



## Department for Levelling Up, Housing & Communities

Rachel Gaffney  
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Our ref: APP/N1920/W/22/3295268  
Your ref: 21/0050/FULEI

8 April 2024

*Sent by email only*

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY ELSTREE GREEN LTD  
LAND NORTH OF BUTTERFLY LANE, LAND SURROUNDING HILFIELD FARM AND  
LAND WEST OF HILFIELD LANE, ALDENHAM, HERTFORDSHIRE  
APPLICATION REF: 21/0050/FULEI**

*This decision was made by the Minister of State for Housing, Planning and Building Safety, Lee Rowley MP, on behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of Helen Heward BSc (Hons) MRTPI, who held a public local inquiry which sat from 19 October to 4 November 2022 into your client's appeal against the decision of Hertsmere Borough Council to refuse your client's application for planning permission for the *Installation of renewable led energy generating station comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping, and biodiversity enhancements*, in accordance with application Ref. 21/0050/FULEI, dated 6 January 2021.
2. On 6 October 2022, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

### **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed, and planning permission refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. He has decided to refuse planning permission. The Inspector's Report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Having taken account of the Inspector's comments at IR5, the Secretary of State is satisfied that the ES provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

## **Matters arising since the close of the inquiry**

6. A revised version of the National Planning Policy Framework (the Framework) was published on 19 December 2023 and amended on 20 December 2023. On 17 January 2024, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the revised Framework and revised National Policy Statements (NPS) EN-1 and EN-3. Representations were received from Hertsmere Borough Council, Pegasus Group (on behalf of the appellant), Debenhams Ottaway Solicitors (on behalf of Aldenham Parish Council) and We are Upp (on behalf of the Combined Objectors' Group). These representations, and responses to them, were circulated to the main parties and are listed in Annex A to this decision letter. The Secretary of State has considered the comments raised in these representations relating to the Framework and NPSs. Copies of the letters listed in Annex A may be obtained on request to the email address at the foot of the first page of this letter.
7. The IR contains paragraph references to the previous version of the Framework; this decision letter refers to both the old and the new paragraph numbers, where these are different.
8. The requirement for mandatory biodiversity net gain (BNG) has been commenced for planning permissions granted in respect to an application made on or after 12 February 2024. Permissions granted for applications made before this date, such as the appeal subject to this decision, are not subject to mandatory BNG.

## **Policy and statutory considerations**

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the Hertsmere Local Plan Core Strategy adopted January 2013, the Hertsmere Local Plan Site Allocations and Development Management Policies Plan adopted November 2016 and the Local Plan 2012-2027 Policies Map adopted November 2016. The Secretary of State considers that relevant development plan policies include those set out at IR27-28.
11. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning practice guidance (the Guidance), as well as those other documents listed at IR29-30.
12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

## Emerging plan

13. The emerging plan is at an early stage. A period of engagement on a Regulation 18 document; Hertsmere Local Plan 2024, commenced on 3 April 2024 and runs until 29 May 2024. The latest Local Development Scheme (LDS) states a Regulation 19 local plan consultation will take place at the end of 2024. Adoption of the final version of the local plan is expected by the end of 2026.
14. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Due to the very early stages of local plan preparation the Secretary of State considers that little weight can be attached to the emerging plan.

## **Main issues**

### The effect of the proposed development on the openness and purposes of the Green Belt

15. The Secretary of State notes that it is common ground between parties that the proposed development is by definition inappropriate development in the Green Belt and agrees substantial weight should be attached to that definitional harm (IR395).
16. The Secretary of State agrees that there would be a change to the character of the land which would impinge upon the openness of the Green Belt (IR400). For the reasons given at IR401-407 the Secretary of State agrees that the development would have a significant adverse effect upon both the spatial and visual qualities of the openness of the Green Belt and that substantial weight should be attached to these harms (IR408).
17. Like the Inspector at IR412, the Secretary of State has considered the appeal proposal against the purposes of the Green Belt having regard to the specific nature of the proposals.
18. The Secretary of State has considered whether the proposal would harm the purposes of the Green Belt as set out in paragraph 143 of the Framework (formerly 138). For the reasons given at IR417-418 the Secretary of State agrees that the introduction of development onto the site, and the extent to which the proposed development would be visible in the wider landscape would be harmful to purpose (c) encroachment into the countryside, as defined by the Framework (IR418).
19. The Secretary of State has given careful consideration to IR422 and the specific impacts on the Green Belt in this case. The Secretary of State considers substantial weight should be applied to collective Green Belt harm, including inappropriate development, harm to both spatial and visual openness and harm to Green Belt purposes, in accordance with paragraph 153 of the Framework (formerly 148).
20. Paragraphs 152-153 of the Framework (formerly 147-148) state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (VSCs). VSCs will not exist unless the potential harm to the Green Belt and any other harm resulting from the proposal, is clearly outweighed by other considerations. The Secretary of State has gone on to consider these matters. His conclusion on whether VSCs exist is set out at paragraph 68 below.
21. The Secretary of State will consider the compliance of the proposal with Core Strategy Policy CS13 at paragraph 68 of this decision when considering whether there are VSCs.

Finally, he agrees with the Inspector at IR423 that the proposal is in conflict with Policy SADM26. He finds that even if VSC were demonstrated, the proposal does not comply with criteria (i), (iv) or (v), there would be conflict with Policy SADM26.

The effects of the proposed development upon the significance of designated heritage assets and their settings

22. For the reasons given at IR430 the Secretary of State agrees that Policy CS14 of the Core Strategy predates the Framework and does not reflect the advice at paragraph 208 (formerly 202) and for this reason the weight attached to Policy CS14 is limited. For the reasons given at IR431 he considers that moderate weight should be attached to Policy SADM29.
23. The Secretary of State agrees with the position of the main parties that in respect of the five designated heritage assets, where harm would arise it would be harm to the setting of the asset, and such harm would amount to less than substantial harm to the significance of the heritage assets (IR432).

*Hilfield Castle, Grade II\**

24. For the reasons given at IR434-454 the Secretary of State agrees that the solar arrays in Field 1 would be a noticeable discordant and jarring feature, detrimental to the setting of Hilfield Castle and an appreciation of an important picturesque view which assists in an understanding and appreciation of the significance of the asset, and therefore harmful to the significance of Hilfield Castle (IR455). He further agrees at IR455 that proposed solar arrays in an area north of the Castle would further diminish an appreciation of the wider rural setting of Hilfield Castle and the extent of former parklands and cause an additional, but minor, level of harm to the setting.
25. At IR456 the Secretary of State agrees that planting trees, reflective of former parkland in Field 1 would reintroduce features that have been lost, enhance the legibility of the former parkland and have a beneficial effect upon the setting of Hilfield Castle, but the enhancements would not mitigate the harmful effects of solar arrays in Field 1. The Secretary of State agrees that the level of harm to the significance of Hilfield Castle would be low/medium in the less than substantial harm range (IR456).

*Hilfield Lodge, Grade II*

26. For the reasons given at IR457-461, the Secretary of State agrees that the proposal would be detrimental to the rural setting and picturesque views of Hilfield Lodge which assist in an understanding and appreciation of the asset and would therefore be harmful to the significance of Hilfield Lodge (IR462). He further agrees at IR462 that the level of harm to the significance of Hilfield Lodge would be low/medium in the less than substantial harm range.

*Slades Farmhouse, Grade II*

27. For the reasons given at IR463-468 the Secretary of State agrees that solar arrays, fencing and associated development in former agricultural land around Slades Farmhouse would be discordant and detracting and would diminish the legible connection between farmhouse and farmland, and would be harmful to the significance of Slades Farmhouse (IR469). He further agrees at IR469 that the effects would not be fully mitigated by the proposed landscape strategy. He further agrees at IR469 that the level of harm to the significance of Slades Farmhouse would be low/medium in the less than substantial harm range.

*Penne's Place Scheduled Monument*

28. For the reasons given at IR470-475 the Secretary of State agrees that the level of harm to the significance of Penne's Place Scheduled Monument would be low on the less than substantial harm range.

*Aldenham Park Registered Park and Garden Grade II*

29. For the reasons given at IR476-479 the Secretary of State agrees that the level of harm to the significance of Aldenham Park Registered Park and Garden would be very low on the less than substantial harm range.

*Effects upon the settings of other Heritage Assets*

30. For the reasons given at IR480-488 the Secretary of State agrees that there would be no harm to the significance of Hilfield Gatehouse, Aldenham Senior School, Kendall House, Medburn House, as a result of the proposal.

*Conclusions on Heritage Matters*

31. The Secretary of State has considered the Inspector's comments at IR491 and has taken into account that there is less than substantial harm to a number of heritage assets. He has further taken into account the Inspector's assessment of the level of less than substantial harm to each designated heritage asset, as summarised at IR494-498.

32. In line with the provisions of section 66(1) of the LBCA Act the Secretary of State has had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

33. The Secretary of State considers that in the circumstances of this case, great weight should be attached to the harm to designated heritage assets.

34. The Secretary of State has undertaken the balancing exercise under paragraph 208 of the Framework (formerly 202) at paragraph 67 below.

35. The Secretary of State agrees with the Inspector at IR500 that given the findings of less than substantial harm to a number of heritage assets there would be conflict with development plan policies CS14 and SADM29. As per paragraph 22 of this decision the Secretary of State has concluded both of these policies should be afforded reduced weight because of inconsistency with the Framework.

The effect of the proposed development upon landscape character

36. The Secretary of State notes that the site is not within a designated landscape (IR502).

37. The Secretary of State agrees with the Inspector's approach at IR504 to address landscape character only, to avoid potential 'double counting' of visual impacts which have already been taken into consideration under the visual dimension of Green Belt openness.

38. For the reasons given at IR505-508 the Secretary of State agrees that it is inevitable that an array of solar panels covering almost 85ha of the appeal site would have a significant impact on existing character (IR508).

39. For the reasons given at IR509-517 the Secretary of State acknowledges that the Landscape and Visual Impact Assessment for the appellant concludes that development

would have a major-moderate and adverse effect initially upon the Borehamwood Plateau Landscape Character Area. Even once the landscape strategy has been implemented, and planting matured, the report finds that there would be a “long-term/semi-permanent” moderate adverse landscape effect within the site (IR516). He agrees with the Inspector that residual landscape benefits post-decommissioning must be weighed in the planning balance, but they would not mitigate the harms during the operational period (IR517).

40. Overall, he agrees that during the operational period, development would have a significant adverse effect on landscape character (IR518) and agrees this should be apportioned significant weight (IR519).
41. He further agrees that the proposal would also conflict with requirements of development plan policies CS12 and SADM11 which, amongst other things, include that all development proposals must conserve and enhance the natural environment of the Borough, including landscape character (IR509).

#### Best and Most Versatile Land (BMV)

42. The Secretary of State acknowledges at IR520 that the land on which the development is proposed is Grade 3b. For the reasons given at IR520-524 the Secretary of State agrees that there would be no conflict with paragraph 180(b) (formerly 174) of the Framework regarding aims to protect BMV agricultural land.
43. Footnote 62 of the Framework, concerning the importance of the availability of agricultural land used for food production has been given further consideration in relation to this application. The Secretary of State considers that the proposed development would be consistent with paragraph 180(b) (formerly 174) of the Framework and finds the updated Footnote 62 to have limited bearing on the determination of this appeal.

#### Glint and Glare

44. For the reasons given at IR525-537, the Secretary of State concludes that through appropriate conditions the proposal would not result in any materially harmful glint and glare effects. He further agrees that the proposal would satisfy the requirements of development plan Policy SADM30 (ii) (IR537), and this matter carries neutral weight.

#### Flood Risk and Drainage

45. For the reasons given at IR538-542, the Secretary of State agrees that through appropriate conditions the proposal would not increase flood risk elsewhere and a requirement for a further Flood Risk Assessment is not necessary (IR542). He agrees this matter carries neutral weight (IR542). He further agrees that the proposal would comply with advice in the Framework at paragraph 165 (formerly paragraph 159) and satisfy the requirements of development plan Policy SADM14 (IR542).

#### Noise

46. For the reasons given at IR543-545, the Secretary of State concludes that through appropriate conditions there are no adverse impacts to the proposal in respect of noise and this matter carries neutral weight. He further agrees that the proposal would comply with advice in the Framework at paragraph 191 a) (formerly 185 a)) and satisfy the requirements of development plan Policy SADM20 (ii) (IR545).

#### Personal Safety

47. The Secretary of State agrees for the reasons given at IR546-547 that this matter carries neutral weight.

### Health, Safety and Hazards

48. For the reasons given at IR548-550, the Secretary of State concludes that through appropriate conditions there are no adverse impacts to the proposal in respect of health safety and hazards and this matter carries neutral weight. He further agrees that the proposal would satisfy requirements of development plan Policy SADM21 (IR550).

### **Benefits**

#### Contribution to the Government's Climate Change Programme and Energy Policies

49. The Secretary of State accepts that the planning application submitted is for a scheme which would generate up to 49.9MW (IR552, IR577).

50. The Secretary of State acknowledges IR551-553 and agrees with parties that the delivery of the solar farm and battery storage would be a benefit. He further acknowledges IR554-563 and agrees with the Inspector at IR564 that whilst some of the documents referenced are drafts, some do not represent planning policy, and some of the Government's policies and objectives are aimed at Nationally Significant Infrastructure Projects above 50MW in size, collectively they create a body of evidence giving an indication of broader Government policy that energy generation from solar, including onshore solar farms, is a key component of the overall Government's business, energy, and climate change strategies to achieve the outcome of net zero greenhouse gas emissions by 2050. He has also had regard to the Framework paragraph 157 (formerly 152) that the planning system should support the transition to a low carbon future in a changing climate, and paragraph 163 (formerly 158) concerning the ability of small-scale projects to provide a valuable contribution to significant cutting greenhouse gas emissions. He has also considered the Guidance (Reference ID: 5-003-20140306) which advises that all communities have a responsibility to help increase the use and supply of green energy. He further acknowledges IR566-567 and IR576.

51. The Secretary of State acknowledges IR570-573 and agrees with the Inspector that these arguments lend weight to a need for more sustainable sources of electricity, not less, and the use of solar energy as one form of renewable energy is endorsed by the Government (IR574).

52. The Secretary of State considers that the renewable energy benefits of the scheme carry substantial weight (IR578). He agrees with the Inspector at IR568 that there is nothing in Policy CS17 to preclude renewable energy projects in the Green Belt.

53. The Secretary of State further notes that paragraph 163 (formerly 158) of the Framework states that an application for renewable or low carbon development should be approved if its impacts are (or can be made) acceptable (IR575). The Secretary of State considers whether paragraph 163b of the Framework is met at paragraph 69 below.

### Biodiversity Net Gain

54. The Secretary of State notes the BNG position of the scheme set out at IR579. For the reasons given at IR580-583 he agrees that the proposal would comply with paragraph 180 d) (formerly 174 d) of the Framework, and Policies CS12 and SADM11 concerning opportunities for habitat creation and enhancement. He considers the BNG of 89.99% in area units and 24.98% in linear units should carry substantial weight.

### Improvements to Soil and Agricultural Land

55. For the reasons given at IR586 the Secretary of State agrees that improvements to soil and agricultural land attract limited weight.

### Landscape Legacy

56. The Secretary of State notes IR587. For the reasons given at IR588-590 agrees with the Inspector that with the harmful effects of the development removed, the appeal site would be left with an enhanced landscape framework which would benefit the character and condition of the Borehamwood Plateau Landscape Character Area, and the Aldenham Plateau Landscape Character Area to a small degree though intervisibility. He further agrees the proposal would comply with SADM11 (IR591) and agrees landscape legacy should attract moderate weight (IR594).

### Heritage Legacy

57. The Secretary of State agrees at IR596 that provision and subsequent retention of hedgerows to the front of Slades Farmhouse would be of limited benefit to the significance of the building. He further agrees at IR597 that the provision of, and subsequent retention of, roughly one dozen specimen Oak trees to enhance the legibility of the former parkland surrounding Hilfield Castle would have a long term minor beneficial effect. The Secretary of State further agrees at IR598 that collectively, these heritage legacy benefits comply with Policy CS14 to where possible, improve local environmental quality, and agrees they should attract moderate weight.

### Creation of Two Permissive Footpaths

58. For the reasons given at IR599-602 the Secretary of State agrees that the creation of permissive footpaths attracts only limited weight.

### Education Strategy

59. For the reasons given at IR603, the Secretary of State agrees that an Educational Strategy including information boards attract only very limited weight.

### Economic Benefits

60. For the reasons given at IR604, the Secretary of State agrees that the economic benefits attract only limited weight.

### Other Matters

61. The Secretary of State has had regard to IR605-611 and agrees with the Inspector that the evidence regarding alternative sites before the Inquiry is not sufficient to demonstrate that the proposed development has to be sited in the Green Belt. He further agrees that this issue should not attract weight in the planning balance.

62. Whilst the Inspector acknowledges IR612-617, he finds that every case should be judged on its own merits.

### Planning conditions

63. The Secretary of State has considered the Inspector's analysis at IR527-529, IR550 and IR618-630, the recommended conditions set out at Annex A of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the Guidance. He

agrees that provisions for requiring landscaping and heritage legacies beyond the operational period would not be necessary nor reasonable (IR626). The Secretary of State is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework. However, the Secretary of State does not consider that the imposition of these conditions would overcome his reasons for dismissing the appeal and refusing planning permission.

### **Planning balance and overall conclusion**

64. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with development plan Policies CS14, which carries limited weight, SADM29 which carries moderate weight, parts of CS12 and SADM11, SADM26 and CS13 if it is concluded below that the VSCs test is not passed. He concludes that the appeal scheme is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.
65. Weighing in favour of the proposal is the renewable energy benefits which carry substantial weight; the BNG contribution which carries substantial weight and the heritage and landscape legacy benefits which each carry moderate weight. The benefits of leaving the land fallow, the two permissive paths and the economic benefits all individually carry limited weight and the education strategy which carries very limited weight.
66. Weighing against the proposal is harm to the Green Belt from inappropriate development, harm to openness and harm to one of the Green Belt purposes which collectively carries substantial weight, less than substantial harm to a number of designated heritage assets which carries great weight and harm to landscape character which carries significant weight.
67. In line with the heritage balance set out at paragraph 208 (formerly 202) of the Framework, the Secretary of State has considered whether the identified 'less than substantial' harm to the significance of Hilfield Castle, Hilfield Lodge, Slades Farmhouse, Penne's Place Scheduled Monument and Aldenham Park RPG is outweighed by the public benefits of the proposal. Taking into the account the public benefits of the proposal as identified in this decision letter, overall, the Secretary of State agrees with the Inspector at IR644 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm, including cumulative harm, to the significance of the designated heritage assets. He considers that the balancing exercise under paragraph 208 of the Framework is therefore favourable to the proposal.
68. In line with paragraph 153 (formerly 148) of the Framework, the Secretary of State has considered whether the harm to the Green Belt by reason of inappropriateness, and any other harms resulting from the development is clearly outweighed by other considerations. Overall, he considers that the other considerations in this case do not clearly outweigh the harm to the Green Belt and the other identified harms relating to impact on landscape character and harm to designated heritage assets. He therefore considers that VSCs do not exist to justify this development in the Green Belt. Furthermore, the Secretary of State considers that the appeal scheme is not in accordance with development plan Policy CS13 as VSCs do not exist.
69. In line with paragraph 163b of the Framework (formerly 158b) he finds that the impacts of the proposal are not acceptable.

70. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that the overall conflict with the development plan and the material considerations in this case indicate that permission should be refused.

71. The Secretary of State therefore concludes that the appeal is dismissed and planning permission refused.

### **Formal decision**

72. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the installation of renewable led energy generating station comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping, and biodiversity enhancements, in accordance with application Ref. 21/0050/FULEI, dated 6 January 2021.

### **Right to challenge the decision**

73. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.

74. A copy of this letter has been sent to Hertsmere Borough Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Laura Webster*

Decision officer

*This decision was made by the Minister for Housing, Planning and Building Safety, Lee Rowley MP, on behalf of the Secretary of State, and signed on his behalf*

## **Annex A Schedule of representations**

### **Representations received in response to the Secretary of State's reference back letter of 17 January 2024**

<b>Party</b>	<b>Date</b>
Combined Objector's Group c/o We Are Upp	24 January 2024
LPA forwarded on by PINS	26 January 2024
Aldenham Parish Council c/o Debenhams Ottoway	29 January 2024
Appellant c/o Pegasus Group	30 January 2024

### **Representations received in response to the Secretary of State's recirculation letter of 2 February 2024**

<b>Party</b>	<b>Date</b>
Combined Objector's Group c/o We Are Upp	7 February 2024
Appellant c/o Pegasus Group	9 February 2024

### **General representations**

<b>Party</b>	<b>Date</b>
Appellant c/o Pegasus Group	5 January 2024



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# Report to the Secretary of State

by **Helen Heward BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Date 10 July 2023**

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Town and Country Planning Act 1990

Hertsmere Borough Council

Appeal by Elstree Green Ltd

Inquiry Held on 18 October - 4 November 2022

Accompanied site visits made Tuesday 18 October and Thursday 3 November 2022

Land north of Butterfly Lane, land surrounding Hilfield Farm and land west of Hilfield Lane, Aldenham, Hertfordshire

File Ref: APP/N1920/W/22/3295268

**File Ref: APP/N1920/W/22/3295268****Land north of Butterfly Lane, land surrounding Hilfield Farm and land west of Hilfield Lane, Aldenham, Hertfordshire**

- 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 Elstree Green Ltd against the decision of Hertsmere Borough Council.
- The application Ref: 21/0050/FULEI, dated 6 January 2021, was refused by notice dated 19 November 2021.
- The development proposed is described as: "*Installation of renewable led energy generating station comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping, and biodiversity enhancements.*"

**Summary of Recommendation: The appeal be dismissed.****Contents**

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**Preliminary and Procedural Matters**

1. The Inquiry sat on eight days between 19 October and 4 November 2022. The final day of sitting was held virtually. The parties prepared an itinerary for site visits. I undertook a number of unaccompanied visits to the site and surrounding area on 18 October

and in between sitting times. Accompanied site visits were held on 20 October and 3 November.

2. Access to Hilfield Castle and grounds had been restricted. An accompanied site visit on the penultimate day of the Inquiry was the first opportunity that the Heritage Witness for the Appellant and I had to view the building and its setting at close quarters.

*Recovery of the appeal by the Secretary of State*

3. Under the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 the appeal was to have been decided by an Inspector. Subsequently, the Secretary of State considered that he should determine it himself because the appeal involves proposals of major significance for the delivery of the Government's climate change programme and energy policies and proposals for significant development in the Green Belt. In exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 6 October 2022 the Secretary of State directed that he shall determine this appeal instead of an Inspector.

*Environmental Impact Assessment*

4. The proposed development falls within the description in column 1, Schedule 2, 3(a) (energy industry) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017 (EIA Regulations 2017) and exceeds the applicable site area threshold of 0.5 hectares (Ha) for an industrial installation project. Hertsmere Borough Council issued an EIA Screening Opinion Letter, 29 September 2020, informing the Appellant that the proposed development constitutes an EIA development, and the planning application was accompanied by an Environmental Statement.
5. The Planning Inspectorate reviewed the Environmental Statement and concluded that the Environmental Statement is satisfactory in terms of Schedule 4 of the EIA Regulations 2017. Further information was not required. All of the environmental information has been taken into account.
6. The Campaign to Protect Rural England Hertfordshire, (CPRE) called for the cumulative impacts of this scheme together with "*at least eight further large-scale ground mounted solar installations within the County.*"<sup>1</sup> Hertsmere Borough Council had not required that the Environmental Statement address cumulative impacts nor was this identified as a need by the Planning Inspectorate review.

*Pre-Inquiry Matters*

7. On 3 September 2022, the Appellant sought to amend the scheme at appeal by omitting one of the fields where solar arrays would be located; known as 'Field 1'. The main reasons given were to further

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<sup>1</sup> CD-ID 14 paragraph 51

lessen the less than substantial harm identified to heritage assets, and that it would respond to concerns raised regarding landscape and visual impacts, and remove areas falling within Flood Zone 2 and 3. The amendments were declined on account of the fact that the size, shape, and area of development would be substantially different from that determined by the Council. Further, it was not clear how the changes would impact the energy capacity of the scheme applied for, and so could deprive consultees and interested parties of a fair and reasonable opportunity to make representations on the effects of the changes sought.

8. On 22 September 2022, a draft Unilateral Undertaking was put forward by the Appellant, updated 18 October, in respect of a Construction Traffic Management Plan and permissive footpaths. I considered that all relevant matters could be secured by planning conditions and the undertaking was not necessary. The main parties agreed.
9. On 10 October 2022, a proportionate heritage rebuttal statement from the Appellant responding to additional heritage assets raised by the Combined Objectors' Group (COG) was accepted. However, a planning rebuttal from the Appellant with a large number of appendices potentially containing new evidence was declined.
10. On 18 October 2022, a Statement of Common Ground, (SoCG) summarising the positions of the Council and Appellant in respect of weight to be attributed to harms and benefits was submitted.

#### *Documents and Drawings Submitted During the Inquiry*

11. The Core Document Library is hosted by Hertsmere Borough Council and can be found at <https://www.hertsmere.gov.uk/Planning--Building-Control/Planning-Enforcement/Solar-Farm-Appeal.aspx>.
12. All parties worked collaboratively and discussions continued between the Appellant, Council and Rule 6 parties in the period leading up to the Inquiry and during the event. A number of documents were submitted. They are catalogued in a section of the Core Document Library titled 'Documents Submitted During the Inquiry. They include: -
  - A Noise SoCG, 17 October 2022, between the Appellant and COG.<sup>2</sup> In brief it put forward wording for a planning condition to ensure that noise impacts upon the amenity of residential properties and Public Rights of Way (PRoW) would be adequately controlled. With this, COG had no remaining substantive disagreement in respect of noise effects. At my request, and arising from a written representation, an update was issued 26 October 2022.<sup>3</sup> It added an assessment of the impact of noise from the proposed development upon the

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<sup>2</sup> DSDI 19

<sup>3</sup> DSDI 11

occupants of a dwelling at O’Malley’s Haulage Yard that had hitherto been omitted.

- A signed overarching SoCG between the Appellant and Council, and a planning statement of matters agreed/not agreed between the Council and Appellant. It includes a table summarising harms and benefits and the weight the parties attach to each.<sup>4</sup>
- A table summarising expert opinion about the likely level of harm to heritage assets.<sup>5</sup> The document was signed by the heritage experts for the Council, Appellant, COG and Aldenham Parish Council Rule 6 parties.
- A revised Construction Traffic Management Plan and note from the Appellant clarifying transport movements.<sup>6</sup>
- Following the 20 October accompanied site visit, an interested party submitted a number of photographs of trees and flooding.<sup>7</sup>
- From the Appellant, a clarification note, photographic images and text of the recorded PRoWs crossing the appeal site, to clarify points raised by an objector about their extent and position.<sup>8</sup>
- From the Council, two extracts of Google aerial photography showing the position of some paths across the appeal site that do not appear in the Definitive Rights of Way Map and Statement.<sup>9</sup>
- From the Appellant, a revised Landscape Strategy Plan drawing together with proposals from the Landscape and Ecology Management Plan for planting and management of habitats with additional notes.<sup>10</sup>
- A note from the Appellant clarifying drawings used to produce photomontages for Figure 9.3 Viewpoint 3 – sheet 3 of 4.<sup>11</sup>
- A version of a drawing attached as Appendix A to the Landscape Proof of Evidence (PoE) for COG with lengths of selected PRoWs marked up by the Appellant.<sup>12</sup>
- A note by the Appellant on glint and glare including a revised condition relating to mitigation in fields neighbouring Butterfly Lane.<sup>13</sup>
- A clarification note by the Appellant on flood risk.<sup>14</sup>

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<sup>4</sup> DSDI 11 i

<sup>5</sup> DSDI 2

<sup>6</sup> DSDI 20 and CD-DSD1 3

<sup>7</sup> DSDI 10

<sup>8</sup> DSDI 15, CD-DSD1 16 and CD-DSD1 17

<sup>9</sup> DSD1 13

<sup>10</sup> DSDI 22 LDA Design Dwg 8398\_013; then superseded by CD-DSDI 34MDwg 8398\_013 Rev A 01

<sup>11</sup> DSDI 35

<sup>12</sup> DSDI 49

<sup>13</sup> DSDI 23

<sup>14</sup> DSDI 33

- From the Appellant, a site location plan, clarifying that land affected by the access proposals is within the control of the Appellant.<sup>15</sup>
- A note by the Appellant relating to solar farms referred to by the Council's Planning Witness in Evidence in Chief.<sup>16</sup>
- From the Appellant, revised elevations for the substation, storage containers, control room, battery containers and inverter/transformer stations.<sup>17</sup>

13. None of these documents introduced substantive new evidence or issues. None of the main parties raised any objection to their submission, and all had an opportunity to consider and address the information during the Inquiry. The submission of the documents resulted in a narrowing of the matters in dispute and accepting them as matters before the Inquiry would not be prejudicial to interested parties.

14. Another note submitted by the Appellant during the Inquiry, TN06, providing details of the results of a new traffic speed survey, amounted to new evidence but did not raise substantive new issues.<sup>18</sup> Its purpose was to inform a proposed planning condition. The Council did not raise an objection to its submission but was unable to secure a response from the Highway Authority during the Inquiry. Both the note and Hertsmere Borough Council's position have been taken into account in this Report.

15. An interested party, who gave evidence on the last day of the Inquiry, sought to introduce documents after the close of the Inquiry. The documents were declined and returned, and have not formed any part of my considerations.

#### *Late Evidence*

16. On 18 and 19 April 2023, and before this report was submitted to the Secretary of State, the Appellant brought attention to the recent publication of Revised draft National Policy Statement EN-1 (March 2023), Revised draft National Policy Statement EN-3 (March 2023), and Powering up Britain: Energy Security Plan (March 2023). Three recent appeal decisions concerning solar farm proposals were also referred to, namely APP/W1525/W/22/3300222 (Chelmsford, Essex), APP/V1505/W/22/3301454 (Herongate, Basildon) and APP/C3240/W/22/3293667 (Telford, Shropshire). It was determined that the evidence offered should be accepted and the main parties offered an opportunity to submit a written response. The Appellant's submissions and responses from the main parties are attached at Annex E and are dealt with in the report.

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<sup>15</sup> DSDI 41

<sup>16</sup> DSDI 25

<sup>17</sup> DSDI 26, DSDI 27, DSDI 29, DSDI 30 and DSDI 31

<sup>18</sup> DSDI 32

## **Site and Surroundings**

17. The description of the appeal site and surroundings are a matter of common ground between the Council and the Appellant.<sup>19</sup> The site is within the London Metropolitan Green Belt. It sits within an area of Green Belt between Bushey, Radlett, and Borehamwood; three of the four main settlements within Hertsmere Borough Council's area.
18. The site is predominantly undeveloped agricultural land covering approximately 130Ha and comprises two parcels linked by a grid connection cable route.
19. The 'western parcel' is formed of five fields. Field 1 is accessed from an existing field gate on the west side of Hilfield Lane. Fields 2 to 5 are accessed from an existing field access on the eastern side. It rises to approximately 100m Above Ordnance Datum in Field 5 near Elstree Aerodrome and drops to roughly 80m Above Ordnance Datum towards Hilfield Lane and Hilfield Brook, then rising again towards the A41 and M1 motorway. The western parcel is in close proximity to the National Grid Elstree Substation.
20. The 'eastern parcel' comprises land north of Butterfly Lane and Fields 7 to 20. Access is gained via an existing access on the north side of Butterfly Lane.
21. There are a number of PRoWs within and adjoining the site. There are no statutory landscape or heritage designations on the site. There are forty-one listed buildings within 1Km. Drawings illustrating these and other features can be found in the Appendices to the Appellant's Landscape and Green Belt Harm proof of evidence, together with other images including the site location and topography.<sup>20</sup>

## **Proposed Development**

22. Development would broadly comprise:
  - Bifacial solar photovoltaic (PV) panels, ground mounted onto a fixed tilt south facing system at a tilt of 15-30 degrees;
  - Sixteen inverter/transformer stations housed in containers;
  - String combiner boxes to combine multiple strings of PV panels;
  - Approximately twenty battery storage containers;
  - On-site substation compound and on-site control room;
  - Compacted crushed stone internal tracks to allow vehicular access to the substation and between fields;
  - 2.2m high security deer fencing and gates;

<sup>19</sup> DSDI 11 section 2

<sup>20</sup> CD-ID 19 Figures 1 to 12

- A 5m minimum stand-off for fencing either side of PRoWs
- Security and monitoring CCTV/infra-red cameras mounted on fence posts along the perimeter of the site;
- Pole mounted weather stations and monitoring containerised building;
- Underground and cable tray cabling to connect the panels, inverters, and battery storage to the proposed on-site substation;
- Underground cable connecting the on-site sub-station to Elstree Substation to the west of the site;
- Site accesses;
- Landscaping planting, biodiversity enhancements and surface water attenuation measures.

23. Paragraph 3.5 of the SoCG states that gaps between rows of solar arrays would be approximately 3 to 4.5m depending upon topography.

#### *The Temporary Nature of the Proposed Development*

24. The development is expected to export renewable energy to the National Grid for a period of thirty-five years. The application proposes a thirty-five-year period for the operational phases of the development. A method statement for decommissioning would be prepared and submitted to the Council for approval and would be secured by planning conditions. The scheme is reversible, including the penetrative ground fixings, and all structures would be removed from the site and the land reinstated for agricultural use following decommissioning.

#### **Planning Policy**

25. The Development Plan comprises Hertsmere Local Plan Core Strategy (adopted January 2013) (Core Strategy); Hertsmere Local Plan Site Allocations and Development Management Policies Plan (adopted November 2016) (SADMPP); and Local Plan 2012-2027 Policies Map (November 2016). The area of the Radlett Neighbourhood Plan (2021) is 400m from the appeal site at its closest and is not engaged.

26. The two policies referenced in the Council's decision notice were SADMPP Policy SADM26 (Development Standards in the Green Belt) and Core Strategy Policy CS14 (Protection or Enhancement of Heritage Assets).

27. The Council and Appellant agree that the following policies are relevant to the appeal scheme: -

##### Core Strategy policies:

- SP1 Creating Sustainable Development
- SP2 Presumption in Favour of Sustainable Development

- CS12 The Enhancement of the Natural Environment
- CS13 The Green Belt
- CS14 protection or Enhancement of Historic heritage Assets
- CS15 Promoting Recreational Access to Open Spaces and the Countryside
- CS16 Environmental Impact of New Development
- CS17 Energy and CO2 Reductions
- CS22 Securing a High Quality and Accessible Environment

28. SADMPP policies:

- SADM10 Biodiversity and Habitats
- SADM11 Landscape Character
- SADM12 Trees Landscaping and Development
- SADM13 The Water Environment
- SADM14 Flood Risk
- SADM15 Sustainable Drainage Systems
- SADM16 Watercourses
- SADM20 Environmental Pollution and Development
- SADM21 Hazardous Substances
- SADM22 Green Belt Boundary
- SADM24 Key Green Belt Sites
- SADM26 Development Standards in the Green Belt
- SADM27 Diversification and Development Supporting the Rural Economy
- SADM29 Heritage Assets
- SADM30 Design Principles
- SADM34 Open Space, Sports, and Leisure Facilities
- SADM40 Highway Access Criteria for New Developments
- SADM41 Aviation Safeguarding

29. The Council and Appellant agree the following are also relevant to the appeal:

- The Hertfordshire Landscape Character Assessment.<sup>21</sup>
- Hertsmere Borough Council Biodiversity Trees and Landscape Supplementary Planning Document.<sup>22</sup>

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<sup>21</sup> CD-HCCP4

<sup>22</sup> CD-HSPD1

- Hertsmere Borough Council Interim Policy Statement on Climate Change (adopted 2020).<sup>23</sup>

30. In terms of national planning policy and guidance, the National Planning Policy Framework, 2021, (the Framework) and National Planning Practice Guidance, March 2014 as amended and updated (PPG), including the Chapter on Renewable and Low Carbon Energy, are material considerations. Other legislation, national guidance and policy documents were referred to by the parties and agreed to be material considerations. In particular:

- Overarching National Policy Statement for Energy (EN-1)<sup>24</sup> (2011), and Draft EN-1 published in September 2021.<sup>25</sup>
- National Policy Statement for Renewable Energy Infrastructure (EN-3) (2011) and Draft EN-3 published September 2021.<sup>26 27</sup>
- The Climate Change Act 2008.<sup>28</sup>
- UK Government Solar Strategy (2014).<sup>29</sup>
- Written Ministerial Statement on Solar Energy: Protecting the Local and Global Environment (March 2015).<sup>30</sup>
- Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (February 2021).
- The Planning (Listed Buildings and Conservation Areas) Act 1990.<sup>31</sup>
- Managing Significance in Decision-Taking in the Historic Environment. Historic England Good Practice Advice 15 (March 2015).<sup>32</sup>
- The Setting of Heritage Assets, Historic England Good Practice Advice in Planning: Note 3 (December 2017).<sup>33</sup>

### **Matters Agreed Between Hertsmere Borough Council and the Appellant**

31. Various background matters and the policy position are set out in the SoCG. The following main matters are agreed:

#### Renewable Energy

- There is no requirement to demonstrate a need for renewable energy, as confirmed by Paragraph 158 of the Framework.

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<sup>23</sup> CD-HSPD2

<sup>24</sup> CD-NPP25

<sup>25</sup> CD-NPP17

<sup>26</sup> CD-NPP25

<sup>27</sup> CD-NPP18

<sup>28</sup> CD-NPP2

<sup>29</sup> CD-NPP22

<sup>30</sup> CD-NPP16

<sup>31</sup> CD-NPP20

<sup>32</sup> CD-NPP10

<sup>33</sup> CD-NPP11

- Development would constitute a low carbon, renewable energy source that would contribute towards meeting national renewable energy targets.
- Development would provide a maximum of 49.9MW of electricity, equivalent to approximately the annual needs of 15,600 homes and displace an estimated 25,400 tonnes of CO<sup>2</sup> per annum.
- The proposed development would be the largest zero carbon renewable energy infrastructure in Hertsmere Borough Council's administrative area and make a substantial and significant contribution towards meeting local, national, and international objectives and policies.

#### Site Selection

- The site is in close proximity to existing energy infrastructure, at the National Grid Elstree Substation adjacent to Hilfield Farm which has capacity for additional power to be fed into it.
- No land is specifically allocated for the generation of renewable energy in the adopted Hertsmere Local Plan.

#### Green Belt

- The site is located in open countryside outside of any defined settlement boundary.
- The proposals comprise inappropriate development in the Green Belt and paragraph 148 of the Framework is engaged.
- There would be harm to openness and to Green Belt purposes.
- Substantial weight should be afforded to any harm to the Green Belt.

#### Landscape Character and Appearance

- The site is within National Character Area 111 Northern Thames Basin and the Borehamwood Plateau Landscape Character Area. The impact on the Borehamwood Plateau Landscape Character Area would be Major-Moderate and Adverse reducing to Moderate Adverse in the long term.
- Long-term visual effects of development would be either Moderate or Slight Adverse when viewed within 150m of the site. Within the site the long-term visual effects would be Major-Moderate and Adverse.
- Viewpoints in the Landscape and Visual Impact Assessment (LVIA) are representative and appropriate.
- Only the landscape character within the site would change as a result of development. Beyond the site, the landscape would remain physically unchanged.
- With the scheme removed after thirty-five years, the proposal would leave an enhanced environment in landscape character terms.

## Biodiversity

- Development would bring about a net gain in biodiversity on the site (39% in terms of habitat improvement and 23% in terms of hedgerow improvements) and would constitute a major public benefit and contribute to the very special circumstances (VSC) case in favour of the development. Ecological benefits should carry significant weight in the planning balance.
- A Biodiversity Metric 3.0 Calculation confirms an 89.99% habitat biodiversity net gain (BNG) and a 24.98% hedgerow BNG through the implementation of development.

