

Land to the West of Wood land and Stocking Lane,
Kingston Estate, Gotham

1 THE PROPOSED DEVELOPMENT, CAPACITY AND MATERIAL ISSUES

- 1.1 This appeal seeks permission for a solar powered renewable energy generating installation of ground mounted PV solar together with other necessary infrastructure and landscaping and biodiversity enhancements.
- 1.2 The application is properly within matters that can be considered under the Town and Country Planning Act 1990, by reference to the NPS EN-3 guidance that the divide between TCPA and NSIP should be by reference to the capacity of inverters forming part of the development. That is a maximum of 17 inverters with a combined export capacity that will not exceed 49.9MWac. The planning condition agreed with the Council is all that is required to secure observance of that threshold. Overplanting isn't a significant issue on this application given the installed dc capacity is likely to be 56.08MWdc, not much greater than the 49.9MWac figure.
- 1.3 The technical report of Mr Urbani (Cussen Appendix 3) confirms no expectation of changes in panel technology or ability to flex panel spacing that would achieve any meaningful reduction in site area which has not been challenged (Temple XE), including to any material degree by the Council's suggestion (Cussen XE) that best available technology will not have been used if there is a possibility that higher rated panels may be available for development. We do not have figures for what would be needed if different panel ratings were to be used (Cussen InspQ) but that is because he is following Mr Urbani's evidence that no other type of panel is likely to offer any benefit together with the Appellant's evidence that this design is acceptable in planning terms and so does not need any reduction (Cussen XE).
- 1.4 The Appellant has put forward a reasonable technical design and explained in detail its reasons for doing so, in which case any questions arising from the *Galloway* judgement have been answered.
- 1.5 As in opening I will address the main planning issues under the four headings of Visual Amenity, Amenity of RoW users, Green Belt Openness and Very Special Circumstances in that order.

2 VISUAL AMENITY

Levels of harm

- 2.1 The Council's case is that the site is an important landscape element in the locality which adds positively to the rural character of the area to which there will be a localised harm to its landscape character which is material and significant (Temple PoE para 6.19 and 22). It is however agreed that the appeal site or area is not identified by the Council as a Valued Landscape (Temple SoC 2.9). Ms Temple does not profess any landscape qualifications but has interpreted the assessments of others. She accepts that the site being an "important landscape element in the locality" is her opinion, not derived from any assessment or published study (Temple XE).
- 2.2 The criticism of Mr Cook's assessment (Cook XE and ReEx) and lack of workings falls away in light of his proof setting out in detail the impacts he identifies and by Ms Temple recognising he has carried out his own assessment (Temple XE).
- 2.3 The Reason for Refusal makes no reference to harm to the character of the landscape which is separate to visual amenity and the reference to visual amenity only relates to public rights of way either adjacent to or which pass through the site. (Andrew Cook proof para 2.3). Ms Temple accepted that she was not making any landscape character argument and was not advancing any new reasons for refusal. Her reference to GLVIA definition of visual amenity did not include any reference to landscape character (Temple XE).
- 2.4 There will be minimal works to existing trees and hedgerows, with existing hedgerows strengthened and infilled where needed to retain and enhance existing landscape elements and to assist integrating the proposals into the surrounding landscape. (Andrew Cook proof para 3.18, 4.4 and 4.5 and Pegasus Landscape Masterplan, Cook Appendix 2), a total increase in hedgerow of some 2km, accepted as a benefit both in terms of screening mitigation and biodiversity (XE Temple).
- 2.5 The challenge by the Council that at Graveley Lane the Inspector and SoS placed no weight on retention of scheme landscaping post development (Cussen XE) does not lead to an inevitable conclusion that the same should happen here. We simply do not know the facts of that case as to why that conclusion was reached.
- 2.6 These improvements will support the network of green spaces to reinforce the character of the local farmed landscape, will conserve and reinforce local landscape character and will provide a resilient and adaptive environment in the face of climate change (Andrew Cook proof para 3.21-22) aspects of green infrastructure benefits accepted by Ms Temple (XE Temple) whilst expressing reservation about the extent to which that planting might alter the experience of the user. As to exactly where historic field boundaries were that would now be replaced you have the historic map in the slope assessment (Cook XinC). That plan also provides reassurance as to the age and species mix of these surrounding woodlands and so likelihood of their continued existence (XinC Cook).

- 2.7 All infrastructure (bar the substation and track) including construction and maintenance tracks would be removed on decommissioning ensuring the landscape reverts back to its original state prior to construction and all changes to topography are reversible and very localised giving a negligible adverse scale of effect (Andrew Cook proof para 3.43 and 4.3) with that reversibility accepted by the Council (Temple XE).
- 2.8 The development's ability to retain the land's agricultural function managed as pasture results from the very limited loss of agricultural land throughout operation and decommissioning (Andrew Cook proof para 4.6) underwritten by the Council's request that there be a grazing condition, which of itself accepts the contribution to acceptability that any future agricultural use would make.
- 2.9 Spatially, it would be "relatively modest in mass and footprint with regular spaces between the solar arrays that would reduce the overall scale of the development" (Nigel Cussen proof para 7.17) contested by the Council as not being "modest" (Temple XE) when considering that 69% of the application site area would be developed, an opinion we can assume would remain at the confirmed figure of 50% being developed, but the fact remains that in contrast to many forms of built development, the low level nature of panels and spacing between rows reduces the effect that footprint may have compared to other forms of development.
- 2.10 Four significant changes have been made following pre-planning discussion and consultation responses (Nigel Cussen proof para 11.36 and Figure 1), removal of the field southeast of the Midshires Way, setbacks to reduce views from receptors, removal of Field 16 and half of Field 15 to the northeast of Crow Wood following the independent landscape assessment, prior to determination which raises the obvious question as to whether that encompasses all the improvements that could be made to the site, which Ms Temple felt uncomfortable commenting on (Temple XE). It is a legitimate question whether the design is as good as it can be and you don't have any suggestions on why it is not, including the challenge put by the Council that good design should mean something with a huge positive, like the Sydney Opera House (Cussen XE).

