

**IN THE MATTER OF AN APPEAL PURSUANT TO S.78 OF THE TOWN AND
COUNTRY PLANNING ACT 1990**

**APPEAL BY EXAGEN DEVELOPMENT LIMITED
OLD WOOD ENERGY PARK
LAND WEST OF WYSALL, NOTTINGHAMSHIRE**

Planning Inspectorate reference: APP/P3040/W/25/3375110

Rushcliffe Borough Council reference: 24/00161/FUL

CLOSING STATEMENT OF BEHALF OF THE APPELLANT

1. When this Inquiry opened, the Appellant invited the Inspector to find that none of the Reasons for Refusal (“RFR”) were well-founded.¹ The Council have confirmed in the updated Statement of Common Ground² that, following the Inspector’s indication that they are minded to take the Appeal Scheme into account in determining the appeal, and the identification of further skylark mitigation land, all four reasons for refusal have been withdrawn by the Council.³
2. The Council's own witnesses accept that any heritage harm is less than substantial and is outweighed by public benefits;⁴ the skylark position has been resolved through the Unilateral Undertaking (“UU”);⁵ fire risk was withdrawn at the outset;⁶ and the landscape reason for refusal has not been maintained in light of the above

¹ ID1, Council Opening statement.

² CD 11.6.

³ CD11.6, §3.1.

⁴ CD8.5, Mr Bond PoE, §4.1.4.

⁵ ID1, Council Opening statement.

⁶ CD8.4 Council Statement of Case.

concessions.⁷ In light of this, the Council now agree that there are no remaining matters of dispute between the parties.⁸

3. The Council's approach now aligns with its own Officers' view in the detailed Officer Report to Committee ("the Officer Report").⁹ No statutory consultees objected to the scheme, and all professional officers and consultants instructed to advise on this project now agree that permission should be granted.¹⁰ The Council no longer advances a case for dismissal.¹¹ It agrees that planning permission should be granted.
4. The Inspector must carry out a planning balance in any event. However, on one side sits a well-designed, sensitively located renewable energy scheme capable of generating up to 49.9MW of clean electricity, with an early grid connection date, a co-located BESS with substantial biodiversity net gain, and a scheme that can provide a meaningful contribution to the national and local response to the climate emergency. On the other hand, the harms that have been assessed by the Appellant's witnesses and, ultimately, by the Council itself are limited, localised, temporary and reversible.
5. The Appellant respectfully submits that the balance falls in favour and that planning permission should be granted.

LANDSCAPE

6. Mr Chanas sets out the baseline and the site context. The Site comprises two parcels to the northwest and west of Wysall, separated from the village by pastoral and arable fields with a well-vegetated settlement edge. The surrounding landscape is agricultural, with no statutory or non-statutory landscape designations. It is agreed through the Landscape Statement of Common Ground¹² that the Site is not a valued landscape in the context of NPPF paragraph 187(a).

⁷ ID1, Council Opening statement.

⁸ CD8.4 Council Statement of Case,

⁹ CD4.1, Committee Report.

¹⁰ CD4.1, Committee Report. Pages 7-9.

¹¹ ID1, Council Opening statement.

¹² CD 8.3.1A.

7. The Site is bounded to the north by Bunny Old Wood and to the west by a series of woodland blocks including Rough Plantation, Wysall Rough Plantation, Long Rough Plantation and Intake Wood. These provide significant physical and visual enclosure. The consented Highfields Solar Farm lies immediately to the west and is the only scheme of relevance from a cumulative perspective.

Landscape Strategy and Mitigation Planting

8. The Enhanced Landscape Strategy¹³ has been carefully thought through. It proposes generous buffers, hedgerow enhancement and new planting throughout the site. The Proposed Development offset distances are in addition to the 10-metre buffers typical of comparable solar farm schemes and provide meaningful green corridors along the Public Right of Way (“PRoW”) routes. This has a varied offset, and some of the widths are substantial – in excess of 100m. Mr Chanas explained that this exceeds the buffer zone, which has been found acceptable on other solar schemes.¹⁴
9. Existing hedgerows would be allowed to grow to approximately 3 to 3.5 metres where currently low, which is consistent with the character of the local landscape. Taller hedgerows are already a feature of the approach to the site from Wysall and are expressly encouraged by the Ecological Impact Assessment for biodiversity benefit. As Mr Chanas confirmed, the assumed rates are consistent with his experience: 0.5m per annum, and, in any event, he has looked at the impacts in Year 15 (when, in reality, there would likely be strong growth ahead of Year 15).¹⁵
10. The scheme sits lightly on the land. Panels would be pile-driven with no foundations required, following the local topography closely. A number of appeal Inspectors have noted this characteristic of solar development: Inspector McCoy at the *Bramley* Appeal observed that panels would not sit heavily upon the land, and Inspector Baird at *Halloughton* similarly found the development would sit lightly on the affected

¹³ CD 3.6.

¹⁴ See Cross Section at Appendix 2 of CD8.6.1, Mr Chanas Proof of Evidence.

¹⁵ Mr Chanas EiC

fields.¹⁶ The proposed minor layout refinements introduced at the appeal stage are inconsequential to the overall assessment. The BESS compound is located on an already level, low-lying part of the site.

11. Converting arable land to permanent pasture is a landscape benefit supported by the Greater Nottingham Landscape Character Assessment,¹⁷ which calls for the conservation of permanent pasture close to villages and along streams, and the restoration of traditional pastoral character. The land will remain in agricultural use throughout, enhanced by new planting that will form a positive legacy well beyond the scheme's 40-year operational life.