## Arboriculture

- Existing trees would be retained. Proposals include tree planting and a condition to ensure their replacement should they die, be removed, or become severely damaged.

## Public Rights of Way

- All PRoWs which pass through the site would remain and no solar panels or other associated equipment would be installed within five metres of any PRoW.
- Two new permissive footpaths are proposed for the lifetime of the development. A condition could ensure they are retained for that period.

## Glint and Glare

- Heathrow Airport, Elstree Aerodrome and National Air Traffic Services have no safeguarding objections.
- Four houses might be moderately impacted under the current baseline conditions. No impact is expected if proposed screening measures were implemented.
- Butterfly Lane might be moderately affected by glint and with screening as it is. Proposed hedging improvements could mitigate that impact.

## Agricultural Land

- The site constitutes Grade 3b land which is not 'best and most versatile' agricultural land. Development would not result in the loss of Best and Most Versatile Agricultural Land.
- Solar panels would be mounted on metal legs allowing grassland to grow beneath them. The metal legs would be driven into the ground without the use of any concrete and removed at the end of their life.
- Part of the site would remain in agricultural use for grazing and other areas set aside for wildlife and biodiversity. Development would provide the soil, which has been intensively farmed, a fallow period to recover from intensive agricultural practices.

- Upon expiry of the permission the land would revert to agricultural use. There would be no permanent loss of agricultural land or its quality.

#### Heritage Matters

- The Council and Appellant agree a list of five heritage assets which would be affected. The Council and Appellant agree that all heritage harms that would arise would be of 'less than substantial harm' and that the test at paragraph 202 of the Framework is to be applied.<sup>34</sup>
- All alleged harms to significance would arise from harm to settings.
- The Council and Appellant agree that the level of harm that would occur to Hilfield Castle (Grade II\*, list entry no: 1103569) and Hilfield Castle Lodge (Grade II, list entry no: 1103570) would be low.
- A table summarising the position of the main parties in respect of heritage assets was submitted.<sup>35</sup> Aldenham Parish Council and COG were also signatory to the table.
- Aldenham Parish Council argue harm would occur to the setting of Hilfield Gatehouse, (Grade II list entry 1346907). COG argue there would be some impact meriting consideration to a number of other listed, local listed and non-listed buildings. Hertsmere Borough Council does not assert harm to any of these.

#### Temporary Consent

- A thirty-five-year temporary consent is sought from the date on which construction of development commences.
- A condition could ensure that a Decommissioning Statement be approved to demonstrate how the equipment would be removed from the site and the land restored to its former condition.

#### The Officer Report to the Planning Committee

- The Officer Report to committee considered that the public benefits would clearly outweigh the limited harm that would be caused to the openness of the Green Belt (whilst affording substantial weight to any harm to the Green Belt in accordance with paragraph 148 of the Framework), and that VSC were demonstrated by the proposals. Members of the Planning Committee disagreed.
- This Officer Report also advised that no environmental harm would be caused; on the contrary the development would bring

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<sup>34</sup> CD-ID 8A Paragraph 2.1

<sup>35</sup> DSDI 2

about improvements to the natural environment within the site. The Planning Committee disagreed.

## **Matters in Dispute Between Hertsmere Borough Council and the Appellant**

32. The main matters in dispute are:

Harm to the Significance of Designated Heritage Assets

- The extent and level of harm that would occur upon the significance of Slades Farmhouse (Grade II, list entry no: 1103614).
- Whether any harm would occur to the heritage significance of Penne's Place Scheduled Monument (list entry no: 1013001) and Aldenham House Registered Park and Garden (Grade II, list entry no: 1000902).
- Whether the public benefits of the scheme outweigh the alleged harm.

Green Belt

- The degree of impact and extent of harm to the openness of the Green Belt.

Benefits of Development

- The amount of weight to be apportioned to the benefits of development.

Very Special Circumstances

- Whether the identified benefits of the development are sufficient to amount to VSC which would clearly outweigh the harm to the Green Belt and any other harm caused.

33. The table on the following page, taken from the SoCG, summarises the position of the Council and Appellant in respect of weight to be attached in the planning balance.

Weight attributed to harms and benefits in the planning balance		
	LPA	Appellant
<b>Harms (negative weight)</b>		
Green belt openness and purposes	Substantial	Substantial
Landscape impact	Significant	Moderate
Heritage impact	Substantial	Moderate
<b>Benefits (positive weight)</b>		
Generation of 49.9MW of renewable energy	Significant	Substantial
Biodiversity/ecological enhancements	Significant	Substantial
Landscape enhancements (operational period)	Neutral	Moderate
Landscape enhancements (post-development)	Limited	
Improving soil and agricultural land quality	No weight	Moderate
Aiding farm diversification	No weight	
Permissive footpaths	Neutral	Limited/moderate
Education strategy	No weight	Limited
Economic benefits	Limited	Significant

## The Case for Elstree Green Ltd

34. The scheme was recommended for approval after a consultation process which led to significant changes to the scheme. The Appellant says that the detailed and comprehensive Officer Report recognised the numerous and weighty benefits of the proposal which included:<sup>36</sup>

- The substantial amount of renewable energy that would be generated from the scheme that: *"would be a significant contribution towards addressing the Climate Emergency that the Council has declared, and towards meeting local and national policy on reducing carbon emissions, addressing climate change, and meeting the UK's obligations under the Paris Agreement of 2016";*
- There would be environmental and BNG benefits to the site and nearby nature reserves;
- Belstone Football Club and local walkers would benefit from the new permissive paths; and
- *"local people, including school pupils, would benefit from the Educational Strategy."*

35. COG suggest in closing there were errors in the approach taken by the Officers in their assessment. The Appellant says that what COG identify are simple challenges to the proper exercise of matters of planning judgment.

36. Members disagreed, but in doing so expressly recognised, in the reason for refusal, the importance of renewable energy acknowledging: *"the wider environmental benefits associated with the increased production of energy from renewable sources."* As the Council's Planning Witness accepted in cross examination, it was clearly an "on balance" decision.

37. Given the clear concessions made by the Council throughout the Inquiry, it is difficult, the Appellant considers, to understand how it can now be argued that the planning balance is anything other than heavily in favour of granting permission. VSC exist and the appeal should, they say, be allowed.

### *The Council's Energy Plan*

38. The Appellant notes that the Council's policy documents all say the right things, but the Council are yet to take the "ambitious actions" which they claim they are committed to. The Appellant says it became apparent through the Inquiry that the Council does not have a plan to achieve its stated energy and climate objectives.

39. The Framework sets out ambitious targets for meeting the challenge of climate change and these are targets that councils are required to

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<sup>36</sup> CD PA-27 paragraph 12.10

reflect in their own development plans. Framework paragraph 152 states that "*The planning system should support the transition to a low carbon future in a changing climate... It should help to... support renewable and low carbon energy and associated infrastructure.*"

40. Framework paragraph 155(b) indicates that plans should "*consider identifying suitable areas for renewable and low carbon energy*". At paragraph 158 the Framework dictates that there is no requirement for applications to demonstrate the need for renewable energy and that "*even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions*". The Framework is clear that renewable energy is key to the country's transition to a low carbon future, and it requires local planning authorities to plan for it.

41. Further national guidance on planning for renewable energy is provided in the PPG. Statements of particular relevance including:

- "*The National Planning Policy Framework explains that all communities have a responsibility to help increase the use and supply of green energy*" (Paragraph: 003 Reference ID: 5-003-20140306);
- "*When drawing up a Local Plan local planning authorities should first consider what the local potential is for renewable and low carbon energy generation.*" (Paragraph: 003 Reference ID: 5-003-20140306);
- "*When identifying suitable areas, it is also important to set out the factors that will be taken into account when considering individual proposals in these areas.*" (Paragraph: 005 Reference ID: 5-005-20150618), and
- "*Policies based on clear criteria can be useful when they are expressed positively (i.e., that proposals will be accepted where the impact is or can be made acceptable).*" (Paragraph: 007 Reference ID: 5-007-20140306).

42. In short, the PPG expects all communities to do their bit to increase the supply of renewable energy, when considering how they can do that their local plans should be informed by an up-to-date, realistic, capacity study and an up-to-date Local Plan can then provide for the delivery of renewables either by allocating land or setting out criteria-based policies against which applications can be judged.

43. The Appellant says the Hertsmere Development Plan does none of this. They wish to record that numerous witnesses before the Inquiry agreed that it is out of date in this regard and none have suggested that it provides any allocations, criteria-based policies or is informed by a capacity study.

44. Nationally the target for the reduction of carbon emissions is to be net zero by 2050; a target which is enshrined in S.1 of the Climate Change Act 2008. In December 2020 the National Audit Office acknowledged that meeting net zero is a colossal challenge, being a significantly tougher objective to achieve than the previous 80%

target.<sup>37</sup> In October 2021 the net zero strategy further tightened in the UK with a commitment that the country will be powered entirely by clean energy by 2035, fifteen years earlier than previously required.<sup>38</sup> Contrary to the cross examination of the Appellant's Planning Witness the latter cannot be read as favouring off-shore wind and disfavouring solar power –it states that unequivocally.

45. The Development Plan is not informed by these up-to-date targets and is out of date in this regard. The Core Strategy was informed by the 1997 Kyoto Agreement targets of reducing emissions to 60% by 2050. The capacity study that existed was the East of England Sustainable Development Round Table 2001 which identified 17% of the region's electricity could be produced by renewable sources by 2020. Hertsmere does not generate 17% of its electricity by renewables, it produces around 6% of its electricity; significantly below the national figure of 33%.
46. The Appellant sets out that evidence that informs the Development Plan is grossly out of date, and there is no up-to-date evidence in the form of a capacity study or anything else – all that exists are the above statements of intent.
47. Judging the Development Plan against Hertsmere's own targets, it is, the Appellant says, out of date. The Council has declared a Climate Emergency and is committed to achieving carbon neutrality as soon as possible and no later than 2050.<sup>39</sup> But that is not reflected in the Development Plan.
48. The Council has adopted strategies that commit it to producing more renewable energy in Hertsmere. The Council's Climate Change and Sustainability Strategy v.1.4, 26th June 2020, states in terms: "*In order to meet the energy needs and our net zero emissions commitment before 2050, a significant amount of renewable energy capacity will need to be deployed within Hertsmere*". Goal number 2 is that it should "*reduce reliance on fossil fuels and reduce emissions by increasing renewable energy capacity*". These objectives are not reflected in the Development Plan, nor its actions in refusing this application.
49. The Appellant's position is that on a practical level there is simply no plan within Hertsmere to meet the national objectives of net zero by 2050, nor the locally set objectives of deploying "*a significant amount of renewable energy capacity*" within the Borough. The Council's Planning Witness accepted the view of the Council's Climate Change Officer that roof top mounted solar panels and similar small scale renewable schemes would not be enough to meet the "step change" that was required in renewable energy production. The only suggestion offered by the Council or Rule 6 parties as to how renewable energy targets could be met was by importing it from "somewhere else". Such a suggestion is at odds with the

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<sup>37</sup> CD-NPP30 page 6

<sup>38</sup> CD-NPP8, first bullet point, page 19

<sup>39</sup> CD-HSPD2 paragraph 1

requirement that “all communities” do their part and Hertsmere’s own commitment to significantly increase its renewable capacity. The Appellant says, this is a council without a plan and is dependent on developer led schemes, such as the appeal proposal, coming forward if it is to stand any chance of making the changes required to meet renewable energy objectives.

50. Whether the Council’s Development Plan is judged against national planning policy and guidance, against the national energy strategy and evidence or against Hertsmere’s own energy and climate strategies, it is out of date.
51. The Council’s Planning Witness accepts the conclusions of the Climate Change Officer; that if this district is to achieve its stated objective, then the only way it could do it would be large scale solar generation in the Green Belt.
52. The other parties to the Inquiry, “acknowledge” the importance of renewable energy but then seek to downplay that benefit. The Appellant considers that this is disappointing and indicative of the failures that have occurred in planning for renewable energy delivery in this locality.

#### *Landscape and Visual Impacts*

53. Whilst the Inquiry heard evidence from landscape witnesses it is not a reason for refusal. The Appellant accepts that in the short to medium term there would be landscape and visual harm but very firmly contends that in the longer term there would be improvements as a result of the legacy plan and that medium/long term effects during operation are not greater than moderate outside the immediate site boundary and beyond. With regards to the harms that would occur, the differences between the landscape witnesses for the Appellant and COG, in regard to visual impacts are small or as COG's Landscape Witness accepted in cross examination the experts' assessment is either the same or of marginal difference.<sup>40</sup> There would be visual impacts and they need to be weighed in the overall planning balance.
54. The Appellant’s Landscape and Visual Impact Assessment demonstrates that due to the comparatively small scale, mass, and height of the solar panels in combination with the existing landscape and topography and proposed mitigation, views of the site would be “localised” and limited to impacts within 150m of the appeal site. That view was endorsed by the Council officers and the previous advisers to Aldenham Parish Council. COG's Landscape Witness accepted in cross examination that views of the appeal site would be limited in distance beyond the site itself. The potential for harm is largely limited to the site itself or those stood next to it.

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<sup>40</sup> CD-ID12a Appendix E

55. The extent of visual harm would be informed by how solar panels are perceived and the Appellant contends it is wrong to treat them as in some way innately offensive to look at. As was acknowledged by Council officers, the perception of solar panels was something that divided opinion and representations were received to the application which set out that the solar farm "*would make for an interesting, unusual and educational walk, and some have pointed out that there are other areas of countryside to walk in nearby for those who don't want to walk past solar panels*".<sup>41</sup>

56. COG's Landscape Witness's opinion on the impacts of the solar farm were all shaped by his opinion that the solar panels would appear as a solid mass. Whilst this was expressed as an opinion the Appellant submits that it is not supported by the factual evidence. Solar panels are not a solid object akin to a building, they are constructed by resting a panel on a frame and so are by definition not opaque solid forms. This is true of both individual solar panels but rows of solar panels as well, with the result that there would be visual permeability through the solar farm from many angles. Visualisations illustrate what a solar panel looks like and the visual permeability of them from relevant viewpoints.<sup>42</sup> This flaw led COG's Landscape Witness to overstate the impacts.

57. The evidence of the Appellant's Landscape Witness was clear that solar development is capable of proper integration within the landscape as a low-lying form of development and that the receiving landscape character provides a strong existing landscape framework along with proposed mitigation, to properly integrate the proposals. The Appellant considers that layout has been specifically designed to address landscape sensitivities and is well designed and pays proper regard to strategic landscape guidance for the Local Character Area including provision of green infrastructure outcomes.

58. The main difference in outcome between the Landscape Witnesses for COG and the Appellant is the assessment of the impact on the Aldenham Plateau Landscape Character Area. COG's Landscape Witness assessed the impact would be the same as that for the Borehamwood Plateau despite the development of the solar farm exclusively occurring on the Borehamwood Plateau Landscape Character Area. COG's Landscape Witness's position is not, the Appellant says, credible. When considering landscape impacts it is the landscape itself that is the receptor. The Borehamwood Plateau would receive 85Ha of development whereas the Aldenham Plateau would receive none, it is therefore nonsensical to suggest that the two landscapes are altered in the same way. COG's Landscape Witness's assessment in this regard lacks any rationality and is unsupported by any guidance. To the extent that intervisibility is a relevant consideration, it does not elevate impacts to the extent argued by COG. The Appellant says that the evidence of their

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<sup>41</sup> CD PA27 – 10.99

<sup>42</sup> CD ID 19 Appendices: Figure 9.1: Viewpoint 1 - A41 Photomontage (Left) Sheet 4 of 6; Figure 9.5: Viewpoint 9 - Sheet 2 of 2; Figure 9.6: Viewpoint 11 (Left) Sheet 4 of 6

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Landscape Witness regarding Guidelines for Landscape and Visual Impact Assessment (GLVIA) is correct.<sup>43</sup>

59. It was accepted for the Council that landscaping mitigation and the reinstatement programme after decommissioning, and the education strategy were all matters that could be dealt with by condition. COG's Landscape Witness accepted that the Landscape and Visual Impact Assessment was fit for purpose and that reinstatement could be dealt with by condition.

60. COG's Landscape Witness and various other witnesses raised concerns about "channelisation" of PRoWs. It is not accepted that this would occur. What is proposed is a 10m wide corridor – at the edge of which would be a fence (sometimes only one side) and beyond that by 3 to 5m would be the start of the array. Even to the extent that it might be unwelcome to a future walker who would prefer to walk through the countryside it is not accepted that this would be a material planning harm sufficient to weigh decisively against the proposals. These routes would be generous (double the width of Butterfly Lane by example) and characterised by wildflower meadow, in places existing or new hedgerow or tree planting and forward views to the surrounding landscape. Conditions secure that the minimum distance from the centre line of any PRoW that runs through the solar farm to the nearest boundary be it fence, hedge or other would be 5m. That is a meaningful distance, and it is secured as a minimum. This was the view reached by the Council's officers who concluded the buffer would "prevent walkers from feeling unduly hemmed in."<sup>44</sup>

61. Aldenham Parish Council refer to the Radlett Neighbourhood Plan (2021) but acknowledge it is not engaged. Even if it was, the Appellant considers that the concern about the usability of footpaths is not justified.

62. The Appellant accepts that there would be short- and medium-term landscape and visual harms but they would diminish as the mitigation planting matures and once the operational period ends then there would be a long-term benefit, a proposition that was not meaningfully challenged before the Inquiry.

#### *Heritage*

63. There are five assets to be considered and it is the Appellant's contention that there is only harm to three of them; and even then, it is firmly submitted that for the reasons given by their Heritage Witness the harm is no greater than the low end of less than substantial harm.

64. The Appellant points out that intervisibility and co-visibility between a heritage asset and new development does not automatically create harm. This is a trite proposition that is all too often forgotten or

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<sup>43</sup> CD-NPP14

<sup>44</sup> CD PA27 – 10.100

misunderstood as it has been, the Appellant says, by the Council in this case. Change only matters if it affects significance. In order to understand what the impact on the significance of a heritage asset actually is, you have to understand what the actual significance of the asset is and from where and what it draws that significance.

65. The Appellant considers that methodological issues appear to have become muddled before the Inquiry by the Council and COG's repeated references to cumulative assessments. That is to say cumulative effects of a single development. However, when the guidance and the evidence of their own witnesses, as well as that of the Appellant's, is properly understood there is actually agreement in how assessment of heritage impacts should be approached.
66. The Framework and relevant legislation require that when considering heritage assets what is to be considered is the impact on their heritage significance. The first step in doing this is to understand the significance of the asset in question. Once that is understood an assessment can be made as to whether the significance of the asset would be harmed by the proposed development. That assessment is carried out by comparing the significance of the asset as it stands now i.e., the baseline and what the situation would be once the development is carried out.
67. That the relevant assessment is against the existing baseline versus the post development position was agreed by all the heritage witnesses who gave evidence to the Inquiry. Past degradation of the asset leads to the existing baseline it does not add to the harm that arises. This approach is not altered by Historic England's The Setting of Historic Assets, Good Practice Advice in Planning, Note 3 (GPA3).<sup>45</sup> The Appellant's Heritage Witness's opinion is that the purpose of the paragraph on Cumulative Change, found at page 4 of GPA3, is to serve as a reminder when carrying out the baseline versus proposed assessment, to have particular regard to the sensitivity of an asset that may have been so extensively harmed by previous development, that it is particularly vulnerable to any further changes, severing the last link between an asset and its original setting. There is nothing, the Appellant says, in this paragraph that suggests it is anything other than the existing baseline that needs to be assessed.
68. The Appellant says there are two ways to test the validity of the suggestions made by the Council and COG in their cross examination of the Appellant's Heritage Witness that there has been a failure to consider cumulative change:
  - The Council's own witnesses carried out their assessments against the existing baseline and agreed in cross examination that it is against that position that the impact

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<sup>45</sup> CD NPP11

of significance of the proposed development should be judged; and

- Nobody pointed to any policy or guidance that indicates what should be used as the baseline if it is not the existing baseline.
- The suggestion that there has been a failure by the Appellant to consider cumulative change is incorrect. The suggestion made by the Council that the Appellant's Heritage Witness's methodology is flawed due to their consideration of cumulative change is simply incorrect and is not supported by the evidence of the Council's own Heritage Witness or that of other heritage witnesses.

69. The criticisms made of the methodology of the Appellant's Heritage Witness ignore their reference in cross examination to advice in GPA3, concerning little-changed settings. The Appellant draws attention to GPA3 page 4 paragraph 9 where it is stated that:

*"Settings of heritage assets which closely resemble the setting at the time the asset was constructed or formed are likely to contribute particularly strongly to significance but settings which have changed may also themselves enhance significance, for instance where townscape character has been shaped by cycles of change over the long term."*

70. The Appellant's Heritage Witness is correct to consider the current contribution the setting of heritage assets makes to their significance.

71. The original scoping of what heritage assets needed to be considered was done by a Desk Based Assessment. The name of that assessment is a misnomer and as it confirms at 3.2 the relevant information sources were "*supplemented by a site visit in July 2020 which confirmed the current ground conditions and land use within the site and the locations of previously recorded heritage assets, and also considered the baseline setting of designated heritage assets in the study area*". When the Heritage Witness for the Appellant was asked to act in the appeal, they considered all the relevant background documents and carried out a site visit before deciding if they could support the appeal. They approached things from first principles and considered each of the assets that were potentially affected before determining which ones needed further consideration.

72. It was suggested in closing by Aldenham Parish Council that the Appellant's Heritage Witness accepted in cross examination that they had advised against the inclusion of Field 1. The reason the parallel scheme was submitted was explained by the Appellant's Planning Witness and the Appellant has never wavered in its position that the appeal proposals are acceptable, and the Council were wrong to refuse planning permission. The Appellant's Heritage Witness gave advice on what improvements could be made. The Appellant says

that recognising an opportunity for improvement is not the same as an acceptance of an existing problem.

73. It is the Appellant's view that five assets require assessment: Slades Farmhouse, Penne's Place, Aldenham House, Hilfield Castle and Hilfield Lodge. Moreover, the difference between the Appellant's and Council's heritage witnesses relates to whether there is harm to Aldenham House and Penne's Place, and the level of harm to Slades Farmhouse. In each instance the Heritage Witness for the Council considered that their assessment of impact was "one step up" from that of the Appellant's. Aldenham Parish Council's Heritage Expert (in writing) agrees that there is no harm to Penne's Place but places the other impacts as higher, however, they did not appear before the Inquiry. The Heritage Witness for COG considers that there is a medium level of harm to Slades Farmhouse, Hilfield Castle and Hilfield Lodge.

74. The Appellant notes that the Inspector will form an opinion on the credibility of the various heritage witnesses who have appeared before the Inquiry. When doing so it is worth bearing in mind that the High Court has confirmed that "*substantial harm or total loss*" means harm that would "*have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced*".<sup>46</sup> A medium level of less than substantial harm is therefore something that is on its way to very much reducing the significance of an asset. Given that the only impacts that arise in this case arise through indirect impacts on peripheral aspects of part of their setting, rather than direct impacts on a heritage asset, it is submitted for the Appellant that assessments of a medium level of less than substantial harm should be treated with a high degree of caution.

#### *Slades Farmhouse*

75. The Appellant's view is that the heritage significance of Slades Farmhouse is primarily derived from its physical form, in particular the early parts of its fabric, and its southwestern elevation. It is from the garden that these features are best understood, and it is the garden which is the element of its setting that makes the most significant contribution to its significance. The small cluster of surviving farm buildings give some legibility to its origins as a farmhouse. Slades Farmhouse was re-orientated to face Sawyers Lane, as seen from comparing the building on the 1786 map to the later maps.

76. Slades Farmhouse's relationship with its wider setting has fluctuated over time and it no longer has a functional agricultural relationship with the wider agricultural land. The Council's Heritage Witness sought to downplay the significance of this distinction, but it is fact that Slades Farmhouse is not the centre of management of the surrounding fields, and that reduces the historical connection. This is

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<sup>46</sup> CDADAP3 - *R DCLG and Nuon UK Ltd v. Bedford Borough Council* EWHC 2847, paragraph 25

clearly legible through the introduction of other land uses, including the coach depot, to its immediate surrounds. The Appellant says that is not a new phenomenon. Historic mapping shows the changing nature of the tenancy of surrounding fields.

77. The Appellant acknowledges that the fields which form part of the appeal site make some contribution to the significance of the asset. However, they consider that the contribution is limited for the reasons set out above and articulated at length by their Heritage witness. Fields 19 and 20 are free from solar panels and those are the fields closest to the southwestern elevation of Slades Farmhouse which is the principal elevation of the asset. That is to minimise the impact on Slades Farmhouse. Mitigation proposed in the area around Slades Farmhouse for new hedgerows to re-establish the legibility of the former route of Sawyer's Lane. There would be some views from Slades Farm of solar panels, but they would all appear with a setback and absent from the field to the southwest. There would be some views of Slades Farmhouse where solar panels would be apparent, but the views from where the asset's significance is best understood would be unaffected. This leads to the conclusion that there is an impact, at the low end of less than substantial harm.

#### *Penne's Place*

78. The Appellant argues that it is not possible to know what the original setting of Penne's Place was seven hundred years ago but that there is extensive mapping evidence that its remnants have been deliberately secluded and cut off from the wider landscape for the last 150 years at least. This has been accentuated by boundary treatments implemented by the school, including vegetation and fencing. Given the seclusion, despite the proximity of the appeal site to Penne's Place, the Appellant says that the appeal site makes no contribution to the significance of Penne's Place and the appeal proposal would not harm its significance. Even if the Appellant's evidence is not accepted and there is some contribution to significance from the appeal site then there has been no proper articulation as to why there would be harm. There may be some limited glimpsed intervisibility of the scheme beyond an appropriate set back but that does not equate to harm to significance.

79. The only body who has suggested anything other than the lowest level of harm to Penne's Place was Historic England. They did not take part in the Inquiry. There is nothing in their representation that suggests they visited the site or that they considered the early map evidence and the simplistic idea that comes across in their representation is that open landscape beyond Penne's Place forms part of its setting. None of the experts before the Inquiry agree with the approach of Historic England and it is submitted that the evidence the Inquiry has had the benefit of hearing live should be preferred.

#### *Aldenham House and Gardens*

80. When considering the impact from a development in the setting of a heritage asset it is key to understand the totality of the setting not

merely the location in which the development is proposed to take place. This is necessary to understand the particular contribution that is made from any given element of the setting and how a change in that location would affect significance. This is a principle which is key in order to properly understand whether there is an impact on Aldenham House Registered Park and Garden. There are planned views from this asset, but not of the appeal site. The designed views are the southwest view down the wide elm avenue that was demonstrably designed as an outwards view from the original core of the parkland. This is best demonstrated by the physical sinking of the lane out of the view on the south-western side of the parkland, as well as evidence from the map regression evidence that culminates in the 1895-99 Ordnance Survey Map which shows the relationship between the parkland, the elm avenue, and the designed southwest view. The south-western focus of Aldenham House Registered Park and Garden is clear as is the contrast between its south-western and north-western elements. The north-western edge does not demonstrate the elements of such a designed view, with secluding vegetation and no sunken lane.

81. The heritage significance of Aldenham House and Gardens is, the Appellant says, overwhelmingly within the asset itself. That is where the very extensive, clearly designed elements are contained; the water gardens, lake, bridge, and the more open parkland elements are in the southern area of the RPG, whereas the northern area is made up of more secluding vegetation and the arboretum which has expanded to fill the northern area. This growth means that any potential views out to the north, including of the appeal site, are greatly inhibited. This has only been further exacerbated by the school acting to secure its boundaries with fencing.
82. The witnesses who have identified harm to this asset did not meaningfully dispute the historic development described by the Appellant's Heritage Witness's or the analysis that they provided of the current experience of the asset and its surroundings. Their evidence is in essence that there would be glimpsed views of the solar farm and there is therefore harm. However, the Appellant argues, the appeal site makes up a very small proportion of the setting of the Registered Park and Garden, and it does not contribute to the heritage significance of the asset, the core of which is that contained within the asset itself. The result is that the appeal proposal would not, the Appellant considers, harm its significance.
83. The Council's Heritage Witness told the Inquiry that it was on their advice that panels were moved back from the north side of Butterfly Lane – once that was done, mindful of the effect of mitigation - the glimpsed views from the northern gateway would be maintained and no harm would be caused.

*Hilfield Castle*

84. Hilfield Castle was sited to give it a dramatic context, in line with the picturesque aesthetic traditions of the time. The views that are most

important to it are the views to the South, which is where the earliest part of parkland was located, and it is the southern façade of the building that is the most important. The Heritage Witness for COG tried to suggest that all façades were equally important, but this ignores the geometry of the building, the level of architectural detailing to each façade and the location of the important views to the south over the ponds or lake and the rising ground beyond. An 1804 plan shows that there was briefly parkland to the west and further north of the Castle but that this was established later than that to the south and came about not from contemporary specimen planting but hedgerow removal.

85. The parkland to the west of the Castle was not long-lived and by the 1839 tithe map it was largely lost. The surroundings of the Castle have now changed dramatically; to its immediate north-east is the aerodrome and southeast the reservoir. Its northern border has limited intervisibility with the surroundings due to the continued growth of vegetation which acts to seclude that edge of the Castle's grounds and inhibit views of the electrical transforming station. The vegetation on the western boundary also limits views.
86. The significance of Hilfield Castle derives primarily from its architectural style. The main contribution that its setting makes to significance is through the remaining grounds of the asset. Parts of the appeal site do make some contribution to significance as they were once parkland but that is no longer apparent and intervisibility is limited. However, the introduction of specimen trees to the north-west and west would enhance the legibility of those areas as former parkland for the first time in over a century. These enhancements are a heritage benefit for the setting of Hilfield Castle and would outlive the thirty-five operational years of the solar farm. Therefore, the Appellant submits, the harm to the significance of Hilfield Castle can only be at the low end of less than substantial harm.

#### *Hilfield Lodge*

87. The Appellant says that the impact on the Lodge is also at the low end of less than substantial harm and the explanation for this largely mirrors that for the Castle, in that its current grounds contribute most to its significance through setting. The primary elevation of Hilfield Lodge is its southern façade which faces south towards the lake which survives to this day. The Appellant again accepts that because parts of the appeal site were once parkland and have some intervisibility with the asset then there is limited harm to the significance of Hilfield Lodge.
88. The Appellant's Heritage Witness's and the Heritage Witness for the Council both agree that there is harm to Hilfield Castle and Lodge and that harm is at the low end of less than substantial harm. The level of harm ascribed by the heritage witnesses for Aldenham Parish Council and COG is difficult to understand. In any event the Appellant submits that the assessment given by the Appellant's Heritage Witness and crucially their explanation for that assessment

is correct. However, the Appellant says that the introduction of specimen trees to the north-west and west of the Castle would also enhance the setting of Hilfield Lodge for more than the thirty-five operational years of the solar farm.

*Non-designated assets*

89. If an asset is not on a local list in an area where one has been established with clear criteria and periodically reviewed, then that gives a strong indication that it is not a non-designated heritage asset. Whilst in theory such an asset could be a non-designated heritage asset, for a professional to reach such a conclusion there would have to be an assessment against a clearly compiled set of robust criteria. This is lacking here.

*Landscape and heritage mitigation strategy*

90. The landscape mitigation strategy that is now before the Inquiry is also a heritage mitigation and improvement strategy that has been informed by both the Appellant's Landscape and Heritage Witnesses. The result of this would be in the long term a heritage gain, which is in particular brought about by the re-instatement of trees to areas of former parkland. The Landscape Witness for COG sought to take issue with this claiming that trees were out of character with the local area, which is obviously wrong as a matter of fact, but in any event, there can be no dispute that they represent a heritage gain as they re-introduce features that are lost. In closing the Council accept there are heritage benefits but take issue with the extent of them.

91. The heritage benefits do not change the position that during the life of the solar farm there would be some heritage harm and the Appellant entirely accepts that the policy consequence of this is that the Framework paragraph 202 balance is engaged.

*Green Belt Impacts*

92. The appeal site is located in the Green Belt and the Appellant acknowledges that the development proposed is by definition inappropriate development. Substantial weight should be attached to that definitional harm as it should to any other Green Belt harm.

93. Assessing Green Belt harm requires an assessment of whether the five purposes are harmed. The Council and the Appellant agree that there is harm to purpose (c) by encroachment into the countryside. This occurs because of the simple fact that there is development within the Green Belt. All the landscape witnesses are in broad agreement that the extent of visibility of the solar farm in the wider landscape is limited and as the Appellant's Planning Witness explained this acts to temper the extent to which the development is perceived as encroaching into the countryside as does the existence of other development in the surrounding area; for example, the aerodrome. This is the only Green Belt purpose that would be harmed, albeit that the Appellant has not sought to dispute the fact that for over 85Ha there would be a change to the character of the

land which would impinge upon the openness of the Green Belt, causing harm which should be afforded substantial weight.

94. COG's Planning Witness argues that there is harm by way of failing to check the unrestricted sprawl of large urban areas. The Appellant says there is no such harm. The appeal site does not adjoin any urban area and so by definition cannot extend one, or be said to be causing an unrestricted sprawl. Nearby settlements would remain physically and visually separate from the solar farm.

95. The essential characteristic of the Green Belt is its openness; this has a spatial element and may also have a visual element. Visually, for reasons already touched upon, the impact is surprisingly limited given the overall scale of the development. The appeal site, due to the topography of the surroundings and the presence of existing and proposed vegetation, is well contained with views limited to the appeal site itself and a range of about 150m around it. The limited nature of its visibility is largely agreed.

96. The level of visual impact on openness is, the Appellant claims, further moderated by the nature of the proposed structures. As already explained solar panels are not dense structures, they are, as their name indicates, panels that are mounted on frames. This means their top surface is solid but below them they are largely open. Their height is limited being approximately 3m tall and these features combine to create a development which would not be widely apparent beyond its immediate local and within its immediate locale the impact on visual openness is reduced by the extent to which the fields where panels are located remain visually permeable.

97. Spatially there would be an impact on openness as the appeal introduces development to a site which is currently undeveloped. But again, the spatial impact on openness is tempered by the physical make-up of the development proposed. Each field where solar panels are located would not become a solid block of development. If a solar panel is considered as a three-dimensional shape it is only the top face that is solid, the remaining faces do not feature any physical form other than the frame at their edges. The Appellant says this is at contrast to typical form of built development.

98. The Appellant accepts that there would be a loss of openness arising from the extensive areas proposed to be developed but asserts that it is too simplistic to suggest that the spatial impact on openness mirrors the size of the solar farm. That said, the Appellant acknowledges that substantial harm should be afforded to the definitional harm, the spatial harm, and the visual harm.

#### *Other Matters*

99. A number of other matters have been raised during the currency of the Inquiry which have little to no material bearing on the overall planning balance that must be undertaken. COG initially raised noise concerns but in a SoCG it is agreed that noise concerns can be addressed by condition.

100. The Rule 6(6) parties referred to flood risk but brought no evidence on this point, and do not dispute the findings of the technical work on this topic. It is a matter that goes to conditions not the principle of development.

101. A condition could be imposed on any planning permission granted by this appeal that would limit the operational life span of the solar farm. Concern that it could continue beyond that date is not a relevant consideration. Any future application to extend the lifespan of the solar farm would have to be considered with regards to the development plan, material considerations and planning law as it stood at that point in time. What the result of any such application could be cannot be predicted at this time and in any event that is not the application that is before this Inquiry. The Secretary of State must determine the appeal scheme before them.

102. Concerns raised about the effectiveness of conditions regarding decommissioning and long-term landscape management are legally unfounded for the reasons set out in the note already submitted to the Inquiry which we append for ease of reference. COG in closing refer to harm to agricultural land due to "wetness." There is no evidence before the Inquiry that justifies such a concern, and the Inquiry has sufficient information to form a view on this issue.

### *The Planning Balance*

#### *The Appeal Proposal*

103. Permission is sought for a solar farm with a generating capacity of up to 49.9MW or providing power for the equivalent of 15,600 homes per annum. There are two inter-related elements to the proposal the solar panels and the battery stores. The solar panels generate electricity which can either go straight into the National Grid or can be stored in the batteries and then later discharged into the national grid when there is a need for the electricity. The benefit of having both is that it allows the productivity of the solar farm to be maximised as surplus energy produced at times when production might be high but demand low can be retained and used when required.

104. The location of schemes such as the appeal proposal is primarily driven by the need to be close to an available grid connection and a substation with capacity. The Appellant identified Elstree Substation as a suitable location. The site was selected following a search using a 5km isochrone from the substation. The detail is contained in the 'Alternative Site Assessment Note.'

105. The 5km search radius is consistent with those in the sites that the Council's Planning Witness has experience of dealing with. Further, the draft National Energy Policy EN-3<sup>47</sup> recognises that that

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<sup>47</sup> CD NPP-18 paragraph 2.48.11

commercial feasibility and minimising overall costs are key considerations, this again justifies the 5km radius.

106. COG suggest that the size of sites that were sought inevitably meant that a site in the Green Belt would be identified. This is very much a "so what?" point. In order for the solar farm to be viable and to affect the step change sought within the District by its own Strategy, it must be over a certain size and the search criteria must reflect that. Hertsmere is committed to increasing renewable energy provision in the Borough and as numerous witnesses confirmed this inevitably means renewable schemes will have to be delivered in the Green Belt. There is no suggestion that there is no other more suitable Green Belt site that should have been considered. COG point to no planning policy or guidance which supports the complaints raised and the Council accept that there is no requirement for a Green Belt sequential assessment.

107. The suggestion by Aldenham Parish Council that there was a concession that a connection can be made to an overhead line, was hypothetical and there was no evidence given on whether a solar farm of the nature and scale proposed here could do so. Neither the Council or Rule 6(6) parties produced evidence on other sites that could or should have been considered.

#### *Decision Making Framework*

108. There has been discussion and cross examination at the Inquiry at the extent to which policies feature in the reason for refusal and the extent to which the heritage policies and Green Belt policies in the Development Plan are consistent with the Framework. However, the Appellant considers that this debate does not really matter for the simple reason that the VSC test is determinative.

109. Framework paragraph 148 is all encompassing and requires the harms to the Green Belt and any other harm, which means any other harm not simply harm to the Green Belt, to be weighed against the benefits of the scheme to see whether all those harms are clearly outweighed. If VSC exist then the Green Belt policies contained within the Local Plan are also complied with and the Development Plan as a whole would be complied with. No one is contesting before the Inquiry that if VSC exist then permission should be refused.

110. The Appellant takes the view that the heritage balance at Framework paragraph 202 must also be passed but is passed if the heritage harms are outweighed by the public benefits of the scheme, and so given that the heritage harms must also be taken into account in the Framework 148 test then inevitably if VSC exist then the heritage balance will also be passed.

111. The Appellant considers that the meaningful 'contentious' policy debates are those relating to Core Strategy Policy CS17 of the Core Strategy and Framework paragraph 151.

112. Core Strategy Policy CS17 is the only policy in the Development Plan which deals with renewable energy schemes of this nature. The only criteria of this policy which it is alleged could be breached is the requirement to consider "environmental assets." As the Appellant's Planning Witness pointed out in cross examination the policy does not say Green Belt. It is the Appellant's position that Green Belt is not something that is typically considered to be an environmental asset. It is instead a pure policy designation. There is nothing in the language of Policy CS17 or its supporting text that suggests the reference to environmental assets includes the Green Belt or that the policies act to bar renewable energy projects from the Green Belt.

113. It would be surprising if Policy CS17 were to be construed as amounting to a prohibition on renewable energy development in the Green Belt and it would certainly be inconsistent with national policy. Framework paragraph 151 states "*very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.*" That paragraph has to have some meaning. Moreover, the benefits of renewable energy are the only thing in the Green Belt section of the Framework that receive any such recognition. The clear steer of this paragraph is that the benefits of renewable energy are capable of amounting to VSC. Policy CS17 is not breached, but rather, the Appellant contends, supports these proposals.

