APPEAL BY RES LTD

AGAINST THE DECISION OF RUSHCLIFFE COUNCIL TO REFUSE PLANNING PERMISSION FOR Installation of renewable energy generating solar farm comprising ground-mounted photovoltaic solar arrays, together with substation, inverter stations, security measures, site access, internal access tracks and other ancillary infrastructure, including landscaping and biodiversity enhancements.

AT LAND AT

Land East Of Hawksworth And Northwest Of Thoroton, Shelton Road Thoroton Nottinghamshire

REBUTTAL PROOF OF EVIDENCE OF MR SAM FRANKLIN BSc (Hons) MSc MRICS FAAV FBIAC PIEMA MISoilSci.

On Behalf of the Rule 6(6) Party, the Hawksworth and Thoroton Action Group (HTAG)

PINS REF: **APP/P3040/W/23/3330045**

LPA APPLICATION REF: **22/02241/FUL**

LPA APPEAL REFERENCE: **P24-0105**

Landscope Land and Property
Village Farm
Thorncote Green
Sandy
Bedfordshire
SG19 1PU

May 2024

This rebuttal mainly addresses the Kernon Report

1. Table 3 in that report shows a hypothetical breakdown of ALC grades in Rushcliffe Borough. The data does not exist in the public domain and is only speculation.

2. The Kernon report states:-

   5.17 The BMV likelihood of the wider area is shown below. Low likelihood is associated with watercourses, otherwise the likelihood is moderate or high.

3. This statement is not correct. Much of the low likelihood land is on flat level sites outside of river valleys. My map of my proof (Appendix) shows areas immediately to the north and east of the appeal site which are of low likelihood. They are not particularly in river valleys.

   *3.15 There is no definition of what is "significant" development in the context of footnote 62 of the NPPF. The threshold for consultation with Natural England is where there will be the loss (**by sealing-over or downgrading rather than a change of use**) of more than 20 ha of BMV agricultural land (as set out in Schedule 4 (y) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) (DMP Order).*

4. Sealing over or downgrading, includes damage to soils by adverse trafficking during construction which can permanently damage soils.

   3.19 The weight to be given to the written ministerial statement is addressed in the planning evidence. This was considered in the appeal decision at Cutlers Green (3319421, 18th December 2023) where, at paragraph 166, the Inspector made the following decision:
   *"**I recognise that the 2015 WMS requires the most compelling evidence for the development of solar farms on BMV. However, this must be read in light of more up to date events.***

5. A ministerial statement made on 15th May 2024 restates the continued support for the protection of BMV land and non BMV land. First, the application must demonstrate that development of any agricultural land is necessary, only then should poorer quality land be preferred to those of a higher quality. The availability of land used for food production should be considered alongside the other policies in this Framework, when deciding what sites are most appropriate for development.

6. For all applicants the highest quality agricultural land is least appropriate for solar development and as the land grade increases there is a greater onus on developers to show that the use of higher quality land is necessary.

   4.10 The following photograph is included because it shows how variable land can be over short distances. In particular I draw attention to the colour of the subsoil removed in the archaeological trenching, as indicated by the arrows.

7. This trench was dug because of the variability as highlighted in the archaeological report, not because of some natural soil variation.

*4.11 Variability of soils over short distances is particularly noticeable in the Subgrade 3a to the west. This was highlighted to me by the farmer. The photographs are located as follows. His soil map is at **Appendix KCC6**. It can be seen that almost every field contains three different types of soil.*

8. Kernon provides a soil texture map from Omnia in his Appendix KCC6. This map shows completely different soil types from the ALC survey. An annotated version of that map is attached as my **Appendix 1**

9. The ALC report identifies and details 10 soil pits across the site. These are numbered as 4, 11, 13, 37, 42, 51, 60 ,73, 87, and 90. The details of the soil types, wetness class grade limitation and ALC grade are set out in the Appellants ALC report (CD 1.29 and 1.29.1).

10. Of these representative soil pits, 5 are described as heavy clay loam (HCL), two are sandy clay loams (SCL), two are medium clay loam (MCL) and one is a clay (C). In the case of soil pit 87 there is also a laboratory report (**Appendix 2**) of the soil texture – confirming it is a medium clay loam (MCL).

11. Of the 10 soil pits only one (Pit 11) has the same soil type as shown on the Omnia map. In fact, the Omnia map does not mention Medium Clay Loam or Heavy Clay Loam at all, which is surprising because this is the finding of 70% of the soil pits across the site according to the ALC report.

