Planning Rebuttal Evidence.

Land West of Bradmore Road and North of Wysall Road, Land West of Wysall, Wysall.

On behalf of Exagen Development Ltd.

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1. Introduction

1.1. My name is Nigel Cussen. I hold a BSC(Hons) in Geography with Economics and a Diploma in Town and Regional Planning. My particulars are set out in my earlier Proof of Evidence.

1.2. This Planning Rebuttal Evidence has been prepared on behalf Exagen Development Ltd ('The Appellant') and relates to a planning appeal submitted pursuant to Section 78 of the Town and Country Planning Act 1990, concerning Land West of Bradmore Road and North of Wysall Road, Land West of Wysall, Wysall ('the Appeal Site').

1.3. The first matter relates to the Council's comments on the Sequential Test at section 3.3 of Mr Bonds proof of evidence (CD 8.5A).

1.4. The second matter relates to Farm Diversification.

1.5. An additional rebuttal statement is also submitted separately, addressing Ecological Matters. No rebuttal is provided on behalf of the Appellant in relation landscape or heritage matters.

1.6. This Supplemental Statement comprises evidence that I have prepared and provide for this Section 78 appeal. It is true and has been prepared and is given in accordance with the guidance of my professional institution. I can confirm that the opinions expressed are my true and professional opinions.

2. Matter 1 – Sequential Test

Extent of area of search

2.1. Paragraph 3.3.9 of Mr Bond's proof of evidence (CD 8.5A) on behalf of the Council states:

"The Council considers that, notwithstanding the desire to restrict the search to land within 3km of the 132kv overhead line, the Sequential Test should have included a Borough wide search of sites outside of Flood Zones 2 and 3."

2.2. Mr Bond goes on to outline at paragraph 3.3.10 that:

"It is clear that there is scope for a Sequential Test to include areas beyond Rushcliffe Borough".

2.3. The Council's position that the Sequential Test should have extended to a Borough wide search outside Flood Zones 2 and 3 does not sufficiently take account of the practical and technical constraints imposed by the electricity grid connection process.

2.4. The grid application process is not flexible. At the time the grid application was made, landowner consent was required in order to apply, and such applications are costly. Once a grid connection application is submitted and an offer is received, that offer is specific to a defined site and a specific connection point. It is not possible to identify grid capacity in principle and then relocate the development to an alternative site without losing that grid position.

2.5. Noting that the Appeal Proposal has a confirmed Grid Offer for delivery prior to 2023, if an alternative site were pursued, a new grid application would be required, which would result in the loss of the existing queue position. There would be no certainty that the alternative site would secure the same connection costs, requirements, or timescales. As a result, alternative sites cannot be considered readily available or realistically deliverable in grid terms.

2.6. In this context, extending the site search beyond land within approximately 3km of the 132kV overhead line would not be practicable. The existing grid connection is fixed to a specific connection point, and the proximity of the site to that infrastructure is fundamental to the grid offer that has been secured. Land located beyond this distance would, by definition, be unlikely to relate to the same connection point and would therefore require a new grid application. This would lead to the loss of the existing grid position, introduce significant uncertainty over connection costs and requirements, and remove any certainty of securing a comparable or timely connection. Consequently, a broader search area extending beyond the 3km corridor would not represent a realistic or deliverable alternative in grid terms.

2.7. This approach is consistent with appeal precedent. In the appeal decision within Rushcliffe District, for Land East of Hawksworth and Northwest of Thoroton (APP/P3040/W/23/3330045) (CD 7.29), the Inspector was satisfied that a search area limited to a 2km corridor of a 132kV overhead line represented a "*reasonable basis for undertaking a realistic alternative site assessment*." In that case, the Inspector accepted that proximity to the grid infrastructure was a constraint on site availability and deliverability. A search area extending to 3km from the overhead line in the current case exceeds by 50% that area considered acceptable in the earlier appeal and is therefore reasonable by comparison.

2.8. Further, Paragraph 028 of the Planning Practice Guidance (CD 5.2) states that '*Reasonably available sites' are those in a* suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. While the PPG does not define what constitutes the relevant '*point in time envisaged*' for a particular development, the Inspector in the Hawksworth and Thoroton appeal (CD 7.29) made clear that, for solar development, this should be as soon as possible, reflecting the urgent need for new electricity infrastructure and the role of solar energy as a key component of the Government's strategy for low-cost decarbonisation of the energy sector. The early availability of grid connection for the appeal scheme is highly relevant in this context.

