

# Green Belt Assessment and Case for Very Special Circumstances

Land at Lunn Lane, Kellington, DN14 0SE

On behalf of NEL Hunter.

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# 1. Introduction

- 1.1. This Green Belt Assessment and Case for Very Special Circumstances Report is prepared by Pegasus Group to support a planning application submitted by NEL Hunter for the installation of a 200MW battery energy storage scheme (BESS) at Land at Lunn Lane, Kellington, DN14 OSE. The application was submitted on 2 November 2023 and validated on the same day under ref. ZG2023/1179/FULM.
- 1.2. The purpose of this report is to help ascertain the extent to which the application site contributes to Green Belt purposes, how development of the site will impact on that contribution and to identify any potential degree of harm upon the Green Belt. Where the proposed development comprises inappropriate development within the Green Belt, the assessment of harm upon the Green Belt will be balanced against the benefits and other material considerations to present a case for very special circumstances required to justify development within the Green Belt. This report should be read in conjunction with the Planning Statement and other planning documentation and drawings.
- 1.3. This report will include an assessment of the Green Belt, which will include the following sections:
  - **Section 2** – Site and Surroundings
  - **Section 3** – Proposed Development
  - **Section 4** – Green Belt Assessment
  - **Section 5** – Case for Very Special Circumstances
  - **Section 6** – The Green Belt Balance
  - **Section 7** – Summary and Conclusions
- 1.4. Once the assessment of the Green Belt is made **Section 5** of the report will outline the case for very special circumstances required to justify the development within the Green Belt.
- 1.5. **Section 6** will provide a conclusion on the assessment of the Green Belt, along with the very special circumstances outlined to determine on balance whether the development is justified within the Green Belt

## 2. Development Description

- 2.1. The site is centred at Grid Reference X: 453782 Y: 424375 which is located at Lunn Lane, Kellington, North Yorkshire. The Location Plan is attached in **Appendix 1**.
- 2.2. The site is in a parcel of scrubland/grassland with an established tree and hedgerow belt on the southern boundary. The site is set within agricultural farmland, with a contractor's yard and associated buildings to the northeast and east. Lunn Lane adjoins the site to the northwest and Weeland Road to the south. To the north of the site beyond Lunn Lane are further agricultural fields, and to the south of the site beyond Weeland Road are further agricultural fields.
- 2.3. The site is positioned in a generally rural area with agricultural land being the predominant land use within the surrounding areas, with predominantly large scale irregularly shaped fields. Located approx.. 800m to the north is the village of Beal, with the village of Kellington located 1.2km to the east. The area has a long connection with energy generation, with the coal fired Eggborough power station formerly located 3.2km to the west of the site.
- 2.4. Given the site's isolated nature, there are very few sensitive residential receptors in close proximity to the site, with the exception of a pair of semidetached residential properties located on the south side of Lunn Lane, approximately 200m north east of the site.
- 2.5. Beyond the residential properties located on Lunn Lane, the next nearest residential uses to the site are located within the built up extents of Beal (c. 800m north west), Kellington (c. 1.2km east) and Kellingley (c.700m west)
- 2.6. Beyond the above land uses, there are also a number of relevant renewable and low carbon energy generating developments located within the surrounding landscape in close proximity to the site. such examples include:
  - Kellingly Solar Farm – Located 1.2km to the southwest of the site.
  - 36.4m (46m tip height) Wind Turbine north of Weeland Road – c. 1.9km west of the Site;
  - 50m (66.7m tip height) Wind Turbine at Manor Farm – c. 1.3km northwest of the Site;
  - Anaerobic Digestion Biogas Generation Facility at Manor Farm – c. 900m northwest of the Site;
  - Anaerobic Digestion Biogas Generation Facility at Smeathalls Farm – c. 2.6km northwest of the Site; and,
- 2.7. The site falls within the administrative boundary of North Yorkshire Council unitary authority and within the former jurisdiction of Selby District Council (prior to the formation of the unitary authority in April 2023).
- 2.8. The Site is not located within a defined settlement boundary and falls within the open countryside for development management purposes. The Site also falls within the South and West Yorkshire Green Belt.



- 2.9. The site is not covered by any national or local landscape designations and is not constrained by any landscape designations that relate to its value or scenic beauty.
- 2.10. There are no listed buildings or other designated heritage assets within the site. the nearest statutory designated heritage assets to the site comprise of the following:
- Grade II Listed Kellington Windmill located approximately 790m to the east of the site.
  - Grade I Listed Church of St Edmund located approximately 980m to the west of the site.
  - Grade II Listed "Churchyard Cross, St Edmund's Churchyard" approximately 5 Metres to "South of Porch", which is located approximately 980m to the west of the site.
  - Grade II Listed "Gate Piers to St Edmund's Churchyard" located approximately 985m to the west of the site.
- 2.11. The Site comprises land, which is wholly classified a Flood Zone 1, an area least at risk of flooding.
- 2.12. In terms of public access, there are no Public Rights of Way (PRoWs) that cross the site or adjoining the site. Within the wider landscape, three PRoWs are located within approximately 1km to the north, east and west of the site.

### 3. Proposed Development

- 3.1. The proposed development is for the installation of a 200MW Battery Energy Storage System with associated infrastructure, access and landscaping. A Block Plan is attached in **Appendix 2**.
- 3.2. The purpose of the facility is to ensure that at peak demand times for energy, the National Grid can access additional power sources, balancing the national system. The facility will also be used when there is a surplus of renewable energy, ensuring that wind and solar generating facilities are able to continue to generate energy even when demand is low. The overarching aim of the facility is to create a more reliable and efficient electricity system that reduces costs for customers.
- 3.3. The proposal involves the use of approximately 3.5 hectares of land for the development of a BESS and associated infrastructure. The development consists of a series of 180 battery units (2.79m high), 45 PCS units (3.05m high), a transformer (up to 6.4m high) Control room and compound and storage and welfare buildings (3.95m high). The site is surrounded by 2.4m high green painted paladin security fencing.
- 3.4. For a full description of the proposed development please refer to the Planning, Design and Access Statement submitted in support of the planning application.

## 4. Green Belt Assessment

4.1. This section of the report has been prepared to help ascertain the extent to which the site and associated land parcel contribute to Green Belt purposes, how development would impact on that contribution, and to identify any potential degree of harm upon the Green Belt. The supporting Landscape and Visual Appraisal (LVA) deals with the landscape character and visual issues, and this Green Belt Assessment should be read in conjunction with the supporting LVA report.

### Policy Background

4.2. The National Planning Policy Framework (NPPF) (December 2023) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The primary context for this Green Belt Assessment is provided by the NPPF. The five purposes of Green Belts, set out in paragraph 143 of the NPPF, are:

- a) *to check the unrestricted sprawl of large built-up areas;*
- b) *to prevent neighbouring towns merging into one another;*
- c) *to assist in safeguarding the countryside from encroachment;*
- d) *to preserve the setting and special character of historic towns; and*
- e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*

4.3. Paragraphs 152 to 156 are largely concerned with the making of decisions on proposals for development in the Green Belt. Paragraphs 152 and 153 state: –

*152. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*

*153. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.*

4.4. Paragraph 154 of the NPPF sets out that the construction of new buildings should be regarded as inappropriate development within the Green Belt, subject to a number of listed exceptions in paragraphs 154 and 155. The exceptions provided do not include renewable or low carbon development, which is therefore considered to comprise inappropriate development within the Green Belt.

4.5. Notwithstanding the above, Paragraph 156 of the NPPF stipulates that:

*"When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special*

*circumstances may include the wider environmental benefits associate with increased production of energy from renewable sources”.*

- 4.6. National Green Belt Policy is generally reflected in Policy SP3 of the Selby District Core Strategy Local Plan (2013) and Policies GB2, GB3 and GB4 of the Selby District Local Plan Part 1 (2005), which form the relevant adopted Development Plan Documents for the Application Site.
- 4.7. Policy SP3 of the Selby District Core Strategy reiterates the aims of National Policy in that:
- “B. In accordance with the NPPF, within the defined Green Belt, planning permission will not be granted for inappropriate development unless the applicant has demonstrated that very special circumstances exist to justify why permission should be granted”.*
- 4.8. Whilst not currently adopted, the aims of the National Policy are continued through the emerging Draft Local Plan (Local Plan – Publication Version 2022) for Selby District whereby Draft Policy SG5 confirms:
- “The extent of the West Yorkshire and City of York Green Belts are illustrated on the Policies Map. Development within the designated Green Belt identified on the Policies Map will be determined in accordance with the National Planning Policy Framework or its successor”.*
- 4.9. In both the adopted and emerging Local Plan documents, the policy wording and associated text do not make any reference to energy infrastructure.
- 4.10. The above review of the planning policies has been conducted to identify key considerations that may help guide the methodology for the assessment of development sites in the context of the Green Belt policy and its statutory purposes, as defined in the NPPF and Planning Policy Guidance (PPG).
- 4.11. It also transpires that the Councils’ policies on Green Belt, in the context of other forms of development, are reflective of the approach advocated for landscape and visual assessments, and this is endorsed by the recent updates to the Planning Practice Guidance (22nd July 2019).
- “Assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:*
- openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*
  - the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
  - the degree of activity likely to be generated, such as traffic generation”*
- 4.12. The PPG provides further advice:

*“Where it has been demonstrated that it is necessary to release Green Belt land for development, strategic policy-making authorities should set out policies for compensatory improvements to the environmental quality and accessibility of the remaining Green Belt land. These may be informed by supporting evidence of landscape, biodiversity or recreational needs and opportunities including those set out in local strategies, and could for instance include:*

- *new or enhanced green infrastructure;*
- *woodland planting;*
- *landscape and visual enhancements (beyond those needed to mitigate the immediate impacts of the proposal);*
- *improvements to biodiversity, habitat connectivity and natural capital;*
- *new or enhanced walking and cycle routes; and*
- *improved access to new, enhanced or existing recreational and playing field provision.”*

4.13. Whilst the proposed application does not seek to adjust the Green Belt boundaries, the above policy is informative and outlines a number of mitigating factors.

4.14. Notwithstanding this, the Green Belt assessment cannot be primarily based on a landscape assessment methodology. Such assessments must be based on the fundamental objective of the NPPF Green Belt policy, as identified in its five purposes.

## **Methodology**

4.15. In order to provide for a concise, clear, and transparent appraisal of the Green Belt assessment, the proposed methodology utilises the first four purposes of Green Belt as outlined in the NPPF. The fifth purpose concerned with the regeneration of brownfield sites has been excluded as being less informative to this Assessment. This has been considered to be the most common and familiar approach applied across the profession, particularly given that all Green Belt makes a strategic contribution to urban regeneration by restricting the land available for development and encouraging developers to seek out and recycle derelict / urban sites.

4.16. Given the emphasis on landscape character and context evident in the Council’s policies, and recent appeal decisions on various solar energy and BESS schemes, Pegasus’ approach relies on the analysis of landscape character, intervisibility between the site and surrounding landscape, its visual context, and relationship with the immediate and indeed wider environs.

4.17. With regards to the criteria used to determine the level of visual and physical openness, this assessment considers the character and nature of views, intervening landscape framework – such features can greatly assist in retaining the sense of openness by restricting or blocking views of the existing or new built form, influence of the existing infrastructure, and quality of defensible boundaries. This is informed by the visual



assessment presented in the supporting LVA and is supported by LVA Appendix 2: Visual Appraisal Plan and Site Context Photographs.

Purpose 1: Check unrestricted sprawl of large built up areas

- 4.18. It is worth noting that with regard Purpose 1 'Check unrestricted sprawl of large built up areas', the original definition referred to London and the Metropolitan Green Belt. It is increasingly common for Green Belt assessments to adjust this definition in order to include a wider range of urban and village areas, not only major cities or large towns.
- 4.19. The principal criteria for this purpose are whether the parcel of land assists in preventing unrestricted sprawl and its location in terms of distance from large built-up areas. Defensible boundaries that assist this purpose may be either natural – various landscape features, or man made – for example highways. Certain features, that appear on plan view, may not be evident in situ or their function as a defensible boundary may be compromised by intervisibility with the urban edge or built environment.

Purpose 2: Prevent neighbouring towns from merging

- 4.20. With reference to Purpose 2, it is necessary to discuss the site in terms of its landscape context and characteristics, including its adjacent areas, that may contribute to the physical separation of built-up areas, but also visual qualities and factors that may assist in the perceived sense of separation. This has been analysed in the supporting LVA, thus the information is not repeated here. With this regard, a physical distance from the nearest neighbouring settlement or built-up area is not the only consideration and is supported by a visual analysis of inter-visibility and perception of how such change may or may not affect the sense of openness. This allows Pegasus to consider which part of the site may have development potential without offending this purpose of the policy and whether the development would lead to the physical or visual coalescence.

Purpose 3: Assist in safeguarding the countryside from encroachment

- 4.21. In terms of planning policy, open countryside is usually described as the landscape outside of the defined settlement boundaries. Countryside is likely to be undeveloped and generally rural, managed as arable, pastures or woodland, with various landscape elements such as hedgerows, and may be of varied condition.
- 4.22. The issue of encroachment is a spatial one but also a visual judgment, including the extent to which built form manifests itself in views. This may include dwellings, highways, movement associated with settlements, street furniture, lighting columns, light spill, and other infrastructure one would associate with built environment and not open countryside. With regards to the spatial aspect of encroachment, certain landscape features, such as woodlands or pronounced topography, may provide a natural and logical line in the landscape. Their presence may assist in separating, both physically and visually, built up from open countryside.
- 4.23. In order to analyse the contribution to this purpose it is necessary to introduce a debate on whether the site is perceived as part of the open countryside, and its relationship to the surrounding landscapes.

Purpose 4: Preserve setting and special character of historic towns

- 4.24. The site is not located in proximity to any historic towns for Purpose 4 to be applicable, in its original sense, but the assessment expands this original definition to provide robust evidence.

Purpose 5: To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

- 4.25. Pegasus' Green Belt Assessment does not consider Purpose 5 – the recycling of urban land, as this would equally apply to all sites on greenfield land. This is widely accepted as a reasonable approach.
- 4.26. North Yorkshire Council, and the now absorbed Selby District Council, do not have an up-to-date detailed Green Belt Study or Assessment which assesses individual Green Belt parcels within the Selby District. As part of the draft emerging Selby Local Plan, Selby District Council prepared a Stage one Green Belt Review, the primary function of which has been to establish whether any exceptional circumstances exist at the strategic level to justify alterations to the Green Belt Boundaries through the emerging Local Plan. The Stage 1 clarifies that should exceptional circumstances exist, then a further staged analysis of the parcels within the Green Belt would be carried out, however, it is concluded in the report that such circumstances do not exist and therefore there is no obligation to undertake further analysis.
- 4.27. In the absence of any detailed Strategic Green Belt Study at a local level, Pegasus have adopted a bespoke methodology for this assessment whereby, a score between 0-3 will be made against each of the four above mentioned purposes to determine this site's contribution toward the Green Belt. This approach is widely accepted and commonly used throughout the industry in terms of providing a detailed analysis of Green Belt contribution.

## **Pegasus' Green Belt Assessment**

- 4.28. The following Green Belt assessment is based on the fundamental objective of the NPPF Green Belt policy, as identified in its five purposes, and Pegasus' methodology derived from a number of published Green Belt assessments covering different parts of the country.

### **Purpose 1 – To check the unrestricted sprawl of large built up areas**

- 4.29. Generally speaking, a large proportion of the site is free from development and thus can be said to have a degree of openness. However, the site directly abuts a contractor's site office building and yard to the northeast and east. Furthermore, the site is directly bordered by the A645 (Weeland Road) to the south, beyond which is further agricultural fields.
- 4.30. Whilst the application site is not contiguous with any defined settlement boundary and is consequently considered to be within the open Countryside and Green Belt, the site is situated in open countryside away from any population centres. The application site is not considered to be situated at the interface between any defined settlement and the open countryside, given the site's distance to the existing built-up extents of Beal and Kellingley, it is considered that the site has a low contribution to Purpose 1.

4.31. The proposal design has sought to integrate the development into the existing boundaries and landscape framework of the site and is to be sensitively offset to respond to the site's landscape features. In addition, the proposals have sought to reinforce the existing boundary with the planting of native shrub and new tree planting for the long term. The proposal is expected to have a minor beneficial effect on hedgerows, trees and scrub. The proposed development would therefore not facilitate the unrestricted sprawl of the urban environment, but rather contain it within an existing and strengthened network of landscape features.

4.32. Overall, it is considered that the land associated with the site has a low contribution to Purpose 1 – score 1. If developed it is considered that it would have a low harm on the performance of the wider Green Belt.

### **Purpose 2 – To prevent Neighbouring Towns from Merging**

4.33. As set out above, the application site is consistent with the existing boundaries and fieldwork of the local area. The site is also located adjoining an existing contractor's officer building and yard and located with Weeland Road to the south and Lunn Lane to the northwest.

4.34. Given the site's isolation and separating distance from any of the nearby settlements of Beal, Kellingley and Kellington, it is considered that the development of the site would not result in any physical coalescence between the surrounding settlements. Furthermore, due to the strong visual landscape framework surrounding the site and within the surrounding area and the general lack of intervisibility between the surrounding settlements, the development of the site would neither result in any visual coalescence.

4.35. Given the above, the contribution of the site to Purpose 2 is considered to be low/weak – score 1. If developed it would have limited harm on the performance of the wider strategic Green Belt.

### **Purpose 3 – To Assist in Safeguarding the Countryside from Encroachment**

4.36. Whilst the site itself is largely devoid of any development except for existing storage yard and office buildings that adjoin the site to the northeast, the immediate surrounds to the south, west and east are characterised by agricultural fields, roads and isolated agricultural buildings.

4.37. The accompanying LVA concludes that the development will have a neutral impact on the National, Local and Localised Landscape Character and a minor adverse impact by year 15 on the site's character. This is due to the low laying nature of the development and the enhanced hedgerow surrounding the site. The intervisibility of the site with the surrounding area is limited to non-sensitive areas surrounding the site.

4.38. The characteristics of the open countryside in this location are curtailed by the existing business use development that surround the site in addition to the isolated agricultural buildings that surround the site.

4.39. Given the context of the site and its immediate surrounds, the site itself can be described as having moderate characteristics of the open countryside. This would suggest that the site has a moderate contribution to Purpose 3.

- 4.40. It is acknowledged that the proposed development would encroach into the countryside for a temporary period as far as the actual footprint of the new built form is confirmed. However, any impact on the wider countryside would be limited by the sensitive design and the landscape mitigation proposals included with the scheme. Further to this the landscaping scheme will provide minor beneficial effects on trees, hedgerows and scrubs by year 15.
- 4.41. On balance it is considered that the site in isolation does not play a fundamental role in relation to the wider Green Belt and its contribution to Purpose 3 is moderate – score 2. If developed it would result in low to moderate harm on the performance of the wider strategic Green Belt.

#### **Purpose 4 – Preserve setting and special character of historic towns**

- 4.42. There are no heritage designations located within the site or the immediate surroundings. There are four heritage designations within 2km of the site, with two Grade II Listed Buildings and one Grade I Listed Building located approximately 890m to the east of the site, associated with the Church of St Edmund, and one Grade II listed building located approximately 700m to the east associated with Kellington Windmill. There are no Conservations Areas within 2km of the site.
- 4.43. It is noted that none of the nearby listed buildings at the Church of Ste Edmund nor Kellington Windmill are assessed as being within the Zone of Theoretical Visibility (ZTV) of the proposed development (**Appendix 3**). The intervening topography and proposed landscape framework separate the site from the surrounding heritage designations and thus are considered to not be affected.
- 4.44. Overall, views from the site do not include any landmarks, listed buildings or the historic core of any of the nearby conservation areas or historic settlements. Where identified designated heritage assets are located within relative proximity to the site, it has been demonstrated that due to the surrounding topography and landscape framework of the site, no intervisibility exists. Therefore, it follows that the contribution of the site to Purpose 4 is nil. If developed it would have very limited harm on the wider performance of the wider strategic Green Belt.

