

# DRAFT STATEMENT OF COMMON GROUND

**Section 78 of the Town and Country Planning Act 1990, Article  
37 of the Town and Country Planning (Development  
Management Procedure) (England) Order 2015 and Rule 17 of  
the Town and Country Planning (Inquiries Procedure) (England)  
Rule 2002**

**Appeal by Renewable Energy Systems Ltd**

at

**Land East of Hawksworth and Northwest of Thoroton**

**APP/P3040/W/23/3330045**

Renewable Energy Systems Ltd (Appellant) (1)

and

Hawksworth and Thoroton Action Group (HTAG) (Rule 6 party) (2)

Signed: [REDACTED]	Signed: [REDACTED]
Name: Helen Hamilton	Name: Nigel Cussen
Job Title: Marches Planning & Environment On behalf of Hawksworth and Thoroton Action Group (HTAG)	Job Title: Senior Planning Director, Pegasus Group On behalf of Renewable Energy Systems Ltd

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## 1 INTRODUCTION AND SCOPE

1.1 This Statement of Common Ground (“**SoCG**”) is made between the follow parties:

- (a) Renewable Energy Systems Ltd (the “**Appellant**”); and
- (b) Hawksworth and Thoroton Action Group (HTAG) (the “**Rule 6 Party**”)

together the “**Parties**”.

1.2 This SoCG has been jointly prepared by the Appellant and the Rule 6 Party and establishes the general matters on which the Parties agree and disagree.

1.3 This SoCG is issued in draft after lodging of the Appeal and there may be further opportunity for the Parties to agree more detailed areas of common ground during their preparation of evidence for the Inquiry, particularly as a result of any expert-to-expert meetings.

1.4 Appendix 1 of this SoCG provides a complete schedule of the planning application documents submitted to the Council and relevant to the Refusal issued by the Council. It does not form a complete list of documents submitted to the Planning Inspectorate as part of the Appeal.

## 2 FACTUAL BACKGROUND

2.1 On 30 November 2022, the Appellant’s submitted to the Council a planning application 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* (application reference 22/02241/FUL) (the “**Proposed Development**”).

2.2 On 30 March 2023 the Council refused planning consent for the Proposed Development (the “**Refusal**”) giving two Reasons for Refusal:

*“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 [of] 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."*

2.3 On 22 September 2023, the Appellant made an application to the Secretary of State under section 78 of the Town and Country Planning Act 1990 (the "**Act**") to appeal the Refusal (appeal reference APP/P3040/W/23/3330045) (the "**Appeal**").

2.4 On 12 December 2023, the Planning Inspectorate, on behalf of the Secretary of State, informed the Parties that the Appeal would be dealt with by way of a Public Inquiry and on 14 December 2023 the Planning Inspectorate notified the Appellant that this SoCG must be prepared for the Appeal to be validated.

### **3 MINOR AMENDMENTS TO THE SCHEME**

3.1 Following the refusal of permission, the Appellant proposed an amendment to the scheme, to exclude part of the field closest to the settlement of Hawksworth field 1. This amendment was described in the Appellant's Statement of Case and shown in revised drawings version 7 of figure 4. The Council confirmed at the

Case Management Conference on 23 April 2024 that it had no objection to the appeal proceeding on the basis of the amended scheme. The Inspectorate confirmed in his post-Conference Note that all evidence should be based on the revised schemes. Following this confirmation the Inspector also confirmed that there would be a round table discussion at the Inquiry regarding Wheatcroft and Holborn matters.

- 3.2 It is agreed that the appeal scheme should be based on the revised drawings; and that no main party would be prejudiced by the revisions.
- 3.3 To ensure consistency of terminology between all parties the Appellant proposes that the amended appeal scheme as submitted with the Appeal is referred to as Scheme B (drawing reference P24-0105\_EN\_02\_E), and the proposals which were submitted as part of the refused application are referred to as Scheme A.

## **4 DESCRIPTION OF APPEAL SITE AND PLANNING HISTORY**

### **4.1 The Appeal Site**

- 4.2 The Appeal Site is located in a rural setting on lands between the settlements of Hawksworth (0.1km west) and Thoroton (0.2km southeast), approximately 15.5km east of Nottingham, Nottinghamshire.
- 4.3 Centred at approximate Grid Reference E476129, N343467, the Appeal Site comprises nine fields covering a total area of approximately 94.24 hectares. The Appeal Site covers low lying lightly undulating agricultural land with an elevation range of approximately 17m to 25m AOD. Internal field boundaries comprise hedgerows, tree lines and several linear strips of woodland shelter belt. External boundaries largely consist of mature to lower hedgerows with individual trees and some evident gaps. In terms of existing infrastructure, electricity pylons extend north-south through Fields 5, 6 and 8, whilst electricity lines pass northwest to southwest through Fields 4, 5, 6 and 9.
- 4.4 There is one recreational route located within the Appeal Site (Bridleway 1 & 6 that pass through the northern fields), and several located close by (please refer to Appendix C - Field Number Drawing). National Cycle Network (NCN) route 64 shares the minor road (Tenman Lane) on the east side of the Appeal Site.