Wysall FP3

12. The suggestion that Wysall FP3 would be obstructed by the proposed planting is not substantiated.¹⁸ The scheme has been designed against the Definitive Map, which is the correct reference point. The *in-situ* alignment of the path deviates from the Definitive Map; it is a trodden, diagonal way across an arable field rather than a fixed route, and cannot be relied upon in preference to the Map.
13. The Enhanced Landscape Strategy shows the PROW. Measured against the 4-metre access tracks shown on CD 1.34, the dotted line represents a corridor of approximately 3 metres, against a legal minimum of 1 metre for a cross-field footpath. The actual gap provided is approximately 9.7 metres, nearly ten times the minimum required, and the Footpath Buffer Distances plan¹⁹ demonstrates clearly that space exists between the PROW corridor and the fence line.
14. The Nottinghamshire County Council Rights of Way Officer raised no concern. Should there be any residual concern, a very minor adjustment to the hedgerow at

¹⁶ Mr Chanas EiC, CD7.1, CD7.49.

¹⁷ CD 6.9.

¹⁸ Mr Higson's PoE CD 8.5.1 § 5.2.3 and his Appendix 2 Figure SH-14, PDF p. 16 states that the route of Public Footpath Wysall FP3 would be obstructed. This is echoed in Mr Bond's Proof CD 8.5 §3.2.12 p.6 where he asserts that the BNG benefit can only be afforded moderate weight due to, amongst other issues, the fact the PROW route would be blocked by the proposed planting.

¹⁹ CD 2.9.

Field 4 would be all that is required to resolve the dispute. That would be part of the Enhanced Landscaping Strategy, which is controlled by conditions.

Landscape Value and Sensitivity

15. The Appellant assessed the local landscape as medium value and medium sensitivity. This is consistent with the Council's own Solar Farm Landscape Sensitivity and Capacity Study,²⁰ which confirms the same conclusion and was prepared with full knowledge of both the local character and the consented Highfields solar farm scheme.
16. The Council's landscape proof asserts a medium-to-high value for parts of the site, citing the PRow network, proximity to Bunny Old Wood, and views from higher ground. However, the Site shares the same characteristics as the wider host character area LAU A, including hedgerows, trees, PRow's, and an undulating landform, and there is nothing that materially distinguishes it from the surrounding landscape.
17. The promoted long-distance routes are part of the ordinary countryside PRow network; none are National Trails. It is also notable that the Council's witness himself agrees,²¹ that the aesthetic and perceptual qualities of the landscape, scale, simplicity, openness and tranquillity, are of medium sensitivity. The disagreement on value does not, in any event, alter the overall outcome.
18. Finally, as Mr Chanas highlighted, the Council's published Sensitivity and Capacity Study²² identifies the host character area as having low capacity for large-scale solar, not zero capacity. Sensitively designed schemes may be made acceptable, and the adjacent character areas have been assessed as having moderate to high capacity. The appeal site sits on the very edge of the character area, transitioning to those adjacent areas.

²⁰ CD 6.6.

²¹ at paragraph 3.3.12 of his Appendix 1

²² CD 6.6.

Landscape Effects

Within the Site

19. Effects on the site itself are assessed as moderate adverse at Year 1, diminishing to minor adverse as the proposed planting matures. The new hedgerow and woodland planting will, in time, become dominant landscape features, bringing about major beneficial effects on the tree and hedgerow resource.

Wider Landscape Character

20. Beyond the site boundary, the key characteristics of the wider landscape are a working agricultural landscape, undulating topography, woodland blocks, hedgerows, and a settlement pattern that is physically unaffected. It is only the experiential and visual aspect of character that is influenced, and only locally. Effects on wider landscape character are assessed as minor adverse, temporary and reversible.

Cumulative Effects

21. Taking into account the Highfields Solar Farm, the host Draft Policy Zone NW01 would remain open, rural and predominantly agricultural. Both schemes are effectively split into northern and southern parcels, fragmented by substantial woodland blocks, which significantly limit the opportunity to appreciate either scheme in its entirety. Cumulative effects are assessed as minor adverse in the eastern part of the host zone only. The underlying character would prevail.

Visual Effects

22. A suite of materials has been prepared to understand the impacts of the Scheme. It is informative in understanding how much of a scheme is visible from a particular location. In questioning, Mr Chanas was clear about why the impacts had largely been considered from the South²³. That is because there is very limited visibility from the north.

²³ Questioning from Interested Parties

Close Range and PRow Views

23. At Year 1, close-range views from within the site and from PRowS traversing the northern parcel would be subject to major adverse effects, which is accepted. As Mr Chanas explained to interested parties, the worst-case scenario for close-range views for those on the PRow has already been assumed.²⁴ However, the layout has been carefully designed to maximise vegetative screening along PRow corridors, with generous buffers between the solar modules and the footpath routes.
24. By Year 15, residual effects reduce to moderate adverse at most, and largely to negligible across most of the PRow network, as illustrated by Viewpoints C and D at Figure 8 of the LVIA. Views from Bradmore Road (Viewpoint 2) are assessed as negligible even at Year 1.
25. Views from the village of Wysall toward the site are virtually absent. As one travels along Wysall FP3 from the village edge, the intervening pastoral field and its hedgerow boundaries screen views almost completely, with only glimpses of the surrounding woodland. The scheme does not come into view until well into the northern parcel.

Views from Higher Ground to the South

26. From the elevated PRow network to the south, the existing woodland blocks are evident: Intake Wood, Rough Plantation, Wysall Rough Plantation and Long Rough Plantation, provide substantial screening. Where views of the development are available, they are intermittent, at distances of over 2 kilometres, and the panels lose their geometry at that range. The southern parcel is largely screened and could be read as a low-lying body of water where it is visible at all. The degree of change is assessed as low, with effects moderately adverse at most locally and diminishing to negligible across most of the route. By Year 15, residual effects are negligible across the southern PRow network as a whole.