#### **Summary**

- 4.45. Pegasus' Green Belt Assessment has been prepared to assist in analysing the site and its landscape context, and to provide evidence to help ascertain the extent to which the site contributes to Green Belt purposes, how the proposed development would impact on that contribution, to ascertain the level of harm upon the Green Belt, and the purposes of including land within it. It supports NEL Hunter's planning application for a very special circumstances case justifying development in the Green Belt in order to provide a comprehensive and robust, yet concise evidence base.
- 4.46. The Landscape and Visual Appraisal (LVA) that accompanies the submission provides a robust assessment of the overall landscape and visual impacts of the development and provides a ZTV model which demonstrates that based on topography alone, the 7m modelled height covering the highest element of the proposal would be visible from short to mid distances to the west through to the north only. Potential views to the east and south are very limited. It was known that due to the flat topography and surrounding vegetation visibility would be far more constrained.

- 4.47. In more detail, in terms of near distance views (0-150m) the site is visible from Weeland Road looking north-west for a short distance of the road. Also looking east from the junction of Lunn Lane and Weeland Road (SCP 2) there is transient open view of the western corner of the site, but there are several pylons visible from this view which are detracting elements within the view. There is also a transient open view directly onto the north-western site boundary looking south-east from the junction of Lunn Lane and New Lane.
- 4.48. In terms of middle-distance views (150m-1km), looking south-east from Common Lane (SCP 3) there are transient views across intervening arable and pasture fields towards the site. Mature trees along Lunn Lane filter views towards the site, with the north-west boundary vegetation partial visible. There are no views into the site beyond the boundary vegetation. There are also filtered views of the northwest site boundary vegetation looking south from New Lane, but there are no views into the site beyond the boundary vegetation.
- 4.49. There are no long distance (1km+) views into the site.
- 4.50. Although the views into the site are limited, the proposal could appear as an encroachment of manmade structures into the countryside from the limited areas where the site is visible. However, whilst there are limited localised views into the site, the visual impact of the scheme would be reduced from the outset of the operational phase by the extensive landscape planting proposed which would mature over approximately 5-10 years to the point where the proposals would be largely screened from view.
- 4.51. In terms of the impact of the site on the landscape character, the proposal would retain the boundary hedgerows and trees which are important character features. The proposal would not adversely affect the key characteristics of the published National and local level character areas (neutral effect) due to the discreet low-level nature of the development. At a more localised character level the proposal would initially have a negligible adverse effect, but after the landscaping has matured at year 15, the effects would be neutral.
- 4.52. The supporting LVA states that the presence of a semi-industrial feature would be barely perceptible beyond the site boundaries and would not be at odds with the existing surrounding features.
- 4.53. The duration of the proposed development is 35 years and is therefore temporary development. After the 35-year period is over, the proposal would be decommissioned, and the land would be returned to agricultural use. Planning appeals for temporary renewable energy schemes have been allowed where Inspectors have concluded that such a period can be considered temporary (not permanent) and have given this weight when assessing the impact on the Green Belt (appeal ref: 3300222) (Inspector's Report attached in **Appendix 4**). The temporary nature of the project should be afforded significant weight in the decision-making process.
- 4.54. Whilst it is acknowledged that a 35-year period is not a short amount of time, it is nonetheless a temporary period. This means that the impact on openness is limited in time, and the permanence of the Green Belt for future generations would be secured. Planning Practice Guidance confirms that the reversibility of renewable energy schemes is a material consideration with regard to the impact on the openness of the Green Belt.
- 4.55. During the construction period, there will be high on-site activity where construction machinery, materials and personnel would be regularly accessing the site. However, during

operation the on-site activity will be reduced to monthly visits for maintenance purposes and would not cause any harmful impact on openness in this regard.

- 4.56. The assessment has concluded that overall, the level of harm caused by the proposed development within the site would be low to moderate, however, can be made acceptable. The proposed robust landscaping reinforces the function of the existing defensible boundary formed by a strong line of hedgerows, understorey, and tree vegetation, that mark the perimeter of the Site. The assessment concludes that whilst the site has a degree of openness, their spatial and visual openness is affected by neighbouring built development, the low-lying nature of the development, surrounding topography, the strong existing landscape framework of the site and the extensive landscape planting scheme and localised views into the site.

## 5. Case for Very Special Circumstances

- 5.1. Overall, this application proposes a renewable energy project that proposes a BESS to balance the national electricity system and allow the power generating capacity of other renewable energy projects to continue when energy demand is low. Consequently, the proposed development would not fall into any of the exceptions listed in paragraph 154 or 155 of the National Planning Policy Framework or the relevant Local Development Plan Policies and accordingly would be classed as inappropriate development in the Green Belt. Thus, the starting point for planning assessment is that the proposed development comprises inappropriate development.
- 5.2. The Proposal constitutes inappropriate development in the Green Belt and NPPF paragraph 156 confirms that very special circumstances must be demonstrated if the project is to be acceptable in principle.
- 5.3. The decision of Sullivan J. in *R (Basildon DC) v FSS* [2004] EWHC 2759 (Admin) established that in relation to Very Special Circumstances (“VSC”) in Green Belt cases “*a number of factors, none of them “very special”, when considered in isolation may, when combined together, amount to very special circumstances.* Thus, for example, in this case the ecological enhancements and local economic benefits may not in themselves amount to exceptional circumstances but they can contribute to establishing such.
- 5.4. The Very Special Circumstances that justify the proposed development in the Green Belt are summarised as follows:
1. Under the NPPF one of the core principles is the need to support the transition to a low carbon future in a changing climate; and to encourage the use of renewable resources. The development does both of those things. Planning is also acknowledged to play a key role in securing reductions in greenhouse gas emissions and in supporting the delivery of renewable and low carbon energy.
  2. It is widely recognised there is limited grid capacity within the national infrastructure. Thus, where capacity has been identified and secured in principle, sites that can be made appropriate should be supported where identified. Notwithstanding the environmental suitability of a site, and this would apply to any renewable scheme at any site, the project would only come forward if it was financially viable. In the market system, it is for the Applicant to ensure that there will be the necessary infrastructure and capacity within a distribution network to accommodate the electricity generated and storage. Grid connection is therefore an important factor in energy storage projects, and the availability of efficient grid connections allows projects to come forward. The location of the grid connection is therefore a material consideration in the site selection process. The National Policy Statement EN-1 identifies how grid connection is as an important consideration for applicants wishing to construct generation plant; and this consideration is an important element for any renewable energy project which is seeking to connect to the national electricity infrastructure.
  3. Lack of available alternative brownfield sites or sites outside of the Green Belt capable of accommodating the development. The Applicant has conducted a thorough assessment of alternative sites and other available grid connection points within the same distribution supply area and within the region. The findings of the

alternative sites assessment are set out in detail within the accompanying Site Selection Justification report.

4. Away from the more built up areas, the wider region is predominantly rural and is mostly characterised by a settlement pattern of isolated settlements. A large proportion of West and South Yorkshire are designated as Green Belt. In order for the Local Planning Authorities to embrace opportunities for renewable energy close to where the energy is used, there should acceptance that these can come forward within the Green Belt. This is reflected in the Council having historically granted planning permission for a number of renewable energy generating facilities within the Green Belt including a number of examples within relative proximity to the site.
  5. North Yorkshire declared a climate emergency on 5 July 2022, and since this period the Council has permitted a limited number of planning applications for large scale renewable energy developments. Approving this proposal would aid the Council in reaching their goal of achieving net carbon neutrality by 2030.
  6. With the risk of shortfalls resulting from the loss of future subsidies, the development would offer economic betterment for the existing stock business who own the land by providing additional income and economic stability. The diversification of land to provide renewable energy generation is a widely accepted form of diversification and is acknowledged to provide significant financial stability to existing farmsteads and rural businesses. Job opportunities will be created associated with the development, maintenance and decommissioning of the site.
  7. The duration of the proposed development is 35 years and is therefore temporary development. After the 35-year period is over, the proposal would be decommissioned, and the land would be returned to agricultural use.
  8. The proposed development will make a significant and far-reaching contribution to Biodiversity Net Gain on the site (which measures 3.5 hectares) which will be maintained throughout the lifetime of the BESS. Given the unique characteristics of the site, net gains of 10.06% of habitat units.
  9. The site is not within a landscape that is designated as having particular value either at national or local level.
  10. The proposed development which is estimated to cost more than £150 million will provide substantial economic benefits locally and nationally. An Economic Benefits Statements has been submitted as part of the application which outlines the significant economic benefits.
- 5.5. The weight to be given to any particular factor will be a matter of degree and planning judgement. The remainder of this section provides supporting justification for the very special circumstances case outlined above.

## **Other Material Considerations**

### **Renewable and Low Carbon Need**

- 5.6. The explicit need to introduce a steep change in how the country deals with climate change has been recognised by the Government who, on 1 May 2019, declared an Environmental and Climate Change Emergency following the finding of the Inter-Governmental Panel on Climate Change that to avoid more than 1.5°C rise in global warming, global emissions would need to fall by around 45 per cent from 2010 levels by 2030, reaching net zero by around 2050. Through the declaration, the Government recognises a need to move swiftly to capture economic opportunities and green jobs in the low carbon economy while managing risks for workers and communities currently reliant on carbon intensive sectors.
- 5.7. As part of its contributions to international efforts, the UK also has domestic legislation and policies in place to reduce greenhouse gas emissions. The Climate Change Act 2008 established long-term statutory targets for the UK to achieve reductions in greenhouse gases by 2050 against a 1990 baseline. The Act originally set a legally binding target of an 80% cut in greenhouse gas emissions by 2050. On 12 June 2019, as a direct response to the climate change emergency declaration, the Government laid the draft Climate Change Act 2008 (2050 Target Amendment) Order 2019 to amend the Climate Change Act 2008 by introducing a target for at least a 100% reduction of greenhouse gas emissions (compared to 1990 levels) in the UK by 2050. This is otherwise known as a net zero target because some emissions can remain if they are offset by removal from the atmosphere and/or by trading in carbon units. The Order became a Statutory Instruments on 27 June 2019.
- 5.8. It is the Government's view that renewable electricity generation is a critical enabler of decarbonisation, and there are many measures it has in place to support its development. Government:
- Has been progressively increasing its commitment towards the ultimate legally binding requirement for Net Zero and emphasis on doing so through renewables, particularly offshore wind and solar;
  - Has increasingly focused on the energy security benefits of renewables, as well as the carbon benefits;
  - Is clear on the scale of change needed to meet the legally binding Net-zero commitments, which includes an ambition for a five-fold increase in solar capacity; and
  - Is increasingly focussed on the role of renewables in reducing energy bills.
- 5.9. In terms of national policy, the Climate Change Act 2008 establishes a legally binding target to reduce the UK's greenhouse gas emissions by at least 80% in 2050 from 1990 levels. The explicit need to introduce a step change in how the country deals with climate change has been recognised by the Government through the declaration of an Environmental and Climate Change Emergency.
- 5.10. In relation to National Policy Statement, they are important documents which set out national policy for energy infrastructure in England. They were established against obligations made as part of the Climate Change Act 2008 (CCA2008). NPPF Para 5 confirms that National Policy Statements for major infrastructure may be a material consideration in preparing plans and making decisions on planning applications, even for schemes which are not regarded as Nationally Significant Infrastructure Projects.

- 5.11. The Government issued updated revisions of NPS EN-1 and NPS EN-3 (Renewable Energy Infrastructure) in January 2024. These revisions include updated policy on the development of low-carbon infrastructure.
- 5.12. Overarching National Policy Statement for Energy (NPS) EN-1 sets out a case for the need and urgency for new energy infrastructure. The urgency of the need requires actions to be taken in the near-term in order for that need to be met and therefore the urgent need for the Proposed Development goes towards meeting the urgent need for new energy infrastructure as set out in NPS EN-1.
- 5.13. The NPSs also set out a case for new energy infrastructure to be consented and built with the objective of supporting the government’s policies on sustainable development by:
- Mitigating and adapting to climate change; and
  - Contributing to a secure, diverse and affordable energy supply.
- 5.14. The revised National Policy Statement states that, ‘Using electrification to reduce emissions in large parts of transport, heating and industry could lead to more than half of final energy demand being met by electricity in 2050, up from 17 per cent in 2019, representing a double in demand for electricity.’
- 5.15. Section 3.3 of Revised NPS EN-1 explains that large capacities of low-carbon generation will be required to:
- Ensure that there is sufficient electricity to meet increased demand;
  - Replace output from retiring plants;
  - Ensure there is sufficient margin in our supply to accommodate unexpectedly high demand; and
  - Mitigate risks such as unexpected plant closures and extreme weather events.
- 5.16. The NPS re-iterates that *“storage has a key role to play in achieving net zero and providing flexibility to the energy system, so that high volumes of low carbon power, heat and transport can be integrated.”* Taken in isolation, the provision of renewable energy should be afforded very substantial weight by the decision maker. A number of appeal decisions that support this position are summarised below:

Appeal Ref	Note on Inspector’s Decision
Appeal ref. 3318171	The provision of a renewable energy scheme with a generation capacity of 25.6MW... attracts very significant weight (para 25).
Appeal ref. 3300222	The benefits of renewable energy raise substantial benefits in favour of the proposal... It is also clearly identified, in Section 14 of the Framework, where it seeks to increase the use and supply of renewable and low-cost energy and to maximise the potential for suitable such development. The delivery of suitable renewable energy projects is

	fundamental to facilitate the country's transition to a low carbon future in a changing climate (paragraph 91).
Appeal ref. 3300299	In the light of the local and national imperative summarised above related to the provision of renewable energy, this matter weighs very heavily in favour of the proposal (paragraph 93).  But the public benefits summarised above, particularly the importance of the provision of renewable energy and the need to tackle climate change, are exceptionally weighty (paragraph 95).
Appeal ref: 3225810	The renewable energy benefit of the proposal must be accorded substantial weight (para 21).
Appeal ref: 3293104	The Secretary of State afforded the production of electricity significant weight (paragraph 21) .

*Table 1 – Appeal Decisions Affording Weight to Renewable Energy Production*

- 5.17. In addition to the above, the additional appeal decisions set out below relate to issues which are relevant to the proposal, in particular with regards to BESS development proposals where they are located within Green Belt locations. They indicate that Inspectors have accepted that BESS provide essential infrastructure to support the delivery of renewable and low carbon energy and that substantial weight should be attached to the significant environmental benefits associated with these forms of development, thus demonstrating Very Special Circumstances required to justify development within the Green Belt.
- 5.18. Of particular note, an appeal (Ref: APP/N2739/W/22/3290256) was allowed on 1st August 2022 for the installation and operation of a battery storage facility and ancillary development on land south of Monk Fryston Substation,, Rawfield lane, Monk Fryston, Selby, located approximately 6km to the north west of the site. Both the appellant and Selby District Council agreed in their evidence that the proposed development would be inappropriate development in the Green Belt as defined by the National Planning Policy Framework (the Framework). On that basis, the main issues of the appeal were determined to be:
- The effect of the proposal on the openness of the Green Belt and the purpose of including land with it.
  - The effect of the development on the character and appearance of the surrounding area.
  - Whether the harm by reason of inappropriateness, or any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.
- 5.19. *In their determination of the appeal, the inspector concluded that:*

*“The proposal would be inappropriate development in the Green Belt. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that harm. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.*

*I have reasoned above that there is harm to the openness of the Green Belt, and to the character and appearance of the area, albeit mitigated by the fact that the proposal would include considerable levels of additional landscaping that would establish over a period of time, and that the development itself is time limited, although this is a considerable period of time.*

*It is also apparent that there is a clear and pressing need to address the energy strategy issues facing the country, hence the need for the proposal. In addition to this the proposal has been supported by a considerable level of technical data and justification for the proposal as to why it needs to be located in the Green Belt.*

*These considerations, collectively, carry great weight and I conclude that they amount to very special circumstances, sufficient to outweigh the harm to the Green Belt, by reason of inappropriateness and the effect on openness”.*

5.20. In February 2022, an appeal was made by Pegasus Group for a BESS development in proximity to the West of Wolverhampton BSP Substation, West of South Staffordshire Railway Walk, Wolverhampton, WV4 4XX (Ref: APP/C3430/W/22/3292837). The main issues of the appeal were:

- Whether the proposed development would be inappropriate development in the Green Belt;
- The effect of the proposed development on the openness of the Green Belt, and;
- Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

5.21. The appeal was allowed on 16th August 2022. In allowing the appeal the inspector concluded that:

*“The proposal would be inappropriate development in the Green Belt, which, by definition, is harmful. To this must be added further moderate harm arising from the loss of openness, and from being contrary to the purposes of including land within the Green Belt. Paragraph 148 of the Framework indicates that any harm to the Green Belt should be given substantial weight.*

*Paragraph 151 of the Framework accepts that very special circumstances will need to be demonstrated if developments are to proceed in the Green Belt. It states that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. Although modest in scale, the appeal scheme would make a valuable contribution to cutting greenhouse gas emissions, by increasing the opportunity to store energy, and this also attracts substantial weight.*

*National policy advises that developments should be located where impacts are, or can be made, acceptable. I consider that the location of the proposed development, adjacent to an existing substation and agricultural buildings, together with the existing and proposed landscaping means that this would be the case here. Additionally, whilst the proposed development would be located at the site for a number of years, it is reversible and capable of being removed from the site.*

*Therefore, and in my judgement, The environmental benefits of the proposal and the fact that the impacts can be made acceptable, are sufficient to outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the proposal do exist and the scheme would not conflict with LP Policy GB1 or the Framework...*

*I have concluded above that, for this appeal, very special circumstances exist to justify inappropriate development in the Green Belt that would reduce openness. My findings on other matters do not lead me to reach a different conclusion. Consequently, the proposal would comply with the relevant provisions of the Framework and the development plan when considered as a whole. The appeal should therefore be allowed”.*

- 5.22. In both instances above, the inspector considered that the environmental benefits associated with the BESS and the temporary nature of the development held significant weight which demonstrably outweighed the potential harm to the openness of the Green Belt.

#### **Powering Up Britain – Energy Security Plan (March 2023)**

- 5.23. This plan sets out the steps the Government is taking to ensuring the UK is more energy independent, secure and resilient. This includes aims to double Britain’s electricity generation capacity by the late 2030s supported by a smooth transition to abundant, low-carbon energy. The strategy to increase supply of low-carbon energy is dependent on enhancing, amongst other things, solar power generation. This includes the infrastructure to produce low energy such as solar around the country.
- 5.24. Turing specifically to energy storage, the plan states that the UK Government is “*facilitating the deployment of electricity storage at all scales through the joint government and Ofgem ‘Smart Systems and Flexibility Plan’.*”
- 5.25. The Government considers that meeting energy security and climate change goals is urgent and of critical importance to the country, encouraging the deployment of BESS technology, such as the Proposed Development, that delivers environmental benefits.