12. A table below sets out the soil type comparing the Omnia Map and the ALC Map using the soil pit locations meant to be representative of the wider site.

Comparing Soil Textures

ALC Pit No	ALC Soil Type	Omnia Soil Type	Wetness Class	ALC Grade	ALC Limitation	Projected Omnia ALC Grade
4	MCL	SC	III	3a	W/D	3b
11	SCL	SCL	II	3a	W/D	2
13	SCL	SC	III	3a	W/D	3b
37	C	SCL	III	3b	W	3a
42	HCL	SCL	III/II	3b/3a	W	3a or 2
51	HCL	SCL	III	3b	W	3a
60	HCL	SC	II	3a	W	3a
73	HCL	ZCL	III	3b	W	3a/3b
87	MCL	ZCL	I	2	D	2
90	HCL	ZC	III	3b	W	3b

13. The table above shows that if the Omnia Soil Types were used, instead of the ALC Grades then 70-80% of the site would be ALC regraded. The main limitations to this land is stated to be Wetness (W). I have reproduced Table Six from the 1988 Guidelines (**Appendix 3**) and it is possible to compare the grading findings using that chart.

14. This strongly suggests that there are errors or omissions in this soil testing. It is not clear if it is the ALC report that is at fault, or the Omnia findings, but both pieces of information are provided by the appellant, though they are incompatible.

15. In the light of government circular of 15th May and no independent verification of the ALC report, together with this Omnia contradictory soil texture information, the reliability of the ALC findings must be questionable. Neighbouring farmers and landowners such as Andrew Kaye have commented on the quality of the land at the site and have suggested that it is considerably better quality than the ALC report finds.

16. The Cutlers Green Appeal (3319421, 18th December 2023) referred to in the Kernon report, must be read in the light of the new ministerial statement of 15th May 2024.

17. Kernon references the Leeming Barr decision (APP/G2713/W/23/3315877). However, the inspector also notes the following:-

15. The Revised guidelines and criteria for grading the quality of agricultural land (MAFF 1988) (MAFF guidelines) highlights that sandy soils readily form compacted layers if cultivated or traversed when wet. Where such damage can be corrected by normal soil management methods it indicates it does not affect the grading. However, it also states that where significant compaction occurs below 35cm it may be difficult or impossible to ameliorate practically or economically. Such compaction is therefore said to be a long-term limitation which is taken into account through reduced permeability and available water capacity in the wetness and droughtiness assessments.

18. This confirms that if compaction occurs at the site, it may not be possible to remedy during or after construction or even at removal and this permanently affects ALC grade. These soils are known to be vulnerable to soil compaction.

19. The Local Plan Policy specifically states that *Development should also aim to minimise soil disturbance as far as possible*. The Kernon report states:-

5.9 There are occasions when the weather makes the soils susceptible to disturbance from vehicular traffic. An example is shown below.

20. The example shown is photo 18, which clearly shows soil disturbance at an inappropriate time. This demonstrates the vulnerability of such techniques and the risk to ALC grade.

Whether Poorer Quality Land Is Available (Issue 2)

21. My proof set out BMV quality maps and Kernon confirms that there is other land in the vicinity that is of low likelihood BMV quality.

Soil Inversion

22. Section 1.73 of Appendix 2.1 “Biodiversity Management Plan” clearly mentions soil inversion and suggests that without it, the ‘difficult to establish’ species rich mixture will not indeed establish. There seems to be a contradiction between the landowner and the biodiversity plan. Kernon mentions the landowner agreement, but we do not have a copy of that agreement. The BMP however does form part of the Appeal. My evidence confirms the issues inherent in trying to establish species rich grassland on arable reversion as proposed here.

Increased Flood Risk

23. We consider that the climate change allowance in the Flood Risk Assessment is out of date as the new data for the Humber Water Basin Flood Risk Management Plan increases the Lower Trent and Erewash Management Catchment peak river flow allowances to 62% for the 2080's. The report can be sourced from https://environment.data.gov.uk/hydrology/climate-change-allowances/river-flow?mgtmcatid=3052

24. **Appendix 4** is a map of the catchment showing the revised figures and also the report as a whole **Appendix 5**.

Sheep Grazing and Food Production and Food Security

25. Photos 25 and 26 of the panels show relatively high clearance, whereas the proposed panels may be lower than this making it both difficult for sheep to get underneath and for a shepherd to clearly see them. This makes feeding, handling and welfare much more difficult.