Landscape character guidance

- 2.11 The Council pays particular attention to Gotham and West Leake Hills and Scarps Draft Policy Zone and its strong landscape character of woodland, arable and pasture, modern field patterns and hedgerow field boundaries...[with] prominent hills providing expansive views of low laying farmland) and a landscape action to conserve, with those conservation actions including locating new industrial development on low ground with well wooded boundaries to reduce visibility. Against this it is said over the 40 year life of the development the urbanising form of development will not conserve the landscape character of the area (Emily Temple PoE para 6.11 to .14 and 6.22)

- 2.12 We ask you to look wider than this to the East Midlands Landscape Character Assessment and its Clay Wolds Group 8, within which physical influences include that “Hedgerow trees, notably oak and ash...adding to the wooded character of the landscape and hedgerows being locally important, providing visual containment and networks of habitat through the agricultural landscape.” (Andrew Cook proof para 5.16 and Appendix 14). Ms Temple agrees but notes a reference to open fields on slopes – but the appeal site is not on a slope (Temple XE).
- 2.13 After which in different locations we are told in respect of RLCT 8A that it has a remote character where hedgerow removal or the absence of hedgerow management has resulted in a perceived decline in the landscape character, something Ms Temple wasn’t sure had happened on this site (Temple XE) for which your site visit may help form an opinion on overall hedgerow extent and condition. In this area the aim is to protect the character of the countryside and consider the visual impact of any new development, which is not a predisposition against development and the specific mechanism for achieving this aim is the planting of new trees to help integrate new development into the landscape is one Ms Temple accepted would be achieved by the development (Temple XE) despite her reference in that guidance to avoiding open elevated areas, which has to be seen against the generally enclosed nature of the site from wider views.
- 2.14 The Council’s challenge to reliance on screening (Cook XE) is at odds with the very many references we heard here and elsewhere in the inquiry to how screening is recommended to help assimilate new development.
- 2.15 That guidance seeks the restoration of hedgerows to be given priority, creating a stronger pattern of land use and reinforcing the well-treed character, with new woodland planting generally being appropriate together with encouraging new planting to ensure a diverse age and ecological structure...creation of woodland edge habitats, enhancing their contribution to landscape and biodiversity character, and strengthening links with restored hedgerows and grassland areas. Ms Temple draws a distinction between restoration and mitigation and over how much woodland is being created, but does accept woodland edge creation (Temple XE).
- 2.16 Quite simply, the development accords closely with all those RLCT aims (Andrew Cook proof para 5.17 to .23) and the level of qualification added by Ms Temple does not evidence any real conflict with those aims.
- 2.17 And then on the Greater Nottingham Landscape Character Assessment Nottinghamshire Wolds RLA Draft Policy Zone (DPZ) NW01 Gotham and West Leake Hills And Scarps we have an emphasis on protecting or safeguarding the key features and characteristics of the landscape in their present form that is developed in landscape actions including conservation of hedgerows and encouragement of infill planting within gaps rather than

erection of timber fencing, accepted by Ms Temple to be found in this development (Temple XE) together with ensuring any new industrial development is nestled on low ground and has well wooded boundaries which integrate with woodland on higher ground to reduce its visibility, also accepted by Ms Temple, with the caveat that we are not on lower ground (Temple XE) but if we achieve that aim, the purpose of the recommended action will have been achieved.

2.18 In fact, the development accords very closely with those aims, including the integration of new development with woodland to reduce its visibility, retaining the distinctive pattern of large blocks of woodland, conserving the existing field patterns and introducing pasture to all those fields together with new small scale woodland and infilling of existing hedgerows (Andrew Cook proof para 5.24 to .33)

2.19 Impacts on residential occupiers, whilst always a relevant consideration are very limited, and do not feature as a reason for refusal (Emily Temple SoC 2.7) and (Andrew Cook proof para 7.6) agreed by Ms Temple (Temple XE).

3 ROW AMENITY

Levels of change and visibility

3.1 The Council refer to the surrounding area being an attractive area of countryside accommodating a well-connected, vast network of recreational routes enjoyed by many users (Temple PoE 6.22/24). It is however recognised that landscaping and biodiversity enhancements would have a minor beneficial landscape effect post-decommissioning (Temple PoE 6.14)

3.2 It is agreed (Temple XE) that there will be no diversions or stopping up of any footpaths and new permissive footpaths extending existing PRoWs have a minor beneficial effect. (Andrew Cook proof para 4.20). This follows NPPG advice that Green Belt effects may be offset by compensatory improvements including new or enhanced walking and cycle routes". (NPPG Paragraph: 002 Reference ID: 64-002-20190722) (Nigel Cussen proof para 7.43)

3.3 There is no objection from NCC or Public Rights of Way officer (Nigel Cussen proof para 7.44)

3.4 Much of the landscape within the locality would be visually unaffected with the actual visual envelope from where the scheme would be seen being very limited and highly localised owing to the layering effect of vegetation, principally the extensive woodlands in the intervening landscape between any visual receptor and the site boundary. (Andrew Cook proof para 6.5)