#### **Committee on Climate Change**

- 5.26. In June 2023 the Climate Change Committee published it’s 2023 Progress Report<sup>1</sup> to Parliament. Within his covering letter to the report addressed to the Prime Minister, the outgoing Chairman Lord Deben states that, “the failure to act decisively in response to the energy crises and build on the success of hosting COP26 means that the UK has lost its clear global climate leadership... The government must act urgently to correct the failures of the past year... I have to ask you directly to heed the advice of the CCC’s report and reclaim the UK’s clear climate leadership role.”

#### **North Yorkshire Council**

- 5.27. In July 2022 North Yorkshire County Council declared a Climate Emergency which has rolled over to North Yorkshire Council from April 2023. North Yorkshire Council replaces seven former district Councils, one of which was Selby District Council which, prior to April 2023, was the relevant administrative area for the application site. Through the North Yorkshire Council Climate Change Strategy 2023 – 2030 acknowledges the need to reduce greenhouse gas emissions through a ‘whole system approach’ which includes where power comes from. There is a stated ambition that North Yorkshire is the first carbon negative region by 2040.
- 5.28. North Yorkshire Council Climate Change Strategy 2023 to 2030 is a relevant material consideration since it sets down how the Council envisages their response to the self-declared climate emergency. The strategy outlines North Yorkshire Council’s high-level response to the Climate Emergency. For North Yorkshire, specific risks for inaction are identified as threats to food, energy and water security, damage to homes, businesses and infrastructure assets, poorer health outcomes and increased cost burden for public services. The document represents significant political commitment at Council level to addressing climate change and is accordingly a material planning consideration.
- 5.29. The strategy sets out how the Council will respond to the Climate Emergency around key themes, one of which is mitigation which is the reduction in impact on the climate by decreasing greenhouse gas emissions. Given the proposal relates specifically to the generation of renewable energy that will avoid the requirement to burn fossil fuels to produce energy, the proposal will contribute directly to meeting one of the key aims of the Council’s Climate Change Strategy.
- 5.30. In summary, there is a firmly established need for this development at both national and local level, and the lack of delivery of renewable energy schemes in North Yorkshire increases the weight that should be attached to the benefits of this Proposal.

### **Energy Resilience**

- 5.31. As stated in the above sections energy resilience is key to the UK Government in achieving their sustainability targets and moving to low carbon energies. The development will help to buffer the National Grid against variation in generation as renewable generators respond to varying amounts of sunlight and wind. This is a significant benefit that derives from the scheme which also aids in providing energy security to the UK, which is a key goal of the UK Government.

### **Ecology and Biodiversity Net Gain**

- 5.32. NPPF Paragraph 151 confirms that: *‘Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.’* Accordingly both the production of renewable energy and the bio-diversity net gain that will result from the proposal are material considerations that can contribute toward the very special circumstances case.
- 5.33. The application is accompanied by a full ecological assessment, supported by site surveys and desk study information. The impact assessment identifies potential areas where biodiversity can be improved across the site, thereby resulting in environmental benefits in accordance with NPPF para 156 and Selby Local Plan Policy SP18.

- 5.34. The proposed development shows a biodiversity net gain of 10.06% habitat units. Current development and landscaping proposals as they stand will result in a net loss in biodiversity units for the development site. However, potential offsetting has been detailed within this report, detailing proposed location and requirements to achieve a net gain for the project of NEL Hunter and retain and increase the biodiversity units within the district.
- 5.35. The appeal decisions summarised below demonstrate that achieving a BNG has been given substantial or significant weight by Inspectors:

Appeal Ref	Note on Inspector's Decision
3292579	'There would be an agreed, and high (96.5%, as confirmed at paragraph 5 of the decision), level of biodiversity net gain resulting from this scheme, and some enhancement to the land around the solar panels by the introduction of flower rich meadows. This attracts significant weight in favour of the proposal' (paragraph 34).
3259686	The decision confirmed this residential development would create a 20% biodiversity net gain. The Secretary of State's decision gave this substantial weight.
3279533	'Thus, even acknowledging that the assessment starts from a low base in terms of the ecological value of the site, a gain of some 73%, is substantial and a benefit that attracts significant weight' (paragraph 59)
3293104	The Secretary of State states that the biodiversity net gain was a substantial benefit (paragraph 23)

Table 3 – Appeal Decisions Affording Weight to Biodiversity Net Gain

- 5.36. Other enhancement measures are also proposed for species that occur or may occur on the site and these should be secured through a Landscape and Ecological Management Plan (LEMP) via a suitably worded planning condition. The landscaping on site will also have beneficial impacts on trees, hedgerow and shrubs.
- 5.37. It should also be noted that there are wider environmental benefits of producing renewable energy that extend beyond the site in addition to BNG. This is specifically recognised within the Council's Routemap to Carbon Negative (October 2022) which encourages the principle of making the most of existing landscape and infrastructure, where possible seeking multiple benefits from development such as biodiversity gains.

#### **Lack of Landscape Designation**

- 5.38. Notwithstanding the assessment on visual impact of the proposals and the associated impact upon the openness of the Green Belt, the Application Site is not situated within any landscape which is protected or designated as being of particular quality. This is not true of all of the landscape within the Council's administrative area where Nidderdale and Howardian Hills National Landscape comprise significant portions of the Councils land take

designated on for their national importance as well as locally defined Special Landscape Areas within the district. Accordingly, the applicant has sought to avoid proposing a scheme which might affect these National Landscapes or their setting by situating the proposed development within an unprotected landscape.

### **Temporary and Reversible Development**

- 5.39. Planning appeals for temporary renewable energy schemes have been allowed where Inspectors have concluded that such a period can be considered temporary (not permanent) and have given this weight when assessing the impact on the Green Belt (appeal ref: 3300222) (Inspector's Report attached in **Appendix 4**). The temporary nature of the project should be afforded significant weight in the decision-making process. Whilst it is acknowledged that a 35-year period is not a short amount of time, it is nonetheless a temporary period. This means that the impact on openness is limited in time, and the permanence of the Green Belt for future generations would be secured. Planning Practice Guidance confirms that the reversibility of renewable energy schemes is a material consideration with regard to the impact on the openness of the Green Belt.

### **Grid Connection**

- 5.40. Challenges facing North Yorkshire in responding to the Climate Emergency are identified within the Council's Climate Change Strategy, one of which is "the limited electrical grid capacity in many places causes additional challenges in renewable energy supply to the grid and decarbonising options for transport and buildings." This is relevant in the context that the proposal has a viable and agreed point of connection to the grid network which is not the case for the majority of land in the surrounds as identified within the accompanying Site Selection Report.
- 5.41. The ability to generate low carbon, low-cost electricity is constrained by grid connection opportunities. In this case the applicant has managed to secure a connection agreement to connect to the National Grid's Grid Supply Point (GSP) Ferrybridge B 132kV Substation. As demonstrated within the supporting Site Selection Report, the site is considered to be a viable and appropriate for the scale of BESS .

### **Economic Benefits**

- 5.42. The Proposal is connecting to the local distribution network at the existing substation. This is a lower level of electrical infrastructure and is operated by a District Network Operator (DNO), in this case Northern Power Grid (NPg). NPg is the organisation responsible for ensuring that electricity is able to be transmitted to properties in the region at a local level. The Proposal will help to address energy security and increase low cost and subsidy free energy generation, which is particularly important at a time of a cost-of-living crisis and energy security crisis. This is a clear economic benefit to the households and business owners in North Yorkshire, many, if not all of whom, will be experiencing the negative effects of rapidly rising energy costs.
- 5.43. NPPF paragraph 85 says that significant weight should be placed on the need to support economic growth, and the economic benefits of the proposal should therefore be afforded significant weight.

### **Rural Diversification and Economic Sustainability**



- 5.44. The proposal is a rural development with BESS becoming a common diversification opportunity for the landowners. The proposal will support the rural economy through farm diversification, by providing the landowner with significant revenue boost.

## 6. The Green Belt Balance

6.1. At the heart of the NPPF is the ‘presumption in favour of sustainable development’, as set out in Paragraph 11. For decision taking this means:

*“c) approving development proposals that accord with an up-to-date development plan without delay (often referred to as the ‘straight balance’); or*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole” (often referred to as the ‘tilted balance’).”*

6.2. NPPF paragraph 153 confirms that “Very Special Circumstances” will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal is clearly outweighed by other considerations.

6.3. In this case, there is limited harm to the Green Belt and landscape but no identified harm to designated heritage assets. For the reasons set down in Section 5 above and the Planning Statement, there are numerous very special circumstances that should weigh in favour of the proposal to outweigh the harm to the Green Belt and any other harms. The Proposal is therefore in accordance with the Development Plan and the NPPF.

6.4. With regards to the planning balance, the following impacts will result from the proposal:

	Impact	Appellant’s Position
Environmental	Provision of renewable energy (carbon reduction)	Very Significant Benefit
	Mitigating the effects of the climate change emergency	Significant Benefit
	Biodiversity Net Gain	Significant Benefit
	Principle of Development	Inappropriate development in the Green Belt is generally regarded to result in <b>substantial harm</b> .

	Impact on openness of the Green Belt	Minor to moderate harm for a temporary period
	Impact on the National and Local Landscape	No adverse impacts
	Impact on the Site Landscape	Minor Adverse
	Heritage Impact	No harm identified
	No suitable alternative site outside the Green Belt or on Brownfield Land	No sequentially preferable or available alternative sites identified
Economic	Investment in the BESS, job creation, and business rates income over a period of 35 years	Significant benefit
	Farm Diversification and support for local rural economy	Moderate benefit
Social	Enhancing UK energy security	Moderate benefit
	Contribution to local and national targets for production of renewable energy	Significant benefit
	Contribution to local energy targets in delivering a carbon negative region by 2040.	Significant benefit
	Energy Resilience	Significant benefit

Table 2 – Planning Balance Exercise

6.5. The planning balance provided demonstrates that planning permission should be granted without delay since there is a clear and compelling very special circumstances case that clearly outweighs identified harm to the Green Belt.



- 6.6. The three dimensions of sustainable development have been assessed and it is concluded that not only do the adverse impacts not significantly or demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole, but very limited adverse impacts are identified at all, and the benefits clearly outweigh any harm.

## 7. Summary and Conclusions

- 7.1. The site benefits from a strong existing landscape framework which provides a defensible boundary to the site, formed by a strong line of hedgerow and tree planting which occupies the southern and eastern boundaries of the site. The visual containment of the site is only bolstered by the neighbouring contractors yard development, surrounding topography and landscape features which act to further reinforce the visual containment of the site. It is concluded that the site's northern edge has a degree of openness where gaps in the existing boundary vegetation allow varying degrees of visibility but overall, any such views of the site are very limited and short in duration.
- 7.2. Following assessment, it has transpired that overall, the level of harm caused by the proposed development within the site would be low to moderate and can be made acceptable.
- 7.3. As set out above in this statement, it is concluded that there are significant environmental benefits associated with the delivery of increased renewable energy generation; substantial increases in biodiversity net gain across the site; the lack of available alternative sites outside of the Green Belt; and, the viable and available grid connection to the proposed point of connection, which form significant material considerations and weigh heavily in favour of the proposed development.
- 7.4. Furthermore, the temporary and reversible nature of the development means that any low degree of harm to the Green Belt or other harm arising from the development would only be temporary for the life of the development (35-years) and would be reversed and restored upon the decommissioning of the development.
- 7.5. On balance it is concluded that the significant environmental benefits associated with the proposed development and other material considerations set out above in this report clearly and demonstrably outweigh the level of harm to the openness of the Green Belt and as such demonstrate that very special circumstances required for the justification of development in the Green Belt do exist. The proposed development is therefore considered to be consistent with the Green Belt provisions of the NPPF and Policy SP3 of the Selby District Core Strategy Local Plan (2013) and Policies GB2, GB3 and GB4 of the Selby District Local Plan Part 1 (2005).



## Appendix 1 – Site Location Plan

DO NOT SCALE

IF IN DOUBT, ASK

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Key:

Site Location Plan 16ha Scale 1:2500

Site Co-ordinates: 53°42'46.31"N 1°11'0.81"W

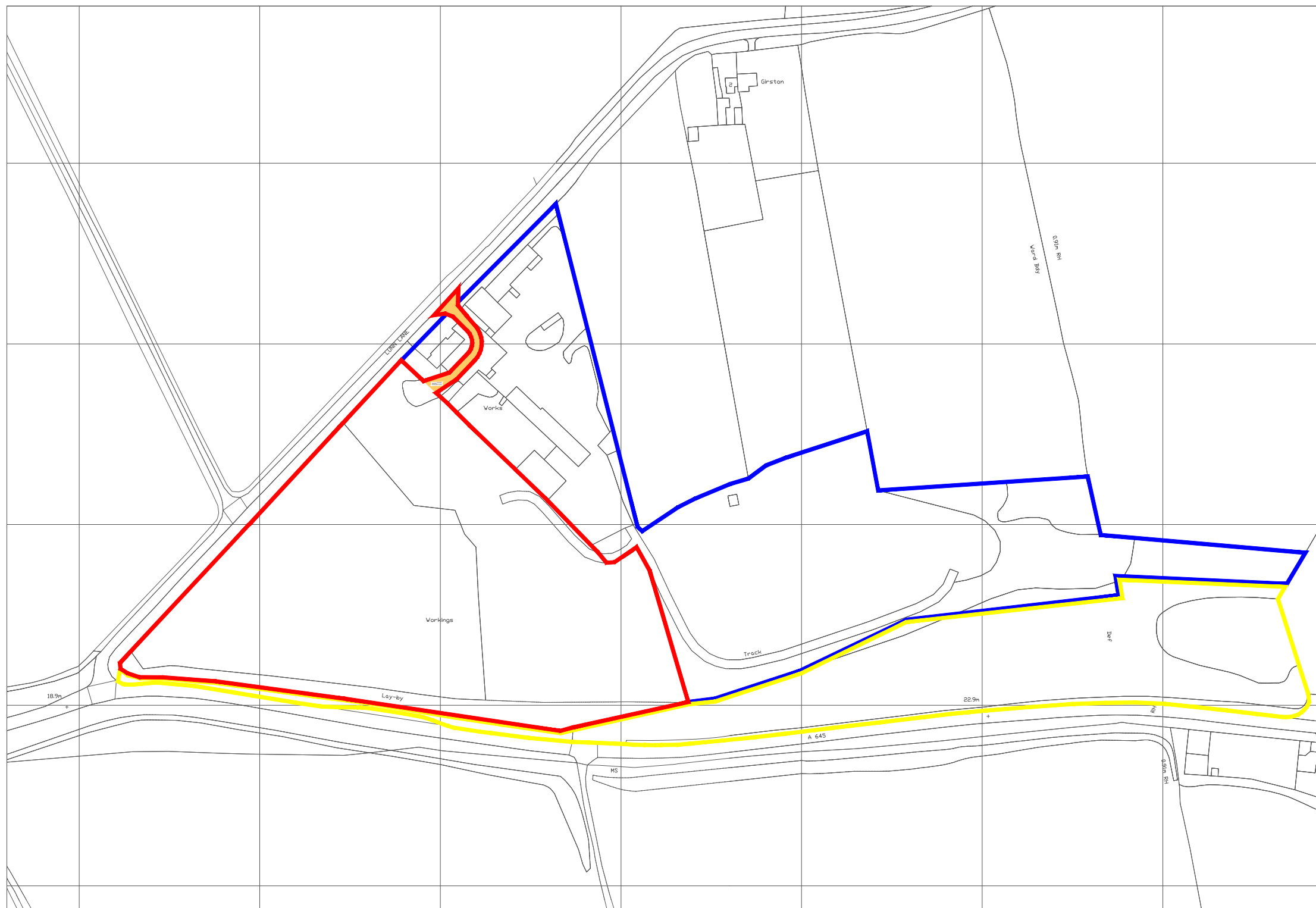
Site Area: 8.6 Acres (Red Line)

Postcode: DN14 0SE



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iii. Dimensions in millimeters unless otherwise stated. Do not scale. If in doubt, ask. Report all errors, omissions & modifications to the Design Department.

- Planning Red Line Boundary
- Extents of landowner's land
- Parish Council - unregistered land
- Shared access road



IF IN DOUBT, ASK

IF IN DOUBT, ASK

DO NOT SCALE

DO NOT SCALE

DO NOT SCALE

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3.0	Yellow line added highlighting unregistered land (land being given back to Parish Council).	KLM	03/08/23
2.0	Shared access highlighted, red line boundary amended to suit.	KLM	13/04/23
1.0	First issue	KLM	23/01/23
REV:	DESCRIPTION:	BY:	DATE:

STATUS: PLANNING



Newton Energi Ltd  
Meadow House, Long Bennington Business Park,  
Newark, NG23 5JR

CLIENT:  
NEL Hunter, Goole, DN14 0SE  
Site Area: 8.6 Acres, 3.5 Hectares

PROJECT:  
Capacity: 200 MW (2hr)  
Connection Voltage: 132kV

TITLE:  
Site Location Plan - Planning

SCALE AT A3: 1:2500	DATE: 23/01/2023	DRAWN: KLM	CHECKED: CH
PROJECT NO: 51	DRAWING NO: 001	REVISION: 3.0	



## Appendix 2 – Site Layout Plan

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- Planning Red Line Boundary
- Land to be retained by landowner
- Parish Council - unregistered land
- 2.4m high paladin perimeter fence
- Minimum 10m deep band of trees and greenery
- Existing trees
- Wild flower meadow
- Truckgrid with grass
- Existing Vegetation / Scrubland
- Hardstanding compound
- MOT Type 1 Cover Gravel
- Shared access road
- Additional site building containers
- Area for temporary construction, welfare and site storage

**Notes:**

Truckgrid with grass to be used for all walkways, roads and passageways across the site

**Battery/PCS Requirements:**

2 x Trina batteries = 4,472 MW

200 MW / 4,472 MW = 44,7227

∴ A 200 MW site will require x 45 battery & PCS units

DO NOT SCALE

4.0	Transformer & Control Room compound moved 5m to the South-East away from Lunn Lane following tree survey comments.	KLM	04/09/23
3.0	Yellow line added highlighting the unregistered land to the south of site (Parish Council).	KLM	03/08/23
2.0	x4 additional batteries added, shared access highlighted, red line boundary amended to suit.	KLM	17/04/23
1.0	First issue.	KLM	01/02/23
REV:	DESCRIPTION:	BY:	DATE:

STATUS: **PLANNING**



Newton Energi Ltd  
Meadow House, Long Bennington Business Park,  
Newark, NG23 5JR