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- 4.5 The Appeal Site is mostly (approx. 60%) contained within Flood Zone 1 (at little or no risk of fluvial or tidal/coastal flooding). There are areas of Flood Zone 2 (approx. 20%) and 3a (approx. 20%) within the Appeal Site.
- 4.6 The Appeal Site would be accessed via the creation of a new entrance off the public highway, Thoroton Road. The vegetation is set back from the road verge by a few metres. Appropriate visibility splays are included within the Construction Traffic Management Plan and the access will be designed in accordance with the Nottinghamshire Highway Design Guide to ensure that the largest construction vehicles can enter and exit the Appeal Site access point. To facilitate this, 13.3m of hedgerow will need be removed. This hedgerow does not meet the criteria to be considered important under the Hedgerow Regulations and was categorised as C2 in the Arboricultural Impact Assessment which accompanied the application
- 4.7 Panels were removed from the western extent (Field 1) of the Appeal Site, panel heights reduced from 3.5m to 2.8m and additional setbacks were added from the public rights of way pre-submission of Planning Application 22/02241/FUL in response to consultation responses.
- 4.8 Following the Refusal, further panels have been removed from western extent (Field 1) to respond to concerns from the local community and to comments from the third party landscape review carried out by Wynne-Williams Associates and the LPA's heritage officer. See Appendix D – Updated Planning Drawings for the latest version of the Infrastructure Layout which includes these changes.

#### **4.9 Planning History**

- 4.10 On 7 September 2022, the Council issued an EIA Screening Opinion confirming that the Proposed Development would not constitute EIA development.
- 4.11 There is no other relevant planning history to the Appeal Site.

### **5 THE APPEAL PROPOSAL**

- 5.1 The Proposed Development seeks planning permission to construct a solar farm with maximum export capacity of 49.9MWac. It will involve the construction of bifacial ground mounted solar photovoltaic (PV) panels, new access tracks, underground cabling, perimeter deer fencing with inward facing CCTV cameras

and access gates, 2x temporary construction compounds, substation and all ancillary grid infrastructure and associated works.

5.2 The Proposed Development will include the following features shown with their indicative areas:

- (a) 5,368 module racks, 150,304 modules, 42,944 pile driven poles = 343.55m<sup>2</sup>;
- (b) 1 x substation compound = 4,656.42m<sup>2</sup>;
- (c) 2 x spare parts containers (12.19m (L) x 2.44m (W)) = 59.48m<sup>2</sup>;
- (d) 26 x inverter substations (16.0m (L) x 6.00m (W)) = 2,496m<sup>2</sup>;
- (e) 13 x inverter substation hardstandings (16.00m (L) x 16.00m (W)) = 3,328m<sup>2</sup>;
- (f) 7,293.3km of deer fencing with 2,431 posts at 3m spacing, with an approximate 0.03m<sup>2</sup> footprint each. Each fence is 2.40m high with a 0.10m gap at the bottom = 72.93m<sup>2</sup>;
- (g) 95 x CCTV posts of 3.50m = 53.20m<sup>2</sup>;
- (h) Local widening of access point on Thoroton Road involving the removal of approximately 300mm depth of soil, with geosynthetic reinforcement or soil stability wherever possible for a total length of approximately 3.33km (14,985m<sup>2</sup>);
- (i) Cable trenches beneath an area of 4,995m<sup>2</sup>; and
- (j) 2x Temporary Construction Compounds (50.00m (L) x 60.00m (W)) = 6,000m<sup>2</sup>.

5.3 The proposed footprint comprises:

- (a) 36,573.10m<sup>2</sup> for infrastructure (approximately 3.88% of the Appeal Site area); and
- (b) 416.48m<sup>2</sup> for piling (approximately 0.04% of the Appeal Site area).

## 6 PLANNING POLICY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that determination of planning applications must be made in accordance with the Development Plan unless material considerations indicate otherwise.