- 3.5 Within the local area the view of the user most often channelled along the lane itself in the direction of travel with the opportunity to gain a panoramic appreciation of the landscape and of the proposed solar farm being very restricted. (Andrew Cook proof para 6.7)
- 3.6 Whilst the Council (Temple PoE 6.14) points to visual affects being adverse in some way at every VP it is also accepted that this is not unusual for a solar development given that any change is assessed at adverse on a precautionary basis and that VPs are generally chosen where they provide a view (Temple XE). The Council agree with the Neo assessments of harm (but not by doing their own assessment) which differ from those of Mr Cook (having done his own assessment) who concludes levels of harm falling to negligible by Year 10 when screening will be fully effective. Ms Temple countered that by saying screening might not be fully effective, or as effective in winter months (Temple XE) but you will be able to assess after your site visit the level of view that will be able to be achieved through access points in hedges and views through screening at any point of the year, given how deep and layered that screening will become, something that can be achieved as early as 5 years with the semi-mature transplanted hedging (instant hedging) that would be deployed in more sensitive locations (XinC Cook).

Specific routes, fields and VPs

- 3.7 Comments by the Council in relation to specific fields and rights of way include that fields 5, 6, 11 and 15 feed physically or visually into the non-wooded open countryside beyond and VPs 3, 4 and 6 having the most harmful visual effects, including loss of a view that is open and expansive and the openness of the view across fields 7 – 11 and its pleasing contrast to the woodland copse north of BW11. It is also said the view north from BW10 emerging from woodland at BW3 would change from grassed field alongside a hedge to a corridor between the existing hedge and new boundary fencing with VP6 illustrating a loss of expansive view south from BW13 by the introduction of a new hedgerow (Temple PoE para 6.12 to .17)
- 3.8 In respect of development adjoining BW1, BW5, BW11, BW12 and BW13 the Council claim this will diminish openness, tranquillity and undisturbed enjoyment of the wholly rural surrounds experienced by users of these routes (Temple PoE para 6.26 to .30)
- 3.9 It is agreed that wider views from rights of way apart from those close to the site will not be affected (bar the access improvements at Kegworth Road) because of screening of the site by existing woodland, planting and topography (Temple XE). Moving along the main route bordering the site (BWs 11 to 13, Fields 5 to 11 and 15 and VPs 2 to 6) visibility is contained until alongside the site itself (Andrew Cook proof para 6.10)
- 3.10 As we then move SE along BW12, where the bridleway runs along the northeastern boundary of Fields 5 and 6 there is already on the field boundary mature hedgerows and tree cover where gaps would be planted and the hedgerow managed at a height of 3 - 4m

and to the extent there are views out to the wider landscape, they would remain, accepted by the Council (Temple XE).

- 3.11 Moving further SE past VP 3 Fields 7 to 10 have northern boundaries generally open to the adjacent bridleway for which a mature instant hedge would be introduced along these four field boundaries to provide visual containment so that within a couple of years there would be very limited opportunity to observe the proposed solar farm except at access points. (Andrew Cook proof para 6.18 and 8.55) also accepted by the Council (Temple XE). Ms Temple places particular stress on these views of panels around screening (the example she gave of VP6 actually looks to be an incorrect representation as there shouldn't be views around screening in those locations Cook XinC) which you can form your own view on having seen the site and then looking again at where those access ways are on the Landscape Masterplan, but clearly Mr Cook sees those as minor considerations. Ms Temple's argument about loss of openness in terms of views into fields presently free of development recognises that those fields being bordered by woodland does limit their existing sense of openness (Temple XE).
- 3.12 Where views of fields are replaced with hedges, those are characteristic of the area accepted by Ms Temple (Temple XE) which we should remember are specifically recommended to assist accommodating new development.
- 3.13 Similarly with the bridleway adjacent to field 15 there is a mature hedge which would restrict the opportunity to observe the proposed scheme when gaps in this hedgerow have been reinforced and it is maintained at a height of 3m +. (Andrew Cook proof para 6.16 and 8.52)
- 3.14 On the cross cutting routes (BW's 1, 3 and 5 and FP2) and the few PRoWs to the south of the site, the principal one is the Midshires Way (although as Ms Temple stated, all are important – Temple XE) from which there would be a distant view of Field 15, but instant mature hedgerow would make this a very small narrow element in the view from a short section of this route, giving an overall effect on this route that would be negligible (Andrew Cook proof para 8.50) accepted by Ms Temple as only a slight effect and that changes to design here reducing panel areas have been an improvement (Temple XE).
- 3.15 In respect of BW10 which passes through the site into Leake New Wood as it passes Field 11 which would effectively be a green lane as new hedging matures and BW1 between Fields 6 and 7 currently runs along a green lane framed by continuous mature hedgerows we have the similar concept of green lanes that are experienced in the immediate area, (Andrew Cook proof para 8.60) with an understanding that this is a route passing through the countryside and limiting the effect upon openness (Andrew Cook proof para 6.24 and 8.59). Ms Temple accepts the concept of being within a green lane but points again to any situations where there would be views through to panels and that within those

corridors you would lose views. In answer to whether those are presently gaps through hedges (InspQ Temple) it appears these are mainly views where there is presently no hedge.