CLIENT:  
NEL Hunter, Goole, DN14 0SE  
Site Area: 8.6 Acres, 3.5 Hectares

PROJECT:  
Capacity: 200MW (2hr)  
Connection Voltage: 132kV

TITLE:  
**Proposed Site Layout**

SCALE: AT A1: 1:500	DATE: 01/02/2023	DRAWN: KLM	CHECKED: CH
PROJECT NO: 51	DRAWING NO: 002	REVISION: 4.0	

IF IN DOUBT, ASK

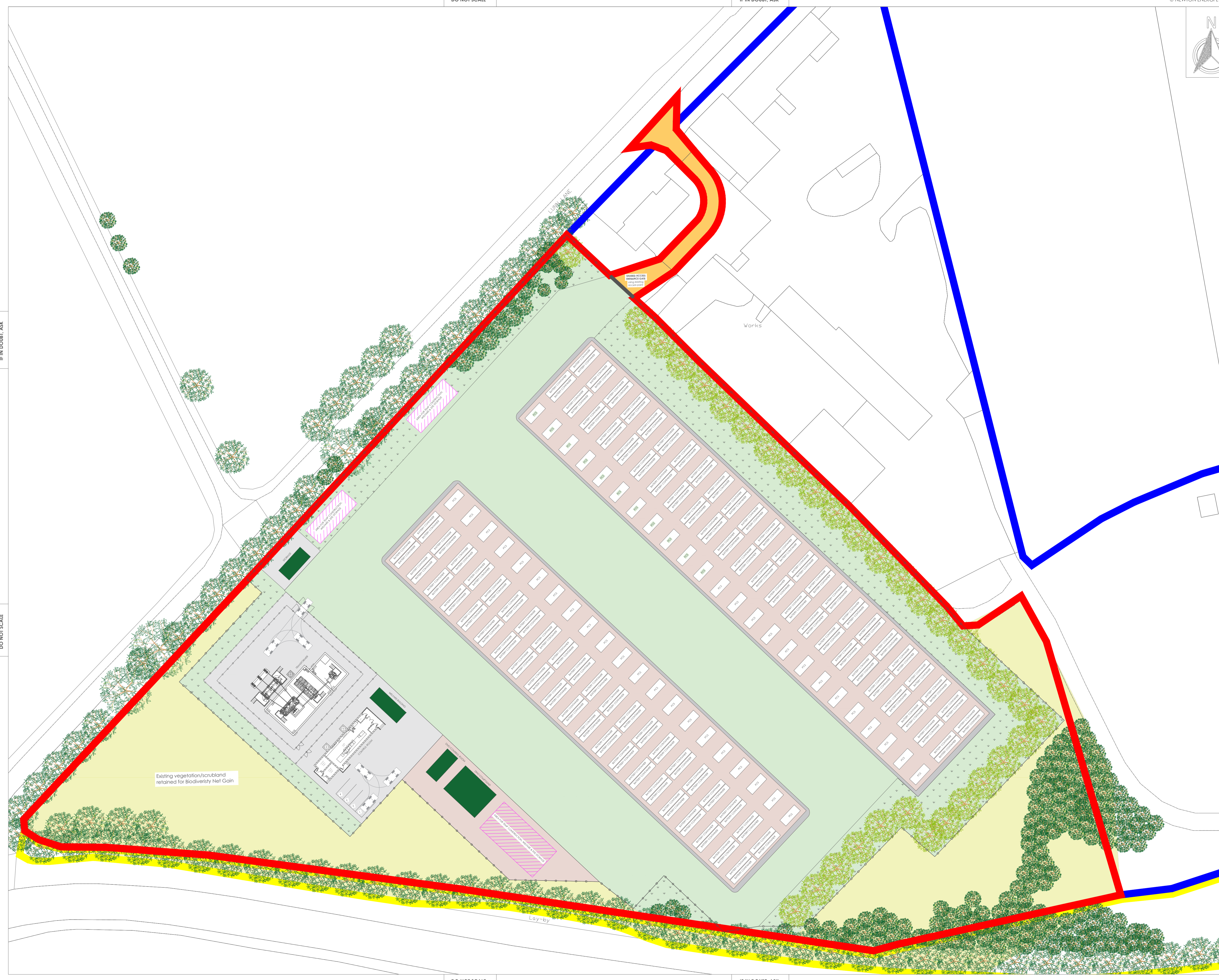
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IF IN DOUBT, ASK

DO NOT SCALE



Existing vegetation/scrubland retained for Biodiversity Net Gain

SHARED ACCESS ROAD

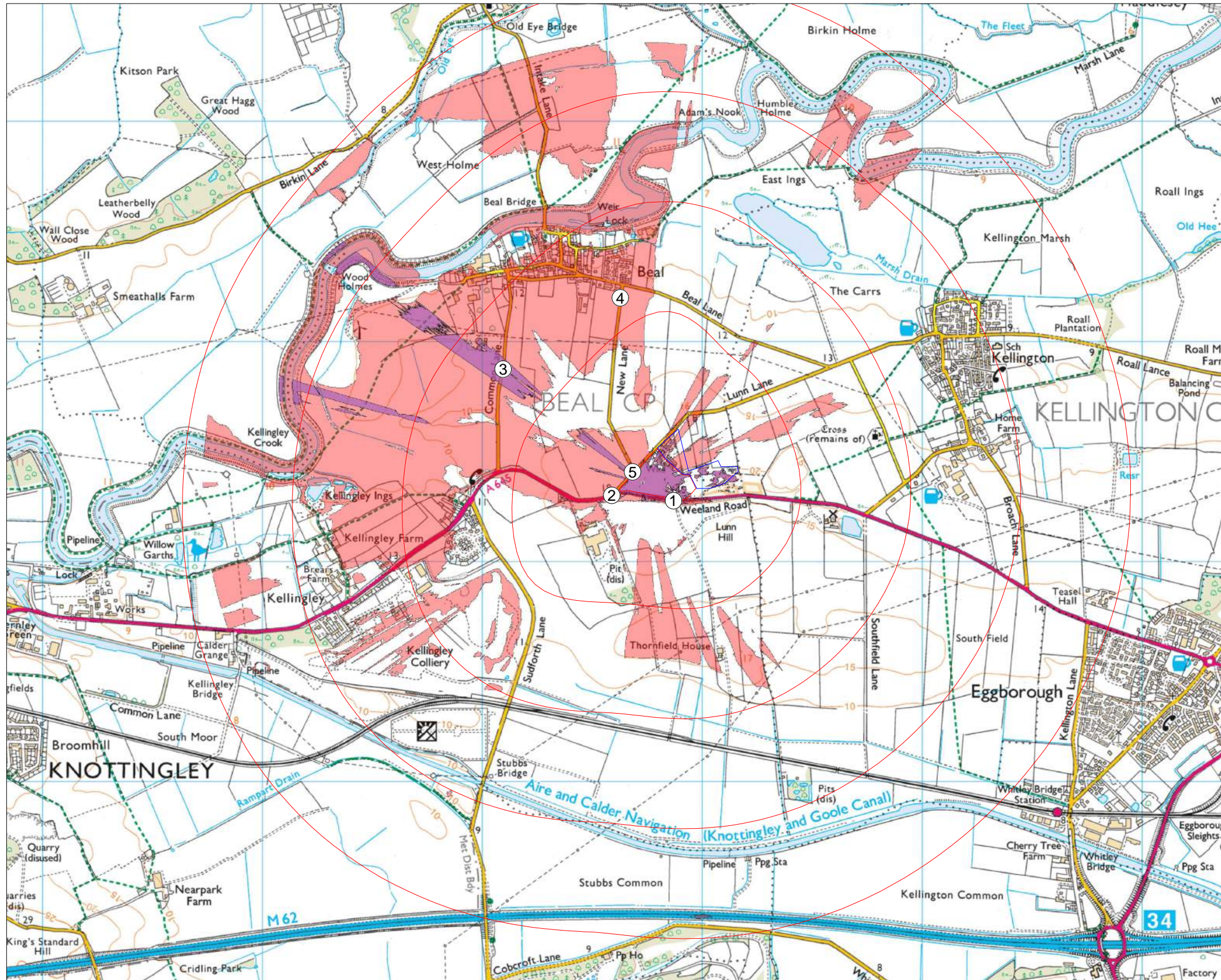
Works

LUNN LANE

Lay-by



## Appendix 3 – Visual Appraisal Plan



- KEY:**
- Proposed Site Boundary
  - Wider Site Boundary
  - ⊙ 0.5km Distance Radii
  - 1 Photographic Viewpoints (Site Context Photograph)
  - Zone of Theoretical Visibility (ZTV)
  - Zone of Theoretical Visibility 2 (ZTV2)

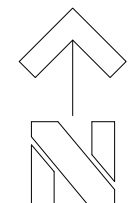
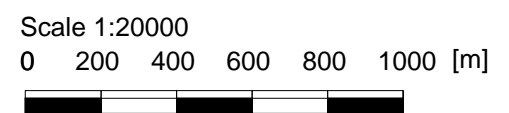
- Visual Appraisal**
- ↔ Open Views
  - ↔ Partial Views
  - ↔ Truncated / No Views

**Notes:**

ZTV is based on visibility from 1.6m height observer to a single point positioned at the proposed building location at proposed building height of 3m. GIS viewshed generated using LIDAR DTM bare earth terrain data.

ZTV2 is based on visibility from 1.6m height observer to a single point positioned at the proposed building location at proposed building height of 3m. GIS viewshed generated using LIDAR DSM surface terrain data.

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Job **NEL HUNTER**

Title **VISUAL APPRAISAL**

scale@A3	drawn	date	drawing number	revision
1:20,000	EH	AUG 23	1602 - 004	-



## **Appendix 4 – Inspector’s Report – Planning Appeal ref. 3300222**



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# Appeal Decision

Hearing held on 6 December 2022

Site visit made on 5 December 2022

**by Ben Plenty BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 February 2023**

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**Appeal Ref: APP/W1525/W/22/3300222**

**Land east & west of A130 and north & south Of Canon Barns Road,  
East Hanningfield, Chelmsford, Essex CM3 8BD**

**Easting:575325, Northing:198892**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Low Carbon Solar Park 5 Limited against the decision of Chelmsford City Council.
  - The application Ref 21/00394/FUL, dated 22 February 2021, was refused by notice dated 9 December 2021.
  - The development proposed is the construction and operation of a solar farm and battery storage system together with all associated works, equipment and necessary infrastructure.
- 

## Decision

1. The appeal is allowed and planning permission is granted for the Installation of a solar photovoltaic (PV) park generating up to 49.9 MW of electricity spread over three sites (sited either side of the A130/Canon Barns Road), comprising of ground-mounted photovoltaic solar arrays, battery-based electricity storage containers, together with inverters/transformer stations, Distribution Network Operator (DNO) Substation, customer substation/switchgear and meter kiosk, batteries, internal buried cabling and grid connection cables, internal access tracks, security fencing and gates and CCTV cameras, other ancillary infrastructure, landscaping and biodiversity enhancements at Land east & west of A130 and north & south Of Canon Barns Road, Chelmsford CM3 8BD, in accordance with the terms of the application, Ref 21/00394/FUL, dated 22 February 2021, and the plans submitted with it, subject to the schedule of attached conditions.

## Preliminary Matters

2. Since the Council's refusal of the proposal, two nearby solar farms have received planning permission. The 'Canon Barns site'<sup>1</sup> is southeast of the appeal site, would generate 8 MW of electricity, and is within the Green Belt. The 'Hill Farm site'<sup>2</sup> is northeast of the appeal site. This will generate 36.7 MW of electricity and is adjacent to the Green Belt. These decisions are material considerations that I will take into account within this decision.

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<sup>1</sup> Planning Application Reference: 21/00502/FUL

<sup>2</sup> Planning Application Reference: 21/00555/FUL

3. A site visit was undertaken the day before the Hearing. During my visit I walked the site and its surroundings with a representative from the Council and the Appellant using a walking route agreed between main parties (Doc B). I therefore have a good awareness of the site and its surroundings.
4. A screening opinion, undertaken by the Council in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 concluded that the proposal was not deemed to be EIA development. I see no reason, within the evidence, to disagree with this view.
5. At the Hearing I was handed three letters of objection from the Parish Councils of West Hanningfield and East Hanningfield and from Mr Malcolm Thomas, a local resident (Docs D, E and F). These raised a range of points, the majority of which were already matters discussed in previously submitted objections. Nevertheless, I decided to accept these and am satisfied that no party would be prejudiced by my taking these into consideration as part of the appeal evidence.
6. The description of development, found on both the Council's Decision Notice and the appeal form, includes a more detailed description to that on the application form. The Appellant explains, at Section E of the appeal form, that the description was changed. As this has been agreed between main parties, and more accurately describes the scheme, I shall use the revised version in the permission.
7. Furthermore, since the refusal of the scheme the Appellant has continued discussions with UK Power Networks. As a result, the proposed 35 metre One Point of Connection Mast is no longer necessary. I understand that instead the development would be connected into the network at the point of an existing pylon. This has resulted in the submission of an amended plan, removing the mast. This alteration was discussed at the Hearing and has reduced the overall visual effect of the proposal, albeit to a small extent. Consequently, I have taken the revised plan into account without causing prejudice to any party.

### **Background and Main Issues**

8. The proposed development is located within the metropolitan Green Belt. Section 13 of the National Planning Policy Framework (the Framework) establishes the national policy objective to protect the Green Belt. Paragraphs 149 and 150 define different types of development that would not be inappropriate development in the Green Belt. It is uncontested by main parties that the proposed solar farm would not comply with any such provisions. I see no reason, within the evidence or in matters discussed at the Hearing, to disagree with this assertion. The proposal would therefore be deemed to be inappropriate development in the Green Belt.
9. Paragraph 147 and 148 of the Framework state that inappropriate development in the Green Belt is, by definition, harmful and carries substantial weight. Such development should not be approved except in very special circumstances. It continues that very special circumstances will only exist if the harm to the Green Belt by its inappropriateness, and any other harm, would be clearly outweighed by other considerations.
10. Turning to a separate matter, during the course of the planning application consideration, the Council undertook an Appropriate Assessment to consider

the effect of the proposed development on the Crouch and Roach Estuaries (Mid Essex Coast Phase 3) Special Protection Area (SPA). Following consultation with Natural England, the Council was content the impacts could be suitably addressed with mitigation secured by condition. Nevertheless, it is incumbent upon me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. It is therefore still necessary to consider this matter as a main issue.

11. Accordingly, in consideration of the evidence, the main issues are:

- The effect of the proposal on the openness of, and purposes of including land within, the Green Belt;
- The effects of the development on the settings of the Grade II\* listed building Church of St Mary and St Edward, and the Grade II listed building Church House and other non-designated heritage assets;
- The effects of the proposed development on the landscape character and appearance of the area;
- The effect of the proposal on agricultural land;
- The effect of the development on the integrity of the SPA; and
- Whether the harm caused by the proposal, by virtue of being inappropriate development in the Green Belt, and any other identified harm, would be clearly outweighed by other considerations to result in 'Very Special Circumstances'

## **Reasons**

### *Green Belt - openness and purposes*

12. The fundamental aim of the Green Belt is to prevent urban sprawl and keep land permanently open<sup>3</sup>. Openness has both visual and spatial qualities. The site consists of six fields. These are enclosed by tree and hedge boundaries, including some woodland areas, especially to the south of the main site. In terms of topography, the site is within gently undulating land with higher land to the south, north and centre of the site. The landform, and extent of field boundary screening, would reduce the overall visual effect of the proposal from wider views.
13. The site is currently farmland. From a spatial perspective, the proposed solar arrays would introduce substantial development into the area in terms of ground cover due to the quantity of arrays within the scheme. Furthermore, the associated access track, substation, inverter stations, fencing and CCTV facilities would result in additional built form that would further diminish the openness of the Green Belt spatially.
14. Nevertheless, the proposed solar arrays would be relatively modest in mass and footprint and would be spaced out at regular intervals reducing the overall scale of the development. Furthermore, the scheme would be in place for a temporary 40-year period. It would then be fully demounted, and land returned to its former condition, at the end of its use. As such, whilst 40 years is a long period of time, it is not permanent. Therefore, the impact on the openness of the Green Belt would be reduced with the site ultimately reinstated to its

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<sup>3</sup> Paragraph 137 of the National Planning Policy Framework

former open character. Consequently, both visually and spatially, the proposed development would result in moderate harm to the openness of the Green Belt.

15. Paragraph 138 of the Framework defines the five key purposes of the Green Belt. These are to check unrestricted sprawl of large built-up areas, prevent neighbouring towns merging, safeguard the countryside from encroachment, preserve the setting of historic towns and assist in urban regeneration (by encouraging the reuse of urban land). It was agreed between main parties at the Hearing that historic towns would be unaffected. Furthermore, despite the comments of the Council I am unconvinced that the proposal would contribute towards urban sprawl or towns merging as the site is not close to a built-up area. Nevertheless, the proposal could result in encroachment and would not contribute to the reuse of urban land.
16. In terms of encroachment, the proposed scheme would place a large number of solar arrays across six fields. Their operation would be supported by consumer units and a main compound. Although maintaining some space between them, the arrays and associated equipment would fundamentally alter the appearance of the fields. These would alter from a sequence of open green spaces to accommodating solar equipment that would be interspersed with retained field boundaries. Such an effect would result in encroachment, in contradiction of a Green Belt purpose.
17. A further purpose of the Green Belt is to deflect new development towards previously developed land (PDL) to assist in urban regeneration. At the Hearing the Appellants stated that it would not be cost effective to locate such a use on PDL due to land values and rates of return. Accepting this I am also unconvinced that the reuse of PDL for such a scheme would secure the most efficient or optimum reuse of such land for a temporary period of time. Accordingly, the proposal would not be in conflict with this purpose of the Green Belt.
18. The proposal, as inappropriate development, would by definition harm the Green Belt. It would result in encroachment and moderate harm to the openness of the Green Belt in both visual and spatial terms. Accordingly, the proposed development would conflict with policies DM6 and DM10 of the Chelmsford Local Plan (LP) and the Framework. These seek to resist inappropriate development and only allow engineering operations that would preserve openness and not conflict with the purposes of including land within the Green Belt. All harm to the Green Belt carries substantial weight.

#### *Heritage Assets*

19. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, when considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or setting or any features of special architectural interest which it possesses. The Framework defines the setting of a heritage asset as the surroundings in which the asset is experienced.
20. The proposal has the capability to affect a range of designated and non-designated heritage assets found around the site. These are identified within

the Appellant's Heritage Assessment<sup>4</sup> as including eight listed buildings and forty non-designated Heritage Assets (NDHAs). Four of these are identified as having an adverse effect on their settings. The setting of a heritage asset is not fixed and may change as the asset and its surroundings evolve. Guidance from Historic England explains that the extent and importance of setting is often expressed in visual terms but may also include other matters including our understanding of the historic relationship between places<sup>5</sup>.

21. The Church of St Mary and St Edward, a Grade II\* listed building, is on the north side of Church Road set away from the highway, within West Hanningfield. It originates from the 12<sup>th</sup> century with 14<sup>th</sup> century additions including a timber frame belfry. It was also extended in the 18<sup>th</sup> and 19<sup>th</sup> centuries. The church consists of various facing materials providing an interesting if slightly eclectic appearance. Its significance derives from its intact historic fabric and the architectural interest of its unusual medieval belfry, and its spatial relationship with the surrounding village. It's setting includes the surrounding agricultural land to the north and south and include it's approach from Church Road.
22. However, due to the recessed nature of the building from Church Road and the site's relationship with surrounding built form, intervisibility between the listed building and its grounds and site would be highly restricted. Furthermore, whilst having a social and functional relationship with the surrounding countryside, there is nothing before me to indicate that the appeal site makes a specific or important contribution to its setting. As a result, the proposal would preserve the setting of this listed building and would not harm its significance.
23. Church House, a Grade II listed building, is a timber framed, plastered house that originates from the 18<sup>th</sup> century. It is a large two-storey dwelling with white rendered walls, clay roof tiles and brick stacks. Its significance appears to derive from its relationship with the adjacent church, its use of traditional materials located within a rural setting. Views from the front of the dwelling, over Church Road, take in fields and parts of the appeal site. Field boundaries and rising topography screen most of the site. Therefore, the site makes a limited contribution to the setting of the listed building. The proposal would also be largely screened from this vantage offering only distant views of the eastern part of the solar farm and boundary related features. The surrounding farmland contributes to its setting, but I am unconvinced that the appeal site itself makes a significant contribution to this. Due to the substantial separation distance, field boundary screening and topographical features, I am unconvinced that the proposal would result in any harm to the setting of Church House, which would accordingly preserve its significance.
24. The proposal would preserve the significance of the two identified listed buildings and would therefore accord with S66 of the Act. It would therefore comply with LP policy DM13, which requires proposed development within the setting of a listed building to not adversely affect its significance, including views to and from the building.
25. Cobb Cottage, a NDHA, was initially constructed as a pair of cottages in the C19 and has since been combined into one dwelling. It's significance appears to derive from its former use as a pair of agricultural worker's dwellings and being

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<sup>4</sup> Historic Environment Desk-Based Assessment, by AECOM, dated February 2021

<sup>5</sup> Historic England – The Setting of Heritage Assets 2015

of a traditional agrarian style of farmstead. Its surrounding fields make a contribution to its setting as its rear elevation overlooks the surrounding open countryside. Views from this dwelling would be similar to those from Church House affording distant views of a small part of the proposal. Although nearer to the appeal site, than Church House, its significance is reduced. Accordingly, the setting of Cobb Cottage would only experience limited change, that would not affect the significance of this NDHA.