6.2 The key planning legislation, policies and guidance relevant to the Appeal Site are:

- (a) Rushcliffe Local Plan Part 1: Core Strategy (2014)<sup>1</sup>;
- (b) Rushcliffe Local Plan Part 2: Land and Planning Policies (2014)<sup>2</sup>;
- (a) Rushcliffe - Climate Change Strategy - 2021 - 30
- (b) Solar Farm Development Planning Guidance – (Supplementary Planning Document) November 2022
- (c) Planning and Compulsory Purchase Act 2004<sup>3</sup>;
- (d) National Planning Policy Framework (NPPF) (2023)<sup>4</sup>
- (e) National Planning Practice Guidance (NPPG) (2014)<sup>5</sup>
- (f) Climate Change Act 2008<sup>6</sup>
- (g) Overarching National Policy Statement for Energy EN-1 (DECC) (Designated January 2024)<sup>7</sup>
- (h) National Policy Statement for Renewable Energy Infrastructure EN-3 (DECC) (Designated January 2024)

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<sup>1</sup><https://www.rushcliffe.gov.uk/media/1/rushcliffe/media/documents/pdf/planningandbuilding/planningpolicy/corestrategyexamination/9%20Local%20Plan%20Part%201%20Rushcliffe%20Core%20Strategy.pdf>

<sup>2</sup>[https://www.rushcliffe.gov.uk/media/1/rushcliffe/media/documents/pdf/planningandbuilding/planningpolicy/lapp/adoption/Rushcliffe%20LP%20Part%202\\_Adoption%20version.pdf](https://www.rushcliffe.gov.uk/media/1/rushcliffe/media/documents/pdf/planningandbuilding/planningpolicy/lapp/adoption/Rushcliffe%20LP%20Part%202_Adoption%20version.pdf)

<sup>3</sup><https://www.legislation.gov.uk/ukpga/2004/5/contents>

<sup>4</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1182577/NPPF\\_Sep\\_t\\_23.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1182577/NPPF_Sep_t_23.pdf)

<sup>5</sup><https://www.gov.uk/government/collections/planning-practice-guidance>

<sup>6</sup><https://www.legislation.gov.uk/ukpga/2008/27/contents>

<sup>7</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/47854/1938-overarching-nps-for-energy-en1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf)



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- (i) Clean Growth Strategy (2017)<sup>8</sup>
  - (j) Department for Business, Energy and Industrial Strategy (BEIS) Outcome Delivery Plan (2021)<sup>9</sup>
  - (k) The Sixth Carbon Budget: The UK's path to Net Zero (2020)<sup>10</sup>
  - (l) The Ten Point Plan for a Green Industrial Revolution (2020)<sup>11</sup>
  - (m) Energy White Paper (2020)<sup>12</sup>
  - (n) Industrial Decarbonisation Strategy (2021)<sup>13</sup>
  - (o) Net Zero Strategy (2021)<sup>14</sup>
  - (p) British Energy Security Strategy (2022)<sup>15</sup>
  - (q) Growth Strategy, (2022)
  - (r) Digest of UK Energy Statistic 2023
  - (s) Planning (Listed Buildings and Conservation Areas) Act 1990;
  - (t) The Conservation of Habitats and Species Regulations 2017
  - (u) The Wildlife and Countryside Act 1981
  - (v) Guidelines for Landscape and Visual Impact Assessment (GLVIA3) – Landscape Institute

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<sup>8</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/700496/clean-growth-strategy-correction-april-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700496/clean-growth-strategy-correction-april-2018.pdf)

<sup>9</sup><https://www.gov.uk/government/publications/department-for-business-energy-and-industrial-strategy-outcome-delivery-plan/beis-outcome-delivery-plan-2021-to-2022>

<sup>10</sup> <https://www.theccc.org.uk/publication/sixth-carbon-budget/>

<sup>11</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/936567/10\\_POINT\\_PLAN\\_BOOKLET.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936567/10_POINT_PLAN_BOOKLET.pdf)

<sup>12</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/945899/201216\\_BEIS\\_EWP\\_Command\\_Paper\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945899/201216_BEIS_EWP_Command_Paper_Accessible.pdf)

<sup>13</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/970229/Industrial\\_Decarbonisation\\_Strategy\\_March\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970229/Industrial_Decarbonisation_Strategy_March_2021.pdf)

<sup>14</sup> <https://www.gov.uk/government/publications/net-zero-strategy>

<sup>15</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1069973/british-energy-security-strategy-print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1069973/british-energy-security-strategy-print-ready.pdf)