2.9. This matter is supported by the Secretary of State decision at Land Off Great Sike Road, Malton (Appeal Ref APP/Y2736/W/24/3342002). At Paragraph 8.8 of the Inspectors Decision letter, it is noted that "*As a matter of general principle when considering alternative sites there is plenty of support for the appellant's view that grid connection should be the key locational consideration"*.

2.10. The decision then refers to the NPS policy advice in EN 3 (CD 5.56) noting the following extracts:

"2.10.14 - The capacity of the local grid network to accept the likely output from a proposed solar farm is critical to the technical and commercial feasibility of a development proposal"; and

"2.10.16 - In either case the connection voltage, availability of network capacity, and the distance from the solar farm to the existing network can have a significant effect on the commercial feasibility of a development proposal".

2.11. The inspector in the Malton decision also refers to other inspectors making similar conclusions, in particular at Penhale Moor, Cornwall (Malton IR para 8.10, APP/D0840/W/23/3334658 – Land known as Penhale Moor Cornwall) where the Inspector noted that "the key" factor in site selection is the ability to obtain a network connection, and at XXX (Malton IR para 8.11, S62A/22/0006 - Land at Berden Hall Farm, Berden) where Inspector Griffiths has also noted that easy access to the grid can be an important factor with access to the grid being a "very important consideration" .

2.12. Against this context, sites beyond the 3km corridor cannot reasonably be considered "*reasonably available*". Any such sites would require a fresh grid application, the loss of the existing queue position, and the removal of certainty regarding costs, requirements and delivery timescales. This would be fundamentally at odds with the urgent need to deliver renewable energy infrastructure in the near term and would not represent a realistic alternative site assessment. The loss of the grid connection position would mean that any other site would not meet the test of the NPPG para 028 of being capable of being "developed at the same time" as the Appeal Proposal.

2.13. As noted in the Malton Decision (Paragraph 8.12) any decision to favour alternative sites would make the Appellants Grid Offer redundant and the failure to capitalise on the early grid connection would be a failure to achieve the Governments ambition to urgently decarbonise. It is noted that the Governments Clean Power Action Plan CP2030 (CD 5.25) states at page 63 that "*Wherever renewables can connect to the distribution network, this should be encouraged for reasons of speed and efficiency*."

<u>Characteristics of Alternative Sites</u>

2.14. The same reasoning as above applies to the Council's observation that the alternative sites identified and discounted share similar characteristics with the Appeal Site. The presence of similar physical or locational characteristics does not, of itself, render such sites reasonably available or deliverable. In grid terms, these sites are subject to the same fundamental constraints: they do not benefit from the secured grid connection, would require new grid applications, and would therefore result in the loss of the existing queue position and certainty over connection costs and delivery timescales. As such, notwithstanding any perceived similarities, these sites cannot be regarded as realistic alternatives when assessed against the requirement for a reasonable prospect of delivery at the point in time envisaged for the development.

2.15. Nonetheless, the Council's suggestions that the Appeal Site shares characteristics with and is therefore not reasonably preferable to sites A to D of the Sequential Assessment is not accepted, particularly in relation to site topography.

2.16. The detailed version of Figure 4 from the Sequential Assessment Report (Constraints Plan drawing reference P25_1631_EN_01 Rev D) is provided as Appendix R1. The contours on the plan indicate that each of sites A to D are subject of greater topographical undulation than the Application or Appeal Schemes, where the contours are less closely related. This would present greater practical implications for development of the scheme and potentially greater visual impacts Area A is predominantly north facing, resulting in being less suited to productive solar energy generation.

2.17. Mr Bond suggests at paragraph 3.3.6 of his proof of evidence (CD 8.5A) that further assessment should be carried out for the alternative sites, stating that:

"It is not evidenced that development at any of the four alternative sites would generate substantially greater impacts on local landscape character or visual impact."

2.18. It is considered that such an approach would be overly onerous. In the appeal decision for Land East of Hawksworth and Northwest of Thoroton (APP/P3040/W/23/3330045) (CD 7.29), the Inspector made clear that detailed assessment of alternative sites "*would not be appropriate and possibly not even practical at this stage*" and that it was reasonable for the appellant "*to make an allowance for unknown constraints and contingencies that might affect the capacity of the site.*" This confirms that a proportionate approach to alternative site assessment is appropriate, particularly where deliverability constraints are already evident.