26. Hophedges, a NDHA, is a cottage adjacent to the north boundary of the site. It appears on the village map in 1840. It is a white render cottage with weatherboarding, decorative dormers and a central brick stack. Its significance appears to derive from its historic interest and traditional agrarian character within a countryside setting. The rear elevation of the dwelling is adjacent to a field with the appeal site including the adjacent field beyond. An access track is proposed beyond the boundary hedge, with solar arrays proposed in the far corner of this adjacent field, around 750 metres from the NDHA. The closest part of the appeal site therefore makes a small contribution to the setting of the NDHA being within its local context. Furthermore, occupiers of this dwelling would be likely to experience some views of the proposal from first floor windows, albeit over a significant distance. Due to the close proximity of the scheme to the NDHA, and its intervisibility, the proposal would result in harm to its setting during the construction and operation of the proposal, albeit limited. Accordingly, this change to the setting of the building would amount to harm at the lower end of such harm.
27. The Framework states that when considering harm to NDHAs a balanced judgement will be required having regard to the scale of any harm and the significance of the asset. The impact of the proposal would cause limited harm to the significance of a non-designated asset, being an asset of lower importance. The negligible harm conveyed to the NDHA would be offset by the separation distance to the track and operational site beyond, existing screening and the merits conveyed through the generation of renewable energy. Accordingly, the proposal would also comply with LP policy DM14, where harm to the significance of a non-designated heritage asset, must be justified following a balanced judgement.

### *Landscape and Visual Impact*

28. Both main parties acknowledge that the proposal would result in harm to the character and appearance of the area. However, there is a distinction to be made between impact on landscape, which should be treated as a resource, and impact on visual amenity, which is the effect on people observing the development in places where it can be viewed, such as from roads, public rights of way and individual dwellings.

#### *Landscape character*

29. The appeal site consists of six fields, the site and surrounding fields are used for a range of arable and pastoral purposes. The fields within the site are arranged in a cluster around the A130 and Canon Barns Road. Purely for convenience I shall refer to the various fields using the numbering convention found in the Appellant's Zoning Layout Plan<sup>6</sup> that refers to Development Zones (DZs).

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<sup>6</sup> drawing number LCS039-DZ-01 revision 10

30. The site includes one field to the east of the A130 (DZs 4 and 6) with the remainder of the site being to the west of this highway, in two similar sized parcels. These are to the north (DZs 1, 2, 3, and 5) and south (DZ 7) of Canon Barns Road. The site is bound partly along its western boundary by a row of electricity pylons, that generally follow a ridge line, and the Essex and Suffolk Waters Hanningfield Water Treatment Works. Also, the A130 follows a shallow valley floor alongside and through the site. Consequently, the site's undulating landform includes a number of relatively substantial man-made interventions.
31. The site is within Natural England's National Character Area 111: Northern Thames Basin, including woodlands, mixed farming and arable land. The site is also within the South Essex Farmlands area E1, within the County Council's character assessment. This is defined as consisting of small to medium sized arable and pastoral fields where tall thick boundary hedges contribute to an enclosed character. It is notable that this also recognises that overhead pylons and major roads visually interrupt the landscape.
32. At a district level, the site is within the South Hanningfield Wooded Farmland: F11<sup>7</sup> in the Council's Landscape Character Assessment. This area is described as consisting of undulating farmland of medium to large arable fields that include hedged field boundaries and wooded horizons. The site is also adjacent to the East Hanningfield Woodland Farmland character area: F12. This is defined as having large arable fields, pockets of pony and pasture paddocks and mature treed field boundaries. The appeal site appears to generally align with these character assessments, especially F11, and therefore makes a positive contribution towards the landscape character.
33. The pattern and arrangement of character area F11 form low-lying land with elevated ridges. This area is largely to the north and east of the site on gradually climbing land. The A130 passes through the landscape along embankments and cuttings, with the adjacent reservoir and its associated buildings and pylons adding to the features evident within the area. The proposed development would locate solar arrays within the existing field pattern. It would retain and enhance field boundaries, leaving most wooded areas. It would retain the structure of field boundaries and keep field patterns intact. As such, the proposal would have a largely non-invasive impact on the landscape features defined as important to the character areas.
34. The appeal site, whilst relatively extensive, represents only a small proportion of the national and county character areas. At a district level, the impact on the landscape would be greater, but as the existing natural features of the site would be largely retained and enhanced, the overall landscape effect would be limited. Furthermore, the solar arrays would be low-lying, open sided features that would be temporary in nature, limiting the overall effect on the wider landscape. However, the proposed development would alter the landscape with the introduction of industrial development and equipment across a relatively broad area. Therefore, this would result in some localised landscape harm. As a consequence, the scheme would result in a moderate adverse impact on the area's landscape character.

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<sup>7</sup> Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessment

### Visual Impact

35. Visual amenity relates to the direct visual impacts on receptors (people) rather than on the landscape. The Appellant's visual assessment was undertaken in December when leaves from deciduous trees would have fallen, offering a 'worst case scenario' of views through the site, when the site would be at its most exposed. Equally, my visit was undertaken at a similar time of the year enabling a similar useful assessment of the visual effects of the proposal to be most appreciated. The Appellant's Landscape and Visual Impact Assessment<sup>8</sup> (LVIA) and its Addendum<sup>9</sup> identify 33 viewpoints which assess the effect of the scheme on Visual Receptors (VRs). The viewpoints have been accepted by the council as being the most significant in understanding the visual effects of the proposal. These selected viewpoints provide only a snapshot of the site and would not necessarily reflect the experience of receptors walking through or around the site.
36. Figure 4 of the LVIA, shows the theoretical visibility of the scheme demonstrating that the majority of views outside the site would be from an arc from the northwest through to the east. In a southern arc around the site, from the west to the southeast, woodland and topography obscure most views. The LVIA considers the visual effects of the proposal both at year one and at year ten, the second assessment taking into account the growth of proposed landscape screening as it approaches maturity.
37. The general topography of the site, and its surroundings, provide screening from many wider views forming a degree of enclosure. Furthermore, man-made features also obscure some views of the site, such as by the embankments of Canon Barns Road and Church Road. The combination of these features would disaggregate and limit some views of the site.
38. The local roads and the A130 provide visual receptors from motorists that have a low sensitivity to change. Road users would primarily be paying due care and attention to other road users and hazards, taking in only limited glimpses of the site, resulting in only negligible adverse visual effect. Motorists of Southend Road (VR6a), Pan Lane (VR5) and Church Road (VR19 and VR21) would be travelling closer to the site and would have the opportunity to take in more of the area affected by development. Nevertheless, such views would result in only a 'minor adverse' effect in the first year, leading to 'negligible adverse' effects (for VR6a, VR19 and VR21) and 'neutral' effects (VR5) at year ten. The view of the scheme from motorists would be largely fleeting and offer only partially glimpsed views of constrained sections of the arrays and equipment. As such, the visual impact on motorists would be of low magnitude, resulting in only 'minor adverse' and 'neutral' effects.
39. Views of the proposal, from the northwest of the site and West Hanningfield, would be limited. Viewpoint VR18, for users of the Public Right of Way (PRoW) 236\_26 and for residents of West Hanningfield (VR18a), southeast views take in fields and hedgerow planting and a ridgeline to the east. These features would limit most views of the solar arrays and their associated equipment. These viewpoints would experience only a small portion of the solar arrays, the fencing and CCTV columns that would enclose, and be within, area DZ2. Once

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<sup>8</sup> Landscape and Visual Impact Assessment, by AECOM, February 2021

<sup>9</sup> Landscape and Visual Impact Assessment, by AECOM, September 2021

- the proposed hedgerow screening has developed, after 10 years, the effect of such views would move from 'minor adverse' to 'negligible adverse'.
40. Views from VR26, on PRoW 236\_36 looking southeast towards the site, would be similar to VR18 and VR18a, albeit closer to the site. These would also provide views of the edge of the solar array farm, only seeing those elements within area DZ2. This viewpoint would initially result in a 'moderate adverse' effect but would lessen over time. I am unconvinced that after 10 years this effect would remain 'moderate adverse'. The substation would be discreet beyond the ridgeline, with only boundary fencing and CCTV columns being evident in the distance behind the established landscape screening. Consequently, the visual effect after this period would be 'minor adverse' only after 10 years.
  41. VR20a considers the rear view for occupiers of Hophedges. The SoCG identified that this VR point was in dispute, but the Council withdrew its dispute at the Hearing, but raised concerns due to the visual effect of the use of the access track. Vehicles using the access track would be infrequent based on the use of the site and as such the overall effect of the development on occupiers would be negligible. Accordingly, given the proximity and scale of existing tree and hedgerow screening views of the proposal from this vantage would be neutral.
  42. Views from VR23 and VR24 look south towards the northern edge of the site, towards area DZ1. These take in viewpoints from walkers using PRoW 236\_47. The addendum shows that these views would remain largely unchanged. The visual effect from these views would change from 'minor adverse' initially to 'minor adverse' and 'negligible adverse' effects respectively after 10 years.
  43. The views from VR3 and VR3a, by users of PRoW 218\_7 and occupiers of Hill Farm and Dunnock Cottage, are elevated and look down towards the site to the southwest. These take in the eastern and northern parts of the site in a wide context with the fields of Hill Farm and the A130 forming the fore ground and middle views respectively. Much of the development zones would be screened by field boundary landscaping and the bridge and road embankments of Church Road and Cano Barns Road where these cross the A130. The effect on the view to VRs would initially be 'minor adverse'. With landscaping developing over future years this effect would reduce to 'negligible adverse' after ten years. Even if parts of the solar farm remained visible these would be likely to be seen as small parcels of development, interspersed by field boundaries and the established new landscaping, within distant views. The impact on these would therefore be 'negligible' after 10 years.
  44. Walkers, cyclists and horse riders, among other slow moving road users, using local roads would be highly sensitive to change. However, such views would only experience small pockets of the proposal and would not provide a broad perception of most of the scheme. These views would also be partially obscured by topography and natural screening that would limit the overall visual effect of the scheme from 'minor adverse' in year one to 'negligible' in year ten.
  45. The site is crossed by a number of public rights of way (PRoW). PRoW 218\_12 runs through the north and south parcels of the site either side of Canon Barns Road. The PRoW of 236\_36 comes into the site from the northwest and runs between DZ2. Also, PRoW 218\_15 connects to 236\_36 and runs through the middle and side of the north parcels (DZs 1, 3 and 5). The PRoWs that cross the site cut through several fields and follow the perimeter of others within the

site. Users of these routes through the site currently enjoy an open aspect over the countryside. However, PRow 218\_12 exits the site to the west runs alongside the waterworks between tall hedges. This is within a relatively narrow walkway in an enclosed route.

46. VR27, on PRow 218\_15, assesses the typical effect of the proposed development on walkers from inside the site. These would be highly sensitive to visual change. Views of the scheme, from the routes that cross through the site, would fundamentally change from the current outlook over open arable land. The effect on users would be 'major adverse' in the first year. However, the sense of enclosure would partially replicate the effect of other sections of this route. Therefore, whilst views from the PRows through the site would become more enclosed, the visual impact on users of the PRows would be reduced to 'moderately adverse' by year ten.
47. A fence up to 5 metres high alongside the A130, has been offered by the Appellant to remove the Council's concerns with respect to glint and glare. In some viewpoints this would result in initial visual effects being diminished. The fence would screen the arrays, especially from views VR6 and VR7 from Southend Road. Accordingly, the proposed fence if deemed necessary, would moderate visual benefits of the proposal in screening some views.
48. Taking the above visual affects into account, most views of the proposal would be 'minor' or 'negligible' by year 10. Whilst the visual impacts of the proposal would be 'major adverse' from the PRow from Visual Receptors through the site, these effects would be diminished to 'minor adverse' once the landscape screening has become established. Consequently, due to the arrangement of local topography the most adverse visual effects would be largely confined to localised effects only. Accordingly, taking all of the above impacts into consideration the visual impact of the proposal would result in moderate harm.

#### Cumulative visual and landscape effects

49. The proposal would be close to the two recently approved solar farms at Canon Barns Road and Hill Farm. Table 4-A, of the addendum LVIA, considers the cumulative visual effects from these viewpoints. The addendum shows how the visual effect from two viewpoints, VR9 and VR29, would change in cumulative terms. Viewpoint VR9, from Canon Barns Road, shows the eastern part of the scheme with the Hill Farm and Canon Barns sites having a 'moderate adverse' visual effect on this view. Viewpoint VR29, from Pans Lane, shows parts of the Hill Farm and Canon Barns sites but also illustrates that the proposed scheme itself would not be visible.
50. Accordingly, the LVIA demonstrates that the cumulative visual effects of all three sites would increase the visual effects of most views from 'negligible' impact to 'minor adverse'. Consequently, in most wider views, the proposal would not materially contribute to a cumulative visual effect of these sites. Accordingly, the overall visual effects of all three sites would be limited and would not substantially increase the visual effect of the scheme from moderately harmful.
51. As has been found above, the proposal itself would only result in localised and a 'moderate adverse' effect on the landscape, for the 40-year duration of the proposed development. The cumulative effect of the development on the landscape, in combination with the two approved schemes, would be greater.

Nevertheless, the combined effect, would only have a further limited adverse impact on the landscape character. Accordingly, the overall effect on the landscape character would remain as a 'moderate adverse' effect in this geographic context.

52. Consequently, despite its overall scale, the proposal would result in a 'moderate adverse' effect on the landscape character and moderate harm to the visual appearance of the area. In identifying harm, the proposal would conflict with LP policies DM6, DM10 and DM19, the Council's Solar Farm SPD and the Framework. These seek, among other matters, for development to not result in an unacceptable visual impact which would be harmful to the character of the area and to protect valued landscapes, to which I attribute moderate weight in the planning balance.

#### *Effect on arable land*

53. Paragraph 174(b), of the Framework, places value on recognising the intrinsic character and beauty of the countryside including the best and most versatile agricultural land. The Framework's Glossary defines Best and Most versatile (BMV) agricultural land as being land in grades 1, 2 and 3a. Most of the site would not qualify as BMV by this categorisation. Nevertheless, it is recognised that the site provides arable value. It would no longer be capable of providing such a function. Also, I recognise that the Appellant suggests that the site could be used for sheep grazing, but such an activity would be unlikely to fully offset the sites current capability for agricultural use.
54. The Appellant's Agricultural Land Assessment has considered the range of crops that can be grown, the type and consistency of yield and the cost of producing the crop. This has found that the appeal site mainly consists of grade 3b agricultural land. Only a small parcel (of two hectares) was identified as being 3a agricultural land. The methodology and findings of the Assessment has not been disputed by the Council.
55. The PPG<sup>10</sup> requires local planning authorities to aim to protect BMV agricultural land from significant, inappropriate or unsustainable development proposals. The Council's Solar Farm SPD also advises that such development should first favour the use of previously developed land and arable land graded as 3b, 4 or 5. Nevertheless, as the significant majority of the site does not meet a BMV classification, the loss of the small parcel of 3a graded arable land is attributed minor harm in the planning balance.

#### *Integrity of the SPA*

56. Natural England identifies that the proposal could have potential significant effects on Crouch and Roach Estuaries (Mid Essex Phase 3) Special Protection Area (SPA) and Ramsar, Crouch and Roach Estuaries Site of Special Scientific Interest (SSSI) and Hanningfield Reservoir SSSI.
57. The site is around 4.7km from the SPA. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations) and is a wetland of international importance. The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA, either alone or in combination with other

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<sup>10</sup> Guide to assessing development proposals on agricultural land, 2021

- plans and projects. In 2018, the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA), rather than at the screening stage<sup>11</sup>.
58. Evidence shows that the SPA is used by a large number of skylark and corn bunting birds. Wintering dark-bellied brent geese, black-tailed godwit, shelduck and shoveler birds also regularly visit the SPA in nationally important numbers. In addition, the mud along the Crouch and Roach is used by redshank and dunlin for feeding and as a roosting site for lapwing and golden plover.
59. The site is also around 250 metres from the Hanningfield Reservoir SSSI. Its main scientific interest derives from its breeding and wintering wildfowl including Gadwall, Pochard, Shoveler, Teal, Tufted Duck and Shelduck.
60. The Appellant's Ornithological Survey<sup>12</sup> Report demonstrates that 46 species of wintering birds and 51 species of breeding birds visit the site. This includes small numbers of little egret, skylark and black-headed gull which are waterbird species found within the SPA. The Ornithological Report has concluded that the distance between the SPA and the Site, the absence of wetland habitat on site and the abundance of similar farmland habitat between the sites indicates that the site is not especially important to the populations of these birds occurring within the SPA. These seem to be reasonable conclusions and although the proposal would affect the integrity of the SPA, this effect would be limited.
61. The Appellant's Skylark Mitigation Strategy<sup>13</sup> seeks to deliver long term habitats for the territories of skylark found on site, both during breeding and non-breeding seasons. These would include tightly mown plots, unmanaged grassland areas and cover-crops within the mitigation areas. This approach would ensure that the site would maintain a succession of occupation and productivity of the population of skylark as identified on site. The proposal would therefore minimise any direct impact on skylarks.
62. In assessment of the Council's AA, Natural England has concluded that the integrity of the SPA<sup>14</sup> would not be adversely affected subject to the proposed mitigation within the Ornithological survey and Skylark Mitigation Strategy. I see no reason to disagree with this conclusion. Therefore, I am satisfied, based on the specific evidence before me, that a condition requiring the mitigation measures detailed in the surveys would prevent an adverse effect on the integrity of the SPA.
63. I therefore conclude through my AA that, with the provided mitigation, the proposal would not harm the integrity of the SPA and accord with the Habitat Regulations. I am also satisfied that the mitigation offered to address the adverse effects on the SPA and Ramsar site would mitigate the effects of development on the identified SSSIs.