²⁴ Mr Chanas EiC

Policy Compliance

27. The effects on landscape character and visual amenity are limited and localised. The characterisation of the scheme as '*industrialising*' should be given no weight. The Government's Solar Roadmap²⁵ expressly identifies this as a common misconception. Solar schemes are designed to have minimal visual impact and can be effectively screened.
28. The Scheme is therefore acceptable against the relevant criteria of Rushcliffe Local Plan Policy 16, which requires renewable energy proposals to be acceptable in terms of landscape and visual effects, cumulative impact, mitigation and decommissioning, amongst other matters. Importantly, the policy does not require that there be no change or no impact. The landscape and visual effects, while locally adverse in the short term, are temporary, reversible and mitigated to acceptable levels through the Enhanced Landscape Strategy. The scheme's 40-year operational life will be followed by decommissioning, with the legacy planting providing a lasting positive contribution to the local landscape.
29. The landscape reason for refusal has been withdrawn, as confirmed in the withdrawal document, and now in the Statement of Common Ground²⁶.
30. The Proposed Development accords with the requirements of Local Plan Part 1 ("LPP1") Policy 10 and Local Plan Part 2 ("LPP2") Policies 1, 16, 22 and 34.

²⁵ CD5.38.3

²⁶ CD11.6

HERITAGE IMPACTS

Approach to the Assessment of Significance and Setting

31. The Appellant's approach has been guided by Historic England's GPA 3 Settings Guidance.²⁷ Ms Garcia identifies what gives each heritage asset its significance and the contribution the setting makes to that significance.
32. For the assets in question, the physical fabric contributes more to significance than the setting does. That is a judgment based on the particular facts of each asset; the approach supported by the *Summerskill* Secretary of State decision²⁸.
33. The importance of assigning relative weight to different elements of significance cannot be overstated. Without that exercise, the assessment becomes unstructured and unhelpful.²⁹ If all elements are treated equally, the assessment will be inaccurate. For example, if a distant field, once in the same ownership, is regarded as contributing as much as the physical fabric, then any change to that field will be overstated as harmful. Change to elements that make only a modest contribution will cause, at most, modest harm. That is the correct and proportionate approach, and it is what GPA 3 requires.

Wysall Conservation Area

34. The Proposed Development results in less than substantial harm at the lower end of the scale to the Wysall Conservation Area, arising from a temporary change to one Important View identified in the Conservation Area Appraisal and Management Plan ("CAAMP").³⁰ The harm will abate as vegetation matures. No other Important Views are affected, the physical fabric of the Conservation Area is untouched, and the ability to read Wysall as a settlement surrounded by agricultural land is fully retained.

²⁷ CD5.35.

²⁸ CD8.6.2. at paragraph 10.3 of the Ms Garcia's Proof.

²⁹ Ms Garcia EiC

³⁰ CD9.4.

The CAAMP

35. The CAAMP is the authoritative document against which impacts on this asset should be assessed. It identifies one Important View in the direction of the site, from Costock Road looking west. The vantage point is clearly defined as the edge of Costock Road on public land; the document does not direct a viewer along the private track to the west. No other views, including the site, are identified as Important, and the 2024 update, which added new views elsewhere, including into the Vicarage grounds, did not add any such views. The CAAMP also makes no reference anywhere to views of the church spire from the wider landscape as contributing to the significance of the Conservation Area.

The LPA's Additional Views

36. It is common ground³¹ that the scheme's visibility is not automatically a cause of harm. The additional views identified by the LPA do not illustrate the special interest of the Conservation Area, since none of the elements the CAAMP identifies as constituting that interest are visible within them. The views from the northern boundary are adjacent to the Vicarage gardens, distinct from the Conservation Area's agricultural character, and the scheme would, in any event, not be visible there, as those fields form a part of the mitigation land. The views from Footpath 8 to the south are expansive, the spire is barely discernible, and the scheme lies out of view to the west when looking towards the settlement.
37. Whilst s.72 of the Listed Building (Conservation Areas) Act 1990 ("Listed Buildings Act") is engaged, the only aspect that will go through the conservation area is the cable, and it is agreed that it causes no harm.

Holy Trinity Church, Wysall

38. There is no harm to the significance of Holy Trinity Church. The physical fabric is unaffected, the key views of and from the church within Wysall are unchanged, and its landmark role within the settlement is fully retained.

³¹ CD8.3.2A, paragraph 2.20.

39. The NPPF defines setting as the surroundings in which an asset is experienced, not merely those from which it can be seen.³² Glimpsed views of the top of the spire from various locations within the site do not constitute an experience of the asset; its age, materials and architectural interest cannot be appreciated. GPA 3 at paragraph 14 confirms that the relevant question is whether views are designed or associative. These are not. They are incidental, and a change to incidental views does not amount to harm.

Highfields

40. There is no harm to the significance of Highfields Farm. The physical fabric is unaffected, and the key elements of significance, the association with Bunny Hall, the immediate agricultural land illustrating former function, and the layout of surrounding buildings, are all preserved. There is a change to the distant landscape, but no known historic association, and any such association can only be understood through records that will remain unchanged.
41. The element of the asset most visible from the site is the twentieth-century mansard roof, which is not an original feature. The tree belts and woodland planting to the east, visible on historic maps, suggest that views in this direction were not intended. It is also directly relevant that in assessing the adjacent Highfields Solar Farm, the Conservation Officer found no harm to this asset, Historic England did not comment on it, and the scheme was consented. The Conservation Officer noted at that time that the contribution of the setting to this listed building is very minimal today.

Policy Compliance

42. It is noted that Historic England, in their November 2024 response³³, identified concerns over the proposed development due to the site's visibility within the wider landscape setting and from within the site. In their Impact section, they only reference three assets of Wysall Conservation Area, Highfields and Holy Trinity Church. Manor Farmhouse is not mentioned in this section. Ultimately, Historic

³² NPPF, page 78

³³ CD4.55.

England set out a position of less than substantial harm and do not object to the application.

43. The heritage reason for refusal has also been withdrawn, as confirmed in the additional Statement of Common Ground. Note that it referred to harm to setting rather than harm to significance, which is erroneous.³⁴
44. Ms Garcia's evidence is that there is no harm to listed buildings and a lower level of less than substantial harm to the Conservation Area; however, even if some less than substantial harm were found to any of the listed buildings above, then the s.66(1) duty pursuant to the Listed Buildings Act would be engaged. That is a requirement to give the conservation of the heritage asset "*great weight*"; however, that does not mean that the weight of the planning harm is uniform; it will depend on matters such as the extent of the assessed harm and the heritage value of the asset in question.³⁵ The heritage harm is to be weighed against the public benefits and the Council agree that such harm (if it exists) would be outweighed.³⁶
45. It is common ground that archaeology does not form part of any remaining reason for refusal.
46. The Proposed Development accords with LPP1 Policies 10 and 11, LPP2 Policies 1, 16 and 28, and the relevant provisions of the NPPF.