114. That such benefits can amount to VSC is shown by the additional appeal decisions submitted to the Inquiry. The purpose of providing those decisions is to demonstrate that solar energy projects have been found to show VSC and be approved in the Green Belt and to counter the skewed consideration of renewable projects presented in the Council's evidence. That is not to say that all energy projects in the Green Belt will demonstrate that VSC exist but that they may. The Council's Planning Witness only sought to present appeal decisions where renewable schemes had been refused permission, which is not an accurate reflection of the spread of available appeal decisions.

115. If VSC are demonstrated, then Policy CS17 is passed and there is compliance with the development plan.

#### *The Balance*

116. When carrying out the balancing exercise great weight should be attached to harm to heritage assets. The Appellant's Planning Witness explained that the weight to be attached to harm depends on the extent of that harm. It is a matter of plain logic that if a given asset were to experience substantial harm then that would weigh more heavily in the planning balance than if the same asset were to experience harm at the low end of less than substantial harm. The Appellant's Planning Witness attaches moderate weight to the harm to the heritage assets. The Appellant says, that does not mean they have not treated that as a material consideration of great importance

but instead it reflects the significance of the assets and the extent to which those assets are harmed.

117. The Appellant's Planning Witness ascribes moderate weight in the overall planning balance to the effect on landscape character and visual amenity. For the reasons already explained these negative impacts are limited to the duration of the lifetime of the solar farm and in the long term there would be beneficial landscape impacts which are secured by condition.

118. Substantial weight should be attached to the harm to the Green Belt and those harms have already been identified.

119. The renewable policies of the Development Plan are, the Appellant says, out of date by any metric. The consequence of this is not to engage the tilted balance in Framework paragraph 11 as we are concerned with a site in the Green Belt and that remains the relevant policy test. But when carrying out the planning balance the plethora of clear failings of the Development Plan with regards to renewable energy must be considered. As must the Council's failure to meet its own stated energy commitments. This is a Council that needs a step change in renewable energy delivery, and it has no plan of any description be it planning or otherwise to achieve that.

120. The Appeal proposals would have a capacity of 49.9MW which equates to an electricity generating power for over [15,600]<sup>48</sup> households in Hertsmere and would result in savings of carbon dioxide emissions during its operational period of approximately [25,400] tonnes of CO<sub>2</sub> per annum. The significance of such benefits is stark. As the Appellant's Planning Witness explained the linked benefit of renewable energy is that it contributes to the country's energy security. The importance of these benefits is articulated at great length in the Officer Report and whilst the judgments exercised there are disputed, the facts that lead to them are not and it is commended to the Inspector.

121. The attribution of weight to the benefits from renewable energy by the other parties is disappointing and exemplifies why there has been such a failure to meet climate change and renewable energy objectives. For example, COG suggest in closing it should attract "some weight" and "moderate weight;" this is not proper recognition of the benefits they claim and is an understatement of the importance of renewable energy. There is not one mention in the closing of COG or Aldenham Parish Council of the need for energy security an obvious material benefit of the proposal.

122. That a solar farm would generate such benefits is inevitable, but what perhaps marks the appeal scheme out are that these are not the only benefits that would be delivered. The appeal scheme is part of the Aldenham Estate's wider vision and aspirations for

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<sup>48</sup> The Appellant's Closing Submissions include a different figure. I have taken this figure from the SOCG (see summary at paragraph 33).

environmentally responsible long-term management. The legacy benefits would live on long beyond the life of the solar farm.

123. Implementation of an ecological management plan would achieve an overall BNG of 90% in area derived units and 25% in linear derived units. That is a level of benefit way beyond any anticipated in national policy, local policy, or legislation. Further environmental benefits would arise from the increase in soil quality under the solar photovoltaic panels. The conversion of arable land to grassland under solar photovoltaic panels can improve soil health by processes such as increasing soil organic matter, soil organic carbon, increasing soil biodiversity and improving soil structure.<sup>49</sup>

124. Provision of two permissive paths would allow Belstone Football Club to make use of a corner at the rear end of their playing fields that is currently disused, and link into the existing PRoWs network, improving connectivity and enhancing opportunities for outdoor recreation. These are not benefits of the highest order, but they are benefits and should be treated appropriately in the planning balance.

125. The Appellant considers that advantages of this solar farm are not simply made up of its obvious renewable energy benefits but the more local environmental and social enhancements as well.

126. When weighing the benefits of the scheme against the harms of the scheme it is not, the Appellant says, a purely mathematical exercise but instead what is needed is a single exercise of judgement to assess whether there are VSC which justify the grant of permission notwithstanding the particular importance of the Green Belt. When that is done it is submitted that VSC do exist and that all harm is outweighed.

#### *Submissions on Restoration Conditions*

127. Following the case of *I'm Your Man*<sup>50</sup> the Appellant's Counsel submits that in this case, what is applied for is full planning permission for as set out in the description of development.

128. They add that, if planning permission is granted and no conditions are imposed once the permission is implemented the development could be completed and operated without restriction. The only way to prevent that from happening, would be by the imposition of conditions on the planning permission to limit the period of the operation of the development and to require the removal of operational development from the land. Once the permission is implemented, such conditions would remain enforceable and the presence of a time limiting condition would not terminate the existence of the planning permission, as far as enforceability of conditions is concerned.

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<sup>49</sup> CD-PA14, paragraph 5.1.6, page 12

<sup>50</sup> *I'm Your Man Ltd v Secretary of State for the Environment* [1998] 9 WLUK 37

129. Counsel for the Appellant submits that were the matter otherwise then the sort of condition envisaged by Robin Purchas QC in *I'm Your Man* would have been unenforceable, and his judgment would then have made no sense. The corollary of this is that any other conditions attached to the planning permission, for example reinstatement, restoration, and landscape conditions, would also remain enforceable.

*Submissions on Capacity*

130. S.31 of the Planning Act 2008 dictates that "*Consent under this Act ("development consent") is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.*"

131. S.14(1)(a) defines nationally significant infrastructure projects as including "*the construction or extension of a generating station*". Further detail on this is provided in S.15:

*"(1) The construction or extension of a generating station is within section 14(1)(a) only if the generating station is or (when constructed or extended) is expected to be within subsection (2), (3), (3A) or (3B).*

*(2) A generating station is within this subsection if—*

*(a) it is in England,*

*(aa) it does not generate electricity from wind,*

*(b) it is not an offshore generating station, and*

*(c) its capacity is more than 50 megawatts..."*

132. As such, Counsel for the Appellant submits, any solar farm with a generating capacity of more than 50MW would be a nationally significant infrastructure projects and would require consent to be granted for its development under the Planning Act 2008. The appeal proposals have not sought consent under the 2008 Act. This means that if the scheme were built out with a capacity of more than 49.9MW it would be liable to enforcement as it would not benefit from the requisite planning consent under the Planning Act 2008.

133. Consequently, the Appellant says, there is no need to impose a condition limiting the generating capacity of the appeal scheme as this is already limited by legislation. Imposing a condition would duplicate a control that already exists.

134. If, the Inspector was of the opinion that there was a need to impose a restriction on the operating capacity of the appeal proposal then this could only be done by way of condition.

*Conclusion for the Appellant*

135. Hertsmere Borough Council that sets out that it is committed to delivering more renewable energy within its administrative boundaries but has no plan to do so. This is a position that the Rule

6 Parties and Council ignore which only serves to demonstrate the obvious failings in the defence of this appeal.

136. The Council is dependent on developers such as the Appellant bringing forward schemes such as this to meet its climate and energy objectives. The Council should have followed the recommendation of its Officers and approved this scheme without delay. The Appellant respectfully invites the Inspector to recommend to the Secretary of State to allow this appeal.

### **The Case for Hertsmere Borough Council**

137. Hertsmere Borough Council considers that the fundamental determinative question in this appeal is: does the benefit of renewable energy generation, together with other less significant benefits, provide the VSC necessary to justify inappropriate development in the Green Belt?

138. At the time that closing submissions were made, Hertsmere Borough Council submitted that the Secretary of State is yet to answer the above question in the affirmative and that on the evidence presented and tested, there is no reason to depart from that consistent approach in determining this appeal.

139. The case attracted an enormous amount of public opposition. The protection of the Green Belt is identified as a key local priority and is at the heart of the Local Plan. Yet the proposed solar development would transform a huge swathe of the Green Belt, which lies between and is easily accessible from three of the main settlements in Hertsmere. The effect is described as temporary but would not be perceived as such by the community.

140. The Council acknowledges that there is a pressing need to increase renewable energy generating capacity, and that solar farms bring important benefits in terms of reducing carbon emissions and assisting with security of supply. The Council has an adopted strategy which recognises the need to deploy a significant amount of renewable energy capacity in its area. It does not follow that this proposal must be accepted, or indeed any other proposal which would cause such a large encroachment into the Green Belt. Local constraints must be taken into account and local authorities must do what they can working within those constraints. It is no surprise that the Appellant cannot point to any policy or guidance which actually supports the deployment of large-scale solar farms in the Green Belt.

141. The scheme would connect to the National Grid. It would produce a national benefit, and not one which would be directly felt in or confined to Hertsmere. It does not need to be located in the Green Belt. It does not need to be in Hertsmere, just because the Appellant has signed a connection agreement with Elstree substation.

142. This is a case where officers recommended that permission should be granted. The Appellant repeatedly took witnesses to various passages within the Officer Report. But it is one analysis,

which was not subject to the rigours of cross examination. Importantly, elected members rejected that analysis. Not one member of the Planning Committee voted in favour of the planning application. Members' views, expressed on behalf of the community they serve, have been represented in this appeal through independent experts. It is submitted that members were right to reach the conclusion that they did, for the reasons given by those witnesses.

### *Green Belt*

#### *Approach*

143. The Framework confirms that:

- Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in VSC;
- VSC will not exist unless harm by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations;
- Any harm to the Green Belt should be given "substantial weight" in the planning balance.

144. It is settled law that all development in the Green Belt is inappropriate unless it falls within the categories set out in Framework paragraphs 149-150, in other words these are closed lists.<sup>51</sup>

145. It is also settled law that the reference in Framework paragraph 148 to "*any other harm resulting from the proposal*" means any other harm and not just harm to the Green Belt.<sup>52</sup> The effect is that, where development is inappropriate, VSC must be shown to clearly outweigh all harms associated with the proposal. In this case, that includes heritage and landscape harms, as well as harm to openness and Green Belt purposes.

#### *Harm*

146. It is common ground that the development would be inappropriate development in the Green Belt and therefore harmful by definition. It is also common ground that the appeal scheme would result in a loss of openness to the Green Belt, considering both spatial and visual aspects.

#### *Openness: Spatial*

147. The scheme would cover 85Ha of the Green Belt. This a very large area of land which is easily bigger than the nearest villages of Letchmore Heath, Patchett's Green, and Aldenham.

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<sup>51</sup> Fordent Holdings v SSCLG [2013] EWHC 2844 (Admin), paragraph 19

<sup>52</sup> Redhill Aerodrome Ltd v SSCLG [2014] EWCA Civ 1386

148. The solar arrays would be arranged in repeating rows and would stand 3m high. The Appellant's Planning Witness could not say how many panels were proposed, and they are far too numerous the drawings to count on the submitted drawings. It is likely that there would be in the order of 100,000 individual panels, which belies the Appellant's characterisation of the spatial impact as "limited".

149. In addition to the arrays, there would be thirty-six shipping containers each 12m in length and approximately 3.5m high (including the 0.609m high concrete bases). These would have a strong presence in the landscape. Twenty of them would be sited in a group in the western parcel next to a new substation nearly 12m long and approximately 4.5m high including the concrete base, within a fenced compound. The rest would be dotted throughout the site and accessed via crushed stone access tracks through the development. Access tracks and inverters/transformers would be located close to or alongside PRoWs in a variety of locations. The development would be enclosed within 2.2m high perimeter fencing, with recurring posts for CCTV cameras. All these elements would have a spatial impact on the openness of the Green Belt.

150. The fact that the solar panels have space underneath them and are not 3D 'blocks' does not significantly reduce the spatial impact. The panels would not be seen or appreciated as individual elements but would generally be experienced as a mass, negating the effect of space beneath. Whilst the arrangement would allow some sense of space between rows, in reality this would only be appreciated one row at a time, in places where the arrays are perpendicular to a PRoW. Even in those situations, perimeter fencing would still have an impact and the solar development in the wider field of view would still appear as a mass. The Appellant's visualisation demonstrates this.<sup>53</sup>

#### *Openness: Visual*

151. The Appellant's Landscape and Visual Impact Assessment concludes that there would be major-moderate adverse effects on visual receptors within the site throughout the thirty-five-year operational period; i.e., allowing for the full effect of mitigation. Again, the Appellant seeks to downplay this effect by describing it as "localised" and "limited" but the choice of words lacks credibility in the context of a site of this vast size.

152. Several well-used PRoWs pass alongside and through the site. The experience of walking these paths will be fundamentally changed. It would cease to be an experience of walking through an open agrarian landscape and would be transformed into an experience of walking alongside or between either mesh fencing or structural planting which would by turns reveal and conceal the industrialising effects of the solar development. There are people who would find this to be an interesting and not unwelcome

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<sup>53</sup> Appellant's Landscape Witness PoE Appendices: Figure 9.

experience. But huge public opposition to the scheme suggests that this is probably not the majority view.

153. The mitigating structural planting proposed may be beneficial from a landscape point of view and would help to reduce visibility of the solar arrays. On the other hand, the proposed structure planting would add to the sense of enclosure produced by the other elements of the scheme and would reduce the incidence of open views between fields. This effect was recognised by the Inspector in the Cranham Golf Course appeal: concluded that the proposed planting of hedgerows and trees would 'compound' the loss of openness caused by the built elements of the solar development.<sup>54</sup> There is a tension between effects on character and appearance and effects on openness – what is a benefit for one is not necessarily a benefit for the other. The same tension exists in places between landscape/visual and heritage considerations.

154. Finally, for the Council is the issue of "channelling" or "tunnelling" of views, which the Appellant refuses to accept would occur, but which was considered likely by all relevant witnesses for the opposing parties. There are a number of locations where PRoWs would pass between or alongside solar development and will be contained either between security fencing on both sides, or by a fence on one side and a hedge on the other. Although 5m offsets are proposed, views would inevitably be 'channelled' along the right of way corridor. The effect of this aspect of the design on perceptions of safety and comfort is a factor bearing on the overall sense of openness which should be taken into account.

#### *Purposes*

155. It is common ground that the proposal would conflict with the third identified purpose of the Green Belt in Framework paragraph 138, namely, to safeguard the countryside from encroachment. The appeal scheme would encroach into the countryside between Bushey, Radlett, and Borehamwood in a very significant way. Evidence was also heard that the second Green Belt purpose (preventing neighbouring towns from merging into one another) would be compromised.

156. In accordance with national policy, the Appellant's Planning Witness rightly accepts that substantial harm should be given to each separate aspect of Green Belt harm (inappropriateness, openness, and purposes).<sup>55</sup> No other conclusion can properly be reached.

#### *Reversibility*

157. The Appellant places emphasis on the reversible nature of the solar development, which would be secured by a planning condition. The appeal should be determined on the basis of what is being applied for, which is a thirty-five-year operational period followed by

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<sup>54</sup> CD-ADAP15, the Secretary of State's Decision letter (DL) paragraph 8

<sup>55</sup> The Appellant's Planning Witness in response to Inspector's questions

decommissioning. Any application to extend the operational period, or to apply for a new planning permission, would fall to be decided on its merits at the relevant time. Nevertheless, as the Appellant's Planning Witness agreed, any decision made in that future time would be considered against a baseline of development on the site, and if a solar farm use continued to be profitable there is no reason why an application would not be made to renew it.<sup>56</sup>

158. In any case, as the Appellant's Planning Witness agreed, a thirty-five-year operational period (plus a one-year decommissioning period) is an extensive period of time.<sup>57</sup> The point has been made many times that this scheme would last for a generation. Harm to the Green Belt would persist throughout that time. There are several appeal decisions before the Inquiry where the Secretary of State has given limited weight to the temporary nature of solar development for these reasons,<sup>58</sup> including cases where the operational period was shorter than proposed here. There is no reason to adopt a different approach.

#### *Justification for Green Belt location*

159. There is no sequential test under national or local policy for development in the Green Belt. Nevertheless, solar farms feed into the National Grid and can in theory be located anywhere in the UK where there is suitable land. It is for the Appellant to show that VSC exist to outweigh the harm, and the need for a Green Belt location is clearly relevant to the balance to be struck – if Green Belt can be avoided, then it should be. This is a factor which is routinely taken into account in assessing solar developments, as the appeal decisions before the Inquiry demonstrate.

160. The Appellant has produced an Alternative Site Assessment showing that a site search applying eight exclusionary criteria was carried out within a 5Km radius of Elstree substation. Although the Inquiry has heard evidence as to the choice of a 5Km radius, the problem with the Alternative Site Assessment is not the radius of the search area, but the fact that only the Elstree substation was considered. This is despite the fact that the Appellant says, in the Design and Access Statement, that this is "*one of several solar farm battery storage proposals being brought forward by the Applicant across England and Wales*".<sup>59</sup>

161. The Appellant suggests in the Alternative Site Assessment that its "*primary starting point was to first and foremost avoid any site located in the Green Belt*"<sup>60</sup> – in which case, why limit the search area to a 5k radius of Elstree substation, in a Borough which is washed over by the Green Belt outside the main settlements? Such an approach was bound to produce only Green Belt sites. The

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<sup>56</sup> The Appellant's Planning Witness XX by Aldenham Parish Council

<sup>57</sup> The Appellant's Planning Witness responding to Inspector's questions

<sup>58</sup> e.g. CD-ADHBC10 paragraph 19; CD-ADHBC11 paragraph 11 DL; CD-ADBC12 paragraph 10 DL

<sup>59</sup> CD-PA5 p.18 (pdf 22) paragraph 6.1

<sup>60</sup> CD-PA44 p.2 paragraph 1.2

approach appears to have been to secure the connection first and then look for possible sites in the vicinity, rather than starting by identifying possible points of connection with available capacity (which could be either substations or indeed overhead power lines).<sup>61</sup>

162. As a result, a Green Belt location was a certainty from the outset and no other option has been, or indeed could have been, considered. The deficiency in the Appellant's Alternative Site Assessment is similar to that seen in some of the appeal decisions which have been submitted to the Inquiry:

- In Land to the West of College Farm the Inspector found that the search evidence was "*not conclusive*", noting that although the search area covered the entire Borough it was an area "*heavily constrained by Green Belt and other designations*", such that a wider search "*might reveal other less constrained options, including potential availability of other grid connections*".<sup>62</sup> The Secretary of State agreed with the Inspector on this point.<sup>63</sup>
- In the Hilfield Farm battery storage decision the Inspector voiced "*concerns regarding the adequacy of the justification*" for the way the catchment area for comparative sites had been established. It had not been explained "*why it was necessary to limit the area to only part of the DNO network, which as one of 14 in the country is therefore, likely to relate to a larger area of the country, and potentially cover land that is not in the Green Belt*".<sup>64</sup> It is notable that the Appellant did not heed this warning from 2020, bearing in mind the decision concerns a nearby site.
- In Land at Redeham Hall the Local Authority accepted that, if a solar farm were to be located in its area, then it would have to be in the Green Belt.<sup>65</sup> This did not convince the Inspector that the appeal proposal needed to be in the Green Belt; they observed that "*other sites will exist in the south-east of the Country which do not lie within the Green Belt, even if such sites are outside the Council area*".<sup>66</sup> They reached this conclusion notwithstanding the Appellant's reliance on the guidance in the PPG that it is responsibility of all communities to contribute to renewable energy generation.
- In Barrow Green Farm the Secretary of State noted that there "*would seem to be scope for alternative sites and options outside the Green Belt to provide similar benefits*

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<sup>61</sup> The Appellant's Planning Witness XX by the Council

<sup>62</sup> CD-ADHBC12, paragraph 119 Inspector Report (IR)

<sup>63</sup> Paragraph 19 DL.

<sup>64</sup> CD-AD-COG1, paragraph 24 DL

<sup>65</sup> CD-AD-HBC11 paragraph 18 IR

<sup>66</sup> CD-AD-HBC11, paragraph 60 IR, confirmed in paragraph 16 DL

*while avoiding the harmful effect.”*<sup>67</sup> In so finding he was agreeing with the Inspector’s conclusion that there appeared to be “*other areas in the south-east outside of the Green Belt where there is grid capacity.”*<sup>68</sup>

163. It is highly unlikely that Elstree substation is the only substation in the UK with available capacity to accept electricity from a 49.9MW solar development. The Appellant is operating across the UK, and this is a development which is just on the threshold of being nationally significant, and which would feed into the National Grid. There is simply no justification for limiting site search to 5km around Elstree, and thereby considering only sites in the Green Belt. The Appellant has not come close to demonstrating that this development requires a Green Belt location. This is a factor which must count against the scheme when considering whether VSC exist.

164. The above decisions also serve to expose the flaw in the Appellant’s assertions that Hertsmere is not ‘pulling its weight’ and ought to be ‘doing its bit’ to deliver renewable energy generation schemes. These arguments are based on the statement in the PPG that “*all communities have a responsibility to help increase the use and supply of green energy*” (reference ID: 5-003-2014030) and the fact that the Borough is significantly behind the national average in terms of generation of energy from renewable sources. None of this means that a site must be found within this Borough for a solar farm of just below the size of a Nationally Significant Infrastructure Project. It does not justify the Appellant’s failure to consider alternative grid connections which are outside the Green Belt.

165. There is no quota or target for local authorities to meet in respect of renewable energy generation. As always in planning, local circumstances need to be taken into account. This is a highly constrained Borough which is wholly within the Green Belt outside the built-up areas. The Government continues to attach great importance to protecting the Green Belt, and despite all of the energy policies and strategies which have been produced, Government has not seen fit to relax Green Belt policy by exempting renewable energy development (or even limited types or scales of such development) from the need to demonstrate VSC.

#### *Any Other Harm – Landscape/Visual*

166. Elected members did not identify landscape and visual impact as being a reason for refusing planning permission, and accordingly the Council has not sought to challenge the Appellant’s assessment of the likely landscape and visual effects. The Rule 6(6) parties have done so. As far as impact on visual amenity is concerned, this is strongly allied to the visual dimension of openness of the Green Belt which has been referred to already.

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<sup>67</sup> CD-AD-COG3 paragraph 17 DL

<sup>68</sup> CD-AD-COG O3 Paragraph 47 IR

167. It is common ground that the appeal scheme would result in a major-moderate adverse effect on the Borehamwood Plateau Landscape Character Area for 10 years, reducing to a moderate and adverse effect for the remaining twenty-five years the solar farm would be in place. The development would cover a significant portion (11%) of the Landscape Character Area.<sup>69</sup> Given the scale of the site, the harmful landscape and visual effects should carry significant weight.

#### *Any Other Harm – Heritage*

168. The impact on designated heritage assets is the subject of the second Reason for Refusal. Harm to the significance of heritage assets must be properly weighed and balanced against public benefits in Framework paragraph 202 balance and may form a basis for refusing planning permission in its own right, as well as being an “other harm” to be clearly outweighed in the Green Belt balance.

#### *Agreed Matters of Law and Policy*

169. The approach to the assessment of heritage impact is largely common ground. The following principles were agreed between the Council and Appellant:

- Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that harm to a listed building or its setting must be given considerable importance and weight and gives rise to a strong presumption against granting planning permission.<sup>70</sup>
- The Framework reflects S.66, providing that great weight must be given to the conservation of designated heritage assets, and Framework paragraph 199 makes it clear that this is irrespective of whether the identified harm is substantial or less than substantial.
- The degree of harm which is identified is a matter of judgement, but if there is harm the decision maker cannot give it whatever weight they think fit – statute and policy dictate great or considerable weight must be given.<sup>71</sup>
- The weight to be given to the harm is not uniform. This is consistent with paragraph 199 Framework which confirms that “*the more important the asset, the greater the weight should be*”. Thus, harm to assets identified in the Framework as being “*of the highest significance*” (including Grade II\* listed buildings and scheduled monuments)

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<sup>69</sup> XX by COG

<sup>70</sup> CD-ADHBC2 Barnwell Manor Wind Energy Ltd v East Northamptonshire DC [2014] EWCA Civ 137, paragraphs 22-24,

<sup>71</sup> CD-ADAP4 Palmer v Herefordshire Council [2016] EWCA Civ 1061, paragraph 5

should carry more weight than an equivalent level of harm to a Grade II listed building.

- Whist greater weight should apply to harm to the most important assets, in any case the starting point remains that where there is harm, great weight applies, and the statutory presumption is engaged.
- Under S.66 harm to the fabric of a listed building and harm to its setting are treated equally. The “setting” is defined in the Framework Glossary as the area in which the asset is experienced, and it is important to consider how the experience and appreciation of a heritage asset is affected by development in its setting. This is confirmed in Historic England’s GPA3 paragraphs 9 and 30.
- Consideration of ‘experience’ and ‘appreciation’ of an asset from within its setting will include consideration of what are termed ‘dynamic’ or ‘kinetic’ views; how the view and experience changes as you move through the setting.

#### *Cumulative Change*

170. The concept of ‘cumulative change’ was the subject of much debate during the heritage evidence. The concept is referred to in both the PPG and GPA3, where it is described as follows:

*“Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset.”*

171. It was agreed that this guidance applies to situations where past development in the setting of a heritage asset has caused harm to its significance. That is relevant here: all of the designated heritage assets have been subject to unsympathetic development in their settings. It applies with particular force to Slades Farmhouse (now adjacent to a modern commercial/industrial complex) and Hilfield Castle (which has seen dramatic change through the intrusion of modern development including roads, the reservoir, the aerodrome, and energy infrastructure).

172. The Council considers that the thrust of the guidance is that past negative changes in the setting of a heritage asset must be identified and should not be treated as a justification for further harm (“consideration still needs to be given...”). It does not mean that past harm should be ‘added’ to the harm that would arise from the development under consideration, thereby increasing the overall degree of harm which is found to occur.

173. The guidance on cumulative change, the Council says, is consistent with the Framework which seeks to avoid harm, promote enhancement to significance, and confirms that heritage assets are

irreplaceable and should be conserved so that they can be enjoyed by existing and future generations (paragraph 189).

174. The suggestion by the Appellant that Historic England's guidance on cumulative change is only relevant "*in a minority of cases where development would sever the last link*" between an asset and its setting should be rejected. This is given as one example of a situation where development will further detract from significance.

175. It is clear from the Appellant's assessment that past unsympathetic development in the setting has been treated as reducing the level of harm which would be produced by the development. The effect of such an approach is to make it easier to justify harmful development, since the lower the level of harm, the easier it will be to outweigh in the Framework paragraph 202 balance (even giving the necessary great weight). That is contrary to policy and guidance. The logical consequence of this approach is that each harmful change in the setting makes the next harmful change easier to justify by progressively reducing the contribution of the setting to significance. Such an approach runs entirely contrary to the legal and policy imperative to preserve both the asset and its setting.

176. The correct approach is to identify where past harm has occurred, and to ensure that in assessing the effect of the proposed development (i) past harm is not being treated as a factor which could justify future harm and (ii) consideration is given to how the proposed development would sit alongside the existing negative elements of setting. As the Appellant accepted, the effect of past unsympathetic development in the setting may be to make the parts which remain intact more important or precious.

#### *Measures to Mitigate or Reduce Harm*

177. Step 4 of the stepped process in GPA3, is to explore ways to maximise enhancement and avoid or minimise harm. It seeks early identification of effects and wants applicants to consider options for reducing harm, which may include "*the repositioning of a development or its elements*" or "*changes to its design*" as well as screening and management measures.

178. There is a live application for the solar farm, submitted as a 'free go,' which covers the same red line site but leaves Field 1 free of development. It was the Council's assumption that the Appellant would seek to introduce that amended scheme into this appeal. When this did eventually happen, it was so late in the process that the amendment was not permitted.

179. The evidence shows that:

- The purpose of removing Field 1 from the resubmission was to address the Council's second Reason for Refusal by further reducing the harm to heritage assets;<sup>72</sup>

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<sup>72</sup> DSDI-21 Planning Statement for application 22/0948/FULEI, paragraph 7.48

- The Appellant's assessment in support of the resubmission application was that by removing Field 1, harm would be avoided in respect of both Hilfield Castle and Hilfield Lodge;
- On the Appellant's and Council's assessments harm would still occur to Hilfield Castle if Field 1 were removed (as both find that development of the land to the north of the Castle identified by the Appellant's Heritage Witness as "area 1" would cause harm). However, both find that harm to Hilfield Lodge is caused solely by the use of Field 1 for the solar farm. Removal of Field 1 from the scheme would (i) completely avoid harm to Hilfield Lodge and (ii) reduce harm in respect of Hilfield Castle;
- The Appellant's Heritage Witness would have preferred Field 1 to be removed from the appeal scheme to reduce the level of harm to heritage;
- The planning statement for the resubmission application indicates that the amount of electricity generated by the resubmission application would still be "up to 49.9MW" and the scheme would still be capable of providing the equivalent annual electrical needs of "up to 15,600 homes". In other words, an identical renewable energy benefit is claimed from both schemes.
- At the Inquiry, the Appellant's Planning Witness suggested could not say with certainty that the resubmission scheme would be unable to generate as much electricity as the appeal scheme. They could not say how many panels would be installed in either scheme. There is no clear evidence before the Inquiry as to precisely how much electricity either scheme would be capable of exporting to the grid. All that is submitted indicates no difference. If there is a difference, there is no evidence as to how significant it is.

180. In these circumstances it cannot be concluded that the harm to Hilfield Lodge and Hilfield Castle caused by Field 1 is clearly and convincingly justified, or that the harm caused by Field 1 is outweighed by public benefits, since the specific benefit associated with that part of the scheme is unknown. The evidence indicates that this is harm which could, and should have been avoided.

181. This also has implications for the assessment of Green Belt harm and the justification for siting this development in the Green Belt. If the amount of Green Belt land being used by the scheme could have been reduced without making any demonstrable difference to electricity output, then this will have a bearing on whether the extent of the harm is clearly outweighed by VSC.

#### *Submissions on Harm to Heritage Assets*

182. All the heritage experts who have provided evidence agree that there would be harm to the significance of Hilfield Castle, Hilfield

Lodge and Slades Farmhouse. All, except the Appellant's Heritage Witness, agree that there would be harm to Aldenham House RPG. The expert witnesses for the Council and COG also conclude there would be some harm to the Scheduled Monument of Penne's Place moated site.

183. At the beginning of the Inquiry all the heritage experts agreed a table summarising their assessments of the level of less than substantial harm identified for each of the heritage assets they had assessed. No witness departed from their stated position during oral evidence, and therefore this document remains an accurate summary of the respective positions.

184. The Council considers that the Appellant's Heritage Witness has consistently underestimated the extent of harm that would arise. From the evidence presented at the Inquiry, the reasons for this appear to be (i) an erroneous approach to the issue of cumulative change, discussed above, and (ii) a focus on intervisibility and the availability of views, which leads to insufficient regard to wider aspects of the experience and appreciation of heritage assets from within their settings.

185. The key points arising in respect of individual assets are as follows: -

*Hilfield Castle (Grade II\*)*

186. The Council records that the agreed harm would arise through the siting of solar development in areas of the Castle's setting to the north and west which were formerly part of its extensive parkland, and which therefore have historical illustrative value. These are parts of the existing setting which remain relatively uncompromised by modern development, in contrast to parts of the setting to the south and east. The Council says that the assessment of harm should not be tempered as a result of the existing negative changes – in fact, these serve to make the more intact areas even more precious and in need of preservation.

187. Photographic material enables consideration of the extent to which the experience and appreciation of this prominent building would be affected by the transformation of parts of its setting from open undeveloped land to solar farm.

188. It is common ground between the Council and Appellant that the harm would be "low" in the spectrum of less than substantial harm, although the Appellant's Heritage Witness's conclusion is arrived at after netting off the heritage benefits of new specimen trees. The Council says its case is bolstered by the evidence of other experts that have identified a higher level of harm.

*Hilfield Lodge (Grade II)*

189. The Council notes that all parties agree that there would be harm to Hilfield Lodge. This arises solely from the use of Field 1 as part of the solar farm. Although there is an irregularly shaped set

back in the layout of panels immediately opposite the Lodge this has not gone far enough and harm remains, for the reasons relating to the loss of the agrarian surroundings and erosion of the historic illustrative value of the land as part of a country estate.

*Slades Farmhouse (Grade II)*

190. The Council say that the Appellant has underestimated the degree of harm arising to this asset by (1) wrongly reducing the level of assessed harm by reference to previous unsympathetic changes to the setting of the asset; (2) attaching particular weight to fluctuations in the landholding associated with the tenancy of Slades Farmhouse, and ignoring the relevance of continuous ownership by the Aldenham Estate and the consequent control exerted over the land, which is an important factor in its long and undisturbed agricultural use; and (3) focussing on the intervisibility between Slades Farmhouse and Field 20 immediately opposite and not paying sufficient attention to effects on experience and appreciation of the building in the wider rural landscape.

191. The Council also say that the Appellant's assessment of harm factors in heritage benefits arising from the double hedge feature. The Council further argue that, if that benefit is stripped out, it would lead to a conclusion of an increased level of harm.

*Aldenham House Registered Park and Garden*

192. The Council say that the Appellant's approach to this heritage asset is hard to understand. They consider that the agricultural land in Field 20 immediately opposite the main gates into the Registered Park and Garden makes a contribution to significance through "*historic illustrative value as a country estate*",<sup>73</sup> but deny any such contribution from any other part of the agricultural land to the north which falls within the appeal site. In contrast the Council considers that is irrational given that land is also part of the Aldenham Estate and therefore has the same historical associations and continuity of agricultural use.<sup>74</sup>

193. Contrary to the guidance in GPA3, the Appellant's Heritage Witness focussed narrowly on the area of land that is visible from the gates of the Registered Park and Garden and in so doing underestimated the effect of the appeal scheme.

194. The Council considers that unscreened views of solar panels would be immediately apparent when following footpaths Aldenham 051 and Aldenham 044, out of the Registered Park and Garden, across Butterfly Lane, and into Field 16 of the appeal site. That path then leads up alongside solar development in Field 15 and between solar development in Field 14. The Council argues that users of those paths are moving between the Registered Park and Garden and its setting, bringing the concept of dynamic or kinetic views into play.

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<sup>73</sup> CD-ID18 paragraph 5.42

<sup>74</sup> As agreed by the Appellant's Heritage Witness in XX by the Council

On arriving at, or leaving, the Registered Park and Garden boundary they would experience the change between the agrarian character of the setting (which is illustrative of the country estate) and the distinctly designed landscape of the Registered Park and Garden. The Appellant's Heritage Witness was unable to give a credible explanation of how, in these circumstances, no harm at all could be said to arise from the proposed solar farm.

*Penne's Place Moated Site (Scheduled Monument)*

195. The Council says that the Appellant's in respect of Penne's Place was too narrow a focus and denies any contribution from the agricultural land to the north which is illustrative of an earlier period.

196. The Council is of the opinion that there is no justification for this and points out that the Appellant's Heritage Witness agreed that it is important to understand different layers of development and change over time.<sup>75</sup> Historic mapping shows that prior to the integration of the moated site into the parkland, it was surrounded by agricultural land, and indeed at one stage it was held in the same tenancy as Slades Farmhouse.<sup>76</sup> The Council considers that the idea that the agricultural land to the north of the asset holds no historic illustrative value<sup>77</sup> cannot be sustained.

197. The Council conclude development would cause some harm through change in the character of the agricultural land to the north and by reducing the existing limited intervisibility through structure planting along the north of Butterfly Lane which, even if managed to a lower height, would still interfere with the current view through the agricultural gateway.<sup>78</sup>

*Heritage Benefits*

198. At the instigation of the Appellant's Heritage Witness that the proposed landscaping drawings included proposed specimen trees within Fields 1 and 5 to "give clearer legibility to these areas as having formerly been parkland"<sup>79</sup> associated with Hilfield Castle, and a proposed 'double hedge' feature immediately to the west of Slades Farmhouse to re-establish the "legibility of the former line of Sawyer's Lane"<sup>80</sup> - a feature shown on historic mapping which is no longer present.

199. Although described as mitigation measures by the Appellant, their Heritage Witness confirmed that these proposed features were intended as enhancements which had been offset against harms in an internal balance rather than mitigation measures which would reduce the harm caused by the solar development.<sup>81</sup>

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<sup>75</sup> Appellant's Heritage Witness XX by the Council

<sup>76</sup> CD-ID18 paragraph 3.6 and plate 3

<sup>77</sup> Appellant's Heritage Witness XX by the Council

<sup>78</sup> CD-ID9B Appendix B p. 39-40 views 10 and 11 and Landscape Strategy Plan Rev A

<sup>79</sup> CD-ID18 paragraph 6.46

<sup>80</sup> CD-ID18 paragraph 3.29

<sup>81</sup> Appellant's Heritage Witness XX by the Council

200. The Appellant's Heritage Witness confirmed that the weight of that enhancement would only start to be felt during the thirty-five-year operational period and would be clearer afterwards.

201. The double hedgerow feature at Slades Farmhouse was poorly thought out from a landscaping perspective, and the Appellant's Heritage Witness's evidence was that if the effect of the double hedge was to reduce or remove views between Slades Farmhouse and Field 20 that would have a small adverse effect on significance.<sup>82</sup> The re-established route would terminate with a fence, and no permissive route is proposed to give it the character of a track, despite the fact that permissive paths are proposed elsewhere. An interpretation board would be necessary to understand the purpose of the feature. Even so, the weight to be given to this feature as a heritage benefit is negligible.

202. In totality, the Council considers that the heritage benefits proposed are very limited.

#### *Weight to be Accorded to Heritage Harm*

203. As set out above, any harm to the significance of a designated heritage asset must be given 'great' or 'considerable' weight as a matter of law and/or national policy. Whilst the weight need not be uniform, this is the bottom line. The Council says that the mathematical approach to the task of applying weight to heritage harm taken by the Appellant's Planning Witness was not heralded in written evidence, and finds no support in any policy or guidance. The conclusion of moderate weight is clearly unsound.

204. The Council submits that their Planning Witness is right to give substantial weight to the assessed impacts on heritage bearing in mind:

- The statutory duty for listed buildings and national policy makes clear that heritage is a 'higher order' consideration;
- Two of the assets affected are "assets of the highest significance" under Framework paragraph 200;
- The size of the development means that multiple heritage assets are engaged, and whilst individually the levels of harm are not very high, there is a cumulative impact on the historic environment in the area. Logically harm to multiple assets should carry more weight than harm to a single asset.

#### *Benefits of the Scheme*

##### *Renewable Energy*

205. The Council's position is that the generation of up to 49.9MW of renewable energy, contributing towards the achievement of net zero targets and security of supply, is clearly the primary benefit of

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<sup>82</sup> Appellant's Heritage Witness XX by the Council

the appeal scheme. If VSC are to be found, it would be on this basis and not because of any of the other benefits, either alone or in combination. The Council considers that this benefit attracts significant weight in the planning balance, but not the substantial weight argued for by the Appellant.

206. The Council points out that in contrast to Green Belt harm and heritage harm, which are clearly treated as higher order considerations where a high level of weight is prescribed, the Framework does not prescribe any particular weight to the generation of renewable energy. The Government has not seen fit to amend the Framework to prescribe weight, notwithstanding the wider context of climate crisis and issues with energy security.