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<sup>11</sup> People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

<sup>12</sup> AECOM Ornithological Survey Report, June 2021

<sup>13</sup> Skylark Mitigation - Technical note, by AECOM, date 20 October 2021

<sup>14</sup> Natural England letter dated 7 October 2021

## **Other matters**

### *Flooding*

64. The Appellant's Flood Risk Assessment<sup>15</sup> identifies that most of the site is within flood zone 1. A small section is in flood zone 3a, alongside Sandon Brook, although no work is proposed within it. The Assessment finds that rainfall falling on solar panels would runoff at an angle and result in a small increase in post development run-off rates. To account for the extra volume a sustainable drainage system (SUDs) would be installed. The proposed drainage system would reduce current run-off rates from the site resulting in betterment over the existing drainage arrangements.
65. The County's SUDs team raised no objection to the proposal subject to the provision of a sustainable urban drainage strategy. As such, despite the concerns raised by interested parties that the development would increase off-site flooding especially onto Church Road, I see no compelling evidence that any off-site flooding would be exacerbated by the proposal. Consequently, the scheme would accord with the requirements of LP policy DM18.

### *Wildlife impacts*

66. The fields within the appeal site are enclosed by hedgerows that include trees within the field boundaries. The hedgerows provide habitats for a diverse range of avian wildlife including hobby and barn owls and 12 priority bird species including skylark, thrush and yellow hammers. Whilst the hedgerows are considered to be a high value resource, the fields are of limited ecological interest being used as a combination of arable farmland and pastoral. The Appellant's desk based Ecological Assessment<sup>16</sup> and associated surveys conclude that the effects on wildlife would be limited, and these could be mitigated through the preparation of a landscape and ecological management plan and a construction environmental management plan, both of which could be secured by condition.
67. In terms of bats, a bat survey identified that certain trees on site could offer suitable habitat. As these trees are proposed for retention, bats species would not be affected by the proposal. In terms of badgers, the submitted survey has been considered by the Council's ecologist and the required mitigation measures can be incorporated into an ecological management plan. A pond near Link House Farm has been found to include Great Crested Newts, a low impact class license would be required to be obtained from Natural England due to the proximity of this to the site.
68. The proposal includes new planting in the form of enhanced hedgerows both around the perimeter of the site, especially along the A130 corridor, and adjacent to the PRoWs that cross the site. The tree and species rich hedgerow planting, including reinforcement of existing hedging, would enhance the existing planting within the site and its wildlife value. Wild green grassland and new planting corridors would also be provided around the margins of the fenced area enhancing foraging routes.

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<sup>15</sup> Flood Risk Assessment and Drainage Strategy, by AECOM, dated February 2021

<sup>16</sup> By Aecom, dated February 2021

69. The Bio-diversity Assessment<sup>17</sup> concludes that the proposal would exceed the 10% bio-diversity net gain objective of upcoming legislation. The proposal would result in a loss of 33% river unit habitat, due to the encroachment of the access route into the 10m riparian zone of the Sandon Brook. Nevertheless, the access route could be partially adjusted when the final layout of the site is agreed by condition and the effect further reduced by habitat enhancement that could be secured by condition. Overall, the proposal would result in a net bio-diversity gain of around 82% habitat units and 29% hedgerow units which would be of significant benefit to the wildlife within the area. A condition for a landscape scheme could be used to determine compliance with the biodiversity net gain metric to ensure it would deliver and manage the calculated gains in perpetuity.
70. Interested parties have identified that the proposal would reduce routes through the site used by large mammals, such as deer. Large mammals, traversing the site, have not been identified as using the site through the ecological assessment and surveys undertaken. However, whether present or not, I am unconvinced that the site offers a particularly important route through the area. Furthermore, the proposal would retain the ability to accommodate some routes through the site for wildlife where within the landscape scheme that could be secured by planning condition.

#### *Highway safety*

71. The proposal includes six access points, four of which would be from Canon Barns Road. These would be used for construction access and then post construction occasionally used for maintenance purposes. The access into the site from Church Road would be for emergencies and to access the substation. Church Road is a single carriageway road with a 60mph speed restriction and is unlit. It also has limited passing points but has no recorded collisions within the prescribed study period. Speed analysis data has shown that actual recorded speeds are around 48mph and the proposed visibility splays, at the access, would enable safe egress and access in this context.
72. The Appellant's Transport Statement<sup>18</sup> demonstrates that the proposal would generate a relatively low level of vehicular activity, with a nominal number of movements of four two-way vehicle trips a week. As such, due to the nature of the use, traffic associated with the operation of the facility would be light and infrequent. I am therefore satisfied that the use would operate without detriment to highway safety, a point supported by the County's Highway Authority.

#### *Security matters*

73. Essex Police has identified that solar farms, within other parts of the country, have been the target of theft<sup>19</sup>. The proposal would include security fencing and CCTV to attempt to protect the site and combat criminal activity. Interested parties have raised concerns that the proposal security measures would be ineffective to deter crime. Although recognising these concerns, there is no compelling evidence that the proposal would be especially vulnerable to theft, that the Appellants security measures would be ineffective or that the proposed

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<sup>17</sup> By Aecom, dated September 2021

<sup>18</sup> Transport Statement, Low Carbon, February 2021

<sup>19</sup> Essex Police – Design out Crime Team, Mr Stephen Armson-Smith, 22/03/21

scheme would raise criminal activity in the area. Furthermore, this could be suitably addressed through agreement of the specification of robust boundary treatment and CCTV coverage by planning condition.

74. The CCTV cameras would be a significant distance from the nearest residential properties. Consequently, I am unconvinced that these would be capable of substantive overlooking into private spaces. Furthermore, this matter could be further mitigated through a planning condition, with respect to camera views, if deemed necessary by the Council.
75. Other concerns raised by interested parties, such as the health effects of the production of solar panels and operation of solar farms, and its impact on local property values are noted but do not have a material bearing on the main issues associated with this appeal.

### **Other Considerations**

#### *Renewable energy*

76. A material consideration in the determination of planning proposals for renewable energy are the National Policy Statements (NPS) for the delivery of major energy infrastructure. The NPSs recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. In September 2021, draft updates to the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) were published.
77. The draft NPS EN-3 states that:
- "solar farms are one of the most established renewable energy technologies in the UK and the cheapest form of electricity generation worldwide. Solar farms can be built quickly and, coupled with consistent reductions in the cost of materials and improvements in the efficiency of panels, large scale solar is now viable in some cases to deploy subsidy free and little to no extra cost to the consumer."*
78. Both the existing and proposed NPSs state that the NPSs can be a material consideration in decision making on applications that both exceed or sit under the thresholds for nationally significant projects.
79. The UK Government has declared a climate emergency and set a statutory target of achieving net zero emissions by 2050, and this is also a material consideration. Since the declaration, the Sixth Assessment Report of the Intergovernmental Panel on Climate Change has indicated that there is a greater than 50% chance that global temperature increases will exceed 1.5 degrees Celsius above pre-industrial levels. The report indicates that delay in global action to address climate change will miss a rapidly narrowing window of opportunity to secure a liveable and sustainable future for all<sup>20</sup>.
80. The UK Energy White Paper, Powering our Net Zero Future (2020), describes the costs of inaction as follows:
- "We can expect to see severe impacts under 3°C of warming. Globally, the chances of there being a major heatwave in any given year would increase to about 79%, compared to a 5% chance now. Many regions of the world would*

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<sup>20</sup> IPCC Sixth Assessment Report - Summary for Policymakers, paragraph D.5.3

*see what is now considered a 1-in-100-year drought happening every two to five years.*

*At 3°C of global warming, the UK is expected to be significantly affected, seeing sea level rise of up to 0.83 m. River flooding would cause twice as much economic damage and affect twice as many people, compared to today, while by 2050, up to 7,000 people could die every year due to heat, compared to approximately 2,000 today. And, without action now, we cannot rule out 4°C of warming by the end of the century, with real risks of higher warming than that. A warming of 4°C would increase the risk of passing thresholds that would result in large scale and irreversible changes to the global climate, including large-scale methane release from thawing permafrost and the collapse of the Atlantic Meridional Overturning Circulation. The loss of ice sheets could result in multi-metre rises in sea level on time scales of a century to millennia.”*

81. The draft NSPs recognise that to meet the Government’s objectives and targets for net zero by 2050, significant large and small scale energy infrastructure is required. This includes the need to ‘dramatically increase the volume of energy supplied from low carbon sources’ and reduce the amount provided by fossil fuels. Solar and wind are recognised specifically in Draft EN-1 (para 3.3.21) as being the lowest cost way of generating electricity and that by 2050, secure, reliable, affordable, net zero energy systems are ‘likely to be composed predominantly of wind and solar’. The Government aims by 2030 to quadruple offshore wind capacity so as to generate more power than all homes use today. This would therefore be delivered in collaboration with solar energy, and other measures, to provide a robust supply.
82. Planning Practice Guidance (PPG), on renewable and low carbon energy, states that ‘there are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology and critically, the potential impacts on the local environment, including from cumulative impacts.’<sup>21</sup>
83. The Framework explains that when dealing with planning applications, planning authorities should not require a developer to demonstrate a need for low carbon or renewable energy projects, and should recognise that even small-scale projects can help reduce greenhouse gas emissions. Paragraph 158(b) also explains that such schemes should be approved if any impacts are, or can be made, acceptable. Furthermore, it identifies once areas have been identified for such projects, by local authorities in local plans, any subsequent applications should demonstrate how they would meet the criteria used in identifying suitable locations.
84. The Council has not allocated any sites for renewable energy schemes in the district. However, it’s Solar Farm Development – Supplementary Planning Document-2021 (SPD) includes locational principles that guide its consideration of suitable sites. Paragraph 8.2 requires solar farms in the Green Belt to demonstrate very special circumstances and, among other matters, to not adversely impact on the identified character and beauty of the Rural Area. Paragraph 5.5 reiterates guidance of the Framework in identifying that Very Special Circumstances may include wider environmental benefits associated with the production of energy from renewable sources.

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<sup>21</sup> PPG, Paragraph: 005 Reference ID: 5-005-20150618

85. The approved Cannon Barns site was allowed in the Green Belt. The Council found that the benefits of renewable energy would outweigh the harm to the openness of the Green Belt, the low level of 'less than substantial' harm to heritage assets and the modest harm to landscape character. Whilst each case must be considered on its own merits, this recent decision provides a useful insight into the weight the Council has applied in the past to renewable energy projects in the Green Belt.
86. The proposed solar farm is substantially larger than the Canon Barns site, with clear contextual differences. Nevertheless, it is plainly evident that a larger site, such as the current proposal that may have a greater impact, would also deliver a greater level of power output thus making a greater contribution towards the production of renewable energy. This benefit weighs strongly in favour of the scheme.

### **Planning balance**

87. I have concluded that the appeal scheme would result in harm to the Green Belt from inappropriateness and loss of openness, to which I afford substantial weight. Furthermore, the proposal would also result in moderate harm to the landscape character and convey moderate visual harm to the area. The proposal would also convey limited harm to the loss of a small proportion of BMV arable land, attracting limited adverse weight. The limited harm identified to the NDHA would be outweighed by the public benefits of the proposal. Nevertheless, for the purpose of my overall planning balance this harm contributes to the adverse effects of the proposal.
88. The proposed scheme would not harm the integrity of the SPA, weighing neither for nor against the proposal. Furthermore, the other matters identified raise issues that either result in no harm or raise technical matters that could be adequately addressed through the imposition of appropriate conditions to negate the harm.
89. Conversely, the proposal would deliver a renewable energy facility that would create up to 49.9MW of power. This would provide power for around 16,581 households, result in a carbon dioxide displacement of around 11,210 tonnes per annum and therefore help combat climate change. The appeal site, whilst large is relatively unobtrusive, within a depression of land that prevents most wide views of the site to be experienced. The surrounding landscape also includes a range of man-made interventions. These features enable the area to accommodate a degree of change where other locally approved solar farms would contribute to the visual evolution of the appearance of the area.
90. The Framework identifies that many renewable energy projects in the Green Belt will comprise inappropriate development. In such cases, developers will need to demonstrate very special circumstances which could include the wider environmental benefits associated with the increased production of energy from renewable sources. Whilst this lends support for renewable projects in the Green Belt it does not confer an automatic approval of such schemes, where the effects of such development must take into account a broad range of issues in mind of the general presumption against inappropriate development and the resultant substantial harm conveyed to the Green Belt by this.

91. The benefits of renewable energy raise substantial benefits in favour of the proposal. These benefits are recognised in the Council's local policies and guidance and national policy in accordance with the Climate Change Act of 2008. It is also clearly identified, in Section 14 of the Framework, where it seeks to increase the use and supply of renewable and low-cost energy and to maximise the potential for suitable such development. The delivery of suitable renewable energy projects is fundamental to facilitate the country's transition to a low carbon future in a changing climate.
92. Also, a solar farm requires grid capacity and a viable connection to operate. As such, this requirement places a locational restriction on site selection that limits the number of appropriate sites for such a facility. The Appellant explains that the national grid suffers capacity difficulties and limits suitable points of connection. The Appellant proposes to connect to the adjacent electrical pylons placing the site in an advantageous location satisfying the connection constraints that exist. The Appellant has therefore demonstrated that a rational approach was taken to site selection lending support for the selected site.
93. Accordingly, the public benefits of the proposal are of sufficient magnitude to outweigh the substantial harm found to the Green Belt and all other harm identified above. These benefits identified attract very substantial weight in favour of the scheme. In this context, the harm to the Green Belt would be clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development exist. Accordingly, the proposal would satisfy the local and national Green Belt policies I have already outlined.

### **Conditions**

94. I have considered the use of conditions in line with the guidance set out in the PPG. I shall take the conditions within the agreed SoCG into consideration and impose these with some amendments and adjustments for clarity.
95. A number of conditions are necessary that relate to the submission of details prior to the commencement of development. These seek details relating to the specific placement of equipment on site, a landscape scheme, temporary fencing, arboricultural method statement, soil management plan, archaeological investigation and definition of exclusion zones, construction ecological management plan, construction traffic management plan and a surface water drainage strategy. I consider these pre-commencement conditions to be so fundamental to the development that it would have been otherwise necessary to refuse permission. These details are required at a pre-commencement stage as they relate to matters that may influence the configuration of equipment on site and relate to its initial setting out.
96. I have imposed the standard conditions with respect to timeframe and approved plans as advised by the PPG for clarity and certainty. Conditions are also necessary to determine the precise location of the equipment, grant only a temporary consent, establish a decommissioning strategy, decommissioning in the event of early closure of the facility and to require notification as to when power provision begins. These conditions would be required to manage the overall landscape impact of the development and comply with LP policy DM19.
97. Conditions are necessary with respect to the provision of a landscape planting scheme, an ecological management plan, construction ecological plan, to

prevent the installation of external lighting, breeding bird mitigation and monitoring strategy and arboricultural method statement in the interests of the character and appearance of the area and to ensure the delivery of a net gain to Biodiversity.

98. It is necessary to require details of boundary treatment and the proposed CCTV system to ensure the proposed works integrate well with their surroundings.
99. During the Hearing the Council explained that it would also require a condition for temporary fencing to prevent glint and glare to motorists. I acknowledge that there is no clear evidence before me that clearly demonstrates that solar farms cause glint and glare that might contribute towards accidents. Nevertheless, the County Highway Engineer's evidence illustrates that some motorists have stated, in accident reports, that dazzle was a distracting component. Therefore, despite the solar panels not being especially reflective, I find that a requirement for screening would be necessary due to the site's proximity to the A130 and the extent of panels that would otherwise be visible from this vantage. Accordingly, this condition would be necessary in the interests of highway safety.
100. It is also necessary for the submission of a construction traffic management plan, site access point specifications and for hardstanding around the accesses to be hard bound, all in the interests of highway safety. Furthermore, conditions are necessary to satisfy the archaeological interests of the site and to define any localised exclusion zones in accordance with LP policy DM15.
101. It is also necessary for the provision of a surface water drainage strategy and its maintenance plan to ensure that a SUDs scheme is installed to mitigate against any flood risk. Furthermore, a condition would be required to ensure that a soil management plan is submitted to manage soil compaction, water runoff and drainage.

### **Conclusion**

102. For the above reasons, the appeal is allowed, and planning permission is granted subject to the conditions within the attached schedule.

*Ben Plenty*

INSPECTOR

## APPEARANCES

### For the Appellant;

Thomas Smith	- Technical Director, AECOM
Richard Hammond	- Landscape architect, AECOM
Jonathan Hill	- Associate Director, AECOM
James Hartley-Bond	- Low Carbon

### For the Council;

Ruth Mabbutt	- Senior Planning Officer, Chelmsford City Council
Ryan Mills	- Place, Essex County Council
Sarah Hill-Saunders	- Planning Officer, Chelmsford City Council
Richard Mackrodt	- Highway Engineer, Essex County Council

### Interested parties;

Cllr Richard Poultner, for Bicknacre and East and West Hanningfield Ward  
Cllr Sue Dobson, for Bicknacre and East and West Hanningfield Ward  
Cllr Les Draper, East Hanningfield Parish Council  
Cllr Malcolm Thomas, East Hanningfield Parish Council (and acting as resident)  
Paul Galley, West Hanningfield Parish Council  
John Dunton, West Hanningfield Parish Council  
Mr and Mrs Hellings, residents

### Additional documents

Doc A:	Statement of Common Ground (signed version)
Doc B:	Viewpoint suggestions and plan for site visit walking route from main parties
Doc C:	Plan of Public Rights of Way
Doc D:	objection from West Hanningfield Parish Councils
Doc E:	objection from East Hanningfield Parish Councils
Doc F:	objection from Mr Malcolm Thomas, a local resident
Doc G:	Attendance List

## Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans and conditions listed on this decision notice: LCS039-SP-01\_rev02 (Site Location Plan), LCS039-DZ-01\_rev10 (Zoning Layout Plan), LCS-SD-11\_rev02 (Panel Cross Section), LCS-SD-01\_rev02 (DNO Substation Elevations and Dimensions Plan), LCS-SD-02\_rev02 (Customer Substation Elevations and Dimensions Plan), LCS-SD-03\_rev01 (Indicative CCTV Post), LCS-SD-04\_rev02 (Security Fence and CCTV Standard Detail), LCS-SD-08\_rev02 (Inverter Elevations and Dimensions Plan), LCS-SD-01\_rev01 (DNO Substation Floor Plan), LCS-SD-15\_rev01 (Customer Substation Floor Plan), LCS-SD-16\_rev01 (Inverter Floor Plan), LCS-SD-21\_rev01 (53ft Battery Container (HVAC on roof) Standard Detail), LCS-SD-23\_rev01 (POC Mast Compound), LCS-SD-25\_rev01 (Meter Kiosk Standard Detail), LCS039-PLE-01\_rev22 (Indicative Site Layout (amended post-decision)), 60644715-ACM-LCSF-SD-DR-DS-000001 Rev P02 (Sandon Brook Solar Farm Outline Drainage Strategy).
- 3) The planning permission hereby granted shall be limited to a period of 40 years commencing from the date electricity generated by the solar panels is first exported to the National Grid. At the end of this 40-year period, the development shall be removed, and the land restored to its previous agricultural use in accordance with details that shall have been previously submitted to and approved in writing by the Local Planning Authority.
- 4) Prior to their installation, full details of the final location, design and materials to be used for the: (a) panel arrays, (b) transformers, (c) inverters, (d) battery storage, (e) control room, (f) substations, (g) CCTV cameras, (h) fencing and gates, and (i) Any other auxiliary buildings. These details shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details and thereafter permanently maintained in the agreed form unless otherwise agreed in writing with the Local Planning Authority.
- 5) No later than six months prior to the expiry of the planning permission, or within six months of the cessation of electricity generation by this solar PV park, whichever is the sooner, a detailed scheme of works for the removal of the development (excluding the approved landscaping and biodiversity works) shall be submitted to and approved in writing by the Local Planning Authority (LPA). The scheme of works shall include the following: (a) a programme of works; (b) a method statement for the decommissioning and dismantling of all equipment and surfacing on site; (c) details of any items to be retained on site; (d) a method statement for restoring the land to agriculture; (e) timescale for the decommissioning, removal and reinstatement of the land; (f) a method statement for the disposal/recycling of redundant equipment/structures. The scheme of works shall be undertaken in accordance with the approved details and timescales. The operator shall notify the Local Planning Authority in writing within five working days following the cessation of electricity generation.