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- (w) Assessing landscape value outside national designations, Landscape Institute Technical Guidance Note 02/21
- (x) GPA3 The Setting of Heritage Assets – Historic England
- 6.3 For the purposes of this Appeal, the Development Plan comprises the Rushcliffe Local Plan Part 1: Core Strategy (the “**Core Strategy**”) and the Local Plan Part 2: Land and Planning Policies (“**LPP2**”).
- 6.4 The Core Strategy was adopted in December 2014 and is a long- term plan to regenerate the Borough by establishing the strategic approach to new development and identifying the main strategic allocations in the Borough. The Core Strategy is more than five years’ old and a review has not taken place within the last 5 years. The LPP2 was adopted in October 2019 and identifies non-strategic allocations and designations and sets out more detailed policies for use in determining planning applications.
- 6.5 Article 35 of the Town and Country Planning (Development Management Procedure) Order 2015 requires that decision notices must clearly state and provide full reasons for the refusal, specifying all planning policies and proposals in the development plan which are relevant to the decision. The planning policies cited in the reasons for refusal are:
- a) Policy 11 (Historic Environment) of the Core Strategy
  - b) Policy 16 (Renewable Energy) of the LPP2
  - c) Policy 22 (Development on the Countryside) of the LPP2
  - d) Policy 28 (Conserving and Enhancing Heritage Assets) of the LPP2
  - e) Policy 34 (Green Infrastructure, Landscape, Parks and Open Spaces) of the LPP2
  - f) Paragraphs 155 (planning for climate change: to help increase the use and supply of renewable and low carbon energy and heat), 180 (Habitats and Biodiversity: Principles that should be applied by Local Planning Authorities when determining planning applications), 200 (Considering Potential Impacts: any harm to or loss of significance of a designated heritage assets should require clear and convincing justification) and 202 (Considering Potential Impacts: When development proposals would lead

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to less than substantial harm to the significance of a heritage asset, this harm is weighed against the public benefits of the proposal) of the 2021 version of the NPPF.

6.6 In addition to those planning policies, the Council's Statement of Case alleges with the following planning policy and material planning considerations:

- a) Policy 10 (Design and Enhancing Local Identity) of the Core Strategy
- b) Planning Practice Guidance ID:5-013-20150327 in respect of Best and Most Versatile (BMV)
- c) Paragraphs 135 (achieving well-designed and Beautiful Places: what planning policies and decisions should ensure), 160 (Planning for Climate Change: to help increase the use and supply of renewable and low carbon energy and heat what plans should ensure), 180 (Conserving and Enhancing the Natural Environment: Planning policies and decisions should contribute to and enhance the natural and local environment), 206 (Considering Potential Impacts: Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification) and 208 (Considering Potential Impacts: When a development proposal would lead to less than substantial harm to the significance of a heritage asset, this should be weighed against the public benefits of the proposal) of the 2023 version of the NPPF.

6.7 On the 9th April 2024 the Council also advised by email there was a conflict with national planning policy for the lack of a sequential test only. The email stated:

6.8 "Furthermore, through similar assessment we have identified that the Officer report for the application states that a flooding sequential test (and exception test) has been passed, however there appears to be no such sequential test submitted on the application file. This Officer's conclusion is therefore incorrect when applying the National Policy on sequential tests which is clear that a sequential test is necessary for sites in flood zones 2 or 3. For the avoidance of doubt, the Council is requesting the Appellant submit a sequential test either at the Statement of Case or Proof of Evidence stage, and the Council will correspondingly respond as to whether the sequential test is passed at either the Proof or Proof rebuttal stages. The search area for the sequential test is requested to be Borough-wide, noting the scale of development proposed."

6.9 The following planning policies are considered to be of particular relevance to the proposals (those which the Council alleges conflict are underlined for ease of reference):

- (a) Core Strategy Policy 1: Presumption in Favour of Sustainable Development
- (b) Core Strategy Policy 2: Climate Change
- (c) Core Strategy Policy 10 (Design and Enhancing Local Identity)
- (d) Core Strategy Policy 11: Historic Environment
- (e) Core Strategy Policy 16: Green Infrastructure, Landscape, Parks and Open Spaces
- (f) LPP2 Policy 16: Renewable Energy
- (g) LPP2 Policy 22: Development within the Countryside
- (h) LPP2 Policy 28: Conserving and Enhancing Heritage Assets
- (i) LPP2 Policy 29: Development affecting Archaeological Sites (not set out in Reason for Refusal 2)
- (j) LPP2 Policy 34: Green Infrastructure and Open Space Assets

### **National Policy and Guidance**

6.10 National Planning Policy Framework (2023)<sup>16</sup>:

- (k) Chapter 2 (Achieving Sustainable Development), paragraphs 7, 8c, 10 and 11 presumption in favour of sustainable development;
- (l) Chapter 12, Paragraphs, 135 Achieving well-designed and beautiful places.
- (m) Chapter 14 (Meeting the challenge of climate change, flooding and coastal change);

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<sup>16</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1005759/NPPF\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf)

- (n) Chapter 15, Conserving and enhancing the natural environment; Chapter 16 Conserving and enhancing the historic environment; and paragraphs 157 (Meeting the challenge of climate change, flooding and coastal change: Transitioning to a low carbon future), 160 (Meeting the challenge of climate change, flooding and coastal change: to help increase the use and supply of renewables, and low carbon energy and heat), 163 (Meeting the challenge of climate change, flooding and coastal change: When determining planning applications what Local Planning Authorities should do), 180 (Conserving and Enhancing the Natural Environment: Planning policies and decisions should contribute to and enhance the natural and local environment); 206 (Considering Potential Impacts: Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification) and 208 (Considering Potential Impacts: When a development proposal would lead to less than substantial harm to the significance of a heritage asset, this should be weighed against the public benefits of the proposal).