³⁴ Garcia EIC

³⁵ When considering where harm has been identified to designated heritage assets, it is useful to refer to the wording within the judgment of *Palmer v Herefordshire Council & Anor* [2016] EWCA Civ 1061 (CD7.43) at paragraphs 5 and 34 (quoting from paragraph 61 of the previous judgment): "5....*this does not mean that the weight that the decision maker must give to the desirability of preserving the building or its setting is uniform. It will depend on, among other things, the extent of the assessed harm and the heritage value of the asset in question.*"

³⁴ ...*The duty to accord 'considerable weight' to the desirability of avoiding harm does not mean that any harm, however slight, must outweigh any benefit, however great, or that all harms must be treated as having equal weight.*"

³⁶ CD 8.5, para 4.1.4

ECOLOGY

Scope of the Ecology Issues

47. The only ecological reason for refusal concerns the skylark. It is agreed that the fields within the solar array will cease to be suitable for skylark nesting once developed.³⁷

Baseline Conditions

48. Four breeding bird surveys were conducted across the red line and the proposed mitigation areas between April and July 2022, in compliance with best-practice guidance. Eight breeding skylark territories were identified within the development footprint. Skylarks are a Species of Principal Importance under Section 41 of the Natural Environment and Rural Communities Act 2006 and are red-listed.
49. The baseline density of 0.08 territories per hectare is notably low: a typical arable site would support 0.2 to 0.25 territories per hectare, which is relevant to the proportionality of the required mitigation.
50. Any criticism of the survey should be seen in the context of what is possible, and when, given that breeding bird surveys run from March to July, and the appeal was submitted at the end of that window. However, the baseline habitat layout is largely unchanged, with crop rotation having reduced suitability since 2022 rather than increased it.

Landscape Context and Population Dynamics

51. Skylark territories shift annually in response to crop rotation and land management. The 2025 walkover survey confirmed that crop changes to maize have already reduced habitat suitability across parts of the site compared to the baseline, illustrating exactly this dynamic. It is for this reason that the local-level population framework is the appropriate basis for assessing significance, rather than placing undue weight on absolute territory counts at any one point in time.

³⁷ Mr Fox EiC

Scale of Impact

52. The displacement of eight territories is a site-level impact only.
53. The local skylark population for Rushcliffe District is estimated at approximately 2,160 territories; the eight on this site represent around 0.37% of that figure. Cumulatively, the total with the Highfields scheme's loss of territories (the total nineteen territories) remains below 1% of the local population. Accordingly, even in an unmitigated scenario – and taking into account cumulative impacts with Highfields Solar Farm, it would not result in a significant impact at the local level.
54. Mr Fox provides evidence that the loss of all territories from the appeal site would not result in a “*significant*” impact upon the conservation status of the species; there is a natural variation in skylark territories year-on-year, having regard to different agricultural practices and climate change, and given that only a small proportion of the overall pairs are present in this location. More territories were to be lost from Highfields Solar Farm, and there was no mitigation.
55. The important point is that the focus is on priority species or priority habitat³⁸ - it is about their conservation status. As discussed further below, it is not the right approach to look at whether or not there is a net loss of breeding pairs of Skylarks.³⁹ The right approach is to look at whether or not there is a “significant” impact on the population, and a site-level impact only would not reach that threshold. Even if all territories were to be lost from the Appeal Site, this would not result in policy conflict.

³⁸ Policy 38(2). Developments that significantly affect a priority habitat or species should avoid, mitigate or as a last resort compensate any loss or effects.

³⁹ Note the Secretary of State consented to judgment on that basis in the Berrington Appeal where the Secretary of State consented to judgment on the following basis: “*The Claimant and First Defendant agree that Inspector erred in his application of the Natural England guidance when considering the adequacy of the compensation land at DL/136-137. In finding that the proposed development failed to avoid significant adverse impacts, he incorrectly focused on whether there would be a net loss of breeding pairs of Skylarks. That is not an approach which is consistent with the guidance which he was purporting to apply which seeks to achieve “no net loss” of habitat, and not numbers of a species. As a result, Ground 1 of the challenge is made out.*”

Mitigation Strategy

The Absorption Effect

56. The grassland within a solar farm supports higher foraging productivity, which increases the carrying capacity of neighbouring arable land. It is conservatively estimated that two of the eight displaced territories could be absorbed into surrounding farmland in this way. The methodology used was precautionary, drawing on the CIEEM article authored by Mr Fox on skylark impact assessment and accounting for nearby woodland blocks and the location of Highfields Solar Farm.

Mitigation options

57. Taking mitigation into account, there are a number of options.
- (i) Option (a), Planning Application: 3.62 hectares (eastern half of Field 7), accommodating one to two additional territories. Residual displacement after absorption: four to five territories.
 - (ii) Option (b), Appeal Scheme: The above plus 6.75 hectares across two further fields to the east. Residual displacement after absorption: one to three territories.⁴⁰
 - (iii) Option (c), Costock Land: Approximately 28 hectares some 850 metres to the south-west. The residual displacement after absorption is at most one territory (assuming usage of spring sown cereals as mitigation crop rather than set aside- which the Council confirmed would be acceptable⁴¹), with potential for net betterment offsetting residual effects from Highfields Solar Farm as well.
58. All mitigation land would be managed specifically for skylark by reverting to set-aside type habitat or spring-sown cereals. Organic set-aside simply means mechanical cultivation without herbicides or pesticides, entirely achievable on land managed primarily for skylark.

⁴⁰ Note that the blue line adjacent land has now since fallen away as an option – see the updated landscape plan.