- 6) The applicant/developer shall notify the Local Planning Authority in writing within 10 working days of electricity being generated from the development being first exported to the National Grid.
- 7) If the solar farm ceases to export electricity to the grid for a continuous period of twelve months, a scheme shall be submitted to the Local Planning Authority for its written approval within three months from the end of the twelve-month period for the removal of the solar farm and associated equipment and the restoration of (that part of) the site to agricultural use. The approved scheme of restoration shall then be fully implemented within nine months of the written approval being given.
- 8) No construction or decommissioning works shall take place except between the following hours: 08:00 to 18:00 Monday to Friday, and 08:00 to 13:00 Saturday. No construction or decommissioning works shall take place at any time on Sunday or a Bank Holiday.
- 9) Prior to the commencement of development, a landscaping scheme containing details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. Subsequently the works shall be carried out as approved prior to the first exportation to the National Grid, or in the first available planting season following such exportation and permanently retained and maintained in accordance with the agreed lifetime of the development. The details to be submitted shall include: (a) Hard surfacing including pathways and driveways, other hard landscape features and materials; (b) Existing trees, hedges or other soft features to be retained; (c) Planting plans including specifications of species, sizes, planting centres, number and percentage mix; (d) Details of planting or features to be provided to enhance the value of the development for biodiversity and wildlife; (e) compliance with the biodiversity net gain metric and (f) the continuation of unobstructed movement of species within the site.
- 10) A Landscape and Ecological Management Plan (LEMP) shall be submitted to and be approved in writing by the local planning authority prior to first exportation to the National Grid. The content of the LEMP shall include the following: (a) Description and evaluation of features to be managed; (b) Ecological trends and constraints on site that might influence management; (c) Aims and objectives of management; (d) Appropriate management options for achieving aims and objectives; (e) Prescriptions for management actions; (f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period); (g) Details of the body or organisation responsible for implementation of the plan; (h) Ongoing monitoring and remedial measures. The LEMP shall include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

- 11) Prior to their installation, details of boundary treatment and CCTV cameras shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the works shall be carried out as approved prior to first exportation to the National Grid and permanently retained and maintained in accordance with the agreed form subject to any such variation that has been previously agreed in writing with the Local Planning Authority. The details to be submitted shall include: (a) Details of the proposed treatment of all boundary fencing; and (b) Details of the CCTV cameras; (c) Whole perimeter fencing plan including provision for the ingress and egress of badgers and other small mammals.
- 12) Prior to the commencement of development, a scheme to deal with the provision of temporary boundary fencing to address glint and glare shall be submitted to and approved in writing by the Local Planning Authority. The temporary fencing should be installed to approximately 3 metres in height (or where necessary to a previously agreed greater height) and shall provide continuous unbroken screening, above the carriageway levels of the A130 and Southend Road. The fencing shall remain in place until the new planting and any additional planting to enhance the existing established planting has reached a minimum height of 3 metres (or greater), to be determined in writing with the Local Planning Authority. Prior to the removal of the temporary fencing, evidence shall be submitted to and approved in writing by the Local Planning Authority, which demonstrates the boundary landscaping has reached a height of 3 metres (or where necessary to a previously agreed greater height) and provides a continuous unbroken screen, above the carriageway levels of the A130 and Southend Road.

In the event of an extraordinary event, where the temporary screening along the perimeter of the site, as shown on the detailed site layout plan secured under Condition 4, is partially or completely removed or destroyed, an Emergency Plan shall be provided prior to the commencement of the development that identifies: i. the procedure to install temporary screening, with associated construction management plan; ii. permanent remedial actions; iii. the party or party's responsible; and iv. provision of any Traffic Management required to the A130 and Southend Road carriageways, as required by the LPA and the Highway Authority. Full details of the Emergency Plan will be agreed in writing with the Local Planning Authority and the Local Highway Authority prior to commencement.

- 13) In relation to tree protection, no works shall take place until an Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall only be carried out in accordance with the submitted Arboricultural Method Statement subject to such minor variations as may be agreed by the Local Planning Authority. The details to be submitted shall include: (a) Details of trees and hedges to be retained and removed; (b) Details of tree surgery work to retained trees; (c) Specification for tree protection including layout and type of tree protection for construction including change that may occur during development; (d) Location and installation of services, utilities and drainage; (e) Details of construction within the root protection area of retained trees; (f) Details of site access,

temporary parking, welfare facilities, loading and unloading, storage of equipment, materials, fuels and waste; (g) Boundary treatments within the root protection areas; (h) Arboricultural supervision and inspection, including timings, reporting of inspections and supervision; (i) Boundary treatments within the root protection areas, and (j) Arboricultural supervision and inspection, including timings, reporting of inspections and supervision.

- 14) Prior to first exportation to the National Grid, a wintering and farmland breeding bird mitigation and monitoring strategy, that includes reference to skylarks, shall be submitted to and approved in writing by the Local Planning Authority prior to the completion of the development. Thereafter, the works shall only proceed in accordance with the approved mitigation and monitoring strategy, subject to any minor variation that may be agreed in writing with the Local Planning Authority. The strategy shall include details of the following: (a) Purpose and conservation objectives for the proposed measures; (b) Detailed methodology for measures to be delivered; (c) Location of the proposed measures; and (d) the Mechanism for implementation and monitoring of delivery. The farmland bird mitigation strategy shall be implemented in the first nesting season following completion of the development and in accordance with the approved details or any such variation that has been previously agreed in writing by the Local Planning Authority and shall be delivered for a minimum period of 10 years from first implementation.
- 15) No work shall take place until a soil management plan has been submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall be carried out in accordance with the approved details and thereafter permanently maintained in the agreed form unless otherwise agreed in writing with the Local Planning Authority.
- 16) No unbound material shall be used in the surface treatment of the vehicular access hereby permitted within 6 metres of the highway boundary.
- 17) Prior to their construction, details of the construction of the site accesses, visibility sight splays, dropped kerb vehicular crossings of the footway and details of surface water discharge from the highway, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the access points shall be constructed ready for use prior to first export to the National Grid in accordance with the approved details. The accesses shall be permanently retained in accordance with the agreed form at all times.
- 18) No development shall take place within the whole site until a programme of archaeological work has been secured and implemented, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority. The scheme of investigation shall include an assessment of significance and research questions; and: (a) The programme and methodology of site investigation and recording; (b) The programme for post investigation assessment; (c) Provision to be made for analysis of the site investigation and recording; (d) Provision to be made for publication and dissemination of the analysis and records of the site investigation; (e) Provision to be made for archive deposition of the analysis and records of the site

investigation; (f) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation; (g) The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

The solar farm shall not be brought into operation until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation, and the provision made for analysis, publication and dissemination of results and archive deposition.

- 19) Prior to commencement of the development a detailed site plan including Archaeological Exclusion Zones will be submitted to and approved by the Local Planning Authority. Following the approval and completion of the archaeological evaluation referred to in Condition 18 and prior to the commencement of development, a final detailed site layout plan with full details of the final locations, design and materials to be used for the panel arrays, inverters, customer switchgear, substations, CCTV cameras, fencing, foundations and cabling will be submitted for approval.

Should the archaeological evaluation identify any significant archaeological deposits, the final detailed site layout plan will define Archaeological Exclusion Zones within which below and above ground development will be excluded or provide sufficient design mitigation including but not limited to the use of above ground cables, concrete shoes or other means to avoid any impact on archaeological deposits if required.

The final detailed site layout plan shall be submitted to and approved in writing by the Local Planning Authority, in consultation with the County Council's Lead Archaeologist. Subsequently the development shall be carried out in accordance with the approved details.

If there are archaeological areas to be preserved in situ, a management plan will be produced for any archaeological areas to be preserved in situ, setting out the methodology to secure the ongoing protection of these areas both during construction, operation and decommissioning of the solar farm.

- 20) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details for the control and management of noise and dust during the construction phase, and with respect to noise shall have due consideration of the guidance within BS 5228:2009+A1:2014. The CEMP will be adhered to by the contractor throughout the construction process. The CEMP shall include the following: (a) Risk assessment of potentially damaging construction activities; (b) Identification of "biodiversity protection zones"; (c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements); (d) The location and timing of sensitive works to avoid harm to biodiversity features; (e) The times during construction when specialist ecologists need to be present on site

to oversee works; (f) Responsible persons and lines of communication; (g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; (h) Use of protective fences, exclusion barriers and warning signs; (i) Details for the control and management of noise and dust during the construction phase; and (j) Shall have due consideration of noise guidance contained within BS 5228:2009+A1:2014. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 21) No development shall take place, including any ground works or demolition, until a Construction Traffic Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Statement shall provide for: (a) Suitable construction vehicle routes for all construction vehicles, to be agreed with the Highway Authority; (b) The parking of vehicles of site operatives and visitors; (c) Loading and unloading of plant and materials iv. storage of plant and materials used in constructing the development; (d) Wheel and underbody washing facilities; (e) The location of the construction compound; and (f) Construction signage and traffic management measures.
- 22) No development shall commence until details of the strategy for the disposal of surface water on the site have been submitted to and approved in writing by the local planning authority (LPA).
- 23) Prior to first use of the development hereby permitted a detailed maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority. It should additionally show that there is a regular and strict maintenance plan in place for the outfall to reduce the risk of blockage. Should any part be maintainable by a maintenance company, details of long-term funding arrangements should be provided.
- 24) No external lighting, including lighting required for construction and decommissioning, shall be installed at the site until such time as a lighting strategy for biodiversity has been submitted to and approved in writing by the local planning authority. All external lighting shall be installed in accordance with the details agreed in the strategy and shall be maintained thereafter in accordance with the agreed details, subject to any such variation that may be agreed with the Local Planning Authority. No additional external lighting shall be installed without prior written consent from the local planning authority.

## **End of conditions**



## **Appendix 5 – R (Basildon DC) v First Secretary of State and Temple [2004] EWHC 2759**

CO/1799/2004

Neutral Citation Number: [2004] EWHC 2759 (Admin)  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE ADMINISTRATIVE COURT

Royal Courts of Justice  
Strand  
London WC2

Monday, 8 November 2004

B E F O R E:

**MR JUSTICE SULLIVAN**

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**THE QUEEN ON THE APPLICATION OF BASILDON DISTRICT COUNCIL**  
**(CLAIMANT)**

-and-

**FIRST SECRETARY OF STATE**  
**(DEFENDANT)**

-and-

**MRS R TEMPLE**  
**(INTERESTED PARTY)**

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(Official Shorthand Writers to the Court)

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**MR JAMES PEREIRA** (instructed by Basildon District Council) appeared on behalf of the  
CLAIMANT

**MR PHILIP COPPEL** (instructed by Treasury Solicitors, London SW1H 9JS) appeared on  
behalf of the DEFENDANT

**MR MARC WILLERS** (instructed on behalf of the Community Law partnership) appeared  
on behalf of the INTERESTED PARTY

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J U D G M E N T

Monday, 8 November 2004

1. MR JUSTICE SULLIVAN: This is an application under Section 288 of the Town and Country Planning Act 1990 to quash a decision by one of the first defendant's inspectors granting retrospective planning permission for the change of use of land at Hatchertang (aka "the Paddocks") Hovefields Avenue, Wickford, Essex ("the site") to a gypsy caravan site for a single family. The site, which is some 40 metres deep with a road frontage to Hovefields Avenue of about 25 metres, is within the Metropolitan Green Belt. The claimant, the local planning authority for the area, had refused planning permission on Green Belt, among other grounds.
2. The Inspector's summary of the relevant planning policies included the following statement:

"It was common ground between the parties that the proposal had to be regarded as inappropriate development with regard to these policies [the policies in PPG2, the Government's Planning Policy Guidance Note on Green Belts]. Paragraph 3.2 of PPG2 makes clear that inappropriate development is, by definition, harmful to the Green Belt and it is for the applicant to show why permission should be granted. Very special circumstances to justify appropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."
3. In paragraph 12 of her decision letter, the Inspector set out seven main issues:
  - (i) The provision of and need for gypsy sites in the locality.
  - (ii) Whether the family can be considered as gypsies for the purposes of planning law and policy and has connections with the District.
  - (iii) The visual impact of the development and its effect upon the openness of the Green Belt.
  - (iv) The suitability of the site with regard to accessibility to schools/shops etc, and access to the main highway network.
  - (v) The impact of the development upon existing residential properties.
  - (vi) Whether there are any very special circumstances in this case which clearly outweigh the harm which would be caused to the Green Belt, and other harm, were the appeal to be allowed.
  - (vii) Precedent."
4. She then dealt with each of these issues in turn in a particularly comprehensive and detailed manner. Before turning to issue (vi), she set out her conclusions in relation to

Local Plan Policies in paragraph 45 of the decision-letter. Those conclusions included the following:

"The appeal site fails the first locational criterion of S7 [which sets out the parameters against which applications for residential gypsy sites will be assessed], as it lies within the Green Belt, and therefore harm is caused by reason of inappropriateness. There would also be some, though a limited, impact upon openness and harm to the character and appearance of the surrounding area. Overall I find that the proposal complies with the criteria in the second part of BAS S7 in terms of accessibility to schools, shops etc, having a minimum impact upon the Green Belt and the appearance of the countryside, convenient and safe access to the main highway network and minimum impact on existing residential properties."

5. In dealing with main issue (vi) the Inspector looked first, at educational issues in paragraph 46 of the decision-letter, and then dealt with alternative accommodation options for the family were the appeal to be dismissed between paragraphs 47 and 55. She set out her conclusions on the planning merits in paragraphs 56-59:

"56. The planning considerations relating to proposals for inappropriate development within the Green Belt all involve a balancing exercise between the harm which would be caused, by reason of inappropriateness and any other harm; and other considerations which may or may not, individually or together be regarded, as very special circumstances. National planning policy for the Green Belt, most recently expressed in PPG2, makes clear the strong presumption against inappropriate developments in the Green Belt and the substantial weight which should be given to this issue when considering applications and appeals. Where planning permission is granted for inappropriate development in the Green Belt those other considerations must clearly outweigh the harm in planning policy and other terms.

57. In this case the starting point is that the proposal represents inappropriate development in the Green Belt which, by definition would cause harm to the Green Belt. The continued siting of the mobile home, its possible replacement by a larger one, the addition of a touring caravan, and possible subsequent demand for a larger day room and stables (though not forming part of this application) would undoubtedly result in a considerably more developed appearance to the land than would be the case were the appeal to be dismissed and the requirements of the enforcement notices complied with. The proposal would also conflict with national and local policies of the Green Belt and criterion (i) of Local Plan Policy S7 and increase the extent of the developed frontage along this part of Hovefields Avenue.

58. However, against these must be weighed a number of factors:

- Government policy seeks to encourage gypsies to provide and manage their own sites.
- Realistically, any gypsy site within Basildon is likely to be within the Green Belt.
- The appeal site is relatively small and self-contained. The amount and scale of development permitted would also be relatively small and would be seen in the context of adjoining and nearby similar authorised residential/gypsy development.
- Neither the structure Plan nor Local Plan Policies relating to gypsy site position are based on a quantitative assessment of the need for sites, as required by Circular 1/94 and the recently issued PPG3. The Revised Local Plan is at a very early stage.
- There is a severe shortage of suitable alternative and available sites within Basildon District or other parts of Essex, either for rent or purchase, and a valid enforcement notice exists on the site under which the Council could take action to evict the occupiers. Were they to do so the occupying family would be most likely to resort to unauthorised sites, quite probably also in the Green Belt. A dismissal of the appeal would in all probability result in considerable disruption to their family life, and the education of the children.
- Even if an authorised gypsy site in the locality became available to buy, it would be beyond the resources of the appellants.
- The dismissal of the appeal would effectively mean that the family were forced to choose between accepting Council housing in order to keep their children in school, but effectively abandoning their gypsy lifestyle (together with at least some of the income they currently receive from horse dealing), or returning to a life on the road, possibly some distance from their roots, families, GP and established sources of work in the hope of finding another site, with their limited funds. This, almost certainly,

would result in a severe disruption to their family life and children's education. Either option would increase the likelihood of the family requiring state support for their housing and/or living costs which has not been necessary up to now.

59. All these factors together, particularly the shortage of suitable alternative gypsy accommodation in the locality, the consequences for the family were the appeal to be dismissed and the potential disruption to the children's education I consider to be matters of considerable importance. In weighing them against the undoubted harm that would be caused by allowing the appeal value judgments have to be made as to the relative weight to be given to needs and outcomes which pull in opposite directions. However ultimately I consider that the need for the planning system to recognise and meet the particular land use requirements of gypsy families, together with the excess of demand over provision of sites in the locality, the lack of a suitable and accessible alternative site for this particular family, and the hardship and disruption to their family life which would result from a dismissal of the appeal are of overriding weight in this case."

6. The Inspector then dealt with issue (vii), precedent in paragraph 60:

"I appreciate the Council's concerns as to the precedent that the grant of planning permission would set in relation to their enforcement action against other unauthorised developments, particularly nearby and also in the Green Belt. In allowing this appeal it is on the basis of a number of material considerations, weighing in favour of the grant of planning permission which together in my view constitute the very special circumstances necessary to clearly outweigh development which will cause harm to the Green Belt. Some of those considerations are specific to the family involved and some site specific. It is possible that identical considerations may be found in other cases and that, in those cases this decision made be regarded as a precedent. But, by definition, circumstances which are found to be very special, particularly those of a personal nature will not create a precedent. Each case has to be considered on its merits and in the light of the particular relevant circumstances and judgment has to be made in each case on the weighting to be given to those factors. While understanding the concerns of the Council regarding precedent, I do not consider that this is a factor which merits significant weight as a material consideration in this case."

7. The Inspector therefore granted planning permission subject to a number of conditions, including the following:

"1) The residential use hereby permitted shall be carried on only by Mrs Rosanne Temple, Mr Roger Dennard and their dependants and no other persons.

2) the residential use hereby permitted shall be restricted to the stationing of one mobile phone and one touring caravan on the land."