- 3.16 Where there would be loss of views over existing fields such as 7 to 10 the replacement of that view with a green lane was explained to have limited effects on openness because the view is in the direction of travel and involves a 5m route, 10m grass strip and 10m tree belt (Cook InspQ) that is clearly not along a narrow channel, something more akin to a drover's lane (Cook XinC).
- 3.17 The BW3 VP8 location, referred to by Cllr Thomas, for a short section would see some solar panels associated with Field 13 but they would form a small element in the view but not materially change the composition of the view or the sense of openness, particularly with immediate screening in effect. (Andrew Cook proof para 6.25 and 8.49).
- 3.18 The Council's comment that development parallel with BW11, BW12 and BW13 will span the majority of the gap along this route between Gotham and East Leake (Temple PoE 6.30) is at odds with there being no intervisibility of the development on these RoW sections with those settlements and with the Council's acceptance that merger of settlements is not in issue here, and indeed no such case is advanced (Temple XE).
- 3.19 And where the Council notes the transition from the West Leake Hills woodland to Field 11 has high usage and is very muddy, and narrowing usage between the existing hedge and new fencing would make that situation worse (Temple PoE 6.28) with the creation of a green lane, this route would have a permanent grass sward improving the usability of this stretch of PRow. (Andrew Cook proof para 10.21 and XinC Cook).

4 OPENNESS

- 4.1 The Council contends that 55.65ha (now confirmed as 40ha) of development across 15 fields conflicts with the GB purpose of safeguarding the countryside from encroachment, demonstrably eroding the sense of openness by the introduction of urbanising infrastructure to a site presently free of built development. The Council's comment that the sense of openness between Gotham and East Leake would be diminished by the development (Emily Temple PoE para 6.5 - 6.6) would appear to be resolved by its acceptance that there is no argument advanced about merger of settlements.
- 4.2 It is agreed (Temple XE) applying NPPG (Green Belt Paragraph: 001) that we should consider spatial and visual aspects of openness, the duration of the development, and its remediability and the degree of activity likely to be generated, such as traffic generation.
- 4.3 Spatially, we know there is minimal ancillary infrastructure and development characterised by the configuration of solar arrays between which the land would be managed as pasture contained well within existing field boundaries (Andrew Cook proof para 8.37/38) with a

perceived loss of any spatial aspect associated with the fields resulting in only a moderate degree of harm. (Andrew Cook proof para 8.40/.41).

- 4.4 Visually, there is already a strong sense of enclosure associated with the site due to the substantial presence of extensive woodland areas which frame the site that would continue such that wider areas of countryside within the Green Belt would have very little visibility and so very little change to the perceived sense of openness (Andrew Cook proof para 8.42) and views effectively limited to public rights of way immediately adjacent or crossing the site meaning only short sections of PRoW where the perception of openness being affected by the proposal is capable of being appreciated. (Andrew Cook proof para 8.45)
- 4.5 In response the Council accepts that screening does reduce the effects on openness, the nature of the development does reduce its spatial effect and that the localised impacts do limit the extent of harm in the Green Belt (Temple XE). In respect of the development being urbanising, it is also accepted that solar development is always likely to be located in a rural area (Temple XE) the qualification added that it might not be Green Belt rural land, isn't to the point about solar farms being found in the countryside.
- 4.6 In response to the Council's argument that the 40 year period for development represents a generation of users of the area, limiting the appreciation local people have of the development being temporary and providing little mitigation to landscape impacts (Emily Temple PoE para 6.7 and .22) the 40 year time-limited development means the visual and spatial aspect would be time-limited and fully removed post-decommissioning with no residual harmful effects on openness except that there would be a more mature landscape in place. (Andrew Cook proof para 8.61).
- 4.7 Whilst commenting the NPS doesn't mandate the temporary period for solar doesn't have to be 40 years Ms Temple accepted not only that only few types of development would be reversible in this way, but critically that this combined with the temporary permission meant this land is not permanently being lost to the Green Belt, can come back into Green Belt use and any attempt to change it permanently would face the VSC test again in the future (Temple XE).
- 4.8 And post construction it is accepted (Temple XE) the proposed scheme would generate little activity in the form of traffic and would not have a material bearing upon the openness of the Green Belt, noted by the LPA planning officer. (Andrew Cook proof para 8.62).
- 4.9 The Council forcefully maintained its position that inappropriate development, encroachment and openness are three separate types of harm, independently ascribed weight by Ms Temple, approached in a unified manner by Mr Cussen. It was however acknowledged (Temple XE) that there is overlap between the three concepts and for that matter Mr Cussen has addressed all three in his proof (Cussen XE), which answers any

criticism of his approach not being even-handed. The point would appear to be that the harm caused by inappropriate development triggers the need for the VSC test and applying that test requires you to have regard to the actual level of harm that would be caused.

5 VSC

Benefits of the development

- 5.1 The Council's reference to the PPG 013 requirement that on greenfield usage consideration is given to use of poorer quality land in preference to higher quality land (Temple PoE 6.31) does not appear to add anything to the determination before you. It is not being argued brownfield land is available or that there are BMV concerns (Temple XE).
- 5.2 NPPF paragraph 153 (CD3.1A) provides the test, that Local Plan LPP Policy 21 (CD4.2 page 94) adopts, allowing permission only where the potential harm to the Green Belt by reason of inappropriateness, and other harm resulting from the proposal, is clearly outweighed by other considerations.
- 5.3 Paragraph 156 NPPF, notes that many renewable energy projects will comprise inappropriate development and developers will need to demonstrate very special circumstances which "may include the wider environmental benefits associated with increased production of energy from renewable sources." (Nigel Cussen proof para 7.10 and 8.7)
- 5.4 The proposal very obviously will produce energy from a renewable resource, which not only should be attributed substantial weight but which, although not accepted by the Council (Temple XE) should also be seen as an endorsement of the principle of renewables in the Green Belt i.e. the singling out one particular type of development at a national level and indicating an ability to accept the benefits of that type of development as VSC.
- 5.5 Ms Temple has not attached her highest weighting to this benefit and would not agree that she should do so (Temple XE) but did not offer any clear reason why the energy generated by this development would be any different or less important than any of the other Green Belt decisions where those benefits have been taken into account, whether the word used by the decision maker was significant or substantial as a benefit. She said the energy benefits "may" weigh in favour of VSC and pointed to there being no VSC as a reason to attach less weight, but that would be presuming the outcome of the VSC test those benefits form part of.
- 5.6 Energy generation, climate change and energy security were argued by the Council as all being the same thing, and that it would be double counting benefits to do otherwise