207. In the solar farm appeal decisions before the Inquiry a high level of weight is given to renewable energy, but there is no consistent pattern of 'substantial' weight. Taking the Secretary of State decisions, 'substantial' weight has only been given to this factor on one occasion.<sup>83</sup> In the remainder of cases the Secretary of State has given 'significant' weight<sup>84</sup> and, in one case, 'great' weight.<sup>85</sup>

208. The weight to be given to the generation of renewable energy generation should not be increased by reference to Hertsmere's performance against the national average, as suggested by the Appellant in cross examination. The Council considers that the adopted Climate Change and Sustainability Strategy indicates that a strategic approach is considered appropriate, rather than encouraging speculative development on the Green Belt. The Local Plan is identified as the mechanism for identifying areas suitable for the deployment of renewable energy projects, including within strategic housing allocations. The Council points out that the introduction to the strategy identifies "*protecting and enhancing greenbelts*" as a principle to be "*embedded in all aspects of the functioning and development of Hertsmere*" in order to achieve carbon neutrality.

209. The Inquiry has been provided with a significant number of energy policy and strategy documents which provide general support for the delivery of renewable energy projects. The Council says that these are high level documents which cover a number of sectors and technologies, and none are instruments of planning policy.<sup>86</sup>

210. The Council say that the recent Net Zero strategy suggests a preference for offshore wind over solar, and that the most recent document of all, the British Energy Security Strategy (April 2022), contains a proposal to strengthen planning policy for solar "*in favour of development on non-protected land*" and to encourage large scale projects to locate on previously developed or lower value land where

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<sup>83</sup> CD-ADHBC 9, paragraph 19 DL;

<sup>84</sup> CD-ADHBC, paragraph 202 DL; CD-ADHBC 11 paragraph 13 DL; CD-ADHBC12 paragraph 26 DL; CD-ADHBC 13 paragraph 8 DL; CD-ADHBC 14, paragraph 14 DL

<sup>85</sup> CD-ADHBC 8 paragraph 13 DL

<sup>86</sup> The Appellant's Planning Witness XX by the Council

possible.<sup>87</sup> This does not add material weight in favour of the generation of renewable energy in the circumstances of this case, where the site is wholly in the Green Belt.

#### *Biodiversity/Ecology*

211. The Appellant has calculated a BNG of 90% in area units and 25% in linear units.<sup>88</sup> This arises primarily from the provision of 'modified grassland' within the solar array enclosures and the other types of neutral grassland around field margins and delivered through management of the Aldenham Brook Green Corridor, Skylark Area, and Hilfield Brook Green Wedge.<sup>89</sup>

212. Area habitat creation in this area will comprise 75.07Ha of modified grassland, 22.42Ha of neutral grassland, 3.13Ha of mixed scrub, 2.90Ha of parkland, 1.90Ha of sealed surface and 0.71Ha of orchard. Created habitats generate a total of 460.63 units. Post-works habitats total 583.99 biodiversity units, an increase by +276.60 biodiversity units, or +89.99%.

213. The degree of net gain that would be achieved is not particularly surprising given that the land is currently in arable use.

214. It is agreed that this is a beneficial effect of the scheme, and it should carry significant weight in view of the 'overprovision' against the 10% requirement which will soon come into force. Substantial weight is not justified, partly because of the lack of policy imperative for this compared with, for example, Green Belt harm, and partly because the open areas which are delivering that BNG are provided in part to mitigate the harm that the appeal scheme would cause:

- The Skylark Area was originally proposed to be covered in solar arrays, but these were removed for other reasons including residential amenity;<sup>90</sup>
- The Hilfield Brook Green Wedge was also originally proposed to be covered in solar arrays,<sup>91</sup> but was "*designed to allow views to be retained through to Hilfield Castle ... and wider countryside to the east;*"<sup>92</sup>
- Parkland was proposed in order to "*maintain an immediate rural outlook for residential dwellings in these areas.*"<sup>93</sup>

#### *Landscape Enhancement and Post-decommissioning Submissions*

215. The Council's assessment is that the landscaping proposals (now shown on the Landscape Strategy Plan Rev A and as described in the LEMP) are to be regarded as neutral during the thirty-five-year

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<sup>87</sup> CD-NPP31 p. 19

<sup>88</sup> CD-PA29 p. 8

<sup>89</sup> CD-PA29 p. 4-6

<sup>90</sup> CD PA5 Design and Access Statement p. 27

<sup>91</sup> CD PA5 p. 24 and 26

<sup>92</sup> DSDI 14 LEMP April 2021 p.26 paragraph 4.4.2

<sup>93</sup> DSDI 14 LEMP April 2021 p.26 paragraph 4.4.3

operational period. The landscaping package is intended as mitigation for the adverse landscape and visual effects of the proposed solar farm, and it would be necessary to make the development acceptable if VSC were demonstrated. Therefore, it does not fall to be regarded as a benefit of the scheme. There is no enhancement during the operational period: the Appellant's assessment is that even with mitigation there would be adverse effects on both landscape character and visual amenity.

216. The Council raised concerns as to how, post decommissioning, it would be possible to secure legacy landscaping as shown on DWG No 8398 012C Green Belt Strategy Legacy.<sup>94</sup> The Council's view was that, following the expiry of planning permission, any condition relating to landscaping would cease to have effect.<sup>95</sup> The Council does not accept the Appellant's submissions on restoration conditions circulated on 2 November 2022. In particular, whilst it is agreed that a time limiting condition imposed under s.72(1)(b) of the 1990 Act could be enforced after the expiry of permission, it is not accepted that the same would apply to landscaping conditions or other types of condition which seek to regulate the use of the land.

217. The Appellant and the Council have now agreed that a condition should provide a thirty-five-year time limit for the operational period, rather than imposing a time limit on the life of the permission itself. The permission would not be a 'temporary' permission in this sense. This amendment to the draft conditions addresses the Council's concerns about the conditions purporting to have continued existence following the expiry of permission. Nevertheless, the Council considers that some issues remain.

218. The Council understood from the evidence of the Appellant's Landscape Witness<sup>96</sup> that the elements proposed for retention post-decommissioning are:

- New planting as shown on Figure 12C and as annotated on the Landscape Strategy Plan of the structure planting and new tree planting, save for the elements to be removed from Fields 1 and 5;
- The Skylark Area indicated on Figure 12C; and
- The Aldenham Brook Green Corridor shown on Figure 12C.

219. The Appellant's Landscape Witness anticipated that the management measures associated with the Skylark Area and the Aldenham Brook Green Corridor, and described in the LEMP, would continue post-decommissioning.<sup>97</sup>

220. The Appellant's proposed Condition 11 is intended to impose a requirement to retain and manage the landscaping elements referred

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<sup>94</sup> CD-ID19

<sup>95</sup> Based on the authority of Avon Estates Ltd v Welsh Ministers and another [2011] EWCA Civ 553

<sup>96</sup> Appellant's Landscape Witness XX by the Council

<sup>97</sup> The Appellant's Landscape Witness XX by the Council

to above for a period of twenty-five years after the solar farm has been completely removed from the land.

221. The Council considers that the Appellant's proposed condition 11 would fall foul of the tests set out in Framework paragraph 56 and should not be imposed because:

- The purpose of the landscaping elements in question is either to screen the development for landscape and visual reasons, or to preserve residential outlook, or to provide biodiversity benefits as part of the VSC to justify the Green Belt harm and thus make the proposed solar farm development acceptable.<sup>98</sup> It follows that, once the development has been removed from the land, it cannot be necessary for the landscaping elements to be retained and replaced/managed.
- For similar reasons, once the development has been removed from the land the landscaping elements would no longer be relevant to the development being permitted. The ongoing retention of the planting and management regimes would cease to relate to the solar farm, and instead will be delivering unrelated benefits to landscape character and biodiversity.
- It is very hard to see how it could be reasonable to impose an obligation on the landowner to comply with a management regime which would restrict the way the land is used for a period of twenty-five years after the solar development has been removed. The suggested approach would commit the landowner to mowing and grazing regimes and other management measures which would have to be complied with at specific times of the year, and which would interfere with an otherwise unrestricted lawful agricultural use.

222. For these reasons, the Council's alternative version is to be preferred. No weight can be attributed to landscape enhancements post decommissioning. If that is not accepted, the Council invites the Inspector and Secretary of State to accept their assessment that such benefits should (if secured) carry only limited weight.

#### *Economic Benefits*

223. The Appellant attaches significant weight to these, but the Council considers that is unrealistic. Construction and supply chain jobs would be short term and the Appellant's Planning Witness accepted that there would be one maintenance visit per month during the operational phase and that there is no evidence of the extent of any jobs created in the supply chain.<sup>99</sup> The Council says that the investment of private finance into a profit-making development

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<sup>98</sup> The Appellant's Landscape Witness XX by the Council

<sup>99</sup> The Appellant's Planning Witness XX by the Council

cannot rationally be regarded as a material benefit in the planning balance. Payment of a tax required by law is not a benefit, it is a legal requirement much the same as the payment of corporation tax by the energy company and the payment of income tax by anyone employed in connection with the solar farm, neither of which are, rightly, being advanced as benefits. In the Council's view it is quite correct to ascribe only limited weight to these matters.

#### *Soil Quality*

224. The Council say that this can be achieved through good stewardship, and that a solar farm is not needed to improve soil health. If the Aldenham Estate is serious about the environmental aspirations which are recorded in section 3 of the Appellant's Planning Witness's proof, then taking measures to improve soil quality are exactly the sort of action that one can expect it to undertake.

225. It is noted that the report on soil health which is appended to the Agricultural Land Classification Report states that (i) environmental stewardship is an important contributor to reducing greenhouse gas emissions, through options such as buffer strips which take land out of cultivation; (ii) the best opportunities to increase carbon storage come from planting perennial crops, returning crop residues to the soil and application of organic manures; (iii) zero tillage does not increase soil carbon in the short to medium term, although global data "suggests" that it does if applied for 12 years or more (implying a degree of scientific uncertainty); (iv) biological function can be enhanced by "*simple approaches that can be integrated into real farm systems*" and (v) soil structure can be improved by increasing soil organic matter (which relates to soil carbon).<sup>100</sup> The Council's Planning Witness is correct to give no weight to this benefit.

#### *Permissive Paths*

226. The Council seeks to make clear that a permissive path around the football club site would do no more than provide an alternative route to an existing PRoW which will remain. The Council is of the opinion that it is highly unlikely that the permissive path would be used in preference because the PRoW follows the desire line. The evidence does not support the claim that the PRoW is preventing the football club from using their land in the way they wish, even if it did, the PRoW will remain so the scheme would not change that state of affairs. There is no benefit here.

227. The northern permissive path would replace an existing tolerated path with a longer permissive route. Like the existing path, the new route would not be dedicated to the public, albeit there would be time limited permissive rights. The proposed path would take a longer route past utilitarian solar development rather than the

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<sup>100</sup> CD-PA 14 Appendix 5 Soil Health p. 2-3

current direct route through an open agricultural field. The Council considers that overall, this is not a benefit.

#### *Education Strategy*

228. A scheme would be required by condition, but no details are provided at this stage, and even the Appellant does not suggest anything more than limited weight should be applied.

#### *Very Special Circumstances*

229. VSC must be shown to clearly outweigh all of the harms identified. This is a very high hurdle for the Appellant to cross, and they have not crossed it. The benefits do not *clearly* outweigh the combined weight of the Green Belt harm, heritage harm and landscape harm. There are, the Council says, no VSC to justify the harm.

230. Whilst each case must be decided on its own merits, it is notable that the Secretary of State has not granted permission for a solar farm in the Green Belt in any of the appeal decisions before the Inquiry. This is a clear indication of the relative weight placed by him on protection of the Green Belt versus generation of renewable energy. Those schemes were all significantly smaller in scale than the current appeal scheme <sup>101</sup> and thus the renewable energy benefits were smaller - but the corollary is that the level of harm to the Green Belt was much lower.

231. It is the Council's view that a finding that VSC exist in this case, which would be primarily on the basis of the benefits associated with renewable energy generation, would set a precedent for other solar schemes in the Green Belt. The Council submits that it would undoubtedly be viewed by indicating a significant shift in policy and approach.

#### *Heritage Balance*

232. The public benefits do not outweigh the less than substantial Harm caused to five designated heritage assets, including a Grade II\* listed building and a scheduled monument which are of the highest significance. There is a cumulative impact to the historic environment. The removal of Field 1 in the resubmission scheme demonstrates that the level of harm that would be caused by the appeal scheme has not been clearly and convincingly justified, that Field 1 does not produce measurable public benefits. The Framework paragraph 202 balance is not in favour of the appeal scheme.

#### *Policy and Material Considerations*

##### *The Development Plan*

233. Whatever criticism may be made of the evidence base for the Local Plan, or areas where it takes a different approach from national

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<sup>101</sup> From 3.6MW (CD-ADHBC 12 Land to W of College Farm) to 7.76MW (CD-ADHBC 8 Green Farm)

policy, it remains the statutory Development Plan and the solar farm appeal must be determined in accordance with the plan unless material considerations indicate otherwise.

234. The Appellant's Planning Witness confirmed that no case was being made under Framework paragraph 11(d).<sup>102</sup> The "most important policies" are not out of date. Both the Core Strategy and the SADMPP were examined and found sound by reference to the 2012 Framework,<sup>103</sup> the substance of which has not changed significantly on the issues which are relevant to this appeal.

#### *Green Belt Policy*

235. Core Strategy Policy CS13 follows and applies national policy on the Green Belt. The policy is breached because VSC have not been demonstrated. Policy SADM26 is also breached. It contains criteria which are relevant whenever development in the Green Belt is being advanced. There is a clear planning purpose to be served in ensuring that any impacts on the Green Belt are minimised as far as possible in any development, whether or not it is inappropriate and whether or not there are VSC. Even where there are VSC to clearly outweigh Green Belt harm, criteria (i), (iv) and (v) require that development should still be as unobtrusive as possible and should be sympathetic in scale, height, and bulk.

236. The Appellant's Planning Witness was right to agree that the protection of the Green Belt is at the very heart of the Local Plan and the strategy it sets out.<sup>104</sup> They were right to agree that any proposal which conflicts with Green Belt policy in the Local Plan cannot be regarded as being in accordance with the plan as a whole.<sup>105</sup> That, the Council says, is the position here.

#### *Heritage Policy*

237. Core Strategy Policy CS14 does not include any reference to the possibility of harm being weighed against public benefits, however the policy seeks to avoid harm to designated heritage assets, which is the fundamental aim of statute and policy. It was found sound when examined against the 2012 Framework, which contained the same test as in paragraph 202 of the current version. So, the absence of that test was clearly not considered to raise any significant issue. Even if the policy did contain the relevant words, it would make no difference in this case because the benefits of the solar development do not outweigh the harm.

238. Policy SADM29 does incorporate the Framework, and the proposed solar farm would conflict with the policy. In addition, it

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<sup>102</sup> The Appellant's Planning Witness XX by the Council

<sup>103</sup> CD-HBCLP 1 p. 11 paragraph 1.9, CD-HBCLP 2 p. 11 paragraph 1.29

<sup>104</sup> The Appellant's Planning Witness XX by the Council

<sup>105</sup> The Appellant's Planning Witness XX by the Council

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would conflict with Core Strategy Policy CS22 ("conserve the Borough's historic environment").<sup>106</sup>

#### *Policy Concerning Landscape Matters*

239. The agreed landscape and visual harm produces a conflict with policies Core Strategy Policy CS12 ("proposals must conserve and enhance the natural environment of the Borough, including ... landscape character"), Core Strategy Policy CS22 (proposals should "take opportunities to improve the character and quality of an area"), Policy SADM11 ("proposals will be assessed ... to ensure that they conserve or improve the prevailing landscape quality, character and condition") and Policy SADM30 ("development which complies with the policies in this plan will be permitted provided it makes a positive contribution to the built and natural environment ... complements the particular local character of the area ... respect enhance or improve the visual amenity of the area by virtue of its scale, mass, bulk, height, urban form").

240. For the reasons set out above, the Council says landscape enhancements following decommissioning cannot be secured without falling foul of the tests for conditions and so should be given no weight when assessing compliance with the above policies. Even if that is wrong, the harm which would be caused for thirty-five years would still result in the breaches just identified.

#### *Core Strategy Policy CS17*

241. This policy (read together with the interim policy statement on climate change<sup>107</sup>) encourages new development of renewable energy generation subject to three caveats, of which the first – "local designated environmental assets and constraints" – is relevant.

242. The Appellant's Planning Witness agreed that the Green Belt is a constraint, and it is locally designated (its extent and boundaries being subject to designation in the local plan).<sup>108</sup> There is scope for argument as to whether the word 'environmental' qualifies only assets, or both assets and constraints. In any event it is noted that the Green Belt is identified as a "natural and historic asset" in paragraph 5.4 of the Core Strategy.<sup>109</sup>

243. The effect of this interpretation is that compliance with Policy CS17 is subject to VSC being shown in Green Belt areas. In other areas outside the Green Belt (i.e., in built up areas) the policy may be supportive subject to the other caveats. This result is not inconsistent with the emphasis placed on the Green Belt in the Local Plan; indeed, it would be surprising if a Local Plan in a Borough which is 80% Green Belt provided broad support for developments which would be inappropriate in that Green Belt.

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<sup>106</sup> CD-ID9 paragraph 9.13

<sup>107</sup> CD-HSPD 2

<sup>108</sup> The Appellant's Planning Witness XX by the Council

<sup>109</sup> CD -HBCLP 1 p. 56

244. Even if the Council is wrong about the interpretation of Policy CS17 and the policy does in fact provide support for the proposed solar farm, it makes no difference to the overall planning balance. Applying the Appellant's interpretation this would be one policy pulling in favour of the scheme, set against a wide range of policies pulling the other way, including Green Belt policy which is fundamental to the plan. The Council says development would remain contrary to the plan as a whole.

#### *Core Strategy Policy SP1*

245. The Council say that this key spatial strategy would be breached.<sup>110</sup> The Appellant's Planning Witness agreed that criteria (v), (viii) and (xiii) would be breached, although attached weight to the reversibility of the scheme. For reasons already given, the Council say that can carry little weight.

#### *Material Considerations*

246. The Council considers that there are none which indicate an outcome otherwise than in accordance with the Development Plan. The following reflects the Council's view of national policy statements and their drafts:

EN-1 does not provide support for this scheme. It is effectively a policy framework for decision making. It does confirm that that the IPC will take an approach to the Green Belt which is in accordance with the approach in the Framework (albeit it was published in 2011 and thus pre-dates the Framework).<sup>111</sup>

EN-1 also helpfully points out that: *"not all aspects of Government energy and climate change policy will be relevant to IPC decisions or planning decisions by local authorities, and the planning system is only one of a number of vehicles that helps to deliver Government energy and climate change policy. The role of the planning system is to provide a framework which permits the construction of whatever Government – and players in the market ... – have identified as the types of infrastructure we need in the places where it is acceptable in planning terms. It is important that, in doing this, the planning system ensures that development consent decisions take account of the views of affected communities and respect the principles of sustainable development."*

EN-3 does not deal with solar technologies at all.

Draft EN-1 and EN-3 cannot be given any weight as material considerations in favour of the appeal scheme. Neither document provides support for the delivery of large-scale solar farms in the Green Belt; Draft EN-3 in fact fails to mention the Green Belt in its section on solar technology, despite discussing it in the context of other technologies including offshore wind.

<sup>110</sup> PoE of the Council's Planning Witness, paragraph 9.17

<sup>111</sup> CD-NPP 25 paragraph 5.10.17

Hertsmere Borough Council submits that this is an omission that would be picked up through consultation.

*Overall Conclusion for Hertsmere Borough Council*

247. It is the Council's conclusion that the proposed solar development is very clearly in conflict with the Development Plan taken as a whole. There are no material considerations which indicate that permission should be granted notwithstanding this conflict. The Council asks the Inspector to recommend that the Secretary of State refuses permission and dismisses the appeal.

**The Case for Aldenham Parish Council**

248. The Site is located within the Parish of Aldenham and the Parish Council opposes the proposal in the strongest terms.

249. This proposed solar farm conflicts with the Development Plan; it proposes an enormous 85Ha set over 130Ha. The development would be the size of two villages in the middle of the Green Belt and next to a Grade II\* listed heritage asset (amongst others).

250. Planning permission must be refused unless, pursuant to S.38(6) Planning and Compulsory Purchase Act 2004, material considerations indicate otherwise. Aldenham Parish Council is of the view that they do not. The Appellant relies on renewable energy to make its case. The Parish Council agree that renewable energy is important, but not such as to mean it can be put in any location.

251. There are three independent reasons to refuse the appeal:

- The Green Belt: VSC do not exist
- Heritage: The benefits are insufficient to outweigh the harm to the significance of heritage assets.
- Landscape: The proposal is contrary to Core Strategy CS12, CS16, CS17, SADM11 and Policy SADM30.

*Green Belt: Very Special Circumstances do not exist.*

252. The starting point is that the proposed solar farm constitutes 'inappropriate development' in the Green Belt. It is, by definition, harmful to the Green Belt, Framework paragraph 147, even before anything else is considered.

253. The Appellant rightly accepts substantial weight must be afforded to the following harms:

- Definitional harm.
- Harm to both visual and spatial aspects of the openness. Including a high magnitude of major-moderate adverse visual effects within the site.
- Harm to the openness and purpose (c) to assist in safeguarding the countryside from encroachment, Framework paragraph 138.

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254. However, harm to Green Belt is under-played by the Appellant.

*Openness*

255. The Site is open countryside. Although the Appellant accepts harm, their terminology and photomontages are 'muted.'

*Spatial Harm:*

- The Appellant's Planning Witness concedes there would be '*a spatial impact*' because, as there would be a development in an area where there was not previously, '*in this sense*' there would be a spatial impact. Their evidence has sought to emphasise the '*gaps*' below and between the panels, or the purportedly '*low*' height of 3m.
- Such terminology does not bring to mind the reality of over 100,000 solar panels and storage facilities covering 85Ha over a site spanning 130Ha, with panels 3m high surrounded by 2.2m high fencing (both well above head height). The spatial harm is undoubtedly highly significant.

*Visual Harm:*

- For visual receptors within the site, the LVIA, rightly, concludes there would be a high magnitude of major-moderate adverse effects.<sup>112</sup> The Appellant seeks to stress that this is a '*localised*' effect.<sup>113</sup> However, the '*localised*' harm is to a site of 130 hectares criss-crossed by numerous PRoWs. The visual harm accepted by the Appellant is actually highly significant.
- For a proposal just under the threshold for a Nationally Significant Infrastructure Project, there are insufficient photomontages showing the likely effect with established mitigation and across the seasons. When considering the photomontages that have been provided, they actually suggest a greater visual openness than would be the case with mitigation. 'Before' views allow sight at least as far as the solar panels and, in some cases, through and under them<sup>114</sup>, whereas 'after' views would block these with the hedge several metres in front of the solar panels, considerably foreshortening views.<sup>115</sup>
- The '*channelling*' effect would be significant particularly where the panels are on both sides of PRoWs. The Appellant does not provide any photomontages of this. However, one may look at Figure 9.5 VP9 p.2 of 2 and imagine the obstruction on both sides of the path. There would be a huge change from a walker having sweeping

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<sup>112</sup> CD-PA15 p.44

<sup>113</sup> CD-ID17 [7.3.7]

<sup>114</sup> CD-ID19 Appendices Figure 9.6 p.4 of 6 (a view through the solar panels to the far end of the field)

<sup>115</sup> Accepted by the Appellant's Landscape Witness in XX

views across the arable landscape on both sides to having fencing, security cameras and solar panels surrounding them on both sides and as far as the eye can see (noting the bends in the footpaths would often not permit the end to be in view).

- Regardless of mitigation, one would either have a view of 3m high solar panels, through a 2.2m high fence, and numerous large shipping containers - or a sizeable and dense hedge. Either way, one would not have the existing, open view over an undulating and attractive<sup>116</sup> arable landscape characteristic of the Borehamwood Plateau.
- Such harm to openness would be permanent in places, as indicated in the Green Belt Legacy Plan at Figure 12C and the Appellant's updated landscape plan. For example, 7.5m high and 10m hedging proposed in Field 15.

#### *Green Belt Purpose*

256. The Appellant accepts harm to purpose (c) of the Green Belt, to assist in safeguarding the countryside from encroachment. The harm would be commensurate with the 130Ha of the encroachment.

257. The purposes of the Green Belt also include (a) checking the unrestricted sprawl of large built-up areas, Framework paragraph 138. Standing back to look at an aerial map, which would clearly be the implication of such an expansive development in this location, on the edge of London and extending to nearly the whole distance between Bushey, Boreham Wood and Radlett. It is nowhere stated that it is necessary for a development to actually touch the surrounding settlements.

#### *Other Harms*

##### *Landscape Character and Visual Amenity:*

258. The Appellant's Landscape and Visual Impact Assessment identifies large-scale and major-moderate adverse changes. The undulating landscape means mitigation would often not screen views.<sup>117</sup> Planting mitigation would be less effective due to the undulating nature of the countryside and the sense of openness would be considerably reduced. This is addressed below.

##### *Effect on the Setting of Heritage Assets:*

259. As set out below, a medium level of less than substantial harm would be caused to the setting of listed buildings; a consideration to which considerable importance and weight must be given.<sup>118</sup>

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<sup>116</sup> Accepted by the Appellant's Landscape Witness in XX

<sup>117</sup> CD-ID19 E.g. Viewpoints 1 (Centre) view to another field on higher ground; Viewpoint (Right) a view across two fields; Viewpoint 3 (left and right) views down over large expanses of solar panels

<sup>118</sup> CD-ADHBC2 Barnwell Manor Wind Energy Limited v East Northamptonshire District Council [2014] EWCA Civ 137 [24]; S.66 Listed Buildings Act 1990

*Public Rights of Way:*

260. The appeal site is attractive<sup>119</sup> and criss-crossed by a large number of PRoWs. These are a valuable recreational asset and benefit the local tourism economy. This is all the more important in an area so close to London and within the M25, where such green land is already in very short supply. They also benefit the local tourism economy. The landscape change from undeveloped countryside to industrial built development would have a significant adverse impact. Fencing would give the feeling of being contained, a particular concern for lone female walkers.<sup>120</sup> It is simply much less likely that someone would want to walk on them should the development go ahead. Although the ambit of the Radlett Neighbourhood Plan (2021) is 400m away from the site, it seeks to protect the same PRoW that would be harmed by this proposal and advises that development that reduces the quantity, functionality and/or quality of walking and cycle networks would not be supported.

*Agricultural Land:*

261. Aldenham Parish Council's Planning Witness observed on site visits that the site is largely agrarian in nature and currently producing crops. It is Grade 3b, moderate quality. Aldenham Parish Council says that this is a valuable resource for producing cereals and grass, particularly in Hertsmere where most land is not of a high grade, and where the Government have stressed the need for the UK to self-support its food production.

*Long-term Impact on the Character of the Area:*

262. Although thirty-five years is not permanent, it is a significant amount of time; it has been recognised in the recent appeals refusing permission for solar farms that even twenty-five years is a significant period of time such that "*for a generation of local people it might as well be permanent so that in terms of the weight to be applied to the harm to openness there is little distinction to be made*"<sup>121</sup> and that it "*comprises a substantial part of the average person's lifetime*".<sup>122</sup> Aldenham Parish Council considers that after thirty-five years, the solar equipment could be replaced<sup>123</sup> and there would be a strong case for other types of built development. This is a matter to be given moderate weight.

*Wildlife:*

263. Aldenham Parish Council considers that wire fencing is likely to significantly impact the ability of larger mammals to roam, as would noise. The Appellant's response that there are still large tracts of land to move through<sup>124</sup> misses the point that their habitat would be

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<sup>119</sup>XX Appellant's Landscape Witness

<sup>120</sup> XX Planning Witness for Aldenham Parish Council

<sup>121</sup> CD-ADHBC6 [55]

<sup>122</sup> CD-ADHBC 4 [134]

<sup>123</sup> CD-PAS Design and Access Statement [5.3]

<sup>124</sup> CD-ID16 at [11.35]

subject to huge, long-term (and potentially permanent) change. It is not whether they can get from A to B; it is their natural habitat.

*Glint and Glare:*

264. Four dwellings would be impacted until screening takes effect over a period of years. Screening will interfere with their open views. It is of the utmost important to ensure road traffic is adequately screened before solar panels are installed in those locations.

*Noise:*

265. Aldenham Parish Council say that noise would still be audible along the PRoWs despite the proposed planning condition and, as such, impact on the enjoyment of being in the open countryside.

*Flooding:*

266. It remains of concern to Aldenham Parish Council that the Appellant did not deal with the points made by the Sustainable Drainage Officer on behalf of the Lead Local Flood Authority about the adequacy of the assessment.

*Benefits*

267. In considering whether the 'other considerations' put forward by the Appellant 'clearly outweigh' the harms so as to amount to 'VSC,' Framework paragraph 148, it is important to recognise that the Government does not consider special rules apply for solar farms in the Green Belt:

- Solar farms have not been listed as one of the various developments that may be appropriate in the Green Belt, Framework paragraph 149. This is despite (i) the Framework being updated in 2021, after both the Climate Change Act 2008 and its 2019 amendment targeting 'net zero', and (ii) the Framework making specific provision for e.g., mineral extraction and affordable housing for local community needs.
- PPG: *Renewable and low carbon energy* specifically provides that local planning authorities should be '*focussing large scale solar farms on previously developed and non-agricultural land.*' (Reference ID: 5-013-20150327)
- It is only that VSC '*may include the wider environmental benefits associated with increased production of energy from renewable sources,*' Framework paragraph 151. It does not even go as far as to suggest such benefits must always be considered.

268. Aldenham Parish Council say that the alleged benefits are overstated by the Appellant.

269. Renewable energy generation is of course very important. This is not disputed by anyone. However, this is not a 'trump card'

necessitating development in the Green Belt. One must look specifically at this proposal.

270. The policies and objectives relied on by the Appellant cannot mean that every local planning authority must ensure the installation of vast solar farms in their area. It would be impossible in (for example) Central London. It must be subject to local constraints, such as the Green Belt. That is exactly why the PPG specifically provides that local planning authorities should be '*focussing large scale solar farms on previously developed and non-agricultural land.*' Energy is a largely national infrastructure for good reason.

271. Artificial constraints are relied on in the Appellant's Alternative Site Assessment to justify this site. The assessment is predicated on a need to install a solar farm within 5km of Elstree substation. There is no justification for this. It is evident that other substations have capacity because the assessment states Elstree was '*one of those identified*'<sup>125</sup> and, as the Appellant's Planning Witness accepted in cross-examination, it is actually not necessary to connect to any substation; a connection can be made to an overhead line. The Appellant has only shown that a solar farm could be connected to Elstree because it has capacity, it is not the case that it must be.

272. As highlighted by the Council's cross-examination of the Appellant's Planning Witness, Government policy generally favours wind over solar. Wind energy is more efficient. It is not the case that solar farms are the primary means for achieving net zero.

273. Much has been made of the Council's intention to generate more renewable energy. This is far from unique. It must be seen in the context of an authority who was also well aware that it also has a very strong desire to protect its Green Belt land. It did not suggest it would forsake the latter in favour of the former.

274. The other benefits relied upon are extremely modest:

- *Biodiversity/ecological:* There would be some benefit, however it is a normal requirement for Development Plan policies and Aldenham Parish Council is already providing significant improvements in the area by planting large numbers of trees without taking up arable land. Improvements may be delivered without a solar farm. It must also be seen in the context of the inevitable harm that would be caused to other wildlife.
- *Landscaping:* This is a normal requirement of Development Plan policies and is really mitigation. As far as any such landscaping is said to be a benefit heritage, this cannot be double counted because it is already taken into account by the Appellant in reaching their assessment of heritage harm.<sup>126</sup>

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<sup>125</sup> CD-PA44 [2.1]

<sup>126</sup> The Council XX of the Appellant's Heritage Witness

- *Farm diversification and soil improvements:* These do not compensate for the loss of agricultural land and could be obtained without the need for a solar farm. The latter is only relevant if the site actually does revert to agricultural use. This is far from certain.
- *Permissive footpaths:* These do not represent an improvement from the current position given the significant harm proposed to the existing PRoWs. Accordingly, this is not considered to be a benefit and should be considered neutral. As highlighted by the Council's cross-examination of the Appellant's Planning Witness, the route to avoid walking across part of the Belstone Football Ground is less direct than the existing route which will remain. The second replicates an existing path already used. Their value is dubious. These proposed permissive paths will no longer be available once the solar farm is decommissioned.
- *Educational strategy:* There are other platforms or this and scant detail has been provided. The information boards are numerous and would be unwelcome 'clutter' in the Green Belt. The proposed location of the board in Field 19 (rather than at the end of Sawyer's Lane) explaining that a double hedgerow is to indicate the former Sawyer's Lane seems highly unlikely to be effective.
- *Economic benefits:* The construction period is under a year and may not involve local workers. In any event, thereafter only very minor ongoing maintenance work would be required. This is underwhelming when compared to the existing agricultural work being undertaken each year. It is likely that fewer people would wish to visit the area, resulting in less support for local businesses. This is not a benefit.
- *Reversibility:* This bears very little weight. There is no guarantee the land would revert to agricultural use in the future. The Design and Access Statement raises the possibility of a further application in thirty-five years. The Appellant asserted the future was 'unknowable'. What is certain is that the baseline against which any future application (e.g., a sS73 application to vary the planning condition dictating a thirty-five-year operational period, or indeed a fresh application for planning permission for any built development) would be very different. A regrettable precedent would have been set for future development on the site and a generation will be unable to recall a time when the land was intact. The development should be considered permanent in landscape terms.<sup>127</sup>

275. There is nothing 'very special' about the circumstances of the proposed solar farm. The other considerations cumulatively fall far

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<sup>127</sup> XX of AK; GLVIA3 [5.51-5.52] refers to long-term as twenty-five years

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short of 'clearly outweighing' the harms. Therefore, there is a conflict with Policy CS13, which reflects the Framework's VSC test.

276. If such an immense solar farm can go ahead on a site such as this, subject to the important protections for the Green Belt and heritage assets, one may expect huge swathes of valuable Green Belt to be similarly lost up and down the country.

*Heritage: Benefits do not Outweigh the Harm*

277. The harm to the significance of relevant designated heritage assets is less than substantial and should be weighed against the public benefits of the proposal; Framework paragraph 202. Harm is agreed. This alone provides a 'strong presumption' against granting planning permission.<sup>128</sup>

278. When assessing the four experts' opinions on the level of harm, it is notable that Aldenham Parish Council's Heritage Expert was measured, unafraid to agree with the Appellant that there was no harm to Penne's Place, and yet still found medium harm to the Hilfield Castle Group and Slades Farmhouse. The Parish Council say the written evidence of their Heritage Expert is reliable.

*Hilfield Castle Group*

279. This includes the Hilfield Castle, Gatehouse and Lodge. It is agreed that they contribute to one another's significance. They are of considerable significance, with reference to both their architectural and artistic interest, and historic interest:

- Listed as Grade II\* (particularly important building of more than special interest), Grade II and Grade II, respectively.
- Designed by Sir Jeffrey Wyatt, '*architect to the king*' who also designed alterations to Windsor Castle and Chatsworth House.
- The south front differs only in minor details from the extant elevation drawings representing one of Wyatt's earliest known designs.<sup>129</sup>

280. Aldenham Parish Council says that the setting must include the Western portion of the Site because:

- The Castle was deliberately set in a commanding position to oversee a country estate, which covered the whole of the Western portion of the Site.<sup>130</sup>
- Regardless of views on whether the Castle has a 'main' façade, it is clear the views are 360 degrees and views to the North and West were important, representing the Castle's North Park and Western Lawn.<sup>131</sup> The

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<sup>128</sup> CD-ADHBC2 *East Northamptonshire DC v SoSCLG* [2014] EWCA Civ 137 at [23]

<sup>129</sup> CD-ID18 Official List entry, Appellant's Heritage Witness PoE p.119

<sup>130</sup> CD-ID18 Appellant's Heritage Witness PoE p.66-67.

<sup>131</sup> CD-ID18 p.66, p.70

undeveloped, rural setting owned by the estate undoubtedly contributed to its significance.

- Despite the presence of trees and changes in land ownership, notable winter, and summer views to the North and West remain.<sup>132</sup>

281. The solar farm would cause a medium level of less than less than substantial harm:

- Intervisibility, although reduced, remains.<sup>133</sup>
- Abstract harm is striking, the Western portion of the proposed solar farm covering a large portion of the former Hilfield Castle estate.<sup>134</sup>
- Previous change has not been of the same scale. The harm would clearly be 'noticeable,' 'significant'<sup>135</sup> and a much greater change from the previous changes to the land relied on by the Appellant; e.g., from parkland to agricultural.<sup>136</sup>
- It is relevant to consider cumulative harm in light of previous encroachments such as the Elstree Aerodrome, Elstree Reservoir, electricity pylons and other 20<sup>th</sup> Century changes because:

The significance of the heritage assets has been compromised in the past by unsympathetic development.

Additional change would clearly further detract from the significance of the assets.

- This was also the conclusion independently reach by both COG's heritage witness and Historic England, who wrote the guidance in GPA3 which was relied on by all parties. Historic England only assessed the Castle, being the only asset in the Group listed as Grade II\* or above.

282. Harm was acknowledged by the Appellant's Heritage Witness who had advised against the inclusion of Field 1 and the Appellant has sought to address this both in a parallel planning application and when attempting to amend this scheme on appeal.

#### *Slades Farmhouse*

283. Similar to the Hilfield Castle Group, this has been put under pressure by previous developments and the proposed development would remove yet more of the rural field system that surrounded it,

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<sup>132</sup> CD-ID18 p.76; CD-ID13d COG's Heritage Witness PoE plate 12

<sup>133</sup> CD-ID18 p.76; CD-ID13d and COG Heritage Witness PoE plate 12

<sup>134</sup>XX Appellant's Heritage Witness; CD-ID18 Appellant's Heritage Witness PoE p.66-67

<sup>135</sup> CD-ID10b Aldenham Parish Council Heritage Report p.20

<sup>136</sup> Appellant's Heritage Witness XX; accepted the proposed change would be much larger

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and to a 'significant' and 'noticeable' extent. The harm would be of a 'medium' level.

*Aldenham House Registered Park and Garden*

284. The visual effects would result in a 'low' level of harm;<sup>137</sup> a view shared by every witness other than the Appellant's Heritage Witness. Considerable importance and weight must be given to this.<sup>138</sup>

285. The benefits relied on by the Appellant (covered above) fall considerably short of outweighing the above harm to heritage assets. There is strong scepticism as to the heritage landscape benefits relied on by the Appellant. In particular, the proposed 1.5m double hedgerow down part of the former Sawyer's Lane beside Slades Farmhouse. Aldenham Parish Council say it is underwhelming.

*Landscape*

286. As above, the Appellant's own Landscape and Visual Impact Assessment rightly concludes there would be a high magnitude of major-moderate adverse effects for receptors within the site. This 'localised' effect in the context of a site covering 130Ha and criss-crossed by numerous PRoWs is actually an enormous effect. Regardless of the precise percentage of the Borehamwood Plateau Landscape Character Area that the site covers, it is clearly a significant and large proportion of it. This Landscape Character Area would be changed.

287. The Appellant's suggestion that the mitigation would, once established, which would take many years, reduce the harm to moderate does not withstand detailed scrutiny:

- There are no photomontages giving any indication of what the site might look like with mitigation in place. It is for the Appellant to show the impact of their proposal.
- No mitigation at all is proposed in many areas, including long stretches of multiple footpaths that would be surrounded by 3m solar panels and 2.2m high fences on both sides. Imagery showing this is a notable omission from the Appellant's evidence.
- The proposed mitigation has limitations in an undulating landscape and where items such as trees provide only intermittent coverage.<sup>139</sup>
- The mitigation is in itself harmful, serving to foreshorten views<sup>140</sup> by way of tall hedges. Where the Borehamwood Plateau Landscape Character Area is based on views into

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<sup>137</sup> CD-ID10b The Heritage Report for Aldenham Parish Council p.16

<sup>138</sup> CD-ADHBC2 *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council* [2014]

EWCA Civ 137 at [24]; s.66 Listed Buildings Act 1990

<sup>139</sup> CD-ID19 Section A-A, Figure 10; XX of the Appellant's Landscape Witness by Aldenham Parish Council

<sup>140</sup> Accepted by the Appellant's Landscape Witness in XX by Aldenham Parish Council

and across the landscape, and arable land, this is significant.