- 6.11 National Planning Practice Guidance on Renewable and Low Carbon Energy Paragraph 013.
- 6.12 National Planning Policy Statement (NPS) (EN-1).
- 6.13 NPS for Renewable Energy Infrastructure (EN-3).

## **7 MATTERS AGREED AND NOT AGREED**

### 7.1 Matters agreed:

#### Principle of Development

- (a) The NPPF sets out support for renewable energy development in Chapter 14 (Meeting the challenge of climate change).
- (b) The Local Plan includes policies which are supportive of Renewable Energy development, including within the Countryside, at Policy 2 of LPP1 and Policies 16 and 22 of LPP2.
- (c) The principle of the proposed development is supported by both national and local policy, including adopted local policy in support of renewable energy provided there are no unacceptable impacts.

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- (d) There is broad in principle support for the proposed renewable energy development.

#### Landscape and Visual Effects

- (e) The officer's report concludes that the proposed development has been designed to respect the character of the landscape and uses the field pattern to integrate the scheme as far as practicable. It concludes that the development accords with Core Strategy Policy 10 (Design and Enhancing Local Identity).
- (f) That any adverse landscape or visual effects associated with the Proposed Development should be considered for the lifetime of the solar farm, but are reversible.
- (g) That the landscape proposals associated with the Proposed Development would result in a net gain in the hedgerow and tree resource within the site.
- (h) That the site is not part of a valued landscape within the meaning of para 180(a) of NPPF.

#### Ecology and Biodiversity

- (i) No statutory or non-statutory protected sites are likely to be impacted by the development.
- (j) Natural England has no objections to the proposal in respect of designated sites. Natural England's response provides additional comment on BMV matters.
- (k) The application is supported by an Ecological Assessment (EcA) to assess the potential impacts on ecology from the Proposed Development.
- (l) It states that the habitats impacted by the development are identified as arable land / cereal cropland, improved agricultural grassland / modified grassland, a line of trees and hedgerow (Priority Habitat). Brown hare was confirmed within the Survey Site.
- (m) As confirmed on page 15 of the Officer report, the Council's Ecology and Sustainability Officer has no objections to the proposal and comments

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that no statutory or non-statutory protected sites are likely to be impacted by this development.

- (n) Biodiversity Net Gain Assessment has also been undertaken using DEFRA Metric 3.0.

#### Glint and Glare

- (o) The glint and glare assessment concludes that there would be no significant impact on residential properties.
- (p) No significant impacts are predicted on aviation activity at East Midlands Airport.

#### Amenity of Nearby Properties

- (q) During the construction period, initial site setup works including access maintenance and improvements would be undertaken where considered to be beneficial to the use of the access, followed by construction of the internal access route(s), ground works, the installation of the solar panels and other infrastructure. Facilities would be provided on site for construction workers, including provision of a site office and welfare facilities (including toilets, changing, and drying facilities, and a canteen). During operation it is expected to be very limited.

#### Best and Most Versatile (BMV) Agricultural Land

- (r) 2% of the site is classified as Grade 2 BMV agricultural land, 36% is Grade 3a and 58 % of the application site is classed as Grade 3b agricultural land, with the remainder forming farm tracks, property, hedgerows and ditches. As such, 38% of the application site constitutes best and most versatile agricultural (BMV land) and 62% of the site does not constitute BMV land.
- (s) Natural England has no objections to the proposal in respect of designated sites. Natural England's response provides additional comment on BMV matters.

#### The Historic Environment

- (t) The heritage assets relevant to this Appeal are:

Thoroton Conservation Area;

Hawksworth Conservation Area;

Grade I Church of St. Helena, Thoroton;

Grade II\* Church of St. Mary and All Saints, Hawksworth ;

Grade II Hawksworth Manor and adjoining Pigeoncote; and

Grade II Model Farm Buildings at Top Farm.

- (u) Harm to the above designated heritage assets, where identified, would be less than substantial and would arise through changes to elements of setting which contribute to significance.
- (v) There is no physical harm to any identified designated heritage assets arising from the Proposed Development.
- (w) The second Reason for Refusal does not relate to below-ground archaeology.
- (x) As agreed at the Case Management Conference of 23<sup>rd</sup> April 2024, the Council have no concerns relating to archaeology arising from this Scheme, subject to appropriate conditions which have been agreed between the Council and Appellant.

#### Decommissioning and Reinstatement of Land

- (y) At the end of the operational lifespan (40 years), the solar panels and the majority of other infrastructure would be removed.