(Cussen XE) but climate change and energy security are very obviously different things, each with its own government policy position and solar renewable energy also has targets of its own, separate from other forms of energy, so it is right to recognise those different objectives set by government and the benefits (which is and should be referred to in the plural) whilst recognising that they are clear links between them (Cussen XE).

- 5.7 The Council's Brownfield Land register reveals no site is large enough to accommodate the scheme (Nigel Cussen proof para 7.27 and Appendix 5) supported by agreement with the Council that neither this or any of the other purposes of the Green Belt (NPPF para 143) is conflicted with, bar purpose C, encroachment, which does add to the desirability of this site for development, given that encroachment is the one inevitable conflict that has to be there in every GB case. All that can be achieved on encroachment is minimisation of effects which has been done with the siting and design of this site.
- 5.8 The Council steadfastly refuse (Temple XE, Cussen XE) to countenance any argument that conflict with only one Green Belt purpose adds to the suitability of the site for development. It would appear to be self-evident that the more conflicts there are, the more harm there is and the less suitable the site is, so that the process must run in reverse, that the less harm there is the easier it is for the benefits to outweigh it (Cussen XE). Perhaps the Council's misunderstanding is to interpret this as playing down the harm that will be caused – which it isn't. It is simply saying if you develop in the Green Belt, do so where the impacts of doing so are at their lowest.
- 5.9 EN-1 (CD 3.3A para 5.11.37 page 153) allows that for this development you can take account "*...of the extent to which its physical characteristics (which we say include spacing between arrays and their low overall height) are such that it has limited (or no) impacts on the fundamental purposes of the GB designation*" (Core Document CD 3.3 A, paragraph 5.11.37) which we say which is also a specific recognition that renewables can be acceptable in the GB which the Council seeks, but does not succeed in distinguishing by pointing to EN1 comment that visual effects must be considered (Temple XE) .
- 5.10 EN-1 and EN-3 are both relevant to this appeal, wherever referred to, following NPS EN-1 para 1.2.1 (Cussen ReEx).
- 5.11 The Council rejects the suggestion (drawn from its own SPD – CD4.6 para 3.8) that it should take account of the NPS the closer a development gets to the 50MW threshold, and the link that would make to Critical National Infrastructure for which there is an assumption that VSC will apply (Temple XE). That would appear to provide recognition of use of Green Belt land, whilst not saying the VSC test is in any way reduced.
- 5.12 The Council's rejoinder on Government encouragement as to which land to use was less persuasive, pointing to the recent Ministerial Statement on BMV for NSIPs and arguing by

extension that means Green Belt should be even more protected. The statement is simply and clearly addressed to BMV and has no relevance to Green Belt (Cussen XE and ReEx).

- 5.13 EN-3 (Core Document CD 3.4 A, paragraph 2.10.150) advice that *‘the time limited nature of the solar farm, where a time limit is sought as a condition of consent, is likely to be an important consideration for the Secretary of State’* is accepted by the Council (Temple XE) to add weight to the 40 year duration and reversible nature of the development (Nigel Cussen proof para 9.69) although the Council contends lesser weight than Mr Cussen, that is a matter for your judgement. That weight may be influenced by the PPG Renewable Paragraph 013 (CD 3.2) comments to planning authorities (Nigel Cussen proof para 9.49) *“that solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use”* and that *“in the case of ground-mounted solar panels it should be noted that with effective screening and appropriate land topography the area of a zone of visual influence could be zero”* which would appear to recognise that visual impact can be reduced effectively only to the screening of a development, and which the evidence on localised impacts would suggest has been achieved with the appeal design but which the Council contends (apparently because the site does not have zero impact – Cook XE) goes not apply here.
- 5.14 In terms of benefits, whilst the Council accept landscaping and biodiversity enhancements would have a minor beneficial landscape effect post-decommissioning (Temple PoE 6.14) in fact habitat units will increase by 120.67%, and hedgerow units will increase by 22.78%. (Nigel Cussen proof para 4.8 and Appendix 4)
- 5.15 There will be enhancement to the publicly accessible parts of the site through the formation of a permissive path along part of the southern boundary of the site which reflects NPPG (on releasing GB land in plan making) advice that Green Belt effects may be offset by compensatory improvements including new or enhanced walking and cycle routes” (CD3.2 NPPG Green Belt Paragraph: 002 Reference ID: 64-002-20190722) (Nigel Cussen proof para 7.43) which is a new permissive path along a woodland edge, providing more access to green infrastructure (Nigel Cussen proof para 11.61). The Council’s challenge that nobody needs this route isn’t the point (Cook XE) it adds to people’s options to walk in the area.
- 5.16 The appeal scheme also represents a significant financial investment, with benefits to the local economy during the construction which together with business rates in the region of £164,000 pa should be afforded weight (Nigel Cussen proof para 11.69 ET PoE 7.3)