⁴¹ McBain in inquiry session on ecology.

59. As Mr Fox explained, the Council's original objections were based on guidance relating to skylark plots, a different mitigation method from that proposed.⁴²

Ability of the Costock Land to Mitigate any impacts

60. In this case, there has been a clear assessment by Mr Fox of the ability of the Costock land to provide for territories. Mr Fox has been able to consider the likely territory density on the Costock land by comparing it with the Appeal Site.⁴³ The habitat type, field configuration, geographical location and overall suitability for skylark within the Costock land are sufficiently similar to those of the fields in the Site to enable the use of the known territory density derived from the baseline survey and apply it to the Costock land for the purposes of the mitigation calculation. The Council have no objection to this approach. Consequently, full baseline survey of the Costock land was not necessary. Mr Fox's methodology has been accepted by other appeal inspectors and is endorsed by CIEEM.⁴⁴
61. The approach taken in this case has been a "*belt and braces*" one. As was referred to in the inquiry session on this issue, previous Inspectors have considered schemes with far less detail before them than in this one.⁴⁵ There is even more certainty here –

⁴² The assertion that land within 50 metres of boundaries cannot contribute is simply incorrect. It is acknowledged that the two eastern fields are fractionally below recommended dimensions and that trees, buildings and minor overhead cables reduce their suitability to a degree, but they are not disqualified, and overhead cables of the same kind cross on-site fields within which territories were present at baseline.

⁴³ See CD10.1, Determine the baseline territory density at the receptor site either from site survey or referencing research-based figures by crop type/ land use (e.g. Table 1). If the habitat is sufficiently similar to the 'donor site', it may be more appropriate to apply the figure calculated in step 2. Then, step 2 is to calculate the density of territories across all skylark-suitable habitat to be impacted (the 'donor' site). Example: 20 territories/100 ha site = 0.2 territories/ha.

⁴⁴ See the second Berrington Decision of Inspector Richard Clegg §50.

⁴⁵ In the first Berrington appeal (Inspector Rose's decision) ("Berrington 1"), the applicant proposed a Grampian condition and an obligation, which had not been agreed with the Council. The Inspector was not satisfied that mitigation of impacts upon skylarks could be dealt with through a scheme to be submitted later (§183), and dismissed the appeal. Having agreed that there was more than a "nil" prospect that a scheme could come forward, the Secretary of State later consented to judgment on the basis that the approach taken by the Inspector was unlawful – it could be dealt with by condition and a UU if there was more than a nil prospect of a scheme coming forward. Note also the Washdyke appeal where there was a condition to deal with skylarks on a pre-commencement basis. CD7.27. and where the condition reads: 8) *No works pursuant to this permission shall commence, until a Skylark Mitigation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Skylark Mitigation Strategy shall be in broad accordance with the draft Skylark Mitigation Strategy (Avian Ecology) (Ref: Renew-919-003599) and shall include the following: a. Purpose and conservation objectives for the proposed measures b. Detailed methodology for the measures to be delivered c. Location of the proposed measures by appropriate maps and / or plans; and d. Mechanism for implementation*

there is a scheme which can be brought forward on the Costock land and that is secured by way of the UU. That offers more certainty than was even deemed appropriate in *Berrington*.

62. The position at *Murrells End Farm*⁴⁶ is also different. At §75, it is indicated that there were no breeding bird surveys and that there would be a lack of carrying capacity. Mr Fox has undertaken such an assessment of the baseline of the mitigation land in this case, by reference to an endorsed paper.⁴⁷ Three visits to the eastern field of the Costock Land were undertaken and found a similarly low density of territories. It appropriately estimates how many territories are assumed to be present on the mitigation land, based on the surveyed site and the similar characteristics between the two.
63. There is no indication that any such evidence on the baseline was before Inspector Kirby in the *Murrells End Farm* decision. Moreover, in that case, it indicates that the “*parties are still in discussion in respect of suitable mitigation for skylarks, however, at the time of the hearing, had not reached agreement*” – that is not the case here; in this case, there has been an assessment of the baseline of the territories on the mitigation land (the Council are in agreement as to the acceptability and as per the Ecology Rebuttal one field was surveyed), and a UU has been prepared pursuant to s.106 of the Town and Country Planning Act 1990 to secure the mitigation land.
64. The UU has been negotiated with the developer (two entities), the landowners of both the application land and the mitigation land and has been subject to feedback from the Council’s ecologist and legal team. Its form is agreed to be acceptable to the Council. In summary, it controls the Skylark Mitigation Strategy (Part 2 of Schedule 1) (“the SMS”), the Implementation (Part 3 of Schedule 1) and Monitoring (Part 4 of Schedule 1).

and monitoring of delivery. Thereafter, the mitigation strategy shall be implemented in the first nesting season following the commencement of development, and in accordance with the approved details, and all features shall be retained for the lifetime of the development.

⁴⁶ CD7.58

⁴⁷ paper endorsed by CIEEM and other appeal inspectors (see *Berrington Inquiry 2* above).

65. The SMS is a strategy to be submitted by the Appellant⁴⁸ and will involve the creation of skylark habitat on the Offsite Skylark Mitigation Land pursuant to the SMS. The SMS will be submitted to the Council for approval and shall include the whole of the Offsite Skylark Mitigation Land and mitigation works on the land shown hatched on the Plan. It will include management practices and will be managed using set-aside, spring-sown cereals, or a combination of the two habitat types for the lifetime of the development. There will also be a monitoring programme, which is to be submitted to the Council no later than the end of the period of 2 calendar years following the date of the deed, on the fourth, sixth, eighth, and tenth anniversaries of that date, and then every four years thereafter. The strategy is therefore robust and secured for the lifetime of the development.