#### Flood Risk

- (z) The Appeal Site lies within Flood Zones 1, 2 and 3 as shown at CD1.24 which is Appendix 4a of the Appellant's Technical Appendix 4 Flood Risk and Drainage Impact Assessment.
- (aa) The proposed development will not give rise to flood risk to any people on site.
- (bb) As confirmed on page 26 of the Officer report, a sustainable drainage strategy, involving the implementation of sustainable drainage in the form



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of swales, is proposed for managing surface water runoff on the site. Swales are proposed at the low points of the application site to intercept extreme flows which may already run offsite. The strategy comments that the swales do not form part of a formal drainage scheme for the development but are provided as a form of 'betterment'.

- (cc) Page 26 of the Councils delegated Officer report states that the site passes the Exception Test.
- (dd) Nottinghamshire County Council as Lead Flood Risk Authority have not raised objections to the proposal from a surface water/ flood risk perspective and have no further comments to make. The Environment Agency have stated that they have no objection on the basis that finished floor levels would be set no lower than 18.20 metres above Ordnance Datum (AOD) and that Finished Floor Levels of all other vulnerable infrastructure shall be set no lower than 300mm above ground levels.

#### Impact on Health

- (ee) The construction and operational phases of the development are unlikely to generate unacceptable impacts on health.
- (ff) The Proposal accords with policies 39 and 40 of the LPP2.

#### Air Quality

- (gg) The proposed development would not generate odour during the operational stage and the proposal is acceptable in respect of effects on Air Quality.
- (hh) The Proposal accords with policy 41 of the LPP2 regarding air quality.

#### Emissions to Ground, Water Courses And/or Air

- (ii) Effects at the construction phase would relate to construction vehicles and it is considered would not be of a level to cause harm to the environment.

#### Vehicular Access and Traffic

- (jj) It is proposed that the site would be accessed from a new vehicular access point off Thoroton Road. Required visibility splays will be provided

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by removing a small section of hedgerow (13.3 metre but compensated by new hedgerow planting within the site).

- (kk) During operation of the solar installation, it is anticipated only infrequent visits would be required for the purposes of equipment maintenance or cleaning of the site on an as required basis. Land management, such as trimming hedgerows, will continue on an annual basis as currently takes place. As such, the operational access would be associated with a low number of trips (around one per week).
- (ll) No objections were raised by National Highways Authority and Nottinghamshire County Council's (NCC) Highways Team. NCC confirmed the new vehicular access is acceptable, suitable visibility splays can be achieved, number of vehicle movements were acceptable and would be appropriately managed.
- (mm) Access and transportation issues form no part of the Council's reason for refusal and the proposal accords with national (paragraph 110 and 111 of the NPPF) and local planning policy (policy 15 of LPP1, policy 1 LPP2 and policy 16 LPP2) in this regard.

#### Impact on Public Rights of Ways (PROW)

- (nn) The Nottinghamshire County Council Rights of Way Team is satisfied that the development has retained the Rights of Way in their current location to acceptable terms and has no objection to the proposals.

#### Impact on Minerals and Mining

- (oo) There is no objection to the proposals from statutory consultees in respect of Minerals and Mining effects.

#### Material issues

- (pp) That there are no material issues contended by the Rule 6 that weigh in favour of dismissing the Appeal other than those set out in the following section headed "Matters not agreed".

## 7.2 Matters not agreed:

- (a) Whether the proposed development exceeds 49.9MW;

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- (b) Whether the capacity of the proposed development is such that the matter cannot be determined by s.78 appeal;
  - (c) Whether the capacity of the development could be controlled by condition such the appeal succeed and planning permission granted;
  - (d) The effects of the Proposed Development on landscape character and visual amenity;
  - (e) The contribution of the Appeal Site to the significance of the Hawksworth and Thoroton Conservation Areas;
  - (f) The contribution of the Appeal Site to the significance of the identified listed buildings;
  - (g) The visibility of the spire of the grade I Church of St, Helena from within the Conservation Area of Hawksworth and the contribution this makes to the significance of those assets;
  - (h) The level of intervisibility between the two settlements;
  - (i) The level of harm within the less than substantial scale arising from the Proposed Development to identified designated heritage assets;
  - (j) Whether the benefits of renewable energy generation associated with the Proposed Development and other environmental benefits it would deliver are sufficient to outweigh any alleged harm to the landscape character; visual amenity, heritage assets, protected species, archaeology and bmv land;
  - (k) Whether the Proposed Development would only be visible from certain locations at the edges of the Conservation Areas;
  - (l) Whether there are views of the Proposed Development from within the the Hawksworth or Thoroton Conservation Areas;
  - (m) Whether there are views of the Proposed Development from listed buildings within the Conservation Areas;
  - (n) Whether LPP1 Policy 10: Design and Enhancing Local Identity is engaged by the heritage elements of the Scheme;