Alternatives

- 5.17 And then finally on alternatives, where the Council challenges the Appellant’s approach, arguing that 2km from the grid point of connection does not represent a limit for

economically feasible development and challenging that the Appellant had “no option” but to develop in the GB (Temple PoE 6.33 and.34) and that neither has it been shown within this 2km area there are no reasonable alternative sites that are better performing (Temple SoC 7.6)

- 5.18 The Council also argues that without having proven a lack of alternative sites there cannot be VSC (Temple PoE 7.13)
- 5.19 In response to which the Council’s Solar Farm Development Planning Guidance, does not identify any preferred sites (CD 4.6 para 3.3 and 3.4) for major development but states that Policy 2 LPP1 and Policy 16 LPP2 provide in principle support for renewable energy schemes with acceptable impacts (Nigel Cussen proof para 8.16) and also in respect of Green Belt applications makes no mention of discounting alternatives or propose any test by which alternatives should be assessed, accepted by the Council (Temple XE).
- 5.20 Also accepted (Temple XE) is that neither does any national or local policy propose a test for considering alternatives, or state that alternatives have to be considered, in contrast to policies that do have sequential test, like flood risk, which means the standard to which availability of alternatives should be looked at is a matter for the decision maker’s discretion, which flatly contradicts the Council’s proposition that without a proven [lack of] alternative there cannot be VSC. The comparison with altering Green Belt boundaries advanced by the Council (Cussen XE) where LPP1 Policy 4 refers to looking for other sites is not a good one. We aren’t altering Green Belt boundaries, and when that is done it is not temporary or reversible.
- 5.21 The Council draw your attention back to the PPG requiring land of lower quality to be considered rather than higher (Temple XE) but if the purpose of this wording is to apply to Green Belt, rather than to BMV where it is more obviously directed, then what does it add to the VSC test, and the approach to alternatives that we have followed, as it clearly does not tell you how to assess alternatives.
- 5.22 The Kingston Grid Report, at Appx 2 Cussen proof, and the Grid Capacity Analysis submitted with the appeal (CD 7.6 Appendix E) do not reveal any better sites and the Council has not suggested any better development site, either within the 2km search area, or wider – or suggested what search criteria should be applied to satisfy it. That comment extends both to Ms Temple simply asserting that the criteria used might have been different (Temple XE) and to the challenges put to Mr Cussen that all of the criteria searched against could have been widened or that two sites (F and G) might, had they been assessed to the same standard as the appeal site, have yielded a viable development site (Cussen XE).
- 5.23 Ms Temple accepted that the presence of a grid offer was relevant to the alternative to be considered, as was the line on which that capacity existed, the 22km length from Ratcliffe

on Soar to Willoughby (Temple XE) concessions that did not limit the questions put to Mr Cussen.

- 5.24 Ms Temple suggested that we might have looked for smaller sites than the 49.9MW we are pursuing (Temple XE) but why would multiplying the number of sites be a better solution, potentially multiplying effects from development and grid over a wider area? She also accepted her reference to the 2.4ha needed for Barton in Fabis BESS was markedly different to the 80ha needed for the Kingston appeal (Temple XE).
- 5.25 Ms Temple also accepted that to make a meaningfully better site we would be looking for a site outside of the Green Belt, both for the solar farm and any grid (Temple XE) and it doesn't present a test for a clearly better site for it to be suggested that we should have looked for a site partially in Green Belt (Cussen XE) although as it was explained, the presence of Green Belt land was not an automatic disqualifier for assessing alternative sites.
- 5.26 Development distant from OHL needs its own separate grid connection, via overhead line that could have visual and landscape effects potentially more so than the development itself, has a sterilising effect on land and needs land acquisition or compulsory acquisition by the DNO, if it is not to go above 2km and become an NSIP itself, that cannot be proportionate and not something that has been seen elsewhere (Cussen XinC).
- 5.27 Undergrounding also brings ecological and agricultural harm (although accepted not to have permanent landscape harm – Cook XE) it sterilises future use of land and needs acquisition of third party land or DNO compulsory acquisition as well as all other planning issues to be balanced against avoiding Green Belt usage.
- 5.28 Then we come to the Council's challenges to the approach to alternatives (Cussen XE). These included comment that the Appellant's approach was retrospective i.e. the Appendix E assessment was only undertaken at the point of appeal (Cussen XE) but let us not forget up to the point the Council were satisfied on alternatives and had made a recommendation of approval. RES, as with any other competent operator undertakes extensive site assessment before pursuing any site, as it is looking for sites that can be successfully developed (Cussen XE).
- 5.29 The Barton in Fabis appeal refusal was referred to, including criticism of reliance on a 132kV connection, but that was a different type of connection that sends power in both directions with connection options that we do not have detail on, it not being enough just to say "they are both renewables" (Cussen XE). We only send power to the grid, there is no BESS on this site. We have shown that only 132kV connection can be used to take up the available 49.9MW grid capacity in our connection offer (Cussen Appendix 2 and ReEx) and if we do not take up this available capacity it would just remain unused (Cussen XE) which would be a waste of a limited resource, at a time of great need.