- The mitigation would result in permanent harm to the landscape. Notably, the 7.5m high and 10m hedging proposed in Field 15 would significantly reduce openness. The updated landscape plan and legacy plan<sup>141</sup> show various locations where mitigation hedges would remain, meaning surrounding views will be removed forever.

#### *Conflict with the Development Plan*

288. Aldenham Parish Council says that there are numerous clear conflicts with the development plan, and draw particular attention to:

- Policy CS12: Enhancement of the Natural Environment. The natural environment and landscape character are not conserved and enhanced by the proposal.
- Policy CS13: The Green Belt provides a general presumption against inappropriate development within the Green Belt, unless the VSC test is met. It is not.
- Policy CS14: Protection or enhancement of heritage assets. All parties agree that the development proposal does not conserve or enhance the historic environment of the Borough and conflicts with the requirement to not cause harm to listed buildings. The Framework has not materially changed since the Core Strategy was found sound; and is not out of date.
- Policy CS15: Promoting recreational access to open spaces and the countryside. This requires the safeguarding of access to the local countryside. The admitted harm to the Green Belt, and landscape within the site, is in clear conflict with this policy as regards the many PRoWs crossing the Site.
- Policy CS16: Environmental impact of development. This requires development proposals to demonstrate that they accord with Policy CS12 and that any adverse effects can be overcome by appropriate alleviation and mitigation, which are capable of being secured through planning conditions or an obligation. Harm to the landscape clearly contradicts this.
- Policy CS17: Energy and CO2 Reductions. Permission for new development of sources of renewable energy generation is subject to important landscape features, minimising any detriment to the amenity of neighbouring residents, and meeting high standards of sustainable design and construction. The admitted harm to the

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<sup>141</sup> CD-ID19 Figure 12C

landscape (together with noise and glint/glare implications) by an enormous solar farm is in obvious conflict with this policy.

- Policy CS22: Securing a high quality and accessible environment. The admitted harm to the Green Belt, landscape and heritage assets plainly conflicts with the requirement to take advantage of opportunities to improve the character and quality of an area and conserve the Borough's historic environment. Notably, the policy requires account to be taken of the cumulative impact of new development. This is an important consideration when it comes to the heritage assets in particular.
- Policy SP1: Creating sustainable development. This required new development to prioritise the efficient use of brownfield land. The Appellant's Alternative Site Assessment, whose (artificial) constraints were admitted to necessitate development in the Green Belt is in clear conflict with this. The solar farm also conflicts with the statement that all developments should:
  - i) ensure a safe, accessible, and healthy living environment for residents and other users of a development;
  - iv) be of high-quality design and appropriate in scale, appearance and function to the local context and settlement hierarchy, taking advantage of opportunity to improve the character and quality of an area;
  - v) avoid prejudicing, either individually or cumulatively, characteristics and features of the natural and built environment;
  - vii) avoid inappropriate development in the Green Belt; and
  - xiii) conserve or enhance the historic environment.
- Policy SADM11: Landscape character. This provides development will be managed to help conserve, enhance and/or restore the character of the wider landscape across the Borough. The admitted landscape harm clearly conflicts with this.
- Policy SADM26: Development Standards in the Green Belt. This requires development to comply with the following principles, clearly violated by this proposal:
  - (i) developments should be located as unobtrusively as possible and advantage should be taken of site contours and landscape features in order to minimise the visual impact;
  - (iv) the scale, height and bulk of the development should be sympathetic to, and compatible with, its landscape setting and not be harmful to the openness of the Green Belt.
- Policy SADM29: Heritage Assets. Provides that the Council will not permit development proposals which fail to protect, conserve or where possible enhance the significance, character and

appearance of the heritage asset and its setting. The scale, design, use and character of the proposal are to be taken into account. As regards listed buildings, it provides that development proposals will not be permitted which would materially harm the setting or endanger the fabric of a listed building.

- Policy SADM30: Design Principles. Development which complies with the policies in this Plan will be permitted provided it makes a positive contribution to the built and natural environment; recognises and complements the particular local character of the area in which it is located, and results in a high-quality design. To achieve a high-quality design, a development must respect, enhance, or improve the visual amenity of the area by virtue of its scale, mass, bulk, height, urban form. The scale of the proposed solar farm and harm to the landscape conflicts with this.

#### *Conclusion for Aldenham Parish Council*

289. Aldenham Parish Council concludes that the proposal does not accord with the Development Plan and no material considerations justify a departure. The Parish Council invites the Inspector to recommend that permission is refused, and the appeal dismissed.

#### **The Case for the Combined Objectors' Group (COG)**

290. The appeal seeks full planning permission for a vast development in relation to land lying within the Metropolitan Green Belt, which is in, and historically has been put to, active agricultural use. That has been the situation for a great many years.

291. The development is at least, the size of two local villages, being 130Ha in total land take, and 85Ha in built development. Notably, it represents development of the majority of the undeveloped land the Appellant has control over. It is, deliberately set at 49.9MW, just below the threshold of a Nationally Significant Infrastructure Project.

292. It would cover a significant amount of the agrarian, intact, open, and rural countryside between Bushey, Borehamwood, and Radlett. Each of those settlements is less than 1Km from an edge of the proposed development.

293. It would impact on a whole range of heritage assets, including the Grade II\* Listed Building Hilfield Castle, and the Scheduled Monument at Penne's Place. The balance of the evidence before the Inquiry is entirely clear in that respect. The only real doubt remains about the level of harms claimed. The other key designated heritage assets are: Slades Farmhouse, Aldenham House Registered Park and Garden, and the Lodge to Hilfield Castle.

294. It is based, given its regional importance, on an Alternative Site Assessment that is deficient, and which by setting the rules of

the game, ensured that only Green Belt sites in Hertsmere would be in play.

295. It uses more land than it requires to do, by including Field 1 within the proposals. This approach remains, albeit apparently contrary to the Appellant's own most recent heritage advice, and in taking that approach harm is being caused to a range of designated heritage assets that is entirely unnecessary harm.

296. It would seriously compromise a locally extensive series of PRoWs<sup>142</sup> that link settlements and provide a valuable resource for recreational opportunities in this attractive<sup>143</sup> swathe of Green Belt.

297. Those effects will last for at least thirty-five years (being the operational life of the development). That is a generation. It would be understood and perceived as permanent change.<sup>144</sup> Seen in that light, the 'enhancements' proposed are small, and should not in totality command any real weight in the overall planning balance.

298. It has attracted a massive local response, almost universally against the proposed development. It is resisted by the Local Planning Authority, none of whose members voted for it. It is resisted by Aldenham Parish Council, and by COG. The consistency of the main bases for resisting the appeal across those bodies is notable in itself.

299. It would be anathema to the plan led process, a process designed to facilitate sustainable development with appropriate community consultation and input, to permit development of this scale by planning appeal in relation to an unallocated site.

300. COG represents Stop the Solar Plan Save our Green Belt (local objectors group), CPRE Hertfordshire – the Countryside Charity, Letchmore Heath Village Trust, Radlett Society and Green Belt Association, Elstree and Borehamwood Green Belt Society, Save Radlett (local group of objectors), Bhaktivedanta Manor (the UK's largest centre for the International Society of Krishna Consciousness) and Elstree and Borehamwood Town Council.

301. COG resists this appeal in the strongest terms and assert that the importance of the scheme, and its implications for the proper protection of Green Belt land, are implicitly recognised in the Secretary of State's decision to recover this appeal.

302. COG says that there are errors and/or matters of mistaken approach within the Officer Report, such as an assessment of a limited loss to openness of the Green Belt suggesting a lack of consideration of the spatial implications of introducing 85Ha of built

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<sup>142</sup> CD-ID19 Fig 7; CD-ID12a/App A/p.3 and CD-DSDI-11/3/2.7

<sup>143</sup> XX by COG: Appellant's Landscape Witness accepted that the land was attractive

<sup>144</sup> XX by COG: The Appellant's Landscape Witness accepted that, on the Landscape and Visual Impact Assessment and GLVIA definitions "permanent" should have been used as the appropriate duration. That is because the operational period of thirty-five years is above the period of twenty-five years used in each case as the upper limit of long term: CD-PA15/9/Duration table; GLVIA 91/5.51

development into the Green Belt. COG considers that the Appellant's reliance on the positive officer recommendation in the Officer Report is misplaced and also point out that the Officer Report recognised that matters of planning judgment were for members to decide.

303. The benefits of renewable energy are properly recognised by all the participants to the Inquiry. But a proper and appropriate approach to national energy policy does not require large swathes of the Green Belt to be given over to solar farming. Allowing this appeal would signal such an approach. Doubtless, that is why historically such appeals have very rarely been successful. Emerging energy policy supports an approach aligned with those previous refusals, a qualitatively better approach than that embodied in the present proposal. An approach of using previously developed land and emerging improving technologies for placement on existing and proposed buildings; and, where demonstrated to be necessary, using greenfield land outside of the Green Belt. COG submits that this is underscored by the Framework not giving the provision of renewable energy a specific weighting, for example at paragraph 151, compared to the heavy weightings deliberately imposed in relation the protection of the Green Belt, and designated heritage assets; both of which are explicitly recognised by the need to give substantial weight to all harm to the Green Belt at paragraph 148 and great weight to the conservation of designated heritage assets at paragraph 199.

304. By contrast, the height of the case advanced by the Appellant is to say that the 'generation of 49.9MW of electricity' should be given 'substantial' weight. COG says, in the circumstances of this case, it should be given a moderate weighting.

#### *Minimum Levels of Harm Created by the Proposal*

305. The minimum levels of harm the Appellant accepts would be caused both to the Green Belt, to designated heritage assets, and to landscape and through visual impacts affecting amongst other things the PROW network, as recorded in the respective Statements of Common Ground, are sufficient to condemn this appeal to failure.

306. If development is to be permitted in the Green Belt on land subject to the level of constraint and harm arising here, then the future for the integrity of the Green Belt, in terms of it housing regionally significant future solar farm projects, is bleak.

307. In relation to the assessment of heritage assets, the claimed 'enhancements' provided in relation heritage are factored into the Appellant's assessment of harm<sup>145</sup> so care must be taken not to double count them as any further benefit of the proposed scheme.

308. In terms of Green Belt harm, the Appellant accepts:

- Definitional harm;

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<sup>145</sup> XX Appellant's Heritage Witness by the Council

- Harm to openness of the Green Belt over the 85Ha of built development;
- Harm to Purpose 3 of the Green Belt.

309. The Appellant correctly accepted that each of those forms of harm must be given substantial weight.<sup>146</sup>

310. In terms of less than substantial Heritage harm, the Appellant accepts:

- Slades Farmhouse (Grade II LB) is harmed: low level;
- Hilfield Castle (Grade II\* LB) is harmed: low level; and
- Hilfield Lodge (Grade II LB) is harmed: low level.

311. Experts for the other main parties independently assessed a greater number of assets; and found greater levels of harm.

312. Finally, in terms of landscape harm, the Appellant accepts:

- Harm to the landscape (in particular the Borehamwood Plateau Landscape Character Area, of which it is agreed the land is reflective). The Appellant says this harm should be accorded moderate weight.
- Harm to visual amenity in the area. The Appellant says this harm, in addition, should be accorded moderate weight.

### *The Development*

313. The Design and Access Statement describes the development. COG draws particular attention to the following features:-

- The solar panels would be up to 3m from ground level, with a face of 4.60m; lengths vary by the number of units in the row.
- Twenty battery storage units, houses in shipping containers.
- A substation (next to the battery storage area).
- Sixteen inverters located throughout the site in containers.
- A control room.
- Site security measures including 2.2m deer fencing and CCTV poles located about every 50-70m at a height of 2.4m.

### *The Development Plan*

314. COG pointed out that the Development Plan is the statutory starting point applying S.38(6) Planning and Compulsory Purchase Act 2004. Both parts of the Development Plan were found sound in accordance with the National Planning Policy Framework 2012, and therefore consistent with national policy. Further, paragraph 202 of the 2021 Framework is replicated by paragraph 134 of the Framework 2012, which was therefore in force at the material times.

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<sup>146</sup> Inspector Question of the Appellant's Planning Witness

Neither the Core Strategy nor the SADMPP are out of date in that respect. Similarly, they are substantially up to date in relation to Green Belt provisions.

315. The SADMPP heritage and Green Belt policies are plainly meant to build upon the Core Strategy policies, and to be applied in the context of development management. Therefore, compliance with both Policies SADM26 and SADM29 is required. They both represent key elements of the plan as a whole, so a substantial failure to comply would amount to a failure to accord with the plan as a whole.

316. The Core Strategy Objectives are set out in terms.<sup>147</sup> Objective 2 is "*To protect the Green Belt and its role in preventing urban sprawl and the coalescence of towns*". It is no accident that the Objective specifically references Purposes 1 and 2 of the Green Belt. Bearing in mind there are only four recognised Main Settlements, the identified priority is to protect land, development of which would (individually or cumulatively) erode the important gaps between settlements; and that is precisely what the Arup Green Belt study identified in relation to the relevant parcels. The need to prevent urban sprawl is doubtless expressly recognised both in relation to those four settlements, but also bearing in mind the relative proximity of Outer London to the Main Settlements, increasing the overall importance and fragility of those gaps.

317. Core Strategy Policy SP1, a key strategic policy, building on those objectives, requires all development across the Borough to ". . . (vii) *avoid inappropriate development in the Green Belt; and . . . (xiii) conserve or enhance the historic environment of the Borough in order to maintain and where possible improve local environmental quality*". The Appellant agrees that the Proposed Development is in conflict with those limbs of the policy. It is in conflict with a key spatial policy and so in conflict with the Development Plan as a whole.

318. Policy SADM 26 requires development in the Green Belt to comply with the following principles "*(i) developments should be located as unobtrusively as possible and advantage should be taken of site contours and landscape features in order to minimise the visual impact; . . . (iv) the scale height and bulk of the development should be sympathetic to, and compatible with, its landscape setting and not be harmful to the openness of the Green Belt.*" The wholesale failure of a scheme of this scale to comply with (iv) and, as a consequence to fail to comply with (i), shows further conflict with the Development Plan as a whole.

319. In similar vein, Policy SADM 29 states that the Council will not permit development proposals "*which fail to conserve or where possible enhance the significance, character and appearance of the heritage asset and its setting. The scale, design, use and character of the proposal will be taken into account . . .*" In relation to Listed

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<sup>147</sup> CD-HBCLP1/21/Table 4

Buildings it states, "*The Council will not permit development which would materially harm the setting or endanger the fabric of a listed building . . .*" COG considers that the proposed development is clearly in conflict with those requirements. The conflict arises in relation to (i) scale (85Ha built, 130Ha overall); (ii) design – industrial<sup>148</sup> and utilitarian<sup>149</sup> – jarring with the settings of the nearby range of heritage assets; (iii) use: industrial; and (iv) character of the proposal – a solar farm of regionally significant size.

### *The Green Belt*

320. The Government attaches great importance to Green Belts. Framework paragraph 137 states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The five purposes of the Green Belt are set out at Framework paragraph 138.

321. Hertsmere is 80% Green Belt. This is a high figure which indicates, by itself, the level of local constraint. But without further analysis it masks the true picture. Outside of the urban areas Hertsmere is Green Belt. It has no countryside land beyond the Green Belt, as many other Metropolitan Green Belt authorities do.

322. The proposed development is inappropriate development. Framework paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in VSC.

323. Framework paragraph 148 advises that substantial weight is to be given to any harm to the Green Belt, and VSC 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.

324. COG draws attention to the following advice on the PPG (Reference ID:5-013-20150327) regarding solar farms:

- The need to encourage effective use of land by focussing large scale solar farms on previously developed land and non-agricultural land;
- The proposal's visual impact, including by way of glint and glare, and impact on neighbouring uses;
- The need for, and impact of, security measures such as lights and fencing;
- The need to take great care in ensuring heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their settings.

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<sup>148</sup> CD-ID13/40/167 and CD-ID9a/39/5.13

<sup>149</sup> CD-ID9a/39/5.13

325. Notably, in Framework paragraphs 150 – 151, the Government chose not to include renewable energy projects within those types of development which might not be inappropriate development even though, for example, mineral extraction is included. Rather, the height of the policy endorsement within Green Belts is to say that “*very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.*” Accordingly, there is no Framework requirement to weigh this positively.

326. It is well established that, in applying Framework paragraph 148, any other harm is not limited to any other Green Belt harm.

327. COG accepts for the purposes of this appeal the energy generating potential, at 49.9MW should attract some positive weight in the balance.

#### *Inappropriate Development*

328. It is common ground the proposed development is inappropriate development, and therefore definitional harm arises.

#### *Harm to Openness*

329. The harm to openness is serious and on a massive scale at 85Ha. COG firmly believe that the land will be ‘industrialised.’ The panels will appear incongruous, alien, and discordant in this undulating, open, agrarian environment. In reality, a much greater part of the 130Ha overall is likely to read as developed built form. In the Statement of Case COG noted that the actual number of panels proposed is not defined, approximated, or illustrated within the Application. COG believe that the number of panels is likely to exceed 120,000. No evidence has been called to rebut that estimate.

330. The panels themselves are substantial, standing up to 3m high and spaced closely together in rows. They would appear by parallax and be generally viewed as a solid mass.

331. There would also be access and internal roads and a large number of other features which would add to the built upon, and industrialised appearance of the site (as summarised above from the Design and Access Statement).

332. The battery units and substation lack screening from footpaths and would stand out, as incongruous and discordant features. Security fencing would be particularly intrusive at close quarters, where footpaths cross fields, and especially where security fencing is proposed on both sides. Even within the landscaped areas, when the landscaping proposals mature, to the extent the fencing itself may be softened, an inappropriate channelling effect would remain.

333. The channelling effect would be exacerbated by the regimented placement of the solar panels themselves which would be in close proximity to, and exceed the height of, the fences. The proposed set back of the fencing from the footpaths would not substantially

remove those impacts, which would continue over long periods, often exceeding 100's of metres at a single stretch.<sup>150</sup> Fencing would be higher than an average adult; and the height of the solar panels another 0.6m on top of that.<sup>151</sup> COG states that the substantial extent to which the channelling effect would arise is shown in COG's Landscape Witness's evidence.<sup>152</sup> It would impact upon PRoWs including Aldenham 30, 32, 40, 42, 43, 44 and Bushey 38.

334. To the extent that the presence of the built solar farm leads to a situation where the mitigation required is hedgerows growing to 5m or 7.5m high along pathways, which would have its own impacts in relation to the general spatial openness of this area of Green Belt – it would be mitigation arising as a consequence of built development. It will have visual implications in relation to (a) the open views presently available, (b) those which are only filtered in part through grown out hedgerows, and (c) in relation to use of the PRoW.

335. The harm to landscape, but most importantly to visual amenity, is set out in COG's Landscape evidence. Even on the conservative basis that the value of the land for those using it is community rather than district, the Summary of Effects Table<sup>153</sup> indicates Major Adverse impacts from eight representative viewpoints. Moderate harm from three more, and Slight harm for the remaining three. It amounts to additional harm to the Green Belt.

336. The Appellant's evidence fails to demonstrate what any of the views of the development would look like after five, ten or fifteen years. This is a serious shortcoming in a project of this scale when Green Belt, substantial landscape and major visual amenity harms are acknowledged by the Appellant and the Landscape and Visual Impact Assessment. GLVIA, suggests a fifteen-year comparison.<sup>154</sup> Equally, ten years might have been chosen in this case, as the Landscape and Visual Impact Assessment chooses the period of ten years as being the stage at which mitigation is said to have significant beneficial impacts; but that was not done either.

337. Nor are the photomontages sufficient in terms of coverage – for example VP/4 and VP/6, where large visual impacts can fairly be anticipated, are without any photomontages.

338. Third, photomontages do not embrace the full impact of some of the most harmful areas of the development, such as the interface between PRoW Aldenham 44 and Aldenham 40 in Field 14.<sup>155</sup>

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<sup>150</sup> XX the Appellant's Landscape Witness by COG: Examples exist of 250m (between Field 3/Field 4 and Field 5, past the large substation and battery storage), 275m (Field 7 heading SW to Field 19, 250m (Aldenham Road NE to the top of Field 19), and 700m (from Butterfly Lane adjacent to Slades Farmhouse, heading N along Field 16, alongside Field 15 and through Field 14 to Watling Street).

<sup>151</sup> See cross section at CD-ID12a/9/App D

<sup>152</sup> ID-12a/3-4/ App A

<sup>153</sup> ID-12a/10/App E

<sup>154</sup> CD- NPP14 pp 141 and as the Appellant's Landscape Witness accepted in XX by COG.

<sup>155</sup> Illustrated by COG's Landscape Witness at ID-12a/App C/p.8 – Viewpoint 9

339. Lastly, the photomontages and other visual representations fail to address seasonal change. Again, this is contrary to best practice as illustrated in GLVIA.<sup>156</sup> No good explanation has been given for this. It is an especially puzzling omission given the gestation period of the application and appeal, and that a number of the Appellant's heritage views are winter views.<sup>157</sup> Nevertheless, there can be no doubt that the effects in landscape and visual impact terms are likely to be significantly more pronounced in winter.<sup>158</sup>

340. As well as the clear open views throughout and around the site, the undulating characteristics of the surrounding land mean that views from farther afield are also likely. COG's Landscape Witness gave an example from Footpath Aldenham 017 at Batlers Green, which had not been picked up by the Landscape and Visual Impact Assessment analysis. From this Viewpoint, (VP A1), a number of fields containing panels would still be seen once the landscaping matures. Views across the site to Slades Farm are also available. Similarly, from VP A2<sup>159</sup> taken from PRoW Bushey 038 views which are currently wide and open would be cluttered with solar panels which would continue to be seen into the long term.

341. The extent of the Large Adverse views that the Appellant accepts will arise for up to 10 years (and from a number of viewpoints after that), appear from the Viewpoint table.<sup>160</sup>

342. The mitigation would be of little effect, certainly in the short term. Leaving the details of final mitigation or condition leaves a substantial degree of uncertainty in the situation where different harms may influence mitigation in different ways. If the response favours landscaping and visual impact treatments, then the residual harm for heritage and use of PRoWs may be higher. These three features are, as the Appellant's Landscape Witness accepted, in tension.<sup>161</sup> This tension, and perhaps the inability to successfully square the circle provided by the key constraints which relate to development at this site, is well demonstrated by the continued revisions of the landscaping material into the third week of the Inquiry. In any event, mitigation of a scheme will normally be considered neutral in the overall Green Belt balance.<sup>162</sup>

### *Harm to Purposes*

#### *Purpose 3 - Encroachment*

343. The harm that would be caused to the purposes of the Green Belt is additional to the harm set out above. It is common ground that Purpose 3 would be infringed: the development would encroach

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<sup>156</sup> CD-NPP14 GLVIA p.143.

<sup>157</sup> See, e.g. CD-ID18/76-78/Plates 68-70

<sup>158</sup> CD-ID12/12/4.16, 14/4.20, COG's Landscape Witness oral evidence

<sup>159</sup> CD-ID12a/7/App B

<sup>160</sup> CD-PA15/37/Table 2

<sup>161</sup> XX the Appellant's Landscape Witness by COG

<sup>162</sup> e.g. CD-ADCOG1/7 DL30

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into the countryside. Given the vast scale of the development, the level of encroachment would be commensurately large and harmful.

*Purpose 2 - Merging*

344. The large scale of the development is again in play in considering Purpose 2. Figure 2B: Green Belt at 1:60,000 scale shows the picture well<sup>163</sup> as does the 1:25,000 site location plan.<sup>164</sup>

345. The proposed development, at its boundaries, is only:

- 250m east from the town of Bushey (which itself is almost contiguous with Watford);
- 750m west of the town of Borehamwood; and
- 790m south of Radlett.

346. Each of those gaps is well under 1Km. Those settlements are identified in the Core Strategy as three of the four Main Settlements in Hertsmere Borough. PRoWs link all three of those settlements, which lie in close proximity within the Green Belt. In each case, there are three fields or fewer separating the site from the relevant settlement. And on each occasion, there are footpaths in the vicinity. In addition, Letchmore Heath lies approximately 530m to the north, and Patchetts Green 1Km to the northwest.

347. The Proposed Development would substantially reduce both the actual extent to which the Green Belt is permanently open and free from built development between those settlements, as well as the existing perception of space between those three settlements, by introducing industrial form at a large-scale set between those three settlements, and across well used and extensive PRoW currently existing between them. It is not necessary to destroy entirely the gap between Main Settlements for Purpose 2 to be engaged.

348. The value of this land for Purposes 2 and 3 is spelt out in the Arup Green Belt Stage 1 assessment, which is the most up to date analysis carrying out a comparative survey, across the entire district, of the relevant parcels of Green Belt land. Parcel 9 was identified as having "moderate" Green Belt value, the second highest available; and Parcel 19 was identified as having "strong" Green Belt value.

349. Parcel 9 scored 3/5 for Purpose 2 and 3/5 for Purpose 3. On Purpose 2, the assessment includes the following *"The parcel forms a small part of the essential gap between Borehamwood and Bushey Heath/Bushey Village and part of the wider gap between Bushey Heath/Bushey Village and North Bushey, and Borehamwood and Radlett. The parcel plays an important role in maintaining the general scale and openness of these gaps, with the gently undulating character of the parcel affording some distant views northwards towards Watford and south-westwards towards Bushey Heath/Bushey*

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<sup>163</sup> CD-ID19/Fig 2B

<sup>164</sup> CD-ID19/Fig 1

*Village.” The Purpose 3 narrative refers to “a largely open character . . . which consist of open arable fields bounded by hedgerows of varying density and consistency. This landscape, together with the gently undulating topography, allows for some long views across open countryside to the edges of settlements.”*

350. Parcel 19 scored 3/5 for Purpose 2 and 5/5 for Purpose 3. On Purpose 2, the assessment includes “*This parcel forms part of a wider gap between Radlett, Borehamwood, Elstree, Bushey Heath/Bushey Village and North Bushey, where the scale of the gap is such that there is little risk of settlements coalescing, but where the overall openness is important to preserving the perceived gap between settlements*”. On Purpose 3, the narrative includes “*Approximately 3% of the parcel is covered by built form and it is characterised by a strong rural character throughout . . . The only significant development . . . The remainder of the parcel consists of very open agricultural fields with long views and very little development.*”

#### *Purpose 1 - Sprawl*

351. The proposal would contribute to urban sprawl, due to both scale and location, towards the periphery of London and between the three main settlements set out above. It is true that the development does not physically adjoin any of the settlements, but that is not necessary to a conclusion that urban sprawl is occurring for development on this scale. It is not necessary for the final dot, or field, to have been joined for these purposes.

#### *Very Special Circumstances*

352. The various benefits claimed in respect of the proposals are dealt with below, but at this stage attention is drawn to the importance the Secretary of State and inspectors have routinely placed on the importance of an appropriately thorough search for alternative sites, so that it is demonstrated that the harm required to the Green Belt cannot be avoided. This issue is addressed further below. Overall, the case for substantial Green Belt harm is clear. The benefits analysed below do not come close to clearly outweighing the totality of the various harms that have been identified.

#### *Landscape and Visual Harm*

##### *Visual Amenity*

353. COG considers that issue of visual harm has been addressed above in the context of the Green Belt. But even in the absence of the Green Belt designation it would stand for itself as an important material planning consideration militating against the development.

##### *Landscape Harm*

354. The level of landscape harm is indicated by GLVIA paragraph 5.50, which requires consideration of landscape harm at four different levels of remove. The Appellant’s evidence relates to the scale of the proposed development and simply reinforces the need for sites which

would house 130Ha worth of development, with 85Ha of built development, if they are otherwise justified, to be located in areas where landscape harm would truly be minimised. The characteristics of the landscape locally do not provide such an opportunity, having the qualities of being undeveloped, gently undulating, agrarian, open, and intact.

355. The proposed development causes harm at all four identified levels in GLVIA paragraph 5.50. It causes harm, at the site level; at the level of the immediate surroundings; at the level of the Landscape Character Area – Borehamwood Plateau; and in the adjacent Aldenham Plateau Landscape Character Area. It is common ground that harm arises at three of those levels. The Appellant acknowledges Moderate harm to the Borehamwood Plateau Landscape Character Area even in the "*long-term/semi-permanent*" duration. For the first ten years the effect is assessed as Major-Moderate adverse. The proposed development makes up a significant portion of that Landscape Character Area. The apparent failure of the Landscape and Visual Impact Assessment to adequately analyse impacts from the adjacent Aldenham Plateau Landscape Character Area means that substantial effects cannot be discounted.

356. However, even those conclusions by the Appellant were based on a misapplication and conservative approach to its own Landscape and Visual Impact Assessment criteria. In particular: the approach to Duration was wrong – permanent should have been used; and the approach to Extent was wrong – Intermediate should have been used, based on a site size of over 2.5Km, even on the conservative assumption that effects stopped at the site edge.

### *Heritage*

357. There are four initial features to note, beyond the extent of the Appellant's accepted levels of harm to designated heritage assets, which of course go substantially beyond the basis upon which the Planning Application was predicated.

- First, there is a large measure of common ground amongst the experts, excluding the Appellant's Heritage Witness, as to which assets are harmed and why.
- Second, Hilfield Castle, and the Scheduled Ancient Monument at Penne's Place, are entitled to be regarded as having the highest levels of significance in accordance with Framework paragraph 200(b). The Core Strategy identifies Penne's Place as one of "*The Borough's four Scheduled Ancient Monuments*" describing them as "*critical local assets*."
- Third, in relation to each designated heritage asset, the opinion of the Appellant's Heritage Witness as to the scale of harm is in conflict with at least two of the other experts.
- Fourth, as identified above, where the Appellant's Heritage Witness indicated levels of harm, those harms had been netted off against the benefits that they considered would arise as a

consequence of the claimed 'enhancements' within the development.

358. Harm to designated heritage assets being clear, COG consider that the starting point is that there is a strong presumption that planning permission should be refused for this reason alone.<sup>165</sup>

359. COG submit that the evidence of COG's Heritage Witness was thorough; moderate and measured; and applied the central guidance in GPA3 in a transparent, coherent, and persuasive way, considering each of the applicable elements.

360. In contrast, COG say, the Appellant's Heritage Witness's evidence lacked recognition of the proposed nature and scale of the industrialisation of the setting of this range of assets, and the utilitarian nature of the design and materials. COG further argues that the Appellant's Heritage Witness was unduly focussed on matters of current intervisibility, rather than overall experience; and unduly concentrated on matters of tenancy rather than more enduring ownership and control.

361. In relation to each of the designated heritage assets COG's Heritage Witness concluded: -

- For Slades Farmhouse – moderate harm.<sup>166</sup>
- For Aldenham House RP&G – minor (low) harm.<sup>167</sup>
- For Penne's Place (SM) – minor (low) harm.<sup>168</sup>
- For Hilfield Castle (Grade II\*) – moderate harm.<sup>169</sup>
- For the Lodge at Hilfield Castle – moderate harm.<sup>170</sup>

362. The evidence of the Heritage Witness for COG recognises the transforming effect that industrial development at such scale would have on the setting of the relevant designated heritage assets and its prevailing open agrarian nature. It is an overarching feature tying the setting of these assets together in light of, amongst other things, their close geographic proximity to each other and the site; the Hilfield group of assets; and common historic land ownership, leading to important changes in the way the assets will be experienced.

363. There is further broad consensus about the importance of Hilfield Castle, its choice of siting so as to present commanding views over extensive areas of countryside, and the fact that, as parts of the setting of such an important asset may be comprised, so what remains becomes more precious.

364. It is in that context that the development, transformative of the setting of Hilfield Castle, is proposed.<sup>171</sup> The Appellant is now pursuing a subsequent "application for planning permission, having

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<sup>165</sup> East Northamptonshire DC v. SoSCLG [2014] EWCA Civ 137; [2015] 1 WLR 45 at [23] per Sullivan LJ.

<sup>166</sup> CD-ID13/18/66-68

<sup>167</sup> CD-ID13/25/99

<sup>168</sup> CD-ID13/29/115

<sup>169</sup> CD-ID13/36/149-151

<sup>170</sup> CD-ID13/36/173-176

<sup>171</sup> CD-ID13d Plates 11-14 and CD-ID13c Figures 26-27

purposefully removed Field 1 from that application on the advice of their heritage consultant.

365. COG concludes on heritage that there is harm to a range of designated heritage assets including those requiring the highest levels of protection. This factor weighs heavily against the development. It falls to be added to the Green Belt balancing exercise as part of the other harm. It is the totality of all of these harms that the Appellant must ultimately demonstrate have been clearly outweighed by the claimed benefits of the scheme.

#### *Public Rights of Way*

366. For COG this issue has been addressed in the preceding paragraphs of its case summary, but it considers that the way the development would seriously erode the recreational and other use of the extensive PRoW's in the locality is a material planning consideration. There is increasing recognition in Government guidance, including Framework paragraph 145, of the value that such resources can provide to the general public; and that recreational use of the Green Belt should be fostered and encouraged. It is a factor of substance to weigh in the balance.

#### *Loss of Agricultural Land*

367. COG consider that loss of agricultural land is a further material planning issue weighing against the proposal. The information submitted in support of the Appeal is not comprehensive, comprising only a semi-detailed survey, apparently undertaken during wet conditions, and leading to the conclusion that the only reason the land was grade 3b was due to its wetness. There is, accordingly, a measure of further uncertainty surrounding this issue which can also weigh against the proposed development. In any event, the loss of moderately productive grade 3b land, which has been in active use, for a period of thirty-five years (and possibly more), counts against the proposed development.

#### *The Benefits Renewable Energy*

368. The provision of a deliverable regionally significant solar farm for energy production and battery storage is a significant positive in the balance. In reality, seen against the policy context of Green Belt, heritage, and landscape considerations, it is the only substantive benefit that arises from the proposed development. It is entitled to moderate weight. Beyond that, it is important not to double count claimed benefits which really fold into this acknowledged benefit.

369. COG considers that the Appellant has laid (undue) stress on the comments of the Council's Climate Change and Sustainability Officer in the Officer Report.<sup>172</sup> COG emphasises that they are comments of an individual officer that no other individual sought to

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<sup>172</sup> CD-PA17 54/10.11 – 10.13.

give this benefit “great weight” and that the members of the Planning Committee clearly did not see it that way.

370. COG considers that reliance on national figures for renewable energy production in this case is likely to be substantially misleading. In contrast COG argues that all of the land outside of built-up areas in Hertsmere is designated as Green Belt and that no analysis has been put forward, in the Alternative Sites Assessment or elsewhere, to compare Hertsmere to other Metropolitan Green Belt authorities. COG argues that when this is taken into consideration it is unsurprising that the authority is below the national average for renewable energy production. COG considers that it would suggest something had gone seriously amiss if it were higher.

371. Substantial reliance on Draft EN-3 is also mistaken. As a draft it commands little weight. But even taking it into account, it weighs against this proposed development. It provides no express support for Green Belt development for solar farms, in contrast to various other landforms.<sup>173</sup> It seeks to avoid the use of agricultural land.<sup>174</sup> It adopts a cautionary approach towards the assessment of unknowns or uncertainty in terms of mitigation.<sup>175</sup> In this case, the lack of clear information about the implications of the proposed mitigation has already been addressed.

372. The Framework has been recently revised, and it does not suggest the proposed development, with the identified harms, is acceptable or represents sustainable development.

#### *The Alternative Site Assessment*

373. COG consider that the need for an adequate Alternative Site Assessment is clear: to demonstrate that harm to the Green Belt, and other similarly important kinds of harm, cannot reasonably be avoided. In COG’s opinion it would have been clear to any experienced solar farm team, consulting the Hertsmere Local Plan, that with the parameters of locating a site within 5Km of the substation with which a contract was required; and having a land-take of at least 80Ha, Green Belt land would be required.

374. Seen in that context, COG say, that the Alternative Site Assessment is deficient. In other planning appeal decisions the need to look outside a Green Belt authority has been stated for smaller proposals, for example the 5.25MW scheme at Redeham Hall, Smallfield<sup>176</sup> and the Barrow Green Farm, Lingfield<sup>177</sup> proposals.

375. It is the position of COG that in a case involving development at much larger scale, the need for a comprehensive Alternative Site Assessment becomes even more pressing to demonstrate that the

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<sup>173</sup> CD-NPP17 83/2.48.13, 2.48.15 last sentence.

<sup>174</sup> CD-NPP17 83/2.48.15 last sentence (mirroring the PPG).

<sup>175</sup> CD-NPP17 85/2.49.17

<sup>176</sup> CD-AGCOG2 IR paragraph 24, 39, 41, 59, 60

<sup>177</sup> CD-ADCOG3 DL paragraph 13, 17 and IR/ paragraph 65, 71, 75

benefits of development clearly outweigh the harms. Solar development is relatively footloose in terms of renewable power. Connections can be made, if appropriate, to pylons for example. There is no planning logic for stopping at an administrative border. COG is firmly of the opinion that there is no evidence before the Inquiry that the Green Belt harm could not be avoided.

376. COG say that it does not matter whether the deficiencies in the Alternative Site Assessment are held to diminish the case for VSC; or whether they reduce the weight that would otherwise be given to the generation of renewable power.<sup>178</sup> In either case, they reflect negatively in the planning balance, and substantially so.

#### *Ecological Enhancement*

377. COG submit that these benefits are very modest and by creating more enclosure would cause changes to the landscape which are not consistent with the existing open agrarian landscape.<sup>179</sup>

#### *Agricultural Land Quality*

378. COG considers that agricultural land quality could be improved by other means and that there is no evidential indication of difficulty in using the agricultural land, which enjoys a grade of at least 3b. COG say that the benefit, should it arise, is only available more than thirty-five years hence, and then only if agricultural use is resumed.

#### *Economic Benefits*

379. COG considers that the economic benefits would result regardless of location and are short term and modest compared to the levels of harm that would arise. COG say that economic benefits and paying business taxes under legal compulsion should not attract any real weight in the planning balance.

#### *New Permissive Rights of Way*

380. COG says that there is no evidence of an existing problem with the PRoW that crosses the Belstone Football Club ground. COG considers that because the PRoW follows a natural 'desire line' it is unlikely that the proposed permissive path would be used in preference. In respect of the second permissive path COG considers that it would simply permit what is already tolerated and yield no significant benefit. COG is firmly of the opinion that the permissive path proposals would not mitigate or compensate the harm that would be caused to the PRoWs that summarised above

#### *Educational Strategy*

381. COG considers that the Appellant's offer of an educational strategy could be expected whatever the location of the development and is inconsequential in the scheme of things.

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<sup>178</sup> CD-ADCOG1 at DL 25.

<sup>179</sup> CD-ID11/18/4.20

### *Overall Conclusion for COG*

382. COG concludes that the proposed development is contrary to central elements of the Development Plan and contrary to the Development Plan as a whole. The Appellant has failed to demonstrate that the benefits of the scheme clearly outweigh the harm to the Green Belt and any other harm, including the harm by reason of heritage, landscape, amenity (footpaths) and loss of agricultural land. Similarly, the Appellant has failed to demonstrate that the benefits exceed the heritage harm to the range of heritage assets set out above. For the reasons set out above the Inspector is respectfully invited to recommend to the Secretary of State that the appeal should be dismissed.