26. My proof indicates that with no access to farm subsidies, the increased aggravation for a shepherd and the poorer quality grazing at low stocking densities all point to low productivity and this is why I consider that little weight should be given to the grazing potential.

27. The Kernon report indicates in paragraph 5.50 that:-

    It shows that food production is not a concern or key objective of Government.

28. However, the war in Ukraine and Suez Canal problems have caused wheat supply and other food related issues, and in consequence there is a refocussed attention on food security in the UK, this is clarified in the May 15th Statement.

29. In clarification of the Governments concern with regard to food production, the December 2023 amendment to the NPPF now specifically references 'food' in footnote 62 and this indicates the rising awareness and concern for food security in the UK.

30. The most recent government circular of 15th May further references food production and not just on BMV land, but on farmland generally. It restates the government's commitment to food security, confirming it is an *essential part of national security. Heightened geopolitical risk has brought this into sharper focus and we think it is more important than ever that our our best agricultural land is protected and our food production prioritised.*

31. Whereas food security is seen as essential, solar projects are only described as *a key part of the Governments strategy for energy security*.

32. The Kernon Report also notes that the land is partly used for non-food purposes growing energy crops. Were the land to be covered in panels it won't be able to continue to grow the energy crops, or food crops. There could actually be a net reduction in energy production from this land if it is taken out of cropping.

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Soil texture – Thoroton

Omnia Digital Farming

Clay (C) | Silty clay (ZC) | Silty clay loam (ZCL) | Sandy silt loam (SZL) | Sandy clay (SC) | Sandy clay loam (SCL) | Sandy loam (SL)

ANALYTICAL REPORT

Report Number	87968-22	H579	MR MIKE PALMER	Client THOROTON	
Date Received	07-FEB-2022		LAND RESEARCH ASSOCIATES		
Date Reported	16-FEB-2022		LOCKINGTON HALL		
Project	SOIL		LOCKINGTON		
Reference	THOROTON		DERBY		
Order Number			DE74 2RH		

Laboratory Reference		SOIL545282	SOIL545283	SOIL545284	SOIL545285						
Sample Reference		TS120	TS123	TS88	TS87						
Determinand	Unit	SOIL	SOIL	SOIL	SOIL						
Sand 2.00-0.063mm	% w/w	39	31	27	35						
Silt 0.063-0.002mm	% w/w	37	38	37	41						
Clay <0.002mm	% w/w	24	31	36	24						
Textural Class **		MCL	HCL	C	MCL						

Notes

Analysis Notes: The sample submitted was of adequate size to complete all analysis requested.
The results as reported relate only to the item(s) submitted for testing.
The results are presented on a dry matter basis unless otherwise stipulated.

Document Control: **This test report shall not be reproduced, except in full, without the written approval of the laboratory.**