- 5.30 The Graveley Lane decision was referred to and 4km search area (Cussen XE) but that was a radial search from a substation, whereas the Appendix E assessment was along the whole section of grid, a 4km by 22km area, that produced 10 alternative sites that were then subject to high level assessment.
- 5.31 It was contended in a number of ways that the reasons for discounting areas of potential sites in the study were unreasonably harsh (Cussen XE), however that is the level of assessment you would expect in such an exercise. You simply cannot do project level assessment when reviewing multiple sites in an alternative assessment (Cussen ReEx) accepted by the Council (Temple XE).
- 5.32 Single landownership was challenged, with the suggestion that multiple ownerships might be just as easy to negotiate with, but experience shows they are not (Cussen XE).
- 5.33 Flood zone was criticised as a constraint, but ignoring that would conflict with sequential search policies, which have been and are being applied in the Thoroton appeal (Cussen XE).
- 5.34 It was suggested that it had been agreed there was no offset needed for public rights of way, but what had been said was that adjacent to a right of way you needed hedging, deer fence and then a 5m access offset (Cook XE) which would be both sides plus the width of the rights of way, to be agreed to a standard with the rights of way office, for routes crossing a site, which can be a substantial loss of developable area (Cussen XE).
- 5.35 250m offsets to villages were criticised, on the basis you don't know what the actual impacts would be, but that would need detailed site assessment (Cussen XE) and how would it be reasonable to be assuming you could put solar hard up against a settlement boundary?
- 5.36 Avoidance of north facing slopes was criticised, but far from the assertion that Mr Cook had agreed they could be developed, in fact he had said they may need 3 to 4 times as much land (Cook XE, Cussen XE)
- 5.37 The criticism in respect of unreasonable reduction in site areas culminated in the Council's point that two sites, F and G, even when reduced for constraints in the Appendix E assessment, resulted in 155/160 acre sites, "more than enough for a solar farm". That would be to completely gloss over what a high level assessment can do. The Kingston redline application area is 200 acres and its developed area 100 acres, a 50% ratio. With 155/160 acres as a starting point, before even starting on detailed site design, the only way is down. Mr Cussen made clear the level of detailed design that then takes place when the specific sensitivities of an individual site are addressed and said a much lower starting ratio of developed area to redline boundary would be unlikely to be successful (Cussen XE).

- 5.38 The frequent refrain that this was all about cost simply isn't borne out by the evidence. Cost is a consideration but the evidence of Mr Smart and Mr Cussen, reflected in the Appendix E assessment was that grid connections can be full development projects in themselves (Cussen XinC) involve interference with land and its future use, including resort to DNO powers of compulsion (which is unaffected by whether they have PD rights) which get more intrusive the longer the grid connection. These are impacts that very reasonably should be minimised, where possible. A viability appraisal has not been advanced, but Mr Cussen has never seen (and no-one else has suggested) a case in which that has been done (Cussen XE).
- 5.39 This was not, as suggested by the Council, an exercise in favouring other constraints over Green Belt (Cussen XE). It was a comparison of other sites to see if any offered clear advantages over the appeal site, the presence or absence of Green Belt being one such constraint, but clearly to avoid a VSC test itself the alternative would have to be wholly outside the Green Belt, and a search that only considered Green Belt would have simply told you what was in and out of Green Belt and nothing more (Cussen InspQ).
- 5.40 As with the Chelmsford appeal decision (CD 5.3 para 92) we believe we have adopted a rational approach to site selection influenced by the availability of grid connection and the Council's Planning officer accepted that we had, in exactly that language. (CD 2.1 para 245 - Nigel Cussen proof para 11.44/45)
- 5.41 We do suggest there is a parallel with minerals, that large scale solar schemes need to utilise the opportunities for a suitable grid connection where they arise, given there are a finite number of immediately available connections.. (Nigel Cussen proof para 9.61)
- 5.42 Given the date on the grid queue (Cussen Appx 2) as a matter of reality, if RES or anyone else set off now to look for an alternative site, leaving aside the time needed to promote such a site, there would be very substantial delay on obtaining a new grid offer which may not just mean delay to development, but a risk that no development comes forward to take up that available capacity.
- 5.43 Relevant to either delay, or no development at all, is that the Government British Energy Security Strategy of April 2022 (CD 3.18) on solar expects a five-fold increase from the current 14GW of solar capacity in the UK by 2035. (Nigel Cussen proof para 9.19/22) which is the kind of step change in how the UK reacts to Climate Change has been recognised by Parliament declaring in May 2019, declared an Environmental and Climate Change Emergency (*Core Document CD 3.11*). The urgent need for this development and much more like it is apparent from the data in the 'Digest of United Kingdom Energy Statistics' (CD 3.14 page 2) showing the additional 0.7 GW of installed solar PV in 2022 is an annual figure which is far below that which is required to achieve the 5-fold increase

to 70GW by 2035, and represents only 16% of the 4.3GW that would be needed annually to meet that 70GW target (Nigel Cussen proof para 9.27 and XinC).

- 5.44 That urgent need is unaffected by the recent NG ESO report about numbers of projects in the grid queue (Cussen XE) many of which have no prospect of being developed (Patrick Smart, Cussen Appendix 2).

6 INTERESTED PARTY ISSUES

- 6.1 Issues raised by interested parties before the inquiry have been addressed comprehensively in Mr Cussen's proof Appendix 9. Questions advanced during the inquiry have similarly been answered and whilst quite clearly those objections remain, they do not raise any unaddressed issues.