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- (o) Whether Section 72 of the Planning (Listed Buildings and Conservations Areas) Act is engaged by the Appeal proposals.
  - (p) To establish significance of and risk to archaeology and if mitigation proposed is suitable or appropriate;
  - (q) Whether the flood risk assessment requires updating to take into account new climate changes allowances published by the Environment Agency in 2022;
  - (r) Whether the updated flood risk technical note requires further mitigation for any alleged harm to landscape, visual impacts and setting of heritage assets;
  - (s) Whether the proposed development would or would not give rise to flood risk to any buildings on site;
  - (t) Whether the proposed development would or would not increase the risk of flooding off site;
  - (u) Whether the Appeal proposal meets the flood risk Sequential and Exceptions Tests;
  - (v) Whether the proposals present a significant risk to protected species, in particular bats;
  - (w) Whether the setback vegetation at the Appeal Site new entrance off the public highway, known as Thoroton Road, would affect and be an issue for visibility for vehicles access to and egressing from the Appeal Site;
  - (x) Whether the total ground disturbance area resulting from the Proposed Development is 36,989.58m<sup>2</sup> or approximately 3.93% of the Appeal Site area;
  - (y) Whether the overall land coverage is estimated to be c. 370,849.20m<sup>2</sup> or 39.35% of the Appeal Site area (94.24ha);
  - (z) Whether the scale of development is the minimum level necessary to ensure that the site performs effectively with regard to its main purpose of generating renewable electricity (as recognised in the officers report page 8) and the scale of development is appropriate in this location (as recognised in the Officers report page 9);

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- (aa) Whether the methodology used for the Landscape and Visual Appraisal and subsequent addendums was sound and in accordance with the Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA3);
  - (bb) The level of effects on both landscape (character and elements) and visual receptors as well as were the levels of effect would be limited to;
  - (cc) Whether the proposed development is reversible at the end of its lifetime;
  - (dd) The time it would take to restore the land to its former agricultural condition;
  - (ee) Whether the proposal would result in any significant impacts on biodiversity;
  - (ff) Whether the benefits from new habitat proposed as part of this development would result in a significant biodiversity net gain;
  - (gg) If Glint and Glare impact may arise, whether the proposed landscaping has been designed sufficiently to mitigate this impact;
  - (hh) Whether the site will be restored to agricultural use after it is decommissioned;
  - (ii) Whether the proposal would reduce or prevent food production from its whole development area for the entirety of its life-time;
  - (jj) Whether the development will cause any form of pollution during its operational stage;
  - (kk) Whether the mitigation proposed by the ecological assessment would remove the risk to protected species;
  - (ll) Whether the favourable conservation status of Protected Species will be impacted by this development;
  - (mm) Whether the Appellant's BNG assessment claim that the proposals would result in a +187.13% for area-based habitat net gain and the hedgerow units for the site result in a 24.68% net gain is achievable;
  - (nn) Whether the landscaping and planting proposals would bring about significant ecological benefits when compared to the present situation,

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including upgrading lower-value, biodiversity-poor arable land to higher value habitats as recognised in the Officer report page 9;

- (oo) Whether proposed planting would satisfactorily mitigate the impacts of glint and glare on residential amenity;
- (pp) Whether the impact of noise and disturbance on adjacent residential properties during the construction phase can be satisfactorily mitigated;
- (qq) Whether, the appellant's construction method statement would satisfactorily protect residential amenity;
- (rr) Whether the proposal is acceptable in regard to its impact on residential amenity and accords with relevant planning policy;
- (ss) Whether adverse impacts on public rights of way can be made acceptable;
- (tt) Whether the impacts arising from construction are suitably mitigated through the submitted construction method statement;
- (uu) Whether the judgment set out in *Palmer v Herefordshire Council & Anor* [2016] EWCA Civ 101 paragraph 34 say: 'Although the statutory duty requires special regard to be paid to the desirability of not harming the setting of a listed building that cannot mean that any harm, however minor, would necessarily require planning permission to be refused.' Rule 6 party do not accept the inclusion of this without a wider context of discussion of heritage case law;
- (vv) Whether rainfall falling onto the photovoltaic panels would runoff directly to the ground beneath the panels and infiltrate into the ground at the same rate as it does in the site's existing greenfield state. Whether existing drainage features would be retained, and the site would remain vegetated through construction and operation of the solar installation to prevent soil erosion. Whilst it is considered that the photovoltaic panels would not result in a material increase in surface water run-off, it is proposed to provide a SuDS arrangement by way of swales / filter trenches in the lower areas of the site to intercept extreme flows which may already run offsite;
- (ww) Whether the proposed drainage strategy would ensure that the development would have a negligible impact upon site drainage, and

surface water arising from the developed site would mimic the surface water flows arising from the site prior to the proposed development. Whether the natural drainage regime would be retained except in the extreme storm event when a benefit is achieved by reducing the extreme storm run-off flows;