### **Interested Party A**

383. They are a long-standing resident who lives in the area, appeared before the Inquiry. Their submissions, including photographs are set out in DSD1 8, 9 and 10. They had many grounds of opposition and concerns and acknowledged that all these matters had become the subject of expert reports and noted the repeated use of adjectives like "the lower end of the scale," "limited," "moderate", "significant", "less than substantial" and "substantial" and thought that these adjectives were helpful, to a degree, to channel a rational thought process, but respectfully suggested that there was a need to and see what the proposed means in real terms. Points made which are considered to add additional information to assist the Secretary of State in determining the appeal are:

- Wrapping solar panels and inverters all around the West, North and East side of the Hilfield estate, in place of land that has been open park or agricultural land for centuries would seriously damage the setting of the Listed Buildings. The broader picture of long-distance open views and the setting of a tall hilltop asset should be considered.
- The worst part of the proposal is Field 1, where panels would be in the direct vista from the Castle, past the Gate House to the Lodge and vice versa. This was a view which Sir Jeffry Wyatville designed and implemented and which is still present to this day. Sir Jeffry Wyatville was the Architect to the King, who remodelled Windsor Castle. The appeal site would be intrusive and be in competition with, and a major distraction from the heritage assets.
- Topography is more than 'gently undulating.' Especially Field 1, facing Hilfield Lodge, and Field 5, which adjoins Hilfield Castle's grounds. The slopes in the site would make the panels more prominent, from both near and far.
- Hilfield Lodge is in residential use.
- The placing of panels in the sloping field opposite Hilfield Lodge would seriously impact on the setting of Hilfield Lodge, Hilfield Castle and The Gate House (which stands between the Castle and the Lodge).

- The proposed access point to the West is at Hilfield Farm is on a blind bend. There is already a problem with the number and size of the large vehicles going to, and from, the commercial uses in the Farm.

### **Interested Party B**

384. They walk PRoWs in the area with the South Herts Hikers; a walking group that they organise. The group is based in Potters Bar much or the walking takes place in Hertsmere including the area around Aldenham. It has a large online membership and is affiliated to The Ramblers, Affiliated Club HFC 100. They are a volunteer with Hertfordshire County Council Countryside and Rights of Way Service and aware of the Hertfordshire Rights of Way Improvement Plan.

385. Their submissions, including maps and drawings, are set out in full in CD DSD1 39 and 40. The views expressed are personal views and do not represent views of the Ramblers nor of Hertfordshire County Council Countryside and Rights of Way Service.

386. The site is crossed by a network of public footpaths which cannot be considered in isolation and should be viewed in the context of all walking routes in the area, for leisure walking, active travel, to and from schools or places of work. They say the network has suffered severe loss since the 1960s.

387. Hilfield Lane, Dagger Lane, Butterfly Lane and 700m section of Aldenham Road North of the junction of Dagger Lane have no footway and no safe or feasible walking route along the verge. They consider that due to past road widening and increasing volume and speed of traffic, these roads are not safe or feasible walking routes for leisure walking or active travel and some public footpaths such as Aldenham Footpaths 34, 42 and 43 are effectively dead ends. The issues are addressed by a Hertfordshire Rights of Way Improvement Plan. They consider that the solar farm would do little to address the poor connectivity of walking routes and lack of opportunities for active travel.

388. They welcomed the permissive footpaths and drew attention to the Rights of Way Improvement Plan suggestion "*6/63 Aldenham Parish, Aldenham 32, Little Kendal Wood through to Aldenham 31, needs link, Score 2, Add RoW*". But they considered that another suggestion, "*6/61, "Aldenham, Decent link from south Radlett to Haberdashers Aske's School. Avoiding busy roads*" should be addressed by means of a new footpath through the proposed solar farm. And that the lack of safe walking routes along Butterfly Lane and Hilfield Lane should have also been addressed.

389. They concluded that, the proposal would have a negative effect on existing public footpaths and insufficient new footpaths to enable active travel are proposed. The developer should work with Hertfordshire County Council Countryside and Rights of Way to implement suggestions in the Hertfordshire Rights of Way Improvement Plan that are within the proposed development site,

including providing safe walking routes by means of new footpaths parallel to and close to Hilfield Lane, Aldenham Road and Butterfly Lane plus Hertfordshire Rights of Way Improvement Plan suggestion 6/61. This would complete a walking route from South Radlett to Haberdashers Aske's School. These new footpaths should be dedicated as PRoWs; not permissive paths which could be closed in future.

## **Written Representations**

390. At the time of the application there were 111 letters in support of the proposal with 1967 against and sixteen neutral. Public comments are summarised in the Officer Report at section 8.4.<sup>180</sup>

391. At Appeal there are two letters in support. One agrees with the considered and objective assessment by officers as reported to the committee. That includes that this is an area of Green Belt that is not of particular quality or importance. The development does not undermine the overarching purpose of Green Belt legislation which is to contain development and urban sprawl. The temporary use of this small area in support of the Local Authority's position on the climate emergency. The other considers that in this time of energy crisis in the UK to have such a beneficial solar scheme turned down by the Hertsmere Borough Council Planning Committee against officer advice is, they consider, a nonsense.

392. At appeal objections were received from 108 individuals and organisations. Most of the issues are addressed by the cases for the Rule 6 Parties. Other matters include:

- The effect of development, particularly during construction, upon the living conditions of occupants of Hilfield Farmhouse,
- The effect of solar arrays in Field 14 upon the living conditions of occupants of 1-2 Medburn Cottages,
- Claims that the proposal is not an environment friendly "green energy" project but a financial scheme,
- Matters relating to modern slavery, ethical sourcing of solar panels and other equipment,
- The need for national security for both food and energy production,
- Effects upon air traffic operations at Elstree Aerodrome from Glint and Glare, and
- Concerns about toxic waste/leakage from hazardous materials including rare minerals and liquids such as cadmium, lead and lithium in solar panels from production to decommissioning.

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<sup>180</sup> CD-PA27 Officer Report section 8.4 pp 39 et seq

## Inspector's Findings

393. Numbers in square brackets [n] refer to earlier paragraphs.

394. The appeal site is located in the Metropolitan Green Belt. Framework paragraph 137 advises that the Government attaches great importance to Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. All proposals for development in the Green Belt should be treated as inappropriate unless they fall within one of the categories set out in paragraphs 149 or 150. Solar farms are not listed as a type of development that may be appropriate in the Green Belt. Paragraph 151 states that when located in the Green Belt, elements of many renewable projects will comprise inappropriate development.

395. The proposed development is by definition inappropriate development and substantial weight should be attached to that definitional harm. This is a matter of common ground [31] and all main parties agree on this.

396. Framework Paragraph 148 instructs that VSC will not exist unless the potential harms to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, are clearly outweighed by other considerations.

397. At a Case Management Conference, 11 August 2022, the main parties agreed that the main issues related to the effect of the proposed development upon:

- The significance of designated heritage assets by way of effects upon their settings, and whether any public benefits are sufficient to outweigh any harm(s).
- The openness of the Green Belt and whether any benefits of the scheme amount to VSC and clearly outweigh any harm.

398. Subsequently, the reasons given by the Secretary of State for recovering the appeal were because the appeal involves proposals of major significance for the delivery of the Government's climate change programme and energy policies and proposals for significant development in the Green Belt.

399. Therefore, and taking into account the oral and written representations, and my observations on site, the main issues are:

- i) The effect of the proposed development on the openness and purposes of the Green Belt.
- ii) The effect of the proposed development upon the significance of designated heritage assets by way of effects upon their settings, and whether any public benefits are sufficient to outweigh any harm(s). The designated heritage assets are:

Hilfield Castle, Grade II\* Listed Building,  
Hilfield Lodge, Grade II Listed Building,  
Slades Farmhouse, Grade II Listed Building,  
Penne's Place Scheduled Monument, and  
Aldenham Park, Grade II Registered Park and Garden.

- iii) The effect of the proposed development upon landscape character.
- iv) Whether the proposed development would result in any other non-Green Belt harms, and
- v) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, including the significance of the proposed development for the delivery of renewable energy so as to amount to the VSCs required to justify the proposed development.

## Main Issues

### i) Green Belt

#### *Openness*

400. An essential characteristic of the Green Belt is its openness. The Court of Appeal in *Turner*<sup>181</sup> confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. The Appellant agrees that there would be a change to the character of the land which would impinge upon the openness of the Green Belt causing harm which should be afforded substantial weight [93].

401. The spatial impact on openness would extend to an area of roughly 85Ha largely occupied by solar panel structures. They would have a three-dimensional form, up to a height of approximately 3m and with a solid upper plane [96-97].

402. The tempering effect [97] of the open nature of the supporting structures, ground beneath and gaps between rows would be limited. In addition, there would be other development. This would include solid container like buildings for a substation, the area of the battery stores, plus inverter/transformer stations in containers spread across the site.

403. Some viewpoints<sup>182</sup> would allow views under, over and through the panels, with grass seen under panels in many views.<sup>183</sup> Even so, the panels would not be appreciated as individual elements. Rather, they would be more often experienced as a mass [150].

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<sup>181</sup> *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

<sup>182</sup> CD ID19 Figure 9.1: Viewpoint 1 Photomontage (Left); Figure 9.6: Viewpoint 11- Photomontage (Left)

<sup>183</sup> CD ID19 Figure 9.1: Viewpoint 1- A41 Photomontage (centre) and (right)

404. Some open views across the site from higher ground, such as on PRoW Aldenham 17, would remain post development. Several well used PRoWs pass alongside and through the site [152] from where there are many other views across the site. Post development several sections of paths would have 2.2m high mesh 'deer fencing' erected 5m either side of the centre line; higher than an average adult [333]. Beyond the fencing it might be only 3-4m to the closest parts of arrays. This fencing would at times appear more solid than open. In some areas the layered views of fencing and solar arrays beyond would have a combined effect, further reducing visual openness. Notwithstanding that development would be a relatively low-lying form, from the eye level of a walker, the effects of the loss of visual openness would be significant.

405. Once landscaping matures, tall hedgerows, would screen some of the wider views, but would also reduce the incidence of open views between fields [153]. In this way it would reduce visual openness.

406. Even allowing for some commodious and wide-open verges and a river corridor running through the proposed development, the overall effect of the 85Ha of proposed solar arrays and other ancillary development would be to significantly compromise the perception of the visual and spatial openness of this part of the Green Belt.

407. The site of the twenty battery stores and substation would be adjacent to Hilfield Farm. An Appeal, APP/N1290/W/19/3240825, for a proposed energy storage system on a site close to the site of this Appeal was dismissed. In that case the Inspector, taking into account a twenty-year lifetime, concluded that the harm to the openness of the Green Belt would be moderate. The current appeal is for a solar farm for thirty-five years and includes 85Ha of solar arrays. The battery stores and substation in the appeal now before the secretary of State would extend out further behind Hill Farm and would be in close proximity to the solar arrays. Together the battery stores and solar arrays in this case would have a much greater impact upon openness.

408. In conclusion, development would have a significant adverse effect upon both the spatial and visual qualities of the openness of the Green Belt. Substantial weight should be attached to these harms to the Green Belt.

#### *The Purposes of Green Belt*

409. Framework Paragraph 138 states that Green Belts serve five purposes:

- (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.

410. As part of work for a Local Plan review Hertsmere Borough Council commissioned Arup to produce a report "Green Belt Assessment (Stage 1) Report: Methodology and Assessment of Green Belt Parcels, January 2017". The Arup Report divides the Green Belt in Hertsmere into parcels and provides an assessment of how they perform against the Green Belt purposes set out in national policy.

411. The appeal site is partly in Parcel 9 and partly in Parcel 19 which are assessed as having "moderate" Green Belt value, and "strong" Green Belt value respectively.<sup>184</sup>

412. However, this is a planning appeal, not a local plan review, the Appellant does not dispute the designation, and the Arup Report does not address solar farm development. Therefore, for the purposes of this appeal I attach little weight to the Arup Report. I have considered the appeal proposal against the purposes of the Green Belt having regard to the specific nature of the proposals.

*(a) to check the unrestricted sprawl of large built-up areas, and (b) to prevent neighbouring towns from merging into one another*

413. Although only 250m east of Bushey, the appeal site is separated from the built-up area of Bushy by the A41 and M1 transport corridor. It is 750m west of Borehamwood and separated by a strip of countryside bound by Watling Street on one side and the railway on the other. The southern edge of Radlett is reasonably well defined by built form and the appeal site clearly separated from it. The site is not directly between Radlett and Borehamwood or Radlett and Bushey and transport infrastructure provides strong separation between Bushey, Borehamwood, and Radlett. Letchmore Heath and Patchetts Green are not towns or large built-up areas.

414. An area of open countryside would remain between the appeal site and Radlett to the north and there would be retained open countryside between the eastern and western parcels of the appeal proposals. The proposed development would not abut any urban area. Nearby settlements would remain physically and visually separate from each other and the solar farm [94]. The physical characteristics of the solar arrays would appear quite different from built-up areas and towns.

415. In principle, it would not be necessary for a proposed development to touch surrounding settlements to result in either sprawling built-up areas, or to contribute to towns merging [257]. Even so, I find that the combination of the location of the proposed development and its physical characteristics mean that it would not physically or visually result in a sprawling built-up area, nor would it

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<sup>184</sup> CD-PA4 a p.83

cause of any of the surrounding settlements to merge into one another.

416. I conclude that the proposed development would not run contrary to Green Belt purposes of checking the unrestricted sprawl of large-built up areas nor that of preventing towns from merging into one another.

*(c) encroachment into the countryside*

417. The appeal site is outside of any settlement boundary and comprises mainly fields used for the growing of crops. It sits within an area of Green Belt between Bushey, Radlett, and Borehamwood; three of the four main settlements within the administrative area of Hertsmere Borough Council. Development would reduce the actual extent to which the Green Belt is permanently open and free from built development in an area of countryside between these settlements.

418. I conclude that the introduction of development onto the site, and the extent to which the proposed development would be visible in the wider landscape would be harmful to purpose (c). The Appellant agrees that there would be encroachment [93]. This harm attracts further substantial weight against the appeal proposal.

*(e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land*

419. The nature of the proposed development is such that it requires a large surface area with good access to light. Previously developed land tends to be in smaller parcels and in this way unlikely to be suitable to provide the amount of space required for the proposed development. Even if such a site was available, the appeal proposal might not represent the most effective reuse and recycling of urban land. I am not persuaded that the proposal would run contrary to the purpose of assisting urban regeneration or encouraging the recycling of derelict or other urban land.

*Green Belt Harm Conclusions*

420. Framework paragraph 147 is unequivocal that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The proposal is for a significant amount of development that would, by definition, be inappropriate development in a Green Belt. The fundamental aim of Green Belt policy is to keep land permanently open. There would be a significant loss of visual and spatial openness arising from the extensive areas proposed to be developed. The proposal would also conflict with one of the five purposes of including land in the Green Belt; that is to protect the countryside from encroachment.

421. As a development with an operational period limited to thirty-five years the harms would not be permanent. But thirty-five years would be experienced for a considerable time, longer than most people's perception of one generation. That development would be

required to cease at some future point would have insignificant impact upon perceptions of the development as constant and enduring. The temporary nature of the development applied for does not materially reduce the Green Belt harms.

422. The Framework states that the Government attaches great importance to Green Belts. It was common ground between the Council and Appellant that substantial weight should be afforded to any harm to the Green Belt [33]. The Table of weight to be attributed to harms and benefits in the planning balance agreed between the Appellant and Council [also set out at paragraph 33] could be read to infer a single substantial negative weight for Green Belt harms. In response to a question at the Inquiry, the Appellant's Planning Witness agreed that each of the Green Belt harms should be given substantial weight. I agree, and conclude that collectively the sum of the substantial harms to the Green Belt by way inappropriateness, harm to the openness of the Green Belt and harm to the purpose of protecting the countryside from encroachment, attract very substantial weight against the proposal.

423. Framework Paragraph 148 states that VSC 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. If VSC do not exist, the proposal would be contrary to national planning policy in the Framework. It would also be contrary to requirements of Core Strategy Policy CS13 and Policy SADM26 which seek to protect the Green Belt from inappropriate development, and ensure that development should not be harmful to the openness of the Green Belt.

## **ii) Heritage Assets**

424. S.66(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.

425. The Glossary to the Framework defines the setting of a heritage asset as "*The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.*"

426. Framework paragraph 199 advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

427. Framework paragraph 202 requires that less than substantial harm to the significance of designated heritage assets, should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

428. Advice in the PPG includes that when considering large scale solar arrays, great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting.

429. The PPG (reference ID: 013-20150327) advises that as the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of large-scale solar farms on such assets. Depending on their scale, design and prominence, a large-scale solar farm within the setting of a heritage asset may cause substantial harm to the significance of the asset.

430. Core Strategy Policy CS14 includes that development proposals must conserve or enhance the historic environment of the Borough and not cause harm to Listed Buildings, Historic Parks and Gardens and Scheduled Ancient Monuments or their setting. Policy CS14 predates the Framework and does not reflect the advice at paragraph 202. For this reason the weight I attach to Policy CS14 is limited.

431. Policy SADM29 includes advice that development proposals which fail to protect, conserve or where possible enhance the significance, character and appearance of a heritage asset and its setting would not be permitted. Proposals will not be permitted which would materially harm the setting or endanger the fabric of a listed building. Whilst this too is at variance with advice in the Framework, Policy SADM29 advises that applications would be considered in accordance with the Framework. For this reason I attach some, but not full, weight to this policy.

432. In respect of five designated assets the heritage experts for the main parties all conclude that where harm would arise it would be harm to the setting of the asset, and such harm would amount to less than substantial harm to the significance of the heritage assets.

433. At the beginning of the Inquiry the heritage experts agreed a table summarising their assessments of the level of less than substantial harm for each of the heritage assets they had assessed.<sup>185</sup>

*Hilfield Castle Grade II\* (list entry 1103569)*

434. As a Grade II\* listed building Hilfield Castle is a heritage asset of the highest significance; only Grade I listed buildings and Scheduled Ancient Monuments being of higher significance. Hilfield Castle replaced Slys Hill and was constructed for G Villiers shortly after 1798, in a high-quality Gothic picturesque style. The architect,

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<sup>185</sup> DSDI 2

Sir Jeffry Wyatville, was a notable English architect and garden designer, responsible for, amongst other things alterations and extensions to Chatsworth House and Windsor Castle. Hilfield Castle derives associative, historic, architectural, and artistic interest from its age and form as a late C18th house by Sir Jeffry Wyatville.

435. Hilfield Castle was sited in a commanding position [280] in the rural landscape to provide a dramatic context, in line with the picturesque aesthetic traditions of the time; and to enjoy commanding views [363] of surrounding countryside from the elevated situation. The evidence of the Appellant's Heritage Witness in their Proof of Evidence is that elements of setting that positively contribute to the significance include:

- Surviving parts of the immediate historic gardens;
- The surviving driveway approaches;
- The remnant of the fishpond/lake to the south;
- The former parkland areas to the north, south and west where their former historic character remains legible; and
- Hilfield Lane, which the Lodge fronts onto and from which the driveways are accessed, and which was re-routed to extend the core parkland.

436. The pleasure grounds were laid out between 1798 and 1803 and the house screened by tree planting from views from a nearby public road around 1798. In 1803 that lane was diverted to the south-west and the grounds extended. A plan of 1804 indicates parkland west of the road and western drives routed to take a more direct line to the new road line. The Appellant's Heritage Witness's written evidence, Proof of Evidence paragraph 6.10 (et seq), is that by this time:-

*"[a] shorter but still serpentine south-western drive would have given sequential views, passing the lodge, revealing the main façade of the house, passing through the gatehouse, and reaching the rear of the main house, perhaps with glimpsed views to the southern parkland.*

*"The trees to the west of the rerouted Hilfield Lane had more of an appearance of relict trees from then-removed field boundaries. It was not uncommon for contemporary landscapes to have views out to wider areas, in contrast to earlier traditions where schemes and views were more contained by planted tree belts.*

*"The land to the west of the road might have had a degree of treatment to give the appearance of continuing parkland, which would have been perceived including when travelling away from the principal residence towards the western entrances, despite being*

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*separated from the core of the parkland by the public road.*<sup>186</sup>

437. An extract from a Bryant Map of 1820 indicates that the area west of the lane was largely laid out to parkland, albeit that the accuracy of the exact area cannot be relied upon. An early C19th estate map indicates the western area is still within the same ownership. Although an 1839 Tithe Map does not clearly identify parkland to the west, the Appellant's Heritage Witness acknowledges that it is shown as one large enclosure and with the field name "*Western Lawn*". An extract from an Ordnance Survey 6-inch Map, 1895-1899, indicates that the Western Lawn was no longer part of the parkland. Today it is farmed, in separate ownership and a power line with pylons crosses it. Trees and woodland limit views.

438. The geometry of Hilfield Castle, the level of architectural detailing to each façade and the location of the important views to the south indicate that the primary elevation of Hilfield Lodge is its southern façade. The Listing describes this elevation as the "*garden front*" and the garden as "*Garden (south) front*."

439. On the 3 November site visit I observed that steps from the canted ground floor veranda, on the garden front elevation, direct the eye to a path and garden (south) front which would once have afforded extensive views over the ponds, lakes, and lawns directly ahead. However, from various positions the eye is also drawn to the west, and views through and around an open colonnade towards the approach to Hilfield Castle from Hilfield Lane. A photograph of a view looking west was included in Sales particulars in 1932.<sup>187</sup>

440. I observed that elements of the view include sight of Hilfield Lodge and an adjacent gateway to the public highway in the valley bottom. The view enables visitors arriving and departing by Hilfield Lodge to be seen, and enables an appreciation of the historic functional, stylistic, and spatial relationship between the Lodge and the Castle.

441. A section of steeply rising farmed field beyond and above the canopies of trees in the valley bottom, forms a green backdrop to the overall view. The view is quite picturesque. The farmed field was part of the Western Lawn and in the appeal scheme before the Secretary of State now forms part of "Field 1" of the proposed solar arrays. Partial glimpses of canopies of former parkland trees within this field are discernible, and the former historic character of the field remains partially legible. Albeit farmed, rather than managed parkland, sight of part of this field contributes to an appreciation of the dramatic topographic situation and wider rural context.

442. As part of the Western Lawn, the evidence indicates that this field was not part of formal pleasure grounds, nor within the area of

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<sup>186</sup> CD-ID18

<sup>187</sup> CD-ID18 Appellant's Heritage Witness PoE pp 70, Plate 61

the principal, most important gardens and south facing views from the Castle. The parkland to the west may not have been long-lived, and it is likely that the view evolved and changed, particularly in the early years when the road was moved. Such changes form part of the history of the asset. Other changes to land ownership and farmland, and introduction of a power line with pylons, have not materially degraded the composition of the view from the Garden (south) front to Hilfield Castle.

443. From Field 1, there are reciprocal views toward Hilfield Castle. These views reveal the situation of Hilfield Castle on high ground overlooking surrounding countryside to the west.

444. The Appellant points out that advice in GPA3 includes that settings which closely resemble the setting at the time the asset was constructed or formed are likely to contribute particularly strongly to significance but settings which have changed may also themselves enhance significance [69]. From my site visit observations, I consider that this is a view where some changes in history have added to the asset's historical and aesthetic significance. There have also been some limited adverse changes, but they have not noticeably impacted the view. I find that the view as presently exists makes a strong contribution to the significance of Hilfield Castle.

445. In other areas, changes to the setting of Hilfield Castle, such as a reservoir, electricity substation and Elstree Aerodrome, have been more harmful to the setting and significance of Hilfield Castle. The effect of past unsympathetic development in the setting may be to make the parts which remain intact more important or precious [176]. The effect of these past unsympathetic developments around Hilfield Castle make the relatively unharmed setting to the west more important [186].

446. The Appellant's Heritage Witness agreed that land west of the road makes some contribution to the heritage significance of Hilfield Castle [86] and Lodge [87] through setting but in their Proof of Evidence (paragraph 6.43) state that this area "*lies beyond the now-secluded grounds of the Castle.*<sup>188</sup> Having seen the site I do not agree that all of Field 1 is secluded from the grounds of the Castle. There is a significant view of part of Field 1 from the garden (south) front to Hilfield Castle which still clearly forms part of the overall view and contributes to the setting and significance of Hilfield Castle.

447. Solar arrays situated on high ground in Field 1 would be clearly seen in limited but unmitigated views above and between the tree canopies. Their prefabricated form, materials and repetitive geometric character seen in an elevated situation would be discordant and jarring. The change would be noticeable and significant, and a much greater change from previous changes to the land e.g., from parkland to farmland.

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<sup>188</sup> CD-ID18 3

448. Hilfield Castle is situated on ground at circa 100m Above Ordnance Datum and the valley bottom is around 81m Above Ordnance Datum. New tree and other planting along the Hilfield Lane in the valley bottom would do little to mitigate views of the solar arrays on the upper parts in Field 1 in the available views from the garden (south) front areas adjacent to the garden front elevation.

449. A Planning Statement for a revised application before the Council for consideration at the time of the Inquiry advises that "the [updated Heritage Impact] "assessment has found that removal of panels from the western land parcel will result in no change to the setting of Hilfield Castle Lodge and will maintain the current views of the tower of Hilfield Castle grade II\* listed building from the west in Field 1, thereby maintaining its current setting".<sup>189</sup> Under cross examination at the Inquiry, the Appellant's Heritage Witness accepted that they had advised against the inclusion of Field 1. Albeit that this was qualified as being an improvement [72].

450. The surroundings to the north of Hilfield Castle have changed in other ways too, including the construction of Elstree Aerodrome and the National Grid Elstree Substation which have harmed the rural setting of the asset. The land has been largely cut-off from Hilfield Castle by a substantial tree belt along the northern boundary, reducing its contribution to the significance of the asset.

451. Solar panels are proposed in an area of former C19th parkland broadly to the north of Hilfield Castle. The built from of the proposed solar arrays and other development would diminish the legibility of the former parkland, more so than the current agricultural use.

452. The proposed solar arrays in this area would cause some limited additional harm to the setting and the historical and aesthetic significance of the Castle. However, topography and landform in this area is such that views of the Castle and the ability to appreciate its dramatic setting would remain. In some views the solar arrays would sit alongside other past unsympathetic development. However, the additional harm would be limited and would not sever the last link between the asset and its original setting [174].

453. Approximately one dozen native Oak trees, reflective of the former parkland and field boundaries would be planted in Fields 1 and 5. In time they would enhance the legibility of parts of the former western and northern parkland areas and have a beneficial effect upon the setting of Hilfield Castle. The Appellant proposes that the trees would remain post decommissioning. These enhancements are accounted for under benefits later. However, the trees would not mitigate or offset the harmful effects of the solar arrays in Field 1 during the lifetime of the solar farm. The Appellant agrees [91].

454. The Heritage Witness for the Council concluded the level of less than substantial harm would be low. Historic England identified the

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<sup>189</sup> DSD1 21 Planning Statement for the revised application – paragraphs 1.16 and 7.49

potential for a moderate level of harm. The Appellant accepts that there would be some harm at the low end of less than substantial harm to Hilfield Castle because solar panels in Field 1 would be placed in land which was once part of the wider parkland which had some visibility and co-visibility with the Castle.

455. From all of the evidence before the Inquiry, together with my observations from site visits, I conclude that solar arrays in Field 1 would be a noticeable discordant and jarring feature; detrimental to the setting of Hilfield Castle and an appreciation of an important picturesque view which assists in an understanding and appreciation of the significance of the asset, and therefore harmful to the significance of Hilfield Castle. Proposed solar arrays in an area north of the Castle would further diminish an appreciation of the wider rural setting of Hilfield Castle and the extent of former parklands and cause an additional, but minor, level of harm to the setting.

456. Planting trees, reflective of former parkland in Field 1 would reintroduce features that have been lost, enhance the legibility of the former parkland and have a beneficial effect upon the setting of Hilfield Castle [86], but these enhancements would not mitigate the harmful effects of solar arrays in Field 1. The Appellant accepts that the heritage benefits do not change the position that during the life of the solar farm there would be some heritage harm [91]. Overall, the level of harm to the significance of Hilfield Castle, a Grade II\* listed building, would be low/medium in the less than substantial harm range.

*Hilfield Lodge, Grade II (list entry 1103570)*

457. Hilfield Lodge is a two-storey, rendered brick building with a single-storey porch that is characterised by crenelated and coped parapets, eclectic fenestration, and moulded string courses and hood moulds. Historic, architectural, and artistic interest is engendered by the age, form, and Gothic picturesque style of the architecture, as well as the associations of the buildings with Sir Jeffry Wyatville. Its significance is mainly derived from the building but the visual, functional, historical, and architectural link to the Castle is clearly apparent. The physical proximity and awareness of the former Western Lawn to the Castle (Field 1 of the solar arrays) just beyond the trees on the opposite side of Hilfield Lane, contributes to the wider setting within the Hilfield Castle estate and an understanding of its rural countryside location.

458. Solar arrays in Field 1 would be 'set back' from Hilfield Lodge but an access track would be constructed, and there would be 2.2m fencing with CCTV and infra-red cameras erected along the field boundary close to Hilfield Lodge.

459. Landscape proposals including new native planting, up to 9m in width, along the eastern edge of Field 1 could strengthen screening. But on the accompanied site visit I observed that there are views between trees along the field edge. There is also insufficient evidence to demonstrate how new planting could be achieved

alongside the proposed access track, particularly given the constraint of areas liable to flooding. This limits the weight I attach to proposed mitigation.

460. In the view from the garden (south) front to Hilfield Castle, the Lodge is seen in the valley bottom with the field beyond and above. This view illustrates the aesthetic and functional relationship between the two. Tree planting in the valley bottom would not screen solar arrays which would be seen to occupy the high ground of the field beyond. The visible solar arrays would appear to sit 'on top' of and 'above,' Hilfield Lodge in this view.

461. The proposed planting of trees in former parkland areas would also have a beneficial effect upon the setting of Hilfield Lodge [88] but would not mitigate the harmful effects of solar arrays in Field 1.

462. I conclude that solar arrays and associated development in former parkland to the Hilfield Castle estate would be a discordant and detracting feature that could not be fully mitigated and would be detrimental to the rural setting and picturesque views of Hilfield Lodge which assist in an understanding and appreciation of the asset, and would therefore be harmful to the significance of Hilfield Lodge. The level of harm would be low/medium in the less than substantial harm range.

*Slades Farmhouse, Grade II (list entry 1103614)*

463. Slades Farmhouse derives historic architectural and artistic interest from its age and general form as a vernacular farmhouse that is thought to be of C18th origin, and especially its principal south-west elevation. It is no longer part of a working farm complex, and the landholding has fluctuated over time [76].

464. On my site visit I observed that a front garden enables appreciation of the principal south-western elevation facing a former track known as Sawyers Lane. It is also the Appellant's position that it is from the garden that the features are best understood, and that the garden is the element of its setting that makes the most significant contribution to its significance [75]. Farm buildings to the rear, although put to various uses, add to legibility. So too, farmed fields immediately surrounding the farmhouse contribute to an appreciation of the significance of the asset. The Appellant accepts as much [77].

465. A large part of the observable farmed land has been historically associated with Slades Farmhouse. Although the present occupants of Slades Farmhouse do not farm the land, this dissociation through tenancy is not obvious in the landscape and a relationship through ownership endures to this day.

466. The proposed solar arrays would occupy a substantial area of the formerly associated farmed fields and come quite close to Slades Farmhouse. No solar panels are proposed in fields 19 and 20, immediately to the front of the principal elevation [77]. Even so,

solar arrays would be seen in some views of the principal elevation, and there would be some views of solar arrays from within Slades Farmhouse. The solar arrays would appear out of character and quite discordant in the available views. Mesh fencing, 2.2m high, would visually and physically truncate the farmhouse from the former farmland and would be a further discordant element.

467. Proposed landscaping would include a double hedgerow planted along a short section of the route of the former Sawyers Lane in front of Slades Farmhouse. Kept at a height of 1.5m the double hedgerow would maintain views of Slades Farmhouse. However, solar arrays would remain visible from first and second floor windows. Moreover, from my site visit observations, I very much doubt that a 1.5m high hedge would prevent all views of solar arrays, that would be up to 3m tall, from within the garden area. This would be to the detriment of understanding the asset's significance from where, the Appellant agrees, it is best understood [77].

468. The 2.2m high mesh fencing would also cut directly across the former alignment of Sawyers Lane. The double hedgerow proposal would lead only to this physical and visual barrier. The section of hedged lane would be unlikely to be understood as representing a former lane that ran through the landscape. This detail is quite underwhelming [285] and the proposed landscape strategy would do little to mitigate or offset the effects of development, and make only a very small contribution to enabling a better understanding of the significance of this asset. Former farm buildings have been repurposed. Uses include a coach depot and vehicles can be seen in some views. Some changes have detracted from the setting and significance of Slades Farmhouse. The solar arrays would be seen in some views with other detracting elements. However, the additional harm would be limited and the solar farm would not materially impact the remaining relationship between the farmyard buildings and farmhouse. An awareness of the former agricultural use of the land would also remain evident through hedgerows.

469. I conclude that solar arrays, fencing and associated development in former agricultural land around Slades Farmhouse would be discordant and detracting and would diminish the legible connection between farmhouse and farmland, and would be harmful to the significance of Slades Farmhouse. Effects would not be fully mitigated by the proposed landscape strategy. The level of less than substantial harm, taking into account the proposed mitigation, would be low/medium in the less than substantial harm range.

*Penne's Place Scheduled Monument (entry 1013001)*

470. A Scheduled Monument is a heritage asset of the highest significance. Penne's Place is a double moated site dating back to the C13th as the former Manor House of the Penne family.

471. There was little accord between the main parties at the Inquiry about the effect of the proposed development. The Council concluded that the harm caused would be at the lowest end of less than

substantial. COG found it would be Low (Minor) and the witnesses for the Appellant and Aldenham Parish Council concluded that no harm would be caused to the significance of Penne's Place Scheduled Monument [433 – table].

472. At the application stage, Historic England advised that development would cause a moderate level of less than substantial harm to the heritage significance of the Monument, however they took no part in the Inquiry and their opinion was not tested.

473. Penne's Place would have been set in a much wider open landscape. Aside from evidence that the Monument was once held in the same tenancy as Slades Farmhouse, there is little evidence about the extent of, and how, land in the wider area to the north would have been important to the setting of Penne's Place [78]. Nonetheless, undeveloped land to the north, including part of the appeal site is a remnant of the earlier wider setting of the Monument and offers some understanding of the former wide landscape that it would have been located within.

474. Butterfly Lane has been constructed and provides a physical and visual break between the Monument and that part of the appeal site that falls within it. The Monument is now within grounds to Haberdashers' School, set amidst quite dense vegetation and trees. The Monument has been physically altered and the immediate setting much changed in the last 150 years. The changes to the close setting have also diminished the contribution that the wider setting makes to the significance of the Monument.

475. However some limited glimpsed intervisibility [78] remains. On my visit I observed that these views, albeit limited, do assist in an appreciation of the former, wider setting. For example, from the access to the school from Butterfly Lane. There would be some awareness of proposed solar arrays on the other side of, and set back from, Butterfly Lane. Solar arrays in this area would diminish an appreciation of the wider setting and cause some harm to the significance of the Monument. Physical separation and strong vegetation would limit intervisibility. Planting as part of the appeal proposals would offer some mitigation, but in itself would further reduce intervisibility [197]. Overall there would be a low level of less than substantial harm to the significance of the Scheduled Monument.

#### *Aldenham Park Registered Park and Garden Grade II (1000902)*

476. The significance of this Grade II Registered Park and Garden is largely derived from the historic buildings and garden and parkland features contained within the designation area. The appeal site is neither part of the early or expanded C19th parkland.

477. The Registered Park and Garden is, by and large, designed to afford views to the south-west. Even so, a north-western gateway is a designed entrance offering views in and out of the Registered Park and Garden.

478. A path from the Registered Park and Garden leads towards the Slades Farm building group. Views towards open countryside and the appeal site are very restricted. From PROW's Aldenham 051 and Aldenham 044 crossing the appeal site, views towards the Registered Park and Garden are also limited by well wooded vegetation along Butterfly Lane. The Registered Park and Garden is very secluded in this locality. I was not persuaded that there were dynamic or kinetic views important to understanding the setting and significance of the asset [194].

479. The contribution that farmland forming part of the appeal site makes to the significance of the Registered Park and Garden is largely confined to areas of farmland seen in views gained on entering or leaving the north-western gateway. This view has not been designed and engineered in the same way as other views to the southwest [80]. Even so, the gateway is a designed feature and I observed that the drive and gateway lead the eye to the countryside beyond. In this way the appeal site opposite this gateway makes a small contribution to the significance of the asset as a designed country estate in the countryside. There would be no development in fields directly opposite the gateway [83]. However, there would be some limited views of solar arrays further away. In time planting would largely mitigate the views. The harm to the significance of Aldenham Registered Park and Garden by way of a change to setting would be very small and amount to a very low level of less than substantial harm.

#### *Effects upon the settings of other Heritage Assets*

##### *Hilfield Gatehouse, Grade II (list entry 1346907)*

480. Hilfield Gatehouse is part of the Hilfield group, located immediately south-west of Hilfield Castle and was designed by Sir Jeffry Wyatville to house a water engine to serve the main house.

481. Following the move of the public road to the west, the Gatehouse became very much enclosed within the core grounds. The Gatehouse is revealed on the approach from the Lodge to the Castle. Views are limited and restricted. Standing outside the Gatehouse I was not aware of views toward the former parkland areas described elsewhere. The northern estate boundaries are quite enclosed. The Heritage Witness for Aldenham Parish Council considered the assets at Hilfield Castle collectively and found that a medium level of less than substantial harm would be caused. The view of the heritage experts for the Appellant and the Council were that no harm to the significance of this asset would arise. From my site visit observations, I conclude likewise.

##### *Aldenham Senior School*

482. The statutorily listed buildings comprise Aldenham School House Grade II (list entry 1103646), Library Grade II (list entry 1103647) and Elm Cottages, Grade II (list entry 1103648).

483. The School was founded as a free grammar school by Richard Platt in 1597. In addition to the statutorily listed buildings, Beevor's and McGill's Boarding Houses are assessed as having local heritage value. The buildings form an imposing establishment and have strong historical, architectural, and cultural significance.

484. Solar arrays would be constructed in fields to the rear. They would be set back from the building group and would not be prominent in views from upper floor windows, where the field pattern would remain evident. Development would not adversely affect the significance of the individual statutorily listed buildings and group.

*Kendall House Grade II (list entry 1103523)*

485. Listed for the architectural and historical interest of the barn and attached cowhouse, the buildings may have had historical connections with the surrounding agricultural land. Solar arrays would be set back some distance. Amongst other things woodland blocks prevent views towards fields where solar arrays would be located. The setting would be maintained, and development would not adversely affect the significance of this property.

*Medburn House (local listing Medburn Kennels, No 115)*

486. This residential property was formerly a School and School house. It appears on a list of locally listed buildings because of the strong design typical of the architecture used in the construction of early school buildings. It is located within close proximity to the appeal site.

487. The buildings were built as Medburn Boys Elementary School in 1864 for one hundred pupils by the Platt Charity of the Brewers Company and there are some known associations with Aldenham School. A footpath runs broadly between the two. From the rear garden there are views towards, and sounds of, Aldenham School, but due to distance both are very limited.

488. The appeal site is visible in direct views from the rear of the property. However, the solar arrays would be set back some distance. A parkland meadow with trees and other substantial screening is proposed between the rear of the property and the solar arrays. This would prevent views and maintain a rural setting to the rear and development would not adversely affect the significance of this property.

*1 & 2 Medburn Cottages*

489. Solar arrays would be quite close, but there is insufficient evidence to say that these changes would result in harm to the significance of this property.

*Hilfield Farm, Hilfield Lane.*

490. The farmhouse at Hilfield Farm is shown on the 1839 Tithe Map. The former farmyard has become quite industrial in character

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and the National Grid Substation is nearby. Solar array development and a proposed battery storage area, substation, storage container, auxiliary transformer and control room would be located close by. The setting would be changed but there is insufficient evidence to say that these changes would harm the significance of this property.

#### *Conclusions on Heritage Matters*

491. A number of less than substantial harms have been found. The Appellant draws attention to *Bedford*<sup>190</sup> where it was held that substantial harm or total loss means harm that would “*have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced*” and submits that assessments of a medium level of less than substantial harm through indirect impacts on peripheral aspects of setting should be treated with a high degree of caution [74]. If a given asset were to experience substantial harm then that would weigh more heavily in the planning balance than if the same asset were to experience harm at the low end of less than substantial harm [116]. However, less than substantial harm does not necessarily equate to a less than substantial planning objection.