7 PLANNING POLICY

- 7.1 Local Plan Policies 16 and 21 are the key determinants. For the Policy 16 criteria, only the amenity issues in the RfR are in dispute. Policy 21 defers to the NPPF and so only level of harm to the Green Belt and VSC are in dispute.
- 7.2 The Council finds conflict with Policy 10 but accepts that is not in the RfR and does not add much to the reference in Policy 16 to protection of amenity (Temple XE).
- 7.3 Policy 34 has been considered because there is Green Infrastructure involved in and around the site, but a difference between the parties as to effects on it, where the Council focusses only on the harm to amenity to argue a policy conflict (Cussen XE) however we ask you to consider the totality of effect on these rights of way, the high level of regard that has been paid to protecting their ability to be used and enjoyed and the addition that will be made to them during the life of the development (ReEx Cussen).
- 7.4 The Council's challenge that the appellant has not asked for permission in the event of a finding that there is any conflict with the Development Plan was rightly rejected (Cussen XE). We are clear that interpreting the Plan as a whole, which means taking account of the benefits of the development (per LPP1 Policy 2 on Climate Change and including benefits as part of the meaning of when impacts are acceptable) and interpreting the approach to harm as being one generally of impacts needing to be acceptable (per LPP2 Policy 16 on Renewables) and not requiring the absence of any harm (per the Council's suggested approach to "conserve" in LPP1 Policy 10) gives a clear route ahead to a finding of conformity with the Plan. In the event however that there are any findings of conflict with parts of the Plan, then the material considerations part of NPPF para 12 allows permission to be granted (Cussen XinC and XE).

8 THE PLANNING BALANCE

8.1 Concluding with Mr Cussen's assessment of factors from his Proof Chapter 11 which are the relevant factors by which to apply the Policy 16 and 21 tests, we have the now familiar list of considerations:

8.2 Factors weighing in favour of the scheme

8.3 Renewable energy generation - the benefit of this project's 49.9MW renewable energy generation should be afforded substantial weight in determining this appeal. (Nigel Cussen proof para 11.24)

8.4 Climate Emergency – in response to the national climate emergency declared by Parliament in 2019 the positive, deliverable action this development represents should be afforded substantial weight. (Nigel Cussen proof para 11.25-28)

8.5 Energy Security - in response to the British Energy Security Strategy 2022 and Energy Security Plan 2023 and EN-3 recognition that solar has an important role in delivering energy independence the contribution the scheme makes to energy security should be afforded very substantial weight in the planning balance. (Nigel Cussen proof para 11.29-32)

8.6 Best Available Technology – the scheme's utilisation of the most efficient technology currently available should be given moderate beneficial weight in determining this appeal. (Nigel Cussen proof para 11.34)

8.7 Good Design - the refinement of the appeal scheme in collaboration with Rushcliffe Council and their technical advisors to minimise harm within the appeal site and the wider area, whilst providing significant benefits. (Nigel Cussen proof para 11.35) should be given moderate weight. (Nigel Cussen proof para 11.40 and Cussen XE)

8.8 Lack of Alternative Sites - the Grid Capacity Analysis submitted with the appeal and the Grid Connection Feasibility statement of Mr Smart, setting out the disadvantages of the connection to the grid at distances of greater than 2km has shown there are no alternative sites which are suitable and available for the Proposed Development or provide any meaningful reduction in impacts than would be achieved with the appeal site (Nigel Cussen proof para 11.42/43) which is a material consideration of significant weight. (Nigel Cussen proof para 11.46)

8.9 Biodiversity Net Gain - the Biodiversity Net Gain over 120% for habitats and 22% for hedgerows, far exceeding the national requirements of the Environment Act 2021 should be afforded significant weight. (Nigel Cussen proof para 11.53)

- 8.10 Soil Regeneration - taking fields out of agricultural use for a long period of time will give the site the opportunity to recover its fertility and productivity in the future should have moderate weight attached. (Nigel Cussen proof para 11.57)
- 8.11 Green Infrastructure – the enhancements to the existing landscape structure that improve green infrastructure, including the public’s accessibility to them should be afforded moderate weight. (Nigel Cussen proof para 11.61)
- 8.12 Farm Diversification - NPPF paragraph 88 support of diversification of agricultural businesses should have moderate weight attached (Nigel Cussen proof para 11.65 and Cussen XE)
- 8.13 Economic Benefits – the significant financial investment, with benefits to the local economy during the construction which together with business rates in the region of £164,000 pa should be afforded limited weight. (Nigel Cussen proof para 11.69)
- 8.14 Factors weighing against the scheme**
- 8.15 Openness and purposes of the Green Belt – the inappropriate development in the Green Belt, albeit only affecting one of the 5 purposes of the Green Belt, encroachment with a degree of harm that is moderate, with the strategic performance and function of the remaining Green Belt remaining intact should still be afforded substantial adverse weight. (Nigel Cussen proof para 11.73)
- 8.16 Effect on Landscape and visual amenity – where negative and at worst moderate, highly localised and limited to the immediate site, enduring for 40 years but still completely reversible should have limited adverse weight attached. (Nigel Cussen proof para 11.77)
- 8.17 Effect on Public Rights of Way – impacts on public rights of way will be limited and mitigated by enhanced hedgerow planting with a new Permissive Path should be afforded limited adverse weight. (Nigel Cussen proof para 11.81)
- 8.18 Neutral considerations**
- 8.19 Matters that should be afforded neutral weight include archaeology, built heritage, flood risk, residential and visual amenity and vehicular access for construction and operation, all of which have been the subject of no Council or statutory consultee objection. However, the acceptability of impacts identified above supports the overall suitability of the site for the development and, in the context of Paragraph 163 (b) of the NPPF provides positive weight in favour of granting planning permission for the proposal. (Nigel Cussen proof para 11.88 and Cussen XE)

8.20 Applying all those considerations, as was said in opening, this is a case where an approval is a decision that sits very comfortably within your discretion and we respectfully ask that you reach that conclusion.

Patrick Robinson
Borges Salmon LLP
24 May 2024