8. On behalf of the claimant, Mr Pereira challenges the decision-letter on two grounds. First, the manner in which the Inspector dealt with the issue of very special circumstances; and secondly, the manner in which she dealt with the issue of alternative accommodation for the family. 1. Very special circumstances.
9. Mr Perera submits the very special circumstances are not merely factors that weigh in favour of granting planning permission. Each factor relied upon must be a factor which is of a quality that can reasonably be called "very special". On this approach, it follows that if particular individual factors cannot each reasonably be described as very special, then they cannot cumulatively be described as very special circumstances. He submitted that, considered individually, none of the factors listed by the Inspector in paragraph 58 of the decision-letter could reasonably be described as very special. For example, the first factor, Government Policy, is common to all cases concerning gypsy caravan site provision. Expressed in numerical terms, the Inspector listed seven factors in paragraph 58, and seven times nought still equals nought.
10. It is unnecessary to rehearse the detail since the defendants do not submit that, looked at individually, any one of the factors listed by the Inspector is very special in character. They submit that the claimant's approach is fallacious since a number of factors, none of them "very special", when considered in isolation may, when combined together, amount to very special circumstances. I agree. The claimant's approach does not accord with either logic or common sense. There is no reason why a number of factors ordinary in themselves cannot combine to create something very special. The claimant's approach flies in the face of the approach normally adopted to the determination of planning issues: to consider all relevant factors in the round. The weight to be given to any particular factor will be very much a matter of degree and planning judgment. To adopt the numerical approach above, whilst some factors may score nought, planning judgments are rarely so clear-cut or absolute, and seven times one/seventh equals one.
11. Mr Pereira relies upon two decisions of mine, Chelmsford Borough Council v First Secretary of State [2003] EWHC 2978 (Admin), and Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions [2002] EWHC 808 (Admin). He submits that those decisions are to be distinguished from another challenge involving this local planning authority, Basildon District Council v Secretary of State for the Environment [2001] JPL 1104. In that case, the Secretary of State had disagreed with his Inspector's recommendation that planning permission should be refused for a gypsy caravan site in the Green Belt, and had concluded that the substantial harm to the Green Belt in that case was clearly outweighed by the family's personal circumstances including, in particular, the educational needs of the children on the site when coupled with the need for more gypsy sites in the area. The claimant's challenge to that decision was rejected by Ouseley J. It might be thought that the present

case is on all fours with the Basildon decision, save that the Secretary of State's reasoning in that case was far less extensive than his Inspector's reasoning in the present case. Moreover, that was a case where the Secretary of State accepted that there would be substantial harm to the Green Belt.

12. Mr Pereira points out that it was not argued in that case that the circumstances relied upon by the Secretary of State could not reasonably be described as "very special" circumstances. He submits, in effect, that the decision in Basildon was erroneous and that the decisions in Chelmsford and Doncaster are to be distinguished and preferred. In my judgment, the decision in Basildon is not inconsistent with the decisions in Chelmsford and Doncaster. In those two cases only one factor was relied upon as constituting very special circumstances by the Secretary of State and one of his inspectors respectively.
13. In such a case it is plain that the one factor relied upon must itself be capable of being a very special circumstance. In Chelmsford, I concluded that the apparently ordinary educational needs of two girls aged 7 and 6 could not reasonably be described as special, let alone as "very special". Although Doncaster was a reasons challenge, a similar problem had arisen. The sole alleged very special circumstance was the apparently unexceptional educational needs of the children on the site.
14. Unlike the present case where the Inspector not merely set out the correct test in paragraph 3 of her decision-letter, but also repeated it in the title to issue (vi) and in paragraphs 56 and 60, the Inspector's reasoning in Doncaster left me in real doubt as to whether he had in fact applied the correct Green Belt test.
15. Mr Pereira relied upon the last sentence in paragraph 56 of my judgment in the Chelmsford case:

"The decision taker must be able to point to a circumstance or circumstances which, viewed objectively, are reasonably capable of being described as 'very special'."
16. Judgments should not be construed as though they were statutes, since they respond to the facts found and the submissions advanced in the particular case. In paragraph 56, I was rejecting the proposition that was then being advanced on behalf of the Secretary of State: that a factor amounted to very special circumstances because, and only because, he so described it. The final sentence is not to be read as saying: "The decision-taker must be able to point to a circumstance or circumstances, each and every one of which, viewed objectively, is reasonably capable of being described as 'very special'"; rather it is saying: "the decision-taker must be able to point to a circumstance, or combination of circumstances which, viewed objectively, is reasonably capable of being described as 'very special'."
17. The short answer to the claimant's argument is that in planning, as in ordinary life, a number of ordinary factors may when combined together result in something very special. Whether any particular combination amounts to very special circumstances for the purposes of PPG2 will be a matter for the planning judgment of the decision-taker.

Having applied the correct test, it was open to the Inspector in the present case to conclude that the combination of factors which she identified in paragraph 58 of her decision-letter amounted to very special circumstances.

18. The claimant is clearly concerned that this decision will set an unfortunate precedent. The Inspector dealt with that issue in paragraph 60 of her decision-letter. I would simply add this. When considering the danger of precedent, it is important to bear in mind the whole and not merely part of the test in PPG2. The question is not merely whether there are very special circumstances, but whether those circumstances clearly outweigh the harm done by reason of inappropriateness and any other harm. Thus, a combination of factors which amounted to special circumstances might be sufficient to clearly outweigh the limited degree of harm that would be caused by granting planning permission upon one particular site, but the same or a similar combination of factors might well be insufficient to justify the grant of planning permission for a site that was more harmful in planning terms, for example because it had a greater impact upon the underlying objectives of the Green Belt; it was more harmful in terms of the character or appearance of the countryside; it had a greater effect upon residential amenity and/or highway safety, etc.

2. Alternative accommodation.

19. The Inspector dealt with this issue in considerable detail between paragraphs 47 and 55 of her decision-letter. She noted in paragraph 47 that alternative accommodation options for the family if they had to leave the site were limited. In paragraph 48 she noted that the claimant's principal planning officer agreed that the chance of the family being offered a pitch in a council-owned site anywhere in Essex was negligible.

20. In paragraphs 50 and 51, she summarised the interested party's position:

"50. Mr Dennard and Mrs Temple said that in terms of accommodation, their priorities were to stay within 5 or 10 miles of Wickford so their children could continue to attend their schools on a daily basis. They also did not want to move any further away as this was their home area, they had family nearby, as were all Mr Dennard's work contacts. It would be very hard to move away and start up somewhere else where he wasn't known. Their other priorities were to have a place where they could keep their horses. If they were forced off the site their first choice option was to go back to living on the road, even though this would be extremely hard. They would have to sell the mobile home, for which they would not get much as it would be a forced sale and buy a touring caravan, which would be very cramped for the family and unsatisfactory as the girls would have to share sleeping space with the boys and washing facilities would be poor. They would take the horses with them and go wherever they could find.

51. If this didn't work out they supposed they would have to declare themselves homeless to Basildon Council. Although they did not rule out ever living in a house, especially if they had no practical alternative, they had never done this. If there were other gypsies nearby and they had

enough land nearby to stable their horses it might be manageable, but they did not think this was likely, it might take some time and they were worried about how they might be treated by other people living nearby. In practice it would be very difficult to keep the horses if they had to move into a normal Council house. They could not afford a privately rented property."

21. The Inspector's own conclusions are to be found in paragraphs 54 and 55:

"54. Given the stated priorities and intentions of the family they are likely to initially try and follow an itinerant life on the roadside or on other public or privately owned land in the local area in order to keep the elder children in school and look after the horses. Realistically this cannot be regarded as a sustainable option, even in the short term, given the lack of suitable sites, disruption and cost to land-owners and the hardship and disruption to their family life. Declaring themselves homeless to the Council would provide them with some accommodation, and could allow the children to continue their education uninterrupted. But in practical terms it would be very unlikely that Mr Dennard could continue to keep his horses, which are an important part of his gypsy lifestyle and family income. It is also uncertain as to whether the family could adapt to living in bricks and mortar in a non-gypsy community and if this proved too hard the only obvious alternative would be to return to the road.

55. Without a fixed address and the likelihood of constant moving from place to place it would be very difficult to keep the children at their current schools, or indeed enrol them at any other with any real expectation that they could stay there for any length of time. While the children have no special educational needs, at present, this must be in part because they have enjoyed a normal and uninterrupted schooling up to now. Were the family required to move away from this site the likelihood of disrupted education, with no definite end point, is high. Continuity of education for the children is both a private and public benefit. Dismissal of the appeal would, almost certainly, have a direct effect upon that continuity of education and I regard that factor as an important material consideration in this case. While the children are not yet at the stage of taking public examinations, a disrupted or missing education at any age, if it continues for any length of time, can be seriously disadvantageous to educational attainment."

22. In his second ground of challenge Mr Pereira made two criticisms of the Inspector's approach to the issue of alternative accommodation. First, he submitted that the Inspector failed to reach any conclusion as to whether the second defendant (the interested party and her family) would be prepared to accept a bricks and mortar home. In the grounds it was also put in the alternative that she failed to give effect to what was described as "the burden of proof in PPG2" in her findings on this aspect of the appeal. It was submitted that the interested party and her family had accepted that conventional housing was an option. They had accepted that they would reside in conventional housing if attempts at an itinerant lifestyle failed. Thus it was said the Inspector erred in accepting that very special circumstances existed as a consequence of the absence of

suitable alternative accommodation when the appellants had failed to show that such alternative accommodation, in the form of conventional housing, would not be appropriate.

23. Secondly, it was submitted that the Inspector had not dealt satisfactorily with the proposition that land could be rented for grazing the horses in the winter. Setting aside the question of grazing land for the horses for the moment, I can see no basis for criticising the Inspector's conclusions in paragraph 54 or in the last bullet point in paragraph 58. It must be remembered that this was a family who had never lived in a bricks and mortar home. The Inspector's conclusion that they would therefore initially try and follow an itinerant lifestyle on the roadside or other publicly or privately owned land in the local area is readily understandable; so is her conclusion that, in the light of the particular local circumstances relating to the need for and availability of sites, that could not realistically be regarded as a sustainable option, even in the short-term.

24. She then dealt with what the consequences would be if the interested party and her family were to declare themselves homeless to the Council, who would then have to provide them with some accommodation. She also stated that she was:

"... uncertain as to whether the family could adapt to living in bricks and mortar in a non-gypsy community and if this proved too hard the only obvious alternative would be to return to the road."

25. In many cases it may be possible to reach a firm conclusion, on the balance of probability, as to whether or not bricks and mortar accommodation for a particular family would prove to be an appropriate alternative to a nomadic lifestyle. This was a case where the Inspector made it perfectly clear that she was unable to be certain about whether or not this particular family would be able to adapt to living in a bricks and mortar home. Given the evidence, she was entitled to conclude that the prospects for this happening were indeed uncertain. In my judgment, her reasoning in this respect was impeccable.

26. So far as the question of providing grazing for the horses is concerned, the position was explained by Mr Dennard and is summarised by the Inspector in paragraph 26 of the decision-letter: most of the family income came from tree/landscape/paving work from regular clients in the Basildon/Wickford/Chelmsford area who knew the claimant, or his father who is now retired. During the winter when that type of job was hard to get the family relied on the income from selling horses. The Inspector said:

"I saw two horses kept in makeshift stables in the rear part of the site. Mr Dennard said he normally has 3 or 4, including typical piebald gypsy horses which many people do not allow to graze on their land. During the summer he rents grazing land for his horses near Chelmsford as he cannot find anywhere nearer. He, and his father, had always kept horses and he would [find] it very hard to give them up. Any alternative accommodation would have to make provision for stabling his horses during the winter."

27. It is against this background that the Inspector concluded in paragraph 54 of her decision-letter: "... in practical terms it would be very unlikely that Mr Dennard could continue to keep his horses, which are an important part of his gypsy lifestyle and family income", if the family was to be provided with Council accommodation.
28. Against this background the Inspector was entitled to use her common sense and to reach such a conclusion. If the family had to accept Council accommodation it was unlikely that Mr Dennard would be able to continue to keep his horses. There is plainly a difference between being able to obtain and make use of land for summer grazing, and being able too obtain and make use of land with stabling for the accommodation of horses during the winter. Although the claimant seeks to focus on this particular aspect of the decision-letter, it is wholly unrealistic, since it is not suggested that this was a major issue before the Inspector and that details of stabling accommodation for winter use were presented to the Inspector. No doubt if there had been detailed argument and evidence about this particular aspect of the matter, the Inspector would have recorded it and dealt with it in what is, by any standards, a very full and detailed decision-letter. In brief, the Inspector gave the matter the attention that it deserved and reached a conclusion which was certainly open to her as a matter of common sense.
29. For these reasons the Council's two grounds of challenge fail, and the application must be dismissed.
30. MR COPPEL: I am grateful, my Lord. I make an application that the claimant do pay the Secretary of State's costs, the first costs to be summarily assessed, and that they be assessed in the figure sought by the first defendant. Does Your Lordship have a copy of the summary assessment?
31. MR JUSTICE SULLIVAN: No, that did not get to me. Is there going to be an argument about it, Mr Pereira?
32. MR PEREIRA: My Lord, no.
33. MR JUSTICE SULLIVAN: Then just give me the figure, there is no need to hand it up. What is the end figure?
34. MR COPPEL: The end figure, my Lord, is £3,820 neat.
35. MR JUSTICE SULLIVAN: £3,820. Can I check, Mr Pereira, is there any argument about the principle of detail?
36. MR PEREIRA: No, there is not.
37. MR JUSTICE SULLIVAN: Yes, Mr Willers, it is very nice to see you again. Do you have any application?
38. MR WILLERS: Thank you, my Lord. There is an application for the second defendant's costs. I am sure your Lordship is well aware of the decision in Bolton, and also the decision that your Lord took in the Keston Travelling Showmen's Park case. I can hand that case up to your Lordship, but I think your Lordship's decision was predicated on the

basis that the land owners, the travellers, who were effectively fighting to keep their home which was the subject of the appeal in that case, were entitled to be separately represented, given the interests that they had in maintaining that home and the threat to their continuing occupation of that property posed by the application to quash the Inspector's decision.

39. MR JUSTICE SULLIVAN: Yes, I think there had been another decision. I know Richards J in another case -- I have seen it.
40. MR WILLERS: A case called Bucks, where I made the same argument based on your Lordship's judgment.
41. MR JUSTICE SULLIVAN: Richards J did not give you costs.
42. MR WILLERS: He did not, my Lord, no. But there is another matter though that perhaps supports this application, and it requires me to go briefly into the chronology of how this matter came before your Lordship. If I can do that very swiftly, my Lord.
43. MR JUSTICE SULLIVAN: Yes.
44. MR WILLERS: My understanding is that the section 288 application was lodged in the spring of this year, certainly before I was instructed. I was instructed on 27 April. I conducted a number of telephone conferences with my instructing solicitors and suggested, when it became clear that the case would certainly be affected by the House of Lords' decision in Porter, that this case ought to be adjourned pending the outcome of that decision.
45. MR JUSTICE SULLIVAN: He managed to decide it without reference to Porter in any event.
46. MR WILLERS: Well, if your Lordship had heard from me I would have made it quite clear that the applicant's case does not sit very happily with the decision in Porter, because that was a case where there was a combination of factors and the House of Lords did not seem to have any concerns about the way in which the Inspector arrived at his decision in that case. But this matter was actually adjourned pending the outcome, and subsequently it seems that the claimant has withdrawn a number of grounds of claim; and it may be on the basis of the decision, I know not. But when the matter came back as a result of the judgment in Porter when the matter was relisted, I inquired as to whether or not the Secretary of State was to be represented. And it was not until 3 November, in other words last week, that my instructing solicitors were informed that the Secretary of State was to be represented.
47. Now, my understanding is that my learned friend, Mr Pereira, drafted the skeleton argument on 29 October. I would not normally complain about the fact that it was late in terms of the timetable, that is not my style, if I could put it that way, but in this instance that skeleton argument came late. It came as a result, as I understand it, that instructions between my learned friend and those instructing me ---
48. MR JUSTICE SULLIVAN: Yes, I received a note from Mr Pereira.

49. MR WILLERS: Exactly, and Mr Pereira was very good in apologising to me for the late arrival of it. But it meant that it was only at that stage that we were able to see exactly what the claimant was pursuing by way of grounds of the claim; and I drafted my skeleton argument on 4 November. Now I appreciate that was the day after my instructing solicitors were told that the Secretary of State would be appearing and defending this. But it was before I had seen a copy of Mr Coppel's skeleton argument. In fact I did not see that until late on Friday evening because it was not served on me until Friday and it came by fax from my chambers. I was away on other business on Friday - so I did not see it until Friday evening - and considered it over the weekend. But quite clearly I am happy to see that Mr Coppel has dealt with admirably, if I may say so, in his skeleton argument with all the points that I sought to address your Lordship upon. But it was not until this weekend when considering the papers that I had the opportunity to decide for myself whether or not it was a matter that needed separate representation. I have to say frankly, my Lord, that I would have advised that the second defendant be represented in any event. But your Lordship may think that there would be no need for me to have attended, had I seen Mr Coppel's skeleton argument at an earlier stage.
50. MR JUSTICE SULLIVAN: Yes, I think you would have been here in any event on a sort of fireman basis, as it were.
51. MR WILLERS: I think that is right, my Lord.
52. MR JUSTICE SULLIVAN: Just in case some unexpected ---
53. MR WILLERS: Exactly, if I had been asked to do so I would have drawn your Lordship's attention to Porter. I think I am the only one in my skeleton argument that has drawn attention to it and provided your Lordship, for what it is worth, with the value authority which (inaudible). Your Lordship perhaps ought to ask yourself what I have added by way of attendance. Certainly that is the way that your Lordship looked at the case when considering the application by the second defendant in the Keston Travellers Showmen's case. But my Lord, for those reasons, and given the late indication on the part of the Secretary of State, and indeed the late arrival of the skeleton argument, for no other -- and I am not criticising Mr Coppel for that, but no decision could have been taken. It may have been that I might have advised, said I would be here, as it were, as a fireman to deal with any fires, but my instructing solicitor having taken instructions may have concluded otherwise. We simply did not have that opportunity.
54. MR JUSTICE SULLIVAN: Thank you very much. What do you want to say, Mr Pereira?
55. MR PEREIRA: Mr Lord, Mr Willers accepts that he would have been here in any event, and in all of those circumstances that come before I do not think add anything to bring the case out of the normal kind of case when something exceptional is required for the second defendant to get his costs.
56. MR JUSTICE SULLIVAN: Thank you very much. I do not think the circumstances are sufficiently unusual to justify a second award of costs. I simply say this, really for the benefit of those sitting behind Mr Coppel. It might help to reduce the need for multiple

representation of defendants or interested parties if the Treasury Solicitor could let interested parties or potential second, third, fourth defendants know at an early stage whether or not the Secretary of State proposes to be represented. I appreciate there are perfectly good reasons for not doing so until a fairly late stage, but I am not saying it in any critical sense; it probably is just a matter of common sense really, but the earlier the Secretary of State's position can be known, either the less chance there is of people turning up unnecessarily or, even if they do turn up, it would be more -- if they had not turned up the basis on which they turn up have to be absolutely essential. Mr Coppel I am not trying to be critical.

57. MR COPPEL: Those behind me are saying that in fact there is correspondence far earlier than that to suggest the Secretary of State would be defending, so the actual position as I understand it...
58. MR JUSTICE SULLIVAN: I do not think it is necessary to resolve the argument. I said what I have said and those behind you will have heard. There are other cases like this, and it is really just a matter of common sense. But I also think that plainly the Secretary of State would have been interested in the principle argument run by Mr Pereira in any event. That is obviously an issue of principle, right or wrong, the Secretary of State would want to be represented. But if I had to put any money on it I would have put my money on the Secretary of State turning up in any event. I suspect Mr Willers did as well quietly to himself. That said, I think this is a case for one set of costs and the form order is the application is dismissed, the claimant will pay the first defendant's costs, such costs to be summarily assessed in the agreed sum of £3,820, and no order in respect of the second defendant's costs. Do you need legal aid?
59. MR PEREIRA: No my Lord.
60. MR COPPEL: My Lord, I know if I apply for permission to appeal the answer will be no, but as a safeguard can I apply in that context?
61. MR JUSTICE SULLIVAN: I shall write on the form for the Court of Appeal "a bold submission". Thank you very much indeed.

Town & Country Planning Act 1990 (as amended)  
Planning and Compulsory Purchase Act 2004

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