492. The statutory duty under S.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or setting or any features of special architectural interest which it possesses applies irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. In the case of *Barnwell Manor* it was held that harm to a designated heritage asset must be given considerable importance and weight [169].

493. Framework, paragraph 199 states that great weight should be given to an asset’s conservation (and the more important the asset, the greater the weight should be).

494. In this case, development would result in less than substantial harms to the significance of Hilfield Castle, a Grade II\* listed building, and Hilfield Lodge, Grade II. Proposals for reinstating trees would enhance the legibility of former parkland to Hilfield Castle but would not mitigate the effects of development.

495. I attach significant weight against the proposed development to the low/medium level of less than substantial harm to the significance of Hilfield Castle, a Grade II\* Listed Building. I attach moderate weight against the proposal to the low/medium level of less than substantial harm to the significance of the Grade II Listed Building, Hilfield Lodge.

496. Solar arrays in farmland would result in less than substantial harm to the significance of Slades Farmhouse, a Grade II listed building. A double row of hedging on the alignment of a short section

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<sup>190</sup> CD ADAP3 - R DCLG and Nuon UK Ltd v. Bedford Borough Council EWHC 2847

of the former Sawyers Lane would offer little mitigation to the effect of development, and the less than substantial amount of harm would be low/medium and attracts moderate weight against the proposed development.

497. With mitigation, the level of less than substantial harm to the significance of Penne's Place Scheduled Monument would be low. Nonetheless, as a heritage asset of the highest significance, the low level of harm attracts moderate weight against the proposed development. A very low level of harm to the significance of Aldenham Park Registered Park and Garden attracts limited weight against the proposal.

498. Overall, the Appellant's Planning Witness attached moderate weight to the harm to the heritage assets [117]. The Council's Planning Witness attached substantial weight [204]. Mindful of the statutory duty, advice at paragraph 199 of the Framework, and that harm would be caused to the significance of two heritage assets of the highest significance, I conclude that the overall the cumulative harm to the historic environment attracts substantial weight against the proposed development.

499. In failing to preserve the significance of listed buildings the proposed development would not accord with S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

500. In causing harm to the settings of a number of heritage assets the proposals would fail to comply with requirements of Policies CS14 and SADM29 which include that the Council will not permit development proposals which cause harm to, or fail to protect, conserve or where possible enhance the significance, character and appearance of the heritage asset and its setting. Albeit that the weight I attach to the conflict with these particular policies is reduced [430-431].

501. Framework paragraph 202 requires that less than substantial harm to the significance of designated heritage assets, should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I return to consider the legacy heritage benefits and undertake the balancing exercise against all public benefits as required by the Framework later.

### **iii) Landscape Character**

502. The site is not within a designated landscape. The Council did not include a reason for refusal on landscape grounds, nor did the Council put forward evidence at the Inquiry.

503. At the Inquiry, the Appellant and COG called landscape witnesses. Aldenham Parish Council submitted evidence in writing but did not call a witness at the Inquiry. The Appellant accepts that there would be some 'short' and 'medium' term landscape and visual harm that needs to be weighed in the overall planning balance [53]. There was debate at the Inquiry about timescales, but as a matter of

fact an operational period of thirty-five years is proposed. It is common ground that over this period of time adverse impacts of Major-Moderate (first ten years) and Moderate (twenty-five years) would occur [167].

504. The Appellant's Planning Witness ascribes moderate weight against the proposal to harms to both landscape character and visual amenity [117]. In this case the likely visual impacts are strongly allied to the visual dimension of openness of the Green Belt. The Council agrees [166]. Therefore in this section I address landscape character only to avoid potential 'double counting' of visual impacts which I have already taken into consideration under the visual dimension of Green Belt openness. This approach is consistent with that taken by the Council and Appellant in the weighing of harms and benefits in the overall planning balance. [See the table at paragraph 33 of this report].

505. The site covers 130Ha with roughly 85Ha of solar arrays proposed. Such an extent of manufactured development would represent a sizeable change, roughly 11% of the Borehamwood Plateau Landscape Character Area [167].

506. Key characteristics of this Landscape Character Area that the appeal site exhibits can be described as an area of gently undulating landform and considerable pasture within an intact landscape framework. A combination of tall bushy hedgerows and field trees contain views into and across the landscape.

507. Whilst there are some detracting and fragmenting elements including main road corridors, the National Grid substation, and Elstree Aerodrome the appeal site is predominantly an intensive agricultural landscape, and this description is reasonably representative of its character.

508. It is inevitable that an array of solar panels covering almost 85Ha of the appeal site would have a significant impact on existing character. Rather than being a tract of relatively attractive open undeveloped, farmed countryside, the character would change to an area of countryside with a large solar farm within it. Whilst the framework of fields and hedgerows would not change, the solar panels and associated inverters, fencing and other infrastructure would be at significantly at odds with, and detract from, prevailing farmland landscape character.

509. A Landscape and Visual Impact Assessment for the Appellant recognises as much finding that "*there will be large scale effects on the character of the site given its changing from agricultural to built development.*"<sup>191</sup> Large scale is described as total or major alteration to key elements, features, qualities, or characteristics, such that post development the baseline will be fundamentally changed. Even if effects were contained within 150m of the site they would still extend

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<sup>191</sup> CD-PA15 DLA Landscape and Visual Impact Assessment paragraph 7.2

over 85Ha. The changes to the landscape would clearly be noticeable.

510. Some boundaries of the site are quite open including the southern boundary of Field 5 and northern boundary of Field 4. Some effects would extend beyond the site. In the vicinity of Field 5, solar arrays would stretch across the landform and appear on the 'skyline'. The Landscape and Visual Impact Assessment acknowledges that medium scale adverse landscape effects would extend to land south of Field 5 around the PRoW, Restricted Byway Bushey 038, leading to Elstree Aerodrome and the immediate vicinity to the north of Field 4 to the south of Letchmore Heath.

511. At Inquiry, the Appellant's Landscape Witness agreed that part of adjacent Aldenham Plateau Landscape Character Area could be affected where there was intervisibility from a publicly accessible area. From PRoW Aldenham 017, at Batlers Green there are views across the appeal site towards Slades Farm. In this view a number of fields containing solar panels would be seen. The intervisibility of solar arrays would not elevate the impacts to be comparable to those to the Borehamwood Plateau Landscape Character Area [58], but there would be a more than barely perceptible adverse effect upon the gently undulating arable farmland character of a limited area of the Aldenham Plateau Landscape Character Area. Growing out and thickening up hedgerows within the site would not fully mitigate this effect.

512. As part of development, key landscape features include over 31,000m<sup>2</sup> of new structural screen planting. Existing field hedgerows would be kept and managed, some would be allowed to grow out more fully, and gap or infill planting undertaken where required to strengthen and thicken them. Roughly two dozen large native trees, such as Oak, and approximately 7000m<sup>2</sup> of orchard with native fruit and nut trees would be planted.

513. Over 65,000m<sup>2</sup> of Skylark Low Intervention Habitat Area would be managed with appropriate meadow grass mix and biannual grazing. In the Aldenham Brook Green Corridor new ponds would be created, scrub and invasive species removed, and new appropriate wildflower and grass mixes introduced. An area called the Hilfield Brook Green Wedge in the western parcel would be managed as tussocky grassland with wildflowers. Wild green corridors would connect woodland and water courses through the eastern parcel and strengthen water and wild grassland features in an Aldenham Brook Green Corridor. All would be managed and maintained for the duration of the development.

514. With the exception of some hedgerows, principally around Field 5, which do not appear to reflect either ancient field boundaries or the former C19th Parkland to Hilfield Castle, the proposed landscape strategy would improve the landscape framework of the site in a manner sympathetic to the aims for the Borehamwood Plateau Landscape Character Area and provide green infrastructure

outcomes. Even so, eleven areas of solar arrays would be enclosed by 2.2m high perimeter deer fencing. Areas of proposed parkland, orchard, and other habitat creation would be small in comparison to the scale of the land take for solar arrays. Access roads would be constructed throughout including in the Aldenham Brook Green Corridor and Hilfield Brook Green Wedge.

515. In time landscaping would provide structure to reduce, limit, soften and partially mitigate some effects. But the proposed landscape strategy would not result in the solar farm becoming well integrated into the landscape across the site as a whole, nor would the character of the landscape prevail over the solar arrays.

516. The Landscape and Visual Impact Assessment for the Appellant concludes that development would have a Major-Moderate and Adverse effect initially upon the Borehamwood Plateau Landscape Character Area. Even once the landscape strategy has been implemented, and planting matured, the report finds that there would be a "*long-term/semi-permanent*" Moderate Adverse landscape effect within the site.<sup>192</sup> 85Ha represents a meaningful portion of the Borehamwood Plateau Landscape Character Area.

517. At Inquiry the Appellant's Landscape Witness advised that it would take 10-15 years for some hedgerows to reach a height at which they would screen development. On this basis, the largely unmitigated Major-Moderate Adverse effects would persist for roughly one third of the lifetime of the proposed development. Moderate Adverse effects would persist thereafter for up to twenty-five years. Irrespective of terminology to categorise the length of time, it would be a very long time in most people's experience. Residual landscape benefits post decommissioning must be weighed in the planning balance [62], but they would not mitigate the harms during the operational period.

518. In conclusion, during the operational period, development would have a significant adverse effect on landscape. In doing so it would be contrary to advice at paragraph 174 of the Framework that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.

519. Landscape harm attracts significant weight against the proposal. The proposal would also conflict with requirements of Core Strategy Policy CS12 and Policy SADM11 which, amongst other things, include that all development proposals must conserve and enhance the natural environment of the Borough, including landscape character in order to maintain and improve environmental quality, and conserve or improve the prevailing landscape quality, character, and condition.

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<sup>192</sup> CD-ID12a/10/App E; CD-PA15/36/7.3.1

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**iv) Whether the proposed development would result in any other non-Green Belt harms**

*Best and Most Versatile Land (BMV)*

520. The combination of clay soils and a limitation of soil wetness led to a conclusion in an Agricultural Land Classification Report that the land is Grade 3b, recognised as being moderate quality agricultural land capable of producing moderate yields.<sup>193</sup> Following an independent review the Council agreed that the land is Grade 3b and no agricultural or soil experts gave evidence to the contrary at the Inquiry.

521. The Government aims for the UK to be self-supportive in food production and safeguard food security.<sup>194</sup> The land would retain an element of an agricultural use and there is no evidence to demonstrate that the height of the arrays would prevent sheep from grazing the grass.

522. Whilst the war in Ukraine and other matters heighten concerns about food security, a solar farm is fully reversible, would not be permanent and the land could be returned to agricultural use at the end of thirty-five years.

523. The proposal satisfies PPG advice that where a proposal involves greenfield land, poorer quality land should be used in preference to higher quality. It also accords with PPG advice that proposals should allow for continued agricultural use where applicable and as far as it encourages biodiversity improvements around arrays.

524. I conclude that there would be no conflict with Framework paragraph 174 regarding aims to protect BMV from significant, inappropriate, or unsustainable development proposals and all soils by managing them sustainably, nor with a requirement of Core Strategy Policy CS12 that in the case of the highest quality agricultural land (Grades 1, 2 and 3a), proposals will only be permitted where there is no likelihood of the land being sterilised for future agriculture. This issue is neutral in the planning balance.

*Glint and Glare*

525. A Glint and Glare Assessment (G&GA) considered effects upon a number of receptors.<sup>195</sup> Glint and Glare matters do not form part of the reasons for refusal, no issues were raised by relevant consultees and none of the main parties presented evidence.

526. Third parties in written submissions raise concerns upon the safety of operations at Elstree Aerodrome. The G&GA finds that for aviation receptors, the maximum impact is low, and no mitigation would be required. At the time of the application, Elstree Aerodrome commented that they had no safeguarding objections to the

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<sup>193</sup> CD-PA14 section 3

<sup>194</sup> CD-NPP39

<sup>195</sup> CD-PA12

development as proposed. They were satisfied with the G&GA in respect of possible effects on air traffic operations at Elstree Aerodrome. They had been able to engage fully with the consultant compiling the report and subsequently discussed the report with twelve flying schools, main clients, and other stakeholders on and off the site. All were comfortable with the report's findings.<sup>196</sup> Elstree Aerodrome concluded that the proposed development would not impact upon the safety of operations at the aerodrome, and there is little technical or other expert evidence before the Inquiry to say otherwise.

527. Four transport receptors on Butterfly Lane would be affected and existing screening would only partially screen development. Additional screening is proposed which would in time fully block all views of the reflective areas.<sup>197</sup> Once established no impact would be expected. Aldenham Parish Council raised concern about the interim period before the screen is established. At the Inquiry, the parties agreed that, should permission be granted, a condition would be reasonable and necessary to require the submission and approval of details of the required landscape mitigation prior to solar arrays being constructed in the relevant fields. Such a condition would be enforceable and reasonable in all other respects and would ensure that the likely impacts would be satisfactorily mitigated.

528. The Highway Authority would require a planning condition to demonstrate that satisfactory visibility splays to Hilfield Farm could be provided. When determining effects for road receptors the G&GA assumes that existing vegetation along Hilfield Lane would be retained.<sup>198</sup> However, drawings for the Site Access to Land Parcel B East of Hilfield Lane indicate that visibility splays could potentially require cutting back or removal of hedgerows and planting.<sup>199</sup>

529. During the Inquiry the Appellant submitted a note about a speed survey undertaken to inform this issue.<sup>200</sup> The County Highway Authority did not have time to consider it. Therefore, the Council and Appellant agreed that should permission be granted, a condition (Annex A condition No 22) could require a speed survey and details of trees and hedgerows, should visibility splays have an impact upon existing vegetation.

530. However, that condition alone would not require replacement planting. In the event that existing vegetation is impacted, it would therefore also be necessary to require the submission and approval of details of new hedgerows and landscape mitigation which should be undertaken prior to solar arrays being constructed. Therefore, I have drafted a further condition to require such a scheme, and that it should be undertaken prior to solar arrays being constructed in Fields

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<sup>196</sup> CD-PA27 Planning Officer Report

<sup>197</sup> CD- PA12 Pager Power Glint and Glare Assessment, Document reference RO12 pp 144, Figure 53

<sup>198</sup> CD-PA12 pp 137, Paragraph 9.6.3

<sup>199</sup> CD-DSDI 3 Construction Traffic Management Plan, October 2022 Dwg SK02

<sup>200</sup> DSDI32

4 and 10, to ensure that glint and glare impacts for road users would be acceptable

531. The G&GA found ten dwellings where reflections are expected to last for more than three months per year but for less than one hour per day, but that the effect of some or no screening would result in low or moderate impact.<sup>201</sup>

532. In particular, the G&GA identified potential for effects to dwellings on Hilfield Lane (G&GA dwelling No's 23 and 24). There are views through roadside vegetation. A proposal to increase planting along Hilfield Lane to a 9m wide buffer would be capable of mitigating impacts to an acceptable level.

533. On Aldenham Road the G&GA found that under the current baseline scenario, an observer in dwelling No 88, would have a clear view of the closest two areas. The G&GA took into account that the developer proposed screening in the form of vegetation next to the dwelling which would block all views of the closest development in reaching a conclusion of 'no impact expected'.

534. On Watling Street, the G&GA found that under the current baseline, observers in dwellings No's 99 to 102 would concurrently experience reflections from proposed solar arrays for more than three months per year but for less than one hour per day and would be only partially screened. The G&GA took into account that the developer proposed new screen planting and concluded that this would be sufficient to fully mitigate impacts once established.

535. An occupant of 1-2 Medburn Cottages, Watling Street objects to solar arrays in Field 14. On a site visit to this property, I observed that a number of existing large trees to a side boundary afford a noticeable degree of screening. Solar arrays in Field 14 would not have a materially adverse effect upon the living conditions of the occupiers.

536. Should permission be granted, and to ensure that the residential amenities of the occupiers of dwellings 23, 24, 88 and 99-102 are not adversely impacted, it would be reasonable and necessary to require submission in writing to, and approval by, the Local Planning Authority, of the proposed planting programme for landscaping measures to mitigate glint and glare effects upon these properties as identified in section 9.5 of the G&GA.

537. Subject to planning conditions as described (Annex A No's 23 and 25) I am satisfied that, if permission were to be granted, the proposal would not result in any materially harmful glint and glare effects. It would comply with a requirement of Policy SADM30 (ii) that development has a limited impact upon the amenity of occupiers of the site, its neighbours, and its surroundings in terms of outlook,

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<sup>201</sup> CD-PA12 pp 126

privacy, light, nuisance, and pollution. This issue is also neutral in the planning balance.

#### *Flood Risk and Drainage*

538. There is some land in flood Zones 2 and 3, particularly in the area of Field 1. The Local Lead Flood Authority advised that a Flood Risk Assessment did not comply with the PPG and there was a lack of information but proposed conditions to be applied in the event that permission was granted.

539. The Local Lead Flood Authority did not give evidence to the Inquiry. A written expert opinion for the Appellant advises that some parts of the site are identified as being susceptible to surface water flooding, either directly associated with identified watercourses within the site or follow overland flow paths separate from watercourses. Any surface water flooding would generally be less than 600mm deep although it might exceed this along the routes of the watercourses.

540. Access tracks would be permeable, development would not result in an increase in surface water run off rates, and additional hedge and tree planting would be likely to result in a reduction in run-off when compared to the existing situation. The nature of the development is such that it would not alter or interfere with overload flow routes.<sup>202</sup>

541. Planning conditions included in the proposed schedule reflect those suggested by the Local Lead Flood Authority and could be imposed to manage flood risk and drainage. They would require, amongst other things, that development be carried out in accordance with the submitted Flood Risk Assessment including that the surface water run-off generated by the critical storm events be mitigated so that it would not exceed the greenfield surface water run-off rates for the relevant rainfall events up to and including the 1 in 100 year +40% climate change event.

542. With these conditions (No's 18-20 Annex A) I am satisfied that, if permission were to be granted, the proposal would not increase flood risk elsewhere and a requirement for a further Flood Risk Assessment is not necessary. The proposal would comply with advice at Framework paragraph 159 that where development is necessary in areas at risk of flooding, the development should be made safe for its lifetime without increasing flood risk elsewhere. It would also comply with a similar requirement in Policy SADM14. This issue neither weighs in favour nor against the proposed development and is neutral in the planning balance.

#### *Noise*

543. Solar panels do not generate operational noise. The storage batteries in twenty shipping containers at Hilfield Farm would have

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<sup>202</sup> Appendix 3 CD-ID16

heating, ventilation, and air conditioning units. There would be some noise emitted from inverter/transformer stations distributed around the site. By the time the Inquiry closed Noise Experts for the Appellant and COG had entered into a Noise SoCG agreeing that, if granted planning permission, a planning condition could limit noise emissions for residential receptors, including occupiers of Hilfield Farm House, and users of PRoWs to an appropriate level [99]. The Council and Aldenham Parish Council did not disagree.

544. A separate condition could require a Construction Traffic Management Plan. Limitations by condition of delivery hours during the construction phase to between the hours of 09.30-14.30 to avoid conflict with school traffic would also protect occupiers of Hilfield Farmhouse from unreasonable effects of noise upon their living conditions during that phase.

545. I conclude that with such conditions (No's 4 and 16 Annex A), and if permission were to be granted, the proposed development would not be likely to cause harm by way of noise. It would comply with advice in the Framework at paragraph 185 a) that planning policies and decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life. It would also reasonably satisfy requirements of Policy SADM20 (ii) that development which would create increases in background noise levels should be sited away from noise-sensitive development as far as possible and that noise mitigation measures should be taken to ensure there is no increase in background noise levels beyond the site boundary. This issue is neutral in the planning balance.

#### *Personal Safety*

546. Concerns were raised that fencing and landscaping proposals alongside a number of PRoW's crossing the site would make some walkers feel unduly hemmed in. Aldenham Parish Council's Planning Witness told the Inquiry it was a particular concern for lone female walkers [260].

547. In places views would be 'channelled' and/or it would not be possible to easily see a clear open way ahead. Some people might feel anxious about personal safety along sections of PRoW's where the corridor width between 2.2m high mesh fencing would be limited, particularly so if the way ahead is not clearly visible due to a change in direction. However, the sections of PRoW that would be within such corridors would be limited, the PRoW network crossing the site is quite extensive, and walkers would have choice. This matter neither weighs in favour nor against the proposal and is neutral in the planning balance..

#### *Health, Safety and Hazards*

548. Concerns relating to chemicals in the production of solar panels and recycling are beyond the scope of the Inquiry. Should

permission be granted, installing, maintaining, and removing equipment would be controlled under health and safety and environmental regulations separate from the planning system.

549. At the application stage Hertfordshire Fire & Rescue Service advised that they would require a suitable water source to be fitted at Hilfield Farm and that all twenty shipping containers should be separated with sufficient room for their fire engines to be able to execute a 'U turn' at speed between each of them.

550. The Council and Appellant agree that, should permission be granted, a 'Fire Risk Reduction Strategy and Emergency Response Plan' and decommissioning statements could be conditioned. COG proposed a condition requiring a scheme to be submitted and approved to install an impermeable sealed drainage system for all transformer and battery storage areas. This would be a reasonable and necessary requirement to prevent contamination and the Appellant has no objection. I am satisfied that with such conditions (Annex A No's 6 and 20), and if permission were to be granted, the proposal would satisfy requirements of Policy SADM21 for hazardous substances. This issue is neutral in the planning balance.

#### **v) Considerations Which Weigh in Favour of the Proposed Development**

##### *Contribution to the Government's Climate Change Programme and Energy Policies*

551. There are two inter-related elements to the proposal the solar panels and the battery stores. The solar panels generate electricity which can either go straight into the national grid or can be stored in the batteries and discharged into the national grid when there is a need for the electricity, allowing the productivity of the solar farm to be maximised [103].

552. A different application by the Appellant to National Grid may indicate a cumulative capacity of 57MW by 2027, but my findings and recommendation to the Secretary of State are confined to the planning application submitted; which is for a scheme which would generate up to 49.9MW. It is common ground between the Appellant and Council that the submitted 49.9MW scheme would provide power equivalent to the needs of about 15,600 homes and displace an estimated 25,400 tonnes of CO<sup>2</sup> per annum.

553. S.1 of the Climate Change Act 2008 states that "*It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.*" The parties agree that the delivery of the solar farm and battery storage would be a benefit but differ in the amount. The Appellant attaches substantial weight; the Council, significant, COG, moderate; and Aldenham Parish Council gives limited positive weight.

554. The Government has more recently declared that it aims to decarbonise UK power systems by 2035. The Ten Point Plan for a

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Green industrial Revolution, November 2020, is oriented towards mobilising government investment and creating and supporting green jobs. It does not include a strategy for solar energy.

555. The Energy White Paper Powering Our Net Zero Future, December 2020, sets out how the UK will clean up its energy system and reach net zero emissions by 2050 and assumes more solar farms connect to the electricity system and that onshore wind and solar will be key building blocks of the future generation mix.<sup>203</sup>

556. The Net Zero Strategy: Build Back Greener October 2021, was presented to Parliament pursuant to S.14 of the Climate Change Act 2008 and sets out how the Government will transition to remove carbon from power, vehicles and gas boilers and deliver cheaper carbon free alternatives. It advises that in June 2021, the Government set in law the sixth carbon budget (CB6) limiting the volume of greenhouse gases emitted from 2033 to 2037. CB6 seeks to reduce emissions by approximately 78% by 2035 compared to 1990 levels. Paragraph 36 states that CB6 requires a sustained increase to the deployment of land-based renewables such as locally supported onshore wind and solar in the 2020s and beyond. Paragraph 77 considers potential recreational impacts and advises that some proposals may cause landscape issues for example, solar and onshore wind generation.

557. EN-1 recognises that major energy infrastructure projects are likely to be inappropriate development in a Green Belt. EN-1 is dated and only references solar energy as part of an essential increase in renewable electricity needed to enable the UK to meet its commitments under the EU Renewable Energy Directive.

558. EN-3 reiterates the urgent need for renewable energy electricity projects to be brought forward but does not specifically refer to solar.

559. Earlier draft updates to EN-1 and EN-3 identify that solar farms provide a clean, low cost and secure source of electricity. They also recognise that solar farms are one of the most established renewable electricity technologies in the UK and that the Government has committed to sustained growth in solar capacity to help meet net zero emissions. They did not refer to solar farms in a Green Belt.

560. A reference in the British Energy Security Strategy, April 2022<sup>204</sup> is only to a proposal to consult on amending planning rules for ground-mounted solar, to strengthen policy in favour of development on non-protected land.

561. Revised draft EN-1 (March 2023) notes that demand for electricity could more than double by 2050 (paragraph 3.3.2). Paragraphs 3.3.20–3.3.24 note that a secure, reliable, affordable net zero system in 2050 is likely to be predominantly of wind and solar,

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<sup>203</sup> CD-NPP8 pages 30 and 45

<sup>204</sup> CD-NPP31

and the important role of storage in achieving net zero is addressed at paragraphs 3.3.25-3.3.31. Paragraph 5.11.37 continues to affirm that in the Green Belt (paragraph 5.11.37) very special circumstances "*may include the wider environmental benefits associated with increased production of energy from renewables and other low carbon sources*".

562. Revised Draft EN-3 (March 2023) Section 3.10 refers to 'solar photovoltaic generation'. Solar is a key part of the Government's decarbonisation strategy (3.10.1) and solar has an important role in delivering the government's goals for greater energy independence, and the Government is supportive of solar that is co-located with other functions, which specifically identifies storage (paragraph 3.10.2). Although paragraph 3.10.16 emphasises the preference for solar farms on brownfield and non-agricultural land.

563. Powering Up Britain – Energy Security Plan, March 2023 includes an Energy Security Plan. The Government states that 'low cost renewable generation will be the foundation of the electricity system and will play a key role in delivering amongst the cheapest wholesale electricity in Europe' (page 34). The Government's commitment is to aim for 70GW of ground and rooftop capacity by 2035 and that this amounts to a fivefold increase on current installed capacity. There is a need to maximise deployment of both types of solar to achieve our overall target. Ground mounted solar is noted as being readily deployable at scale and states that the Government 'seeks' large scale solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land. The Government considers that meeting energy security and climate changes goals is 'urgent' and 'of critical importance to the country', and further that these goals can be achieved together with maintaining food security for the UK'.

564. Some of the documents are drafts, some do not represent planning policy, and some of the Government's policies and objectives are aimed at Nationally Significant Infrastructure Projects above 50MW in size. However, collectively they create a body of evidence giving an indication of broader Government policy that energy generation from solar, including onshore solar farms, is a key component of the overall Government's business, energy, and climate change strategies to achieve the outcome of net zero greenhouse gas emissions by 2050.

565. The PPG (Reference ID: 5-003-20140306) advises that all communities have a responsibility to help increase the use and supply of green energy. Framework paragraph 152 advises that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

566. The Appellant refers to the Digest of UK Energy Statistics Annual data for UK, 2021. Changes between 2020 and 2021 could have been influenced by many factors. The Council does not dispute that nationally 33% of electricity is generated from renewable sources including solar energy, whereas 2018 data indicates that only 5.4% of energy consumed in Hertsmere is from renewable sources. Nor does the Council dispute that the electricity generated by the solar farm would increase the total amount of renewable electricity generated in Hertsmere to 20%.

567. The Council declared a climate change emergency in 2019 and the Council's Climate Change and Sustainability Strategy v.1.4, dated 26th June 2020 recognises that "*In order to meet the energy needs and our net zero emissions commitment before 2050, a significant amount of renewable energy capacity will need to be deployed within Hertsmere*". Goal number 2 of its Climate Change Action Plan is that it should "*reduce reliance on fossil fuels and reduce emissions by increasing renewable energy capacity*". One principle is to protect and enhance 'greenbelts' and action points include that the Local Plan should "*Identify areas suitable for the deployment of renewable energy projects in the Local Plan, including within strategic housing allocations, to ease and facilitate the planning process for large projects.*"<sup>205</sup>

568. The Core Strategy recognises that it is important to contain policies which help to secure a more efficient use of natural resources.<sup>206</sup> Policy CS17 states that the Council will also permit new development of sources of renewable energy generation subject to certain requirements. I find nothing in Policy CS17 to preclude renewable energy projects in the Green Belt. Nor is there anything to say that Policy CS13 would not apply to such projects in the Green Belt.

569. The Officer Report recognised the renewable energy benefits of the proposal and set out that the substantial amount of renewable energy that would be generated from the scheme would be a significant contribution towards addressing the Climate Emergency that the Council has declared, and towards meeting local and national policy on reducing carbon emissions, addressing climate change, and meeting the UK's obligations under the Paris Agreement of 2016.<sup>207</sup> The Council acknowledges the pressing need to increase the supply of renewable energy generating capacity [140].

570. Whilst some argue that the energy produced would not directly supply/benefit homes in Hertsmere, the electricity generated would be fed into the National Grid, and would supply national needs from which Hertsmere would benefit.

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<sup>205</sup> CD-HSPD5 pp2 and 8

<sup>206</sup> CD-HBCLP1 paragraph 5.43

<sup>207</sup> CD PA-27 paragraph 12.10

571. A Statement by the Secretary of State for Communities and Local Government, 25 March 2015 underlined the importance of focusing solar growth on domestic and commercial roof space and previously developed land. There may be 250,00Ha of south facing commercial roofs in the UK. Cumulatively roof mounted PV panels on domestic and commercial buildings will play their part in the delivery of renewable energy. Up to 50% of the UK's electricity need and provision might be potentially capable of being delivered on brownfield land.<sup>208</sup> Conversely, 50% might not. The Council's Climate Change Officer accepted that roof top mounted solar panels and similar small scale renewable schemes would not be enough to meet the "step change" that was required in renewable energy production in Hertsmere Borough Council's area.

572. Some interested parties argue that the proposal is not an environment friendly green energy project but a financial scheme to create carbon credits, and that solar does nothing to help in lower carbon dioxide emissions from power generation in the UK; that energy from solar farms is very inefficient and unreliable as it is unable to guarantee a continuous supply under UK weather conditions; that fixed panels are not the most technologically advanced and efficient; that air conditioning units will require some of the electricity generated, and that the construction of a solar farm, including the recycling of panels, causes more carbon emissions than it would save.

573. Some interested parties argue that phasing out gas heating systems for homes and a switch over to electric cars would likely increase both individual household electricity consumption. In which case the energy generated would serve less homes. It is further argued that meeting a theoretical generating capacity of 49.9MW would require 124,750 commercial 400W panels working at 100% efficiency in bright sunlight every day of the year; but in a high latitude region with extensive cloud cover, like the UK, efficiency is only around 12% and will typically generate about 48W/hour per panel, and over one million panels would be needed to realise an output of 49.9MW.

574. These arguments lend weight to a need for more sustainable sources of electricity, not less, and the use of solar energy as one form of renewable energy is endorsed by the Government.

575. Framework Paragraph 158 advises that when determining planning applications for renewable and low carbon development, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy and recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions, and approve the application if its impacts are, or can be, made acceptable. There is no requirement for the Appellant to demonstrate that their scheme is

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<sup>208</sup> CD-ID14 CPRE PoE paragraph 54

either the most productive or most efficient renewable energy project.

576. The need for energy security has been highlighted by recent international developments and the scheme would assist in achieving that aim. Against that recent international developments also highlight the need for food security. Land is a finite resource and some of these considerations pull in opposite directions.

577. Under the Planning Act 2008 development consent is required through the NSIP process for the construction of a solar farm with a generating capacity of more than 50MW. Attention was drawn to an application by the Appellant to the National Grid which may indicate a cumulative capacity of 57MW by 2027. However my findings and recommendation to the Secretary of State are confined to the planning application submitted; which is for a scheme which would generate up to 49.9MW.

578. Having considered the renewable energy benefits that the scheme would bring I conclude that the proposed solar farm with the potential to generate up to 49.9MW electricity together with energy storage would make a significant contribution to the delivery of low-carbon and renewable energy, in line with the Government's climate change programme and energy policies and the Council's Climate Change and Sustainability Strategy. This attracts substantial positive weight in favour of the development.

#### *Biodiversity Net Gains*

579. The total site area is 130Ha of which 85Ha would be developed. Roughly one third would be left as nature and wildlife areas. A Biodiversity Net Gain Assessment for the application calculated a net gain of 89.99% in area units and 24.98% in linear units [123]. Significant components of the BNG include the creation of approximately 75Ha modified grassland, 22Ha neutral grassland, 3Ha mixed scrub, 3Ha parkland, and 0.7Ha of orchard.

580. Many species that interested parties are concerned about, including Skylarks, Great Crested Newts, bats, and badgers are protected in law. Eleven areas would be surrounded by 2.2m high fencing. Nonetheless, gates to allow passage for small mammals including foxes and badgers could be provided in the fences. Open corridors through the proposed site would enable wildlife, including larger mammals such as muntjac deer, to roam.

581. The Environment Agency welcomed the extensive landscape management plan that includes restoration and enhancement of several ponds across the site, and a wide buffer zone for both the Hilfield Brook and Aldenham Stream. These would assist in the protection of these watercourses and their catchment area, improving water quality and providing good quality habitat for many species. Detailed specification of wildflower seed mixes could be controlled by conditions.

582. The proposals for habitat creation and enhancement and benefits for biodiversity would satisfy requirements in the Framework at paragraph 174 d) that planning policies and decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

583. It would comply with an aim of Core Strategy Policy CS12 to conserve and enhance the natural environment of the Borough. It would also comply with aims of Policy SADM11 that the location and design of development and its landscaping should take opportunities to enhance habitats and green infrastructure links.

584. A 10% BNG requirement will become mandatory under the 2021 Environment Act. The level of benefit that would result from the appeal scheme would go significantly beyond national and local requirements. The extent of the BNG that would be delivered, over and above 10% constitutes a major public benefit and contributes to the VSC case in favour of the development. The Appellant's Planning Witness attached substantial positive weight to the BNG. The Council consider that it should carry significant positive weight partly because of the lack of policy imperative for this compared with, for example, Green Belt harm, and partly because the open areas which are delivering that BNG are provided in part to mitigate the harm that the appeal scheme would cause [214, see also the table at paragraph 33] Even so, I conclude that the extent of BNG attracts substantial positive weight in favour of development.

585. BNG does not offset Green Belt harm, similarly the weight to be afforded to BNG should not be less because of Green Belt harms.

#### *Improvements to Soil and Agricultural Land*

586. Development would provide the soil a fallow period to recover from intensive agricultural practices. Increasing soil organic matter and soil organic carbon, increasing soil biodiversity, and improving soil structure would be beneficial. But there is little evidence to say what extra benefits thirty-five years would provide, nor much to say what effect there would be to the clay conditions or soil wetness. The latter being described as limiting the entirety of the agricultural land on the site in the Agricultural Land Classification Report.<sup>209</sup> On the basis of the evidence before me, I give limited positive weight to likely benefits of leaving the land fallow.

#### *Landscape Legacy*

587. The concept is illustrated on DWG No 8398 012C and proposals described in a Landscape Enhancement and Management Plan. Some details were revised during the Inquiry and DWG No 8398 013 Rev A Landscape Strategy Plan was submitted to support this.

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<sup>209</sup> CD-PA14, paragraph 5.1.5, page 12

588. The majority of the proposed landscaping would be required during the operational stage to prevent, or mitigate, harmful aspects of the development. For example, the Appellant's Landscape Witness informed the Inquiry that the potential for adverse impacts to PRoWs was an important design principle in the proposed green infrastructure framework, including the Hilfield Brook Green Wedge and Aldenham Brook Green corridor.<sup>210</sup>

589. At the end of the thirty-five-year operational period the solar farm would be removed. A 'legacy landscape' would then be left where hedgerows would have been strengthened and enhanced. Specimen trees would be maturing. The river corridors and wildlife habitat areas would have been strengthened and enhanced. Some unsympathetic hedgerows, such as around Field 5 which do not appear to reflect either ancient field boundaries or the former C19th Parkland to Hilfield Castle, would have been removed.

590. The solar farm would be fully reversible. At the end of thirty-five years all structures and development would be removed, and the land reinstated for agricultural use. I have no doubt that, with the harmful effects of the development removed, the appeal site would be left with an enhanced landscape framework which would benefit the character and condition of the Borehamwood Plateau Landscape Character Area, and the Aldenham Plateau Landscape Character Area to a small degree though intervisibility.

591. These benefits would further aims of Policy SADM11 that development should be managed to help enhance and/or restore the character of the wider landscape across the Borough and conserve or improve the prevailing landscape quality, character, and condition, including as described in the Hertfordshire Landscape Character Assessments.

592. However, with the harmful elements of development removed at the end of the operational period, there would be no need for aftercare or on-going landscape mitigation [221]. To impose a condition, as proposed by the Appellant, requiring that site wide landscaping should be kept and managed once the solar development has been taken away would not comply with the Framework. This requires that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.

593. The Appeal Scheme might be part of the Aldenham Estate's wider vision and aspirations for environmentally responsible long-term management. But these aspirations are not a planning a matter and could change. They attract no weight in the planning balance.

594. Notwithstanding the above, I conclude that the structural landscape benefits that would remain once the solar farm had been

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<sup>210</sup> CD-ID17 Paragraph 7.5.5 1

removed should be afforded moderate weight in favour of the scheme.

#### *Heritage Legacy*

595. The Appellant submits that the landscaping mitigation strategy is also a heritage mitigation and improvement strategy which would result in a long-term heritage gain [90].

596. Provision and subsequent retention of hedgerows to the front of Slades Farmhouse would mark the former Sawyers Lane, but the section is short, and hedgerows would need to be kept low. The section of lane would not be functional and would go nowhere. It would do little to strengthen the legibility of Slades Farmhouse in relation to the former lane and historic landscape. It would be of limited benefit to the significance of Slades Farmhouse.

597. The provision of, and subsequent retention of, roughly one dozen specimen Oak trees to enhance the legibility of the former parkland surrounding Hilfield Castle would have a long term minor beneficial effect in helping to reveal the significance of Hilfield Castle and Hilfield Lodge and could be secured by Tree Preservation Orders.

598. These benefits would be consistent with an aim of Core Strategy Policy CS14 to where possible, improve local environmental quality. Heritage legacy benefits attract moderate weight in favour of the proposals.

#### *Creation of Two Permissive Footpaths*

599. The Appellant clarified the PRoWs network during the Inquiry by reference to the Hertfordshire Definitive Map and Statement.<sup>211</sup> The proposals fairly represent the recorded rights. It is not disputed that a number of additional footpaths are in use. One unrecorded path exists across Field 12. It is well trod and evident on an extract of a Google Map aerial photograph.<sup>212</sup> Solar panels on, and fencing around, this field would prevent walkers following this route.

600. A proposed permissive path around the edge of the field would connect PRoWs FP31 and FP32. It would be longer but would serve the same purpose as the existing path linking the existing network and enable a circular route. However, its provision would be limited to thirty-five years and there is little to say whether the existing unrecorded route would be reinstated afterwards. If permission were to be granted, it could be secured by a planning condition (Annex A No 17).

601. A proposed permissive path around the corner of Fields 16 and 15 would enable walkers to avoid crossing Belstone's Football Club at Medburn Sports Ground. However, the route of the existing PRoW is

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<sup>211</sup> CD'S DSD1-15, DSDI 16 and DSDI-17

<sup>212</sup> CD-DSDI 13 Image 1

more direct. There are no proposals to close the PRoW and scant evidence that it interferes with existing or proposed use.

602. The Appellant acknowledges that these are not benefits of the highest order [124]. I conclude that permissive paths should attract only limited weight in favour of development.

#### *Education Strategy*

603. Some walkers might experience walking the PRoWs as "*an interesting, unusual and educational walk*" about 'green energy.' The Appellant proposes an Educational Strategy including information boards to help inform and educate the general public and school pupils on the principles of renewable energy generation and nature conservation. Whilst a benefit, these are not significant matters in the greater scheme of things, and attract very limited weight positive weight in support of the proposed development.