- (xx) Whether the proposal complies with LPP1 policy 1, LPP2 policies 2, 17, 29; and paragraph 1, 16, 200-211 of the NPPF;
- (yy) Whether the scheme including amendments made in April 2024 may be referred to as Scheme C for clarity;
- (zz) Whether the primary construction phase of the proposed development is expected to last for approximately 16-24 weeks, and
- (aaa) Method of consultation for the appeal scheme

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## Appendix 1

### Schedule of Documents Submitted to Council

#### **7.3 Volume 1**

- (a) Application Form
- (b) Design and Access Statement
- (c) Planning Statement
- (d) Statement of Community Involvement

#### **7.4 Volume 2 Figures**

- (a) Figure 1 - Site Location Plan
- (b) Figure 2 - Site Location Map
- (c) Figure 3 - Field Numbers
- (d) Figure 4 - Infrastructure Layout
- (e) Figure 5 - Infrastructure Layout
- (f) Figure 6 - Access Track Detail
- (g) Figure 7 - Construction Compound Detail
- (h) Figure 8 - PV Module and Rack Detail
- (i) Figure 9 - Security Fence Detail
- (j) Figure 10 - CCTV Detail
- (k) Figure 11 - Inverter Station
- (l) Figure 12a - Substation Layout Option 1
- (m) Figure 12b - Substation Layout Option 2
- (n) Figure 13 - Deer Fence Detail
- (o) Figure 14 - Sheep Handling System Detail
- (p) Figure 15 - Indicative Track with Bridleway Crossing



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## 7.5 **Volume 3 Technical Appendices**

- (a) Technical Appendix 1 - Landscape and Visual Assessment
- (b) Figure 1.1 - Landscape Character Areas
- (c) Figure 1.2 - Landscape Designations
- (d) Figure 1.3 - Viewpoint Locations with ZTV
- (e) Figure 1.4 - Viewpoints 1 and 2
- (f) Figure 1.5 - Viewpoints 3 and 4
- (g) Figure 1.6 - Viewpoints 5 and 6
- (h) Figure 1.7 - Viewpoints 7 and 8
- (i) Figure 1.8 - Viewpoint 1 Years 1 and 10
- (j) Figure 1.9 - Viewpoint 4 Years 1 and 10
- (k) Figure 1.10 - Viewpoint 5 Years 1 and 10
- (l) Figure 1.11 - Viewpoint 6 Years 1 and 10
- (m) Figure 1.12 - Landscape and Ecological Management Plan
- (n) Appendix 1D - Illustrative Viewpoints A-B Photo Panels
- (o) Technical Appendix 2 - Ecological Appraisal
- (p) Figure 2.1 - Environmental Designations
- (q) Figure 2.2 - UK Habitat Classification
- (r) Figure 2.3 - Pond Map
- (s) Figure 2.4 - Local Wildlife Sites
- (t) Appendix 2.1 - Biodiversity Management Plan
- (u) Appendix 2.2 - Net Gain Assessment
- (v) Appendix 2.3 - Bird Hazard Management Plan
- (w) Technical Appendix 3 - Cultural Heritage Impact Assessment
- (x) Figure 3.1 - Designated Heritage Assets
- (y) Figure 3.2 - Historic Environment Record

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- (z) Figure 3.3 - Henry Stevens 1820 Map of Newark on Trent
  - (aa) Figure 3.4 - OS 1883 Map
  - (bb) Figure 3.5 - OS 1921 Map
  - (cc) Figure 3.6 - Lidar Data
  - (dd) Appendix 3B - Tables
  - (ee) Appendix 3C - Walkover Survey Report
  - (ff) Appendix 3D - Geophysical Survey Report
  - (gg) Technical Appendix 4 - Flood Risk and Drainage Impact Assessment
  - (hh) Figures
  - (ii) Appendix 4B - Hydrology Photos
  - (jj) Appendix 4C - Flow Report Solar
  - (kk) Appendix 4D - Flow Report Substation
  - (ll) Appendix 4E - BRE Infiltration Report
  - (mm) Appendix 4F - Outline SuDs Design
  - (nn) Appendix 4G - Foul Drainage Assessment
  - (oo) Technical Appendix 5 - Construction Traffic Management Plan
  - (pp) Figures
  - (qq) Technical Appendix 6 - Glint and Glare Assessment
  - (rr) Figures
  - (ss) Appendices
  - (tt) Technical Appendix 7 - Noise Assessment
  - (uu) Technical Appendix 8 - Outline Construction Environmental Management Plan
  - (vv) Technical Appendix 9 - Agricultural Land Classification Survey
  - (ww) Appendices
  - (xx) Technical Appendix 10 - Arboricultural Impact Assessment
  - (yy) Appendices