However, in the absence of any evidence to suggest that developing Site F would be unviable, the fact that it would be less profitable for the Appellant than the Appeal Site is irrelevant – which Mr Cussen acknowledged.

77. As regards the contention that the additional distance would involve additional environmental impacts owing to power lines, as Ms Temple noted when challenged on this, we have no evidence at all to substantiate this proposition. It cannot be assumed that any unknown environmental impact from a power line is so harmful that it is preferable to develop in the GB. This is especially the case when it is recognised that a grid connection can be subterranean, which Mr Cook sensibly acknowledged would involve no landscape and visual impact. Further, such subterranean connections can be

incorporated through permitted development rights and can be unobtrusive. Indeed, they would not sterilise any land, which is obvious given that countless urban environments throughout the country have subterranean power lines.

78. Thus, the reality is that the Appellant's alternative site selection is not robust and thus it cannot be relied upon as evidence that there are no alternative non-GB sites that would be suitable. Rather, what this evidence actually demonstrates is that there are suitable sites – as Site F is such a candidate. Indeed, there is no reason why the Appellant need to develop within the GB when they could proceed with Site F. The fact that they will make less of a return for doing so is not a VSC to justify developing in the GB.

Site G

79. The Appellant's reasons for discounting large areas of Site G are more fanciful than with Site F. This site is 295 acres in size, but the Appellant seeks to chop it down to 160 acres.

80. The Appellant removes 'large areas of the land' owing to it being visible along Willoughby Road and the northern side from the farm entrance. This land has no landscape designation and thus large parts of the Site are being removed owing to just being visible. Thus, seemingly it is preferable to develop the GB than it is to have any visual harm outside the GB – this is notwithstanding the fact that developing the Appeal Site itself involves landscape and visual harm in any event.

81. The Appellant also removed any north facing land. However, whilst it is not disputed that north facing land requires larger gaps between panels, this does not mean that such land cannot be used. More to the point, it would still be preferable to rely on north facing land outside the GB than to resort to developing in the GB.

82. The Appellant removes land to accommodate setback distances and buffers for PROWs through the Site, however, Mr Cook's evidence was that such setback distances and buffers are not required. Thus, land was discounted for no good reason.

83. Further, the fact that the Appellant has been so overzealous with chopping the Site down from 295 acres, further demonstrates why it is not credible that over 60 acres can also be assumed as needing to be lost owing to unknown constraints on the Site.

84. Thus, the justification for chopping the Site down so substantially does not withstand scrutiny. Further, Site G is 540m from the grid connection, whereas the Appeal Site is 240m from it. Thus, it cannot be maintained that the additional costs involved with this distance would be so out of kilter with the Appeal Site.

85. Thus, again, Site G positively demonstrates that there are non-GB sites that could accommodate the development proposal. Thus, it is not simply theoretical that there might be non-GB sites, we have evidence of such a suitable site. The fact that alternative sites exist outside the GB entirely undermines the VSC case that development in the GB is warranted here. Ultimately, if the benefits of the proposal can be achieved without needing to develop in the GB that ought to be preferred.

86. It is also worth noting that none of this information was considered within the officer report recommending approval. Indeed, the existence of Sites F and G as suitable alternatives was unknown at that time – given that they were first raised within the Appellant's Statement of Case for this appeal. Thus, the reasons for recommending approval here have been overtaken by events, now that there is the knowledge that the justification for developing within the GB is undermined by the knowledge of suitable alternatives.

SUMMARY

87. Ultimately Ma'am, the Council contend that whilst there are undoubtedly compelling benefits of the proposal in the context of a national recognition of the need for renewable energy, the benefits are insufficient to amount to VSC and that the case has not been proven that these benefits could not be achieved in a more appropriate location – namely outside of the Green Belt. Indeed, the issues in this appeal are remarkably aligned with the Bartin in Fabis appeal decision[21]. Obviously each appeal is determined on its own merits, but in that appeal the inspector was similarly unconvinced of a renewable scheme in the GB where the alternatives case had not been made out and there was harm to openness, purpose C and some landscape and visual harm.

88. In any event, the overriding question this appeal raises is whether there is compliance with the development plan and, if not, whether there are material considerations that justify a departure from the development plan – in accordance with section 38(6) of the PCPA.

89. In light of the impacts associated with the scheme, the Council contend that this gives rise to conflict with the development plan as a whole. This is not a case where the Appellant contends that the development plan is out of date nor has it been properly advanced that there are reasons to depart from the development plan. Thus, the default position within paragraph 12 of the NPPF applies, namely that, *'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'*.

90. In summary, the Council respectfully invite you Ma'am to dismiss the appeal.

Killian Garvey

[21] CD 5.10


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CHAMBERS