#### *Economic Benefits*

604. Business rates from the development would be retained by the Borough. The Aldenham Estate would benefit but there is scant evidence to say that the proposal would amount to a necessary farm diversification. There would be economic benefits with the provision of between 70 and 80 direct and some unquantified indirect jobs during the construction phase, but the construction phase would be of short duration and there would be few jobs when the development is operational. Economic benefits therefore attract only limited weight in favour of the proposed development.

#### **Other Matters**

605. Although there is no requirement for a Green Belt sequential site assessment, evidence relating to the need for the development to be located on this Green Belt site can be pertinent to the consideration of whether VSC exist.

606. Evidence from other appeal decisions pulls in opposite directions. In APP/N2739/W/22/3290256 for a battery storage scheme, the Inspector attached substantial weight to harm to the Green Belt but accepted the evidence demonstrated that the battery storage needed to be close to an existing substation and went on find that VSC existed, and permission was granted.

607. In this case, the Design and Access Statement advises that "*location is driven first and foremost by the need to be close to an available grid connection point, recognising that the viability of a renewable energy led project reduces the further away it is. The Elstree Substation, located adjacent to the Site, has capacity which the Applicant has secured a Connection Agreement. The Applicant considered different sites in the area before concluding there are no preferable alternative sites which are suitable and available for the Proposed Development.*"

608. The appeal site is in close proximity to Elstree Substation and the provision for the connection is in place. A 5Km search radius is also consistent with those used in other cases [105]. But even if I were to accept that the appeal site is the most suitable within 5Km of Elstree Substation, other substations have capacity, and the Design and Access Statement advised that the Appellant is bringing forward several solar farms with battery storage.<sup>213</sup> It is not necessary to connect to a substation; connection could be made to an overhead line, and there is no adopted policy or legislative requirement to prefer distribution connected projects.

609. In dismissing APP/N1920/W/19/3240825 for the storage of batteries and associated equipment at Hilfield Farm, a site directly adjacent to the current appeal site, the Inspector had concerns about catchment area for comparative sites. They noted that the report did not explain why it was necessary to limit the area to only part of the Distribution Network Operator network, which as one of fourteen in the country was therefore, likely to relate to a larger area of the country, and potentially cover land that is not in the Green Belt.

610. The PPG (Reference ID: 5-013-20150327) includes advice that planning authorities should consider encouraging the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value. However, the Officer Report advised that there are no available brownfield sites in Hertsmere measuring 85Ha.

611. In the Interim Statement on Climate Change Hertsmere Borough Council has made a commitment to significantly increasing its renewable capacity. I agree with the Appellant in as much as an argument that Hertsmere could import renewable energy from less constrained areas elsewhere does not absolve the Council from taking responsibility for seeking to facilitate increased renewable and sustainable energy capacity within its area. Nevertheless, the evidence regarding alternative sites before this Inquiry is not sufficient to demonstrate that the proposed development has to be sited in the Green Belt. I conclude that the evidence on alternative sites neither attracts weight for or against the proposal.

612. To grant permission for a temporary solar farm would not change the status of the land as either Green Belt or countryside or make the site eligible for housing development; any further proposals for solar energy developments on this or other sites would fall to be considered on their own merits at the time. Concerns about the financial security and experience of the landowners and applicant, business structure, and future intentions, matters relating to modern slavery, ethical sourcing of solar panels and other equipment, are not material planning considerations within the remit of this Inquiry.

613. The Officer Report recommended permission be granted.

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<sup>213</sup> CD-PA5 paragraph 6.1, page 18

614. Several appeal decisions are put before the Inquiry. Some are for battery storage only; some are not in a Green Belt. There were no appeals for a comparable scale solar farm within a Green Belt where the Secretary of State has granted permission when the Inquiry sat. Subsequent to the closure of the Inquiry three recent appeal decisions have been drawn to my attention by the Appellant. APP/W1525/W/22/3300222, and APP/V1505/W/22/3301454 both concerned proposals for solar farm development within the Metropolitan Green Belt. APP/C3240/W/22/3293667 concerns a site at Telford, Shropshire.

615. In respect of APP/W1525/W/22/3300222 the Inspector noted that the Council had not allocated any sites for renewable energy (paragraph 84), afforded substantial weight to harm to the Green Belt in terms of inappropriateness and loss of openness (paragraph 87). The benefits of renewable generation were held to be 'substantial', the delivery of suitable renewable energy projects fundamental to the transition to a low carbon future (paragraph 91), and that the solar farm requires grid capacity and a viable connection to operate (paragraph 92). Overall, the benefits were deemed to be of a sufficient magnitude to outweigh the substantial harm to the Green Belt and all other harm (paragraph 93).

616. The circumstances in respect of APP/V1505/W/22/3301454 were quite different as the appeal site was for only 3Ha of an overall 38Ha site, and permission was already granted for 35Ha. The appeal site was "the last piece of the jigsaw" and would cause limited additional harm. APP/C3240/W/22/3293667 does not concern a Green Belt site.

617. The Appellant acknowledges that not all energy projects in the Green Belt will amount to VSC [114] and that weighing the benefits of a scheme against the harms of the scheme is not a purely mathematical exercise, but an exercise of judgement [126]. Each case must be judged on its own merits.

## **Conditions**

618. In the event that planning permission were to be granted planning conditions would be required to secure various aspects of the development. Framework paragraph 56 requires that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.

619. A copy of the final draft schedule of conditions was submitted by the main parties at the end of the Inquiry.<sup>214</sup> I have had regard to the conditions suggested and the tests set out in the Framework.

620. Condition 1, commencement of development, is required to comply with the requirements of Section 91 of the Town and Country

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<sup>214</sup> DSDI 46

Planning Act 1990 (as amended). However, the statutory period of three years is reduced to two years, reflecting the urgency of the need to increase and deliver renewable electricity as soon as is practicably possible.

621. The planning application describes the operational period as thirty-five years. Condition 2 is required to provide an appropriate mechanism to ensure that the operational period ceases at the end of that time because full planning permission has been sought and if no conditions are imposed once the permission is implemented the development could be completed and operated without restriction [128]. However, the VSC are predicated on the basis that the operational period will be limited to thirty-five years and thereafter the harms to the Green Belt and landscape will cease. It is reasonable and necessary to include a requirement that the operator advises the local planning authority of the date development commences and that the cessation of use is linked to the operational period proposed in the planning application. Recording the date of first commercial export is a reasonable means to determine the end of the operational period.

622. Condition 3, relating to decommissioning, is reasonable and necessary to ensure and that the land is satisfactorily restored for agricultural use in accordance with the terms of the application and the VSC which justify the granting of temporary planning permission on this Green Belt site and the public benefits that outweigh the (less than substantial) harm to neighbouring designated heritage assets.

623. The generating capacity of the scheme is dealt with by other legislation. Therefore, there is no need to impose a condition limiting the generating capacity to 49.9MW and the proposed schedule does not therefore include such a condition. Should the Secretary of State be minded to allow the appeal and grant permission the legal submissions on behalf of the Appellant [130-134] in this regard at should be considered.

624. Reasoning for conditions including noise (Conditions 4 and 16 and report paragraphs 544-546), flood risk (Conditions 18-20 and report paragraphs 539-543), and glint and glare (Conditions 22 & 25 and report paragraphs 528-538) have been set out previously.

625. At the Inquiry, the main parties agreed that the landscape strategy, detailed planting plans, and specification of the landscaping mitigation for the operational phase, landscape and ecological management could all be secured by planning conditions. They would be necessary to conserve and enhance the biodiversity of the appeal site and to reduce the proposal's visual impact on the surrounding area. So too conditions relating to lighting (Condition 8), fencing (Condition 13), and colours of enclosures of battery stores and inverter stations (Condition 14). A condition requiring details of a grass grazing management plan is reasonable to ensure the land remains grazed in accordance with the terms of the application.

626. For reasons set out previously, provisions for requiring landscaping and heritage legacies beyond the operational period would not be necessary nor reasonable. The proposed schedule does not include such conditions. Should the Secretary of State consider otherwise they would need to consider the Appellant's legal submissions on restoration conditions [127-129] and the submissions from the Council on the use of such conditions [215-222].

627. I am satisfied that conditions in respect of Construction Operation Management Plan and Construction Traffic Management Plan are necessary in respect of management of safety for public rights of way, highway safety, wildlife interests and residential amenity during the construction phase. A condition in respect of archaeology is necessary to ensure that artefacts or features of archaeological interest are recorded or protected as appropriate during the installation works, pursuant to Policy SADM29. Requirements for details of a Battery Storage Plan and area is necessary for public safety.

628. Condition 17 is necessary to safeguard the amenity of the exiting PROW's and to ensure that the permissive paths are provided in accordance with the VSC which justify the granting of temporary planning permission on this Green Belt site and the public benefits that outweigh the (less than substantial) harm to neighbouring designated heritage assets which include the provision of new footpaths.

629. The Educational Strategy also forms a small part of the VSC and public benefits and therefore it is necessary and reasonable to impose Condition 9 to require details of the strategy and to ensure it is delivered.

630. The Appellant confirmed that they were agreeable to the imposition of the pre-commencement conditions. It is concluded that, if permission were to be granted, the conditions set out in the proposed Condition Schedule at Annex A would be necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.

### **Conclusions on Main Issues and Planning Balance**

631. I use the same terminology to attribute weight to the harms and benefits of the effects of development that the Appellant and Council have used [see table at 33]. That is, in ascending order of weight, neutral/no weight, limited, moderate, significant, and substantial. For the avoidance of doubt, 'very substantial weight' is greater than 'considerable substantial weight'.

#### *Harms arising from the proposed development*

##### *Main issue i) : the Green Belt*

632. The appeal proposal would result in harm to the Green Belt by way of inappropriateness, loss of openness, and harm to one of the

purposes of including land within it, namely (c) to assist in safeguarding the countryside from encroachment. As required by Framework paragraph 148, I attach substantial weight to each of the Green Belt harms identified. Collectively, the harms to the Green Belt attract very substantial weight against the proposed development.

*Main issue ii) the Settings of five Designated Heritage Assets*

633. The proposed development would result in a low/medium level of less than substantial harm to the significance of Hilfield Castle, a Grade II\* listed building, attracts significant weight against the proposal. Low/medium levels of less than substantial harm to the significance of Hilfield Lodge, Grade II, and Slades Farmhouse, also Grade II, each attract moderate weight against. Penne's Place Scheduled Monument is another asset of the highest significance. A low level of less than substantial harm to the significance of this asset attracts moderate weight against. A very low level of harm to the significance of Aldenham Park Registered Park and Garden attracts limited weight against the proposed development.

634. Mindful of the statutory obligation to attach considerable importance and weight to the need to conserve heritage assets in a manner appropriate to their significance, and notwithstanding that harms would be for a limited period of thirty-five years and fully reversible, I conclude that harm to heritage assets overall attracts substantial weight against the proposal.

635. In causing material harm to the settings of a number of heritage assets the proposals would also fail to comply with requirements of Policies CS14 and SADM29 that the Council will not permit development proposals which cause harm to, or fail to protect, conserve or where possible enhance the significance, character and appearance of the heritage asset and its setting. Albeit that the weight I attach to these particular policies, and hence the conflict with them is reduced.

*Main issue iii) - Effect Upon Landscape Character*

636. For a period of approximately thirty-five years development would have a significant adverse effect on landscape character. The landscape harm that would arise attracts significant weight against the proposal and would conflict with requirements of Policies CS12 and SADM11 of the Development Plan.

*Main issue iv) - Any Other Non-Green Belt Harms*

637. No other material harms were found. Evidence from an assessment of alternative sites neither weighs in favour nor against the proposed development. Matters relating to glint and glare, best and most versatile agricultural land, noise, flood risk and drainage, personal safety, and health and safety are also found to be neutral in effect.

*Main issue v) – Considerations Which Weigh in Favour of the Proposed Development*

638. The Government is committed to cutting greenhouse gas emissions and the need for a move away from fossil fuel and towards renewable sources of energy production is supported. The solar farm could generate up to 49.9MW electricity and together with the proposed energy storage would make an early and significant contribution to the delivery of the Government's climate change programme and energy policies and the Council's Climate Change and Sustainability Strategy. These renewable energy benefits attract substantial positive weight in favour of the proposed development.

639. A BNG of 89.99% in area units and 24.98% in linear units constitutes a major public benefit and attracts substantial positive weight in favour of the proposal. Legacy landscape and heritage benefits and enhancements also attract additional moderate positive weight in favour of the proposal.

640. Improvements to soil and agricultural land, proposed permissive paths, and economic benefits each attract a limited amount of positive weight. A proposed education strategy attracts a very limited amount of positive weight in favour of development.

*The Final Balances*

641. The weighing of the benefits against the harms of the scheme is not a purely mathematical exercise. As the Appellant agreed in closing, what is needed is an exercise of judgement [126].

642. There are two final balances required by the Framework in this case. The balance required by Framework paragraph 148 to determine if VSC's exist, requires that 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.

643. The balance required by paragraph 202 requires that less than substantial harm to the significance of designated heritage assets, should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. As the latter test requires the balancing of public benefits against only the heritage harms, I undertake that first.

*Framework paragraph 202 balance*

644. The considerable substantial positive weight to be attached to the public benefits of the delivery of renewable energy, substantial positive weight to biodiversity benefits, moderate positive weight for both legacy landscape and heritage benefits and enhancements, and additional more limited positive weight in favour of the development from other public benefits of improvements to soil, creation of permissive paths, education strategy and economic benefits (all identified as 'Considerations which weigh in favour of the proposed development' and set out above [551-604]), are collectively very

substantial and would outweigh the substantial negative weight to be attached to the overall harm to the designated heritage assets.

*Framework paragraph 148 balance*

645. However, the magnitude of the totality of the weight against the proposal, including very substantial weight against the proposal for harms to the Green Belt, together with substantial weight against for harm to heritage assets and significant weight against for harm to landscape character, is very great indeed.

646. The sum of all of the benefits that would arise from the proposed development amount to very substantial positive weight in favour of the development.

647. However, I conclude that these considerations do not clearly outweigh the harms to the Green Belt and other harms. The VSC required to justify development in the Green Belt as required by paragraph 148 do not exist.

648. In the absence of VSC's, the proposed development would also be contrary to requirements of Core Strategy Policy CS13 which seeks to protect the Green Belt from inappropriate development.

*Conclusion*

649. In the absence of VSC's, the proposed development is not in overall accordance with national planning policy for development in the Green Belt and conflicts with the Development Plan as a whole.

**Recommendation to the Secretary of State**

650. The appeal be dismissed and planning permission refused.

651. In the event that the Secretary of State disagrees and allows the appeal, it is recommended that the conditions at Annex A be applied.

*Helen Heward*

Planning Inspector

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## **Annex A – Recommended Condition Schedule**

### **1 Commencement of Development within Two Years**

The development hereby permitted shall be begun before the expiration of 2 years from the date of this permission.

### **2 Operational Period**

1) The developer shall submit:

- i) a Notice of Commencement of development to the Local Planning Authority, stating the date on which development began. That Notice shall be made in writing to the Local Planning Authority no later than one month from the date of commencement.
- ii) a Notice of 'First Export' Within one month of the First Commercial Export of electricity from the site to the Local Planning Authority, stating the date on which, the First Commercial Export of electricity commenced. That Notice shall be made in writing to the Local Planning Authority no later than one month from the date of the first commercial export.

2) The operation of the solar farm and battery storage that is hereby granted shall cease thirty-five years from the date of the First Commercial Export of electricity. Thereafter the land shall revert to agricultural use.

### **3 Decommissioning Method Statement (prior to first commercial export)**

Prior to the first commercial export of electricity from the site, a Decommissioning Method Statement (DMS) shall be submitted in writing to the Local Planning Authority for approval. The DMS shall detail:

- a) How all structures, development and equipment are to be removed from the site (including fences, containers, access tracks, underground structures and construction bases, posts, cables, cameras, and lighting),
- b) The areas of land to be returned to agricultural use, save for the areas identified as not being restored to agricultural use in drawing 8398-12C,
- c) Measures to restore land to agricultural use including details how soil structure and conditions and biodiversity within the site
- d) Details for the management of the Public Rights of Way through the site during the decommissioning period.

Decommissioning shall be carried out in full accordance with the approved DMS.

No later than thirty-three years from the date of the first commercial export of electricity from the site, or six months before the approved DMS is to be implemented if the solar farm is to cease operation use before thirty-five years, review, and update of the DMS addressing any changes in best practice in the decommissioning process since the original DMS was approved, shall be submitted to the Local Planning Authority in writing for approval.

Decommissioning of the site for energy generation, as agreed in the latest approved DMS, shall be fully implemented no later than one year following the expiry of the operational period (as defined in condition 2), or no later than one year following the date on which the site has ceased to be in continuous use for energy generation (whichever is the sooner).

#### 4 *Construction and Operation Management Plan*

Prior to the commencement of development, a Construction and Operation Management Plan (COMP) for the site shall be submitted to the Local Planning Authority for approval. The COMP shall include details of:

- a) the construction and management of the access tracks and their crossing during the construction and operation periods and how the Public Rights of Way network is to be managed during the construction process, including publication of Notices advising of the duration and extent of works which may affect the Public Rights of Way.
- b) how retained habitats within the site will be protected and how impacts associated with dust deposition, soil compaction and direct damage from machinery will be minimised or avoided during construction.

The approved plan shall be implemented thereafter.

#### 5 *Approved Plans and Documents*

The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings listed below: -

DWG EE-01-P01 Site Location Plan 26 October 2022 (red line and blue line)

Drawing HF1.0 revision v.b - Location Plan

Drawing HF1.1 revision v.c - Location Plan 1 - Eastern Parcel

Drawing HF1.2 revision v.c Location Plan - Western Parcel

Drawing HF2.0 revision 19B - Proposed Site Plan 27 October 2022

Drawing HF2.2 revision v.a - Proposed Site Plan - Western Parcel

Drawing HF2.1 revision v.a - Proposed Site Plan - Eastern Parcel

Drawing HF3.0 revision 03 - PV Elevations

Drawing HF4.0 revision 03 - Inverter Transformer Stations 28 October 2022

Drawing HF5.0 revision 02 - Internal Access Road Elevations  
Drawing HF6.0 revision 02 - Fence and Gate Elevations  
Drawing HF7.0 revision 02 - Weather Station Detail  
Drawing HF8.0 revision 03 - Substation Elevations 28 October 2022  
Drawing HF9.0 revision 03 - Control Room Elevations 28 October 2022  
Drawing HF10.0 revision 02 - Auxiliary Transformer  
Drawing HF11.0 revision 02 - CCTV Elevations 104  
Drawing HF12.0 revision 03 - Battery Container Elevations 40ft 28 October 2022  
Drawing HF13.0 revision 03 - Storage Container Elevations 28 October 2022  
Drawing HF14.0 revision v.a - Field Topographical Data East  
Drawing HF15.0 revision v.a - Field Topographical Data West

Reason: For the avoidance of doubt and in the interests of proper planning.

## 6 *Battery Safety Management Plan (pre-commencement)*

No battery stores shall be installed on the site until the following details have been submitted to and approved in writing by the Local Planning Authority:

- a) A Battery Safety Management Plan has been submitted to and approved in writing by the Local Planning Authority (who will consult Hertfordshire Fire and Rescue Service and the Environment Agency). The Plan shall cover the construction, operational and decommissioning phases. The Plan shall include proposals and details for:-
  - a Responsible Person for the scheme, (as defined under article 3 of the Regulatory Reform (Fire Safety) Order 2005, or under a subsequent legal amendment)
  - Management of fire risks and hazards,
  - Isolation of electrical sources to enable firefighting activities,
  - Measures to extinguish or cool batteries involved in fire, and management of toxic or flammable gases,
  - Measures to minimise environmental impacts in the event of an incident, including proposals for the containment of fire water run-off,
  - Measures for handling and disposal of damaged batteries,
  - Site training exercises and procedures
  - Provision of a fire hydrant within the site, in close proximity to the battery stores compound, capable of providing a minimum of 1,900 litres of water per minute for at least two hours.
- b) A layout plan for the battery storage area including sweep and turn circles/hammer head to ensure the safe access and turning of emergency vehicles.

Development shall be carried out, and operated at all times, in accordance with the approved Battery Safety Management Plan and layout plan.

## 7 *Archaeology (pre-commencement)*

A.) No development shall commence until an Archaeological Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved details. The Archaeological Written Scheme of Investigation shall include the following:

- i) An assessment of the archaeological significance of the site
- ii) Research questions
- iii) The programme and methodology of site investigation and recording
- iv) The programme for post investigation assessment
- v) Provision to be made for analysis of the site investigation and recording
- vi) Provision to be made for publication and dissemination of the analysis and records of the site investigation
- vii) Provision to be made for archive deposition of the analysis and records of the site investigation
- viii) Nomination of a competent person or persons/organisation to undertake the works set out within the Archaeological Written Scheme of Investigation.

B.) Prior to the first commercial export of electricity from the site, the site investigation and post investigation assessment shall be completed in accordance with the programme that is set out in the approved Archaeological Written Scheme of Investigation.

## 8 *External Lighting Plan*

- a. No external lighting shall be installed unless it is in accordance with Condition 8B or with an External Lighting Plan (ELP) which shall have been submitted to and approved in writing by the Local Planning Authority. The ELP should include a base line survey to show the current lighting levels within residential areas neighbouring the development; it should also include a plan showing the location of proposed lighting in relation to sensitive wildlife habitats. The external lighting scheme shall be installed in accordance with the approved ELP and retained as such thereafter.
- b. No external lighting shall be installed or operated during the period of this planning permission, except for the manually operated lights to be attached to the substation and transformer / inverter cabinets for use in an emergency maintenance visit situation, as set out in section 4.2.7 of the Design and Access Statement. Details of such lighting to be provided in this regard shall be submitted to the Local Planning Authority and agreed in writing prior to installation on site.

## 9 *Educational Strategy (pre-export)*

Prior to the first commercial export of electricity from the site, an Educational Strategy shall be submitted to and approved in writing by the Local Planning Authority, setting out what measures are to be provided to inform and educate the general public and school pupils on the principles of renewable energy generation and nature conservation that pertain to this development. This Strategy shall include proposals for explaining the energy generated in real time, the content and location of any interpretation boards, and how to facilitate school visits. The approved Strategy shall be resubmitted to the Local Planning Authority for approval in writing before the fifth anniversary of the previously approved Strategy to update the proposals. The latest approved strategy shall then be implemented and maintained thereafter until the end of the operational period.

## 10 *Grazing and Grass Management Plan*

- A.) Within one year of the first commercial export of electricity from the site, a Grazing Management Plan (GMP) shall be submitted in writing to the Local Planning Authority. The GMP shall detail which parts of the site shall be used for the grazing of livestock, during which months of the year, what animals or poultry are to be grazed there, and it shall set out details of how the grazing and mowing regime is to be managed. Any changes to the GMP during the lifetime of the permission shall be submitted to the Local Planning Authority for approval and shall not be carried out except in accordance with that approval.
- B.) Within one year of the first commercial export of electricity from the site, the grazing of livestock shall commence on such parts of the site, at such times of year, and according to such principles as have been approved by the Grazing Management Plan.

## 11 *Landscape and management scheme*

No development shall be commenced until a detailed Landscape and Management Scheme ("the LMS") has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based upon the principles within the submitted LEMP (April 2021) and the LEEP, and shall also be in general accordance with the details shown on Drawing 8398\_12b and Landscape Strategy Plan Drawing 8398\_013\_Rev A.

The LMS shall include details of:

- A. Proposed species, location, planting density for all trees, shrubs, plants, and grassland mixes
- B. Landscape management regime for proposed planted areas, habitats, and open spaces for the duration of the operational development up to the point of its decommissioning (thirty-five years), including details of the managed height of hedgerows.

The LMS shall be implemented as approved in the first planting season following the first export of electricity from the site.

The Site shall be managed in full accordance with the LMS during the operational phase of the development hereby permitted.

Any trees, shrubs or plants that die within a period of thirty-five years from the completion of the development, or are removed and/or become seriously damaged or diseased in that period, shall be replaced (and if necessary continue to be replaced) in the first available planting season with others of similar size and species, unless the Local Planning Authority gives prior written permission for any variation. No hedgerows or trees shall be removed or shortened unless such works are specified in the approved plans. Replacement planting will not be required where good management of maturing vegetation requires appropriate thinning

## 12 *Ecological Enhancement and Invasive Species*

- A.) The development shall be carried out in full accordance with the proposals that are set out in the Landscape Enhancement Management Plan (document R009, December 2020), Landscape and Ecology Enhancement Plan (drawing number 7533\_012) and NEW PLAN and sections 5-7 of the Ecological Appraisal (document R013).
- B.) No site clearance or other ground works within the application site shall commence until an Invasive Species Eradication Plan to control and remove the presence of Japanese Knotweed from the site has been submitted and approved in writing by the Local Planning Authority. This eradication plan shall include specific details of timescales and aftercare to ensure appropriate treatment for its long-term control and removal from the site. The development shall thereafter be implemented in accordance with the approved Invasive Species Eradication Plan unless otherwise agreed in writing by the Local Planning Authority.

## 13 *Fences*

The fences to be erected on the site shall comply with approved Drawing HF6.0 revision 02 - Fence and Gate Elevations. Other than those fences shown on the approved Site Layout drawing, no other fences shall be erected without the prior written agreement of the Local Planning Authority (save for any fences or means of enclosure that may be approved under condition 24 with regard to Glint and Glare), notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any legislation amending or re-enacting the same.

All fences (except those around the substation and battery store compound) shall include gates to allow passage for small mammals including foxes and badgers. Wooden posts for CCTV cameras shall not exceed a height of 2.4m, and the cameras shall face inwards only (as per section 4.2.6 of the Design and Access Statement).

## 14 *Colour of Enclosures to the Battery Stores and Inverter Stations*

The enclosures for the battery stores and inverter stations shall be finished in one of the following colours, or in such other colour as has been agreed in writing by the Local Planning Authority: RAL 6002 leaf green, RAL 6005 moss green, RAL 6035 pearl green, RAL 7010 tarpaulin grey, RAL 7012 basalt grey or RAL 8007 fawn brown.

#### 15 *Site Security*

The site shall be secured in accordance with the proposals that are set out in section 4.2.6 of the Design and Access Statement.

#### 16 *Noise*

The Rating level of plant and equipment associated with the development shall be at least 10 dB below the background sound level at any affected residential properties where the Rating level and Background sound level are as defined and determined in accordance with BS 4142:2014+A1:2019.

The sound level of the ambient noise shall not be more than 1 dB higher than the sound level of the ambient noise in the absence of the specific noise of plant and equipment associated with the development along any public right of way, where ambient noise and specific noise are as defined and determined in accordance with BS 7445-1:2003

#### 17 *Public Rights of Way and Permissive Footpaths*

Any fences hereby approved shall be erected not less than 5m from the centre line of any public right of way within the site.

Prior to commencement of the development a permissive path specification and strategy shall be submitted to the Local Planning Authority for approval. Prior to the first commercial export of electricity, the permissive paths (one adjacent to Fields 15 and 16, the other around Field 12, as shown on the Landscape and Ecology Enhancement Plan) shall be provided in accordance with the approved specification and strategy and shall be maintained and shall remain unobstructed for the lifetime of the development.

#### 18 *Drainage Condition – Compliance with Flood Risk Assessment*

The development shall be carried out in accordance with the Flood Risk Assessment (reference R010 dated 16 April 2021 prepared by RMA Environmental) and the following mitigation measures:

- 1.) Limiting the surface water run-off generated by the critical storm events so that it will not exceed the greenfield surface water run-off rates for the relevant rainfall events up to and including the 1 in 100 year + 40% climate change event.
- 2.) Providing storage to ensure no increase in surface water run-off volumes for all rainfall events up to and including the 1 in 100 year + climate change event in above ground SuDS features.
- 3.) Discharge of surface water from the private drain into a suitable location, such as an ordinary watercourse or river.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

**19 Drainage Condition - Surface Water Drainage Scheme (pre-commencement)**

No development shall take place until a detailed Surface Water Drainage Scheme for the site, based on the approved drainage strategy and sustainable drainage principles, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the surface water run-off generated up to and including 1 in 100 year + climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the first export of electricity from the site.

The Surface Water Drainage Scheme should include the following details:

- 1.) Fully detailed drainage strategy indicating how surface water will be managed on site for the solar panel areas, battery storage area, inverter stations and access road, including all SuDS features, discharge points and watercourses. If discharging to a watercourse, full details confirming the capacity and condition should be provided.
- 2.) Full details of the ordinary watercourses on site including their location, connectivity, details regarding any associated buffers and an impact assessment to ensure there is no detrimental impact on the watercourses.
- 3.) Assessment of SuDS (sustainable drainage) management and treatment.
- 4.) Detailed engineered drawings of the proposed SuDS features including cross section drawings, their size, volume, depth and any inlet and outlet features including any connecting pipe runs.
- 5.) Detailed assessment of existing overland flow routes and demonstration of how these will be managed as part of the development, including during the construction phase.
- 6.) Detailed post-development network calculations for all events up to and including the 1 in 100 year + 40% climate change event with half drain down times.

**20 Drainage Condition - SuDs**

Upon completion of the drainage works for each site in accordance with the timing/phasing arrangements, a management and maintenance plan for the SuDS features and drainage network must be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- 1.) Provision of a complete set of "as-built" drawings for site drainage.
- 2.) Maintenance and operational activities.
- 3.) Arrangements for adoption and any other measures to secure the operation of the scheme throughout its lifetime.

#### *21 Impermeable Drainage System Scheme (pre-commencement)*

The development hereby permitted shall not be commenced until such time as a scheme to install impermeable sealed drainage systems for all transformer and battery storage areas have been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented as approved.

#### *22 Hard Surface at Access A (pre-commencement)*

No construction or installation shall be undertaken via site Access 'A' - i.e. the existing access to Field 1 - until the surface at the access bell-mouth is formalised to provide a hard surface, in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority including the details of arrangements for surface water drainage at that access to be intercepted and disposed of separately, so that it does not discharge onto the highway carriageway. The works shall have been completed in accordance with the approved details prior to Access A being brought into use for the purposes of the construction of that part of the solar farm development located in Field 1.

#### *23 Visibility Splays at Access B (pre-commencement)*

No construction or installation shall be undertaken via site access 'B' of the Construction Traffic Management Plan (document R005) - i.e., the existing access to Hilfield Farm - until the results of the speed survey and the required visibility splays have been submitted to the Local Planning Authority and approved. The visibility splays shall be provided in accordance with the approved details prior to the Access B being brought into use.

In the event that arboricultural works are needed, the submission shall be accompanied by an Arboricultural Report, an Arboricultural Impact Assessment and a Glint and Glare Mitigation Scheme. All to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The Scheme shall detail the mitigation measures that are proposed, in accordance with the Glint and Glare Assessment (document RO12, issue 6 dated July 2021).

#### *24 Construction Traffic Management Plan (pre-commencement)*

No construction shall commence until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. The CTMP shall include

- booking system details,
- compound layout,
- welfare facilities,

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- wheel washing facilities,
- delivery hours (which shall not fall outside the hours of 09.30 - 14.30, to avoid conflict with local school traffic)
- Details of consultations carried out on the details of the proposed CTMP including with the Haberdasher's School

the proposed CTMP prior to submission to the Local Planning Authority.

The approved CTMP shall be implemented throughout the period of construction.

## 25 *Glint and Glare Mitigation for Roads and Dwellings (pre commencement)*

A Glint and Glare Mitigation Scheme shall be submitted in writing to the Local Planning Authority for approval prior to the commencement of development. The Scheme shall detail the mitigation measures that are proposed, in accordance with the Glint and Glare Assessment (document RO12, issue 6 dated July 2021).

The scheme shall include measures to mitigate effects upon road users on Butterfly Lane and occupiers of dwellings 23, 24, 88 and 99-102 as identified in the Glint and Glare Assessment (document RO12, issue 6 dated July 2021).

No solar panels shall be installed in the areas marked "Site 15", "Site 16" and "Site 17" in Figure 5 of the Glint and Glare Assessment (document RO12, (Pager Power's ref 10025C) issue 6 dated July 2021) until the mitigation measures for road users on Butterfly Lane have been implemented as approved.

No solar panels shall be installed in the area marked "Site 13" in Figure 5 of the Glint and Glare Assessment (document RO12, (Pager Power's ref 10025C) issue 6 dated July 2021) until the mitigation measures for dwellings 99-102 have been implemented as approved.

No solar panels shall be installed in "Site 1" and "Site 2" in Figure 5 of the Glint and Glare Assessment (document RO12, (Pager Power's ref 10025C) issue 6 dated July 2021) until the mitigation measures for dwellings 23 and 24 have been implemented as approved.

No solar panels shall be installed in "Site 19" in Figure 5 of the Glint and Glare Assessment (document RO12, (Pager Power's ref 10025C) issue 6 dated July 2021) until the mitigation measures for dwelling 88 have been implemented as approved.

Such mitigation measures shall thereafter be retained throughout the operational period and until the development has been decommissioned and the solar arrays removed.

## **End of conditions**

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## **ANNEX B - APPEARANCES AT THE INQUIRY**

### **FOR THE APPELLANT**

**Paul Tucker KC and Freddie Humphreys of Kings Chambers** called

- Paul Burrell BSc Hons Dip Up MRTPI, Pegasus Group, (Planning Policy and Planning Balance)
- Alister Kratt LDA Design, (Openness and Landscape Effects)
- Gail Stoten BA (Hons) MCIfA FSA, Pegasus Group, (Heritage)
- Simon Chamberlayne Enso Energy (conditions round table session only)

### **FOR THE LOCAL PLANNING AUTHORITY**

**Emma Dring, Cornerstone Barristers** called

- Laura Ashton MA MRTPI, LAUK (Planning)
- Maria Kitts BA (Hons) MA, Essex County Council (Heritage)

### **FOR ALDENHAM PARISH COUNCIL**

**Vivienne Sedgley, 4-5 Grays Inn** called

- Valerie Scott BSc (Hons), MCD, MRTPI, HCUK Group (Planning)

### **FOR THE COMBINED OBJECTORS' GROUP**

**Wayne Beglan, Cornerstone Barristers** called

- Emily Benedek UPP Architects and Planning (planning)
- Graeme Drummond, BSc (Hons) Dip LA Director and Owner of Open Spaces Landscape and Arboricultural Consultants Ltd (Landscape)
- Chris Berry BA (Hons) MRTPI, CPRE Hertfordshire (Green Belt)
- Jacob Billingsley, BA (Hons), MSt (Cantab) (Heritage)

**COG** collectively represented the following bodies:

Stop the Solar Plan Save our Green Belt (local objectors group)

CPRE Hertfordshire – the Countryside Charity

Letchmore Heath Village Trust

Radlett Society and Green Belt Association

Elstree and Borehamwood Green Belt Society

Save Radlett (local group of objectors)

Bhaktivedanta Manor (the UK's largest centre for the International Society of Krishna Consciousness)

Elstree and Borehamwood Town Council

### **INTERESTED PARTIES**

- A Mr Jefferis
- B Mr Lauder

## ANNEX C - CORE DOCUMENTS LIST

### A. Planning Application Documents

REF	DOCUMENT
CD-PA1	Application Forms and Certificates
CD-PA2	Site Location Plan
CD-PA2a	Site Location Plan Eastern Parcel
CD-PA2b	Site Location Plan Western Parcel
CD-PA3	Site Layout Plan
CD-PA3a	Site Layout Plan Eastern Parcel
CD-PA3b	Site Layout Plan Western Parcel
CD-PA4	Planning Statement
CD-PA5	Design and Access Statement
CD-PA6	Construction Traffic Management Plan
CD-PA7	Environmental Statement
CD-PA7a	Environmental Statement Technical Appendices
CD-PA7b	Environmental Statement Non-Technical Summary
CD-PA8	Noise Assessment Report
CD-PA9	Flood Risk Assessment
CD-PA10	Ecological Appraisal
CD-PA10a	Ecological Appraisal Appendices
CD-PA11	Landscape and Ecological Management Plan
CD-PA12	Glint and Glare Assessment
CD-PA14	Agricultural Land Classification Report and Review
CD-PA15	Landscape and Visual Impact Assessment
CD-PA15a	Landscape and Visual Impact Assessment Appendices
CD-PA15b	LVIA_FIGURE_8_Illustrative_Viewpoints
CD-PA15c	LVIA_FIGURE_9_Photomontages_part 1
CD-PA15d	LVIA_FIGURE_9_Photomontages_part 2
CD-PA15e	LVIA_FIGURE_9_Photomontages_part 3
CD-PA15f	LVIA FIGURES_1 to 6
CD-PA15g	LVIA_FIGURE_7_Photopanels
CD-PA16	Biodiversity Net Gain report
CD-PA17	Ground Investigation
CD-PA18	Archaeological Evaluation Report
CD-PA19	Geophysical Survey Report
CD-PA20	Planning Committee 20211111 minutes
CD-PA21	Statement of Community Involvement
CD-PA22	Decision Notice
CD-PA23	Capacity Review - Jumar 1 of 1
CD-PA24	DLA-Planning-Report-Solar-Farm-Feb-2021
CD-PA25	Planning Committee update sheet 20211111
CD-PA26	Landscape and Ecology Enhancement Plan (LEEP) Rev G
CD-PA27	Planning Committee Report

CD- PA28	Screening Opinion
CD- PA29	Biodiversity Net Gain Metric 3.0
CD- PA30	Biodiversity Metric 3.0 Calculation tool
CD- PA31	PV Elevations - Drawing HF3.0 revision 03
CD- PA32	Inverter Transformer Stations - Drawing HF4.0 revision 02
CD- PA33	Internal Access Road Elevations - Dwg HF5.0 revision 02
CD- PA34	Fence and Gate Elevations - HF6.0
CD- PA35	Weather Station Detail - HF7.0
CD- PA36	Substation Elevations - HF8.0
CD- PA37	Control Room Elevations- HF9.0
CD- PA38	Auxiliary Transformer - HF10.0
CD- PA39	CCTV Elevations - HF11.0
CD- PA40	Battery Container Elevations 40ft - HF12.0
CD- PA41	Storage Container Elevations 40ft - HF13.0
CD- PA42	Topo Data East -HF14.0
CD- PA43	Topo Data West - HF15.0
CD- PA44	Hilfield Solar Farm Alternative Site Assessment

## B. National Planning Policy / Guidance

REF	DOCUMENT
CD-NPP1	National Planning Policy Framework (NPPF) July 2021
CD-NPP2	Climate Change Act 2008
CD-NPP3	Climate Change Act 2008 (2050 Target Amendment) Order
CD-NPP4	Planning Practice Guidance Renewable & Low Carbon Energy
CD-NPP5	The Ten Point Plan for a Green Industrial Revolution (November 2020)
CD-NPP6	National Infrastructure Strategy (November 2020)
CD-NPP7	Energy White Paper (December 2020)
CD-NPP8	Net Zero Strategy: Building Back Greener (October 2021)
CD-NPP9	Conservation Principles Policies and Guidance April08
CD-NPP10	Managing Significance in Decision-Taking in the Historic Environment, Historic England, 2015
CD-NPP11	The Setting of Heritage Assets, Historic England (2017)
CD-NPP12	Statements of Heritage Significance
CD-NPP13	NPPG - Conserving and enhancing the historic environment
CD-NPP14	Guidelines for Landscape and Visual Impact Assessment (GLVIA) 3rd edition
CD-NPP15	Landscape Institute Technical Guidance Note 06/19
CD-NPP16	Written Ministerial Statement on Solar Energy. Protecting the Local and Global Environment, Planning update March 2015
CD-NPP17	EN-1 Draft Overarching National Policy Statement for Energy Sept 2021
CD-NPP18	EN-3-draft National Policy Statement for Renewable Energy Infrastructure Sept 2021
CD-NPP19	Clean Growth Strategy Correction Oct 2