** Please see the attached document for the definition of textural classes.

Reported by *Myles Nicholson*

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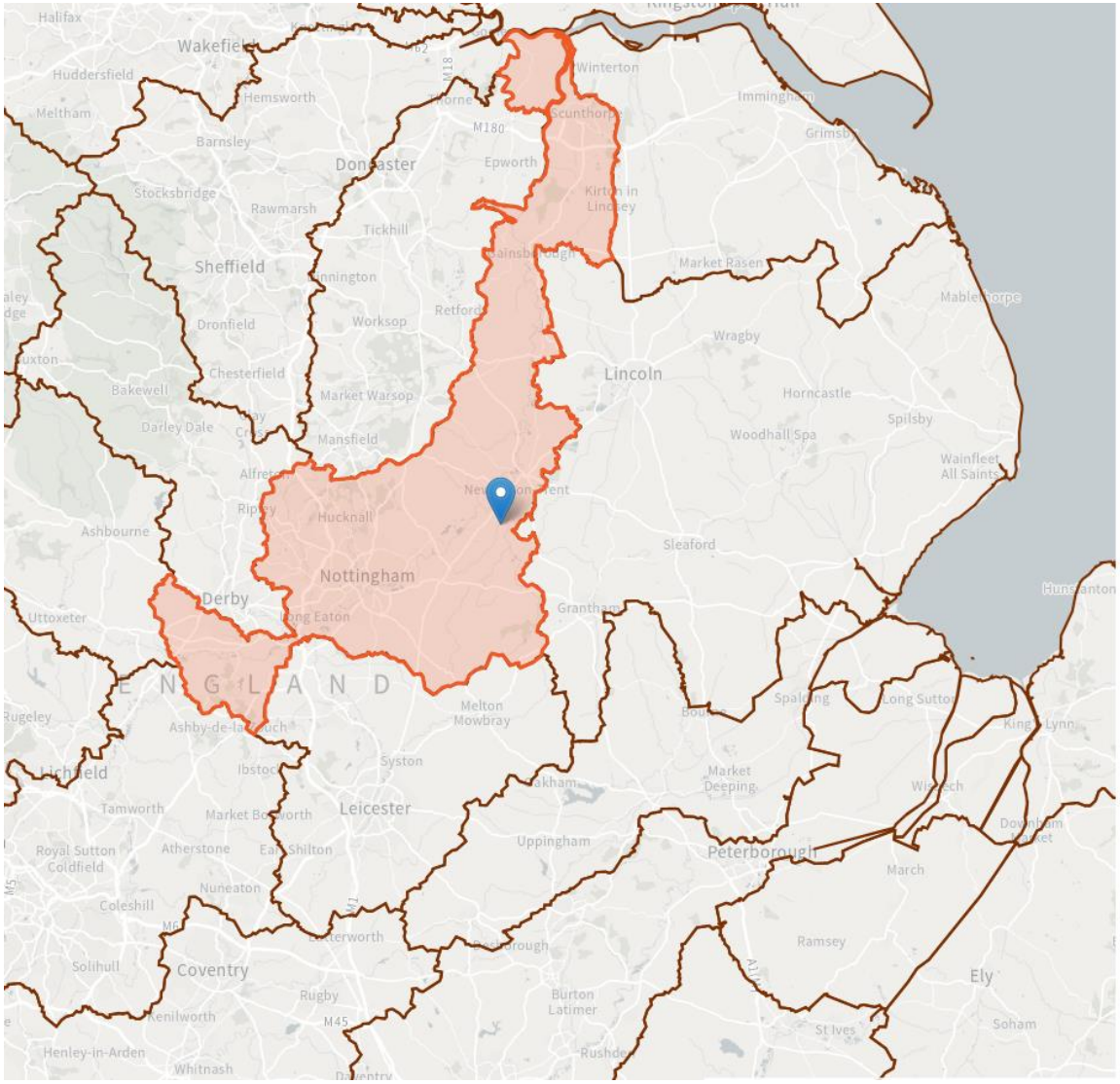
Agricultural Land Classification of England and Wales

Table 6 Grade according to soil wetness - mineral soils

Wetness Class	Texture[1] of the top 25 cm	Field Capacity Days				
		<126	126-150	151-175	176-225	>225
I	S[2] LS[3] SL SZL	1	1	1	1	2
	ZL MZCL MCL SCL	1	1	1	2	3a
	HZCL HCL	2	2	2	3a	3b
	SC ZC C	3a(2)	3a(2)	3a	3b	3b
II	S[2] LS[3] SL SZL	1	1	1	2	3a
	ZL MZCL MCL SCL	2	2	2	3a	3b
	HZCL HCL	3a(2)	3a(2)	3a	3a	3b
	SC ZC C	3a(2)	3b(3a)	3b	3b	3b
III	S[2] LS SL SZL	2	2	2	3a	3b
	ZL MZCL MCL SCL	3a(2)	3a(2)	3a	3a	3b
	HZCL HCL	3b(3a)	3b(3a)	3b	3b	4
	SC ZC C	3b(3a)	3b(3a)	3b	4	4
IV	S[2] LS SL SZL	3a	3a	3a	3b	3b
	ZL MZCL MCL SCL	3b	3b	3b	3b	3b
	HZCL HCL	3b	3b	3b	4	4
	SC ZC C	3b	3b	3b	4	5
V	S LS SL SZL	4	4	4	4	4
	ZL MZCL MCL SCL	4	4	4	4	4
	HZCL HCL	4	4	4	4	4
	SC ZC C	4	4	4	5	5
Soils in Wetness Class VI - Grade 5						

[1]For naturally calcareous soils with more than 1% $CaCO_3$ and between 18% and 50% clay in the top 25 cm, the grade, where different from that of other soils, is shown *in brackets* (see page 16).

[2] Sand is not eligible for Grades 1, 2 or 3a (see page 16).



Lower Trent and Erewash Management Catchment peak river flow allowances

	Central	Higher	Upper
2020s	13%	18%	29%
2050s	17%	23%	38%
2080s	29%	39%	62%

This map contains information generated by UK Centre for Ecology and Hydrology using UK Climate projections.