Policy Compliance

66. The Proposed Development (absent mitigation) results in a site-level impact, including cumulatively together with the Highfields scheme, and delivers mitigation that reduces or eliminates the residual effect. Even in the absolute worst case, Mr Fox is of the view that there is no breach of Policy 38 or a legal duty. That is because there is no more than a site-level impact – the impact is not significant. That is entirely consistent with the approach taken in Highfields Solar Farm, where there was no mitigation proposed.
67. There is mitigation before the Inspector, now, through Option (a) and Option (c); however, the UU secures the most comprehensive suite of mitigation.
68. In all circumstances, it is therefore compliant with LPP1 Policy 17 and LPP2 Policy 38.
69. The third reason for refusal relating to skylarks has been withdrawn following the completion of the UU, which secures appropriate skylark mitigation. It is common ground that the scheme's effects on all other protected species are acceptable.⁴⁹ Both

⁴⁸ Defined as the First Developer or Second Developer in the UU.

⁴⁹ CD 8.3a, paragraph 7.33.

the application and appeal schemes are in accordance with Local Plan Part 2 Policies 16 and 38 and the NPPF.

Otters

70. This is not in the RFR, but it was raised as an issue by interested parties.
71. No evidence of otter was recorded across three separate surveys in 2022 and 2023. Nonetheless, the Ecological Impact Assessment made a precautionary assumption of the presence of otters in the Kingston Brook. The Interested Parties' confirmation of wider area records does not alter the assessment; this assumption was already made.
72. The brook runs through the site for approximately 125 metres, a tiny fraction of a typical otter territory of 10 to 40 kilometres. If present, the species is most likely using the brook for occasional foraging rather than resting or breeding. Mr Fox indicated that he had been to the Site and had seen no evidence of places for resting or breeding.
73. The scheme includes a 10-metre no-works buffer, protection of the riparian corridor during construction, and additional safeguards at the bridge crossing. These are standard and proportionate measures. Such buffers are standard practice for developments adjacent to watercourses and ensure that the habitat corridor remains protected during construction. Given that the assessment already assumed otter presence, the confirmation that the species occurs in the wider area does not alter the impact assessment.
74. Finally, during the pre-works investigation, if otters were found, it would be possible to mitigate in any event. This would include supervision of works to replace the access bridge over the Kingston Brook, maintenance of a safe alternative bankside passage for otters during works, and, as a worst-case, moving the bridge crossing location or recourse to a Natural England mitigation licence to permit disturbance under a licensed method statement. There is also the means to secure this in the CEMP.

OTHER MATTERS

Safety risk

75. The fourth reason for refusal relating to fire risk has been withdrawn, as confirmed in the Statement of Common Ground.⁵⁰
76. As the Solar Roadmap explains, BESS in the UK must comply with strict health and safety regulations for both installation and operation. These systems, housed in units about the size of a shipping container, incorporate safety features such as temperature/humidity control, fire detection, suppression systems, and continuous monitoring so that, if any problems arise, they can be addressed quickly and the system isolated.⁵¹
77. The updated position, in light of the revised guidance from the National Fire Chiefs Council, is appended to the Appellant's Planning Proof⁵². In addition, two updated notes have been prepared by Mr Jim Tough, of Abbott Risk Consulting Limited, dealing with the safety concerns arising from the BESS, articulated by Dr Jones and to deal with additional concerns around PFAS and solar panel fires.
78. There is a very low risk of any fire. However, Mr Tough explains why battery fires from e-bikes and scooters are not helpful comparators⁵³, the relevance of separation distances⁵⁴, the likelihood of impacts of hydrofluoric acid,⁵⁵ and how any fire impacts would be managed through a controlled burn to minimise runoff water impacts.⁵⁶ Accordingly, the implemented safety measures and the risks posed are within the bounds stipulated in the HSE Safety Report, *Reducing Risk – Protecting People*. The site design and layout have acknowledged and accommodated the requirements of the NFCC guidance and the guidance prepared by the Department for Energy

⁵⁰ CD 8.3a, paragraph 5.3.

⁵¹ CD5.83.3, page 8

⁵² Note also the original compliance report at CD3.9. at Appendices 1.1 and 1.2

⁵³ CD11.4 §2.1.2

⁵⁴ CD11.4 §2.1.3.

⁵⁵ CD11.4 §2.1.4.

⁵⁶ CD11.4 §2.1.5

Security and Net Zero (“DESNZ”).⁵⁷ In addition, the second note prepared by Mr Tough explains that solar panel fires are very low and how the release of toxins, notably PFAS, is unlikely.

Mental Health and Wellbeing

79. Interested Parties⁵⁸ raised the potential for impacts upon mental health and well-being. The Mid Shires Way passes through the site and will remain open throughout. There are generous corridors.⁵⁹ It is a long-distance route, and part of the wider PROW network in the area.⁶⁰ There are a large number of additional routes in the vicinity of the site for those who do not want to walk through the solar farm. The Solar Roadmap's misconceptions section confirms that public support for solar farms is consistently high, including among those who live near them, and rises further once schemes are built.⁶¹ Importantly, only 8% of people are not happy for a solar farm to be developed in their local area. There is no evidence that there would be a public health reason for refusing permission.

Soil quality

80. Paragraph 187(b) of the NPPF directs decision-makers to acknowledge the economic benefits of the best and most versatile agricultural land, that is, land in Grades 1, 2 and 3a of the ALC. The site comprises a mix of Grade 3b and Grade 4 land. It falls entirely outside the category of land that the NPPF seeks to protect from development. This is a material consideration which should carry significant weight in favour of the proposal: one of the most commonly raised objections to ground-

⁵⁷ CD11.4, Section 3.

⁵⁸ CD11.R

⁵⁹ See Mr Chanas PoE, Appendix for Cross Sections.

⁶⁰ is shown in CD 2.16, Figure 4

⁶¹ CD5.38.3, Page 8. The level of support for solar is consistently high, with UK Government's own polling showing that 88% of the public indicated they support solar.²² When asked if they would be happy for a solar farm to be developed in their local area, 54% indicated they would be happy, 27% wouldn't mind and 8% would be unhappy.²³ Note, the remaining 11% answered as not applicable. Research carried out by Copper Consultancy also shows that support for solar farms is greater among people who live near them – and rises after they are built.

mounted solar schemes does not apply here. Furthermore, the land will not be taken out of agricultural use during the operational period.