Sequential Test as "strong reason for refusal"

2.19. Finally, Mr Bond states at paragraph 3.3.12 (CD 8.5A) that, in respect of the Sequential Test:

"Whilst this is not a reason for refusal, having regard to the Appellant's updated evidence on this point, I regard this to be a main issue in the appeal and the failure to provide a robust sequential test amounts to a strong reason to refuse planning permission."

2.20. It is noted that, under The Town and Country Planning (Development Management Procedure) (England) Order 2015, when a local planning authority issues a decision notice for refusal it must state clearly and precisely its full reasons for refusal. As acknowledged by Mr Bond himself, the matters raised in respect of the Sequential Test did not form part of any stated reason for refusal. As such, it is not appropriate for this issue to be elevated to a "strong reason" for refusal when it was not relied upon by the Council at the decision-making stage.

2.21. Notwithstanding the above, even if the Inspector were to conclude that the Sequential Test has not been passed, it is well-established that this is not, of itself, fatal to an application. Case law and recent appeal decisions confirm that flood risk policy does not operate as a rule-based prohibition and that any conflict with policy must be assessed through the overall planning balance. This approach has been confirmed in Mead ([2024] EWHC 279) (CD 7.26), the Yatton appeal (APP/D0121/W/24/3343144) (CD 7.63) and most recently in Gladman Developments Ltd v Secretary of State and Lancaster City Council ([2026] EWHC 51 (Admin)) (CD 7.64). In Gladman, the High Court quashed the decision on the basis that the Inspector treated the absence of a Sequential Test as determinative, effectively stopping once a policy breach capable of being a "clear reason" for refusal had been identified, without undertaking a lawful and meaningful planning balance. The Appellant's detailed reliance on these decisions is set out at paragraphs 8.96–8.100 of the Proof of Evidence (CD 8.6).

2.22. The Council's position in this appeal also sits uneasily with its recent decision to grant planning permission for the adjoining solar farm and battery energy storage development at Highfields Solar Farm (ref. 22/00303/FUL), illustrated by the brown site boundary on the Constraints Plan (Appendix R1).

2.23. The Council's assessment identified that the southern part of the site, associated with Kingston Brook, lay within Flood Zone 2. The site layout provided for the application

indicates the extent of flood zone 2 and the development proposed within the flood zone, including access track and security fencing (Appendix R2)

2.24. In that context, the Council raised no objection on flood risk grounds and concluded that the development passed both the Sequential Test and the Exception Test, accepting that the limited extent of development within Flood Zone 2 was compatible with flood risk policy (Application ref 22/00303/FUL Delegated Report, PDF page 23 – Appendix R3). This recent approval, relating to an adjoining site, the same watercourse and materially similar flood risk circumstances, highlights the inconsistency of the Council's approach and further undermines its attempt in this appeal to characterise matters relating to the Sequential Test as a "strong reason" for refusal.

2.25. It is also notable that a sequential approach has been taken to the design to locate sensitive equipment outside the Flood extents so the development would not be impacted by flood risk and would not make flood risk worse elsewhere, as evidenced in the FRAs (for Appeal and Application Schemes). This is confirmed by the agreement with the LPA that their outstanding concern in respect of flood risk and drainage is the application of the Sequential Test.

2.26. In conclusion, the Development would deliver clear public benefits, most notably through the provision of clean, renewable and sustainable electricity generation directly into the local network, supported by ancillary carbon zero battery energy storage. This would make a strong contribution to both national and local energy and climate change objectives. These, together with the other benefits of the Application and Appeal Schemes, are set out at paragraph 4.28 of the Appellant's Proof of Evidence (CD 8.6) and weigh in favour of the appeal.

3. Matter 2 – Farm Diversification

3.1. Paragraph 3.2.14 of the LPA's Planning proof of evidence, sub paragraph 9 addresses farm diversification and queries the effect of the income generated from the proposal as a beneficial diversification for the agricultural business. The attached statement (Appendix R4) addresses this point, providing additional detail as to the beneficial effect of the secure income generated to the farm business through the Application and Appeal Schemes.

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

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