81. Sheep grazing between and beneath the panels is a well-established practice, maintains the land in agricultural condition, and contributes to the farm diversification benefit of the scheme and has been associated with the new entrants gaining access to land to graze where they otherwise would not be able to. The soil management plan secured by condition ensures that land quality is preserved and may be enhanced over the life of the development.

Access and Construction

82. The construction access route is agreed with the Local Highway Authority and is designed to avoid Wysall. It involves the removal of approximately 7 metres of hedgerow, with no objection from the tree officer, and is more than offset by substantial new hedgerow planting secured in the Enhanced Landscape Strategy.
83. Some passing places are to be installed on Bradmore Road from the north, providing enhanced highway safety even post-construction. The suggestion that an alternative access should be used is refuted, given that the access was discussed with the Local Highway Authority and Local Planning Authority during the determination of the application.

Impact of lighting and noise

84. There is no operational lighting proposed, so there would be no impact from lighting; the only very limited lighting is that for security reasons (a PIR light in the BESS and substation compound). There would be no perimeter lighting around the solar farm – that would be infrared CCTV, so there would be no visible light. There will also be very limited noise impacts, given that, once established, a solar farm is a static, quiet form of development.⁶² A CEMP will control the impacts of lighting and noise etc during the construction period.

⁶² Any noise impacts from the development, including the solar farm, BESS and substation is modelled and assessed and a noise limit condition is proposed in agreement with the EHO.

Impact upon Trees

85. The impact upon trees, including those in the Conservation Area, has been considered as part of the Arboriculture Impact Assessment⁶³, which includes the area along the cable route. As Mr Cussen explained, the cable route comprises the entire highway, so there is no basis for suggesting that this is impacting trees on one side of the road as opposed to the other. It is no different to utilities being installed in the highway verge as they have been. Moreover, there have been ongoing discussions with the Local Highway Authority about these works. Again, such impacts will be controlled by the CEMP and other requisite highway licenses.

Flood Risk Sequential Test

86. Flood risk was not a reason for refusal. A sequential test was prepared in response to a query from the Council⁶⁴ and referenced in the rebuttal⁶⁵. The micro-siting of electrically sensitive equipment, one of the four amendments to the scheme, directly responds to the Environment Agency's revised flood mapping data. The updated Flood Risk Assessment is sound. The Council do not advance a case that there has been a failure of the sequential test such that permission should be refused.

Minerals Safeguarding

87. The site falls within a Minerals Safeguarding Area for Tutbury Gypsum. The Minerals Safeguarding Note⁶⁶ demonstrates that there is no conflict: the relevant gypsum extraction is a consented scheme at depth, some 30 metres below the site. Both schemes accord with Policy 42 of LPP2.⁶⁷

⁶³ CD1.8.

⁶⁴ CD 3.11.

⁶⁵ at CD 8.7 and CD 8.7.1

⁶⁶ at Appendix 4 to Mr Cussen's Proof

⁶⁷ Mr Cussen Proof paras 9.95–9.96.

Insurance and Safety Risk

88. Mr Cussen clarified where there would be deer fencing and where there would be security fencing. This is reflected in the Enhanced Landscaping Strategy Plan.
89. Security fencing would not be around the entire development as was suggested. There is no requirement for security fencing enveloping the development, and ultimately, as Mr Cussen explained, those instructing have been reassured that deer fencing is proposed as part of a wider management regime, which is satisfactory, including installation of CCTV and remote monitoring for added security.

Land Drainage

90. Any issues raised relating to land drainage are dealt with separately under the Land Drainage Act 1991. The LLFA confirmed that they had no objection to the original application, and were consulted on the appeal amendments and did not provide comment.⁶⁸ If there were problems with changes to the culvert, they would have said so.

PLANNING BALANCE

The Development Plan

91. Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 together require the decision-maker to have regard to all material considerations.
92. The agreed development plan policies are set out in section 6 of Mr Cussen's Proof of Evidence and in the Statement of Common Ground.⁶⁹ It is common ground that those policies are the relevant starting point for the decision.

⁶⁸ Note that there is no objection to the original application – CD4.9, and the consultation summary is at CD3.12

⁶⁹ CD 8.3a.

93. The two determinative local plan policies are Policy 2 of the LPP1 and Policy 16 of the LPP2. Policy 2 addresses climate change and provides the strategic policy foundation for proposals of this kind. Policy 16 is the specific renewable energy policy. It is cast in positive terms: renewable energy schemes will be granted where they are acceptable against criteria (a) to (p). This is not a policy of restriction but one of support, consistent with and reflective of the presumption in favour of sustainable development in the NPPF. The detailed assessment of compliance with Policy 16 is set out in the table at paragraph 8.118 of Mr Cussen's Proof and is considered further below in the context of each reason for refusal.
94. The remaining development plan policies engaged by the reasons for refusal, including Policies 10, 11 of LPP1 and Policies 1, 22, 28, 34 and 38 of LPP2, are addressed in the Proof at paragraphs 8.114 to 8.144. The Inspector is invited to accept the Appellant's assessment of compliance with those policies, which has not been effectively challenged.
95. There is no conflict with the Development Plan.

Other Material Considerations

96. Renewable energy: substantial weight. The solar element falls within the Gate 2 programme for connections prior to 2030, directly serving the Clean Power 2030 objective at a time when the consenting rate of approximately two solar farms per week is not being achieved. There is an urgent pressing need for this development. It delivers clean energy in line with the government's targets and the Solar Roadmap, NPPF, EN-1 and EN-3. It will help the Council to tackle its declared Climate Emergency. Substantial weight is also consistent with that attributed by many inspectors.⁷⁰

⁷⁰ CD 7.10 Graveley Lane, APP/X1925/V/23/3323321, Inspector Richard Clegg, paragraphs 18 and 36, decided by SoS Simon Hoare MP, 11 March 2024); CD 7.11 (Rayleigh, APP/B1550/W/23/3329891, Inspector Alison Partington, paragraph 47, 11 March 2024); CD 7.15 (Honiley Road, APP/T3725/V/23/3332671, Inspector Cullum Parker, paragraphs 24 and 36, decided by SoS Matthew Pennycook, 23 July 2024.

97. Energy Security. The urgency of domestic renewable energy generation is driven by real-world energy market conditions that have intensified significantly in recent weeks and remain acute. International energy price volatility, the consequences of geopolitical instability for fossil fuel supply chains, and the rapidly accelerating demand for grid capacity from data centre development each independently reinforce the case for this proposal. This has hardly ever been more pressing. As Mr Cussen explained, just last week, the Secretary of State for Energy Security and Net Zero urged the UK to go further and faster in the pursuit of national energy security. Substantial weight should be given to this as a material consideration.⁷¹
98. Grid Connection and Co-Location. The proposal combines solar generation with a BESS on a single site, sharing a grid connection. This co-location delivers greater benefit. The BESS captures electricity during periods of low demand and releases it during periods of peak demand, improving grid efficiency, reducing curtailment, and contributing to grid stability. This represents a more efficient use of grid infrastructure than either would on its own.
99. The BESS offer is protected, and if the appeal is allowed, the BESS would be guaranteed a Gate 2 offer in a future gate window. Any suggestion that this is not needed is refuted by the fact that emerging national policy continues to instruct decision-makers to give it substantial weight: see the draft NPPF, which continues to treat BESS as infrastructure attracting the highest weighting in planning decision-making.⁷² The Inspector is invited to treat this as a distinct consideration in favour,

⁷¹ CD 7.11 (Rayleigh, APP/B1550/W/23/3329891, Inspector Alison Partington, paragraph 47, 11 March 2024); with CD 7.10 (Graveley Lane, APP/X1925/V/23/3323321, paragraph 18, SoS Simon Hoare MP, 11 March 2024) also attributing substantial weight to benefits framed substantially in energy security terms, namely reducing reliance on fossil fuels, though without using the phrase explicitly.

⁷² See emerging NPPF, W3, where W3: Renewable and low carbon energy development and electricity network infrastructure 1. In considering proposals for renewable and low-carbon energy development and electricity network infrastructure, substantial weight should be given to: a. The benefits of such development for improving energy security, supporting economic development and moving to a net zero future; Renewable and low carbon energy is defined as follows: “Includes energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – including from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass and deep geothermal heat. Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels). This includes, but is not limited to, nuclear power and supporting infrastructure, 110 as well as low carbon fuels such as biomethane, hydrogen and heat from recoverable sources, such as heat recovered

over and above the individual merits of the solar and storage elements taken separately.

100. Biodiversity Net Gain: this should attract significant weight. The BNG significantly exceeds the statutory minimum, with extensive new hedgerow, tree planting and Skylark mitigation secured.⁷³
101. Economic and local benefits: moderate weight. This is common ground with the Council. The Solar Roadmap discusses at length the economic value of onshoring solar businesses. It is a critical component of the Government's economic strategy.⁷⁴ The Inspector is invited to note the following economic threads running through the Roadmap:
- a. Cost. Ground-mounted solar is one of the UK's cheapest electricity sources to build and operate. It is estimated that solar is cheaper than both fossil and non-fossil alternatives in most of the world.⁷⁵
 - b. Consumer and public finance protection. The Secretary of State's foreword states that solar helps protect families, businesses and the public finances from the rollercoaster of fossil fuel markets. Large-scale ground-mounted solar delivers this by suppressing wholesale power prices.
 - c. Jobs: The Solar Roadmap estimates the solar sector could support up to 35,000 direct and indirect jobs in Great Britain by 2030, double the current level of around 17,000. Reaching that figure requires schemes like this one to be consented and built.
 - d. Economic Growth strategy: The Roadmap and the Clean Energy Industrial Strategy⁷⁶ both frame solar deployment as part of the Government's wider

from data centres, as well as the storage of renewable and low carbon energy, such as Battery Energy Storage Systems (BESS)''

⁷³ CD 7.10 Graveley Lane (paragraph 23), "significant weight" for 205.96% BNG CD 7.11 Rayleigh (paragraph 48), "significant weight" for 141%/165% BNG CD 7.2 Langford (paragraph 23), BNG described as a "substantial benefit" but afforded "significant weight" collectively alongside additional planting

⁷⁴ See for example, Solar Roadmap (CD5.38).

⁷⁵ Solar Roadmap (CD 5.38), Chapter 1, page 15 ("Benefits of Solar"), footnotes 16 and 17.

⁷⁶ CD 5.49

economic growth strategy. Delivering the ground-mounted pipeline creates the sustained domestic market that underpins supply chain investment and manufacturing jobs; without projects coming forward, those market signals are absent.

- e. Business rates: it is worth noting that these are estimated at over £3 million;⁷⁷ These were part of the economic package, given moderate weight in the Rayleigh appeal⁷⁸.
- f. Local employment: there will be an opportunity for local employment during construction and maintenance.

102. Soil and green infrastructure: this should attract moderate weight. Soil quality is maintained and enhanced through management; substantial new green infrastructure is secured through the Enhanced Landscape Strategy.

103. Farm diversification: this scheme represents farm diversification, and farmers have explained that it is the only diversification option they have, Support for such schemes should be provided, having regard to the impacts of volatility in commodity markets, acknowledged in the Batters Review. It also provides grazing opportunities, which have recently been cited as a benefit to new entrant farmers (without access to land).

104. The scheme not only complies with the Development Plan but also benefits from many material considerations which weigh in favour of the grant of permission. It ought to be approved without delay. It provides a compelling suite of benefits which help achieve all of the aims of sustainable development articulated in the NPPF and national policy more generally. Every week of delay has a measurable cost in clean power not generated.

⁷⁷ Note that Inspector Partington considers these in the package of economic benefits.

⁷⁸ CD7.11

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105. For all of these reasons, the appeal should be allowed, and planning permission should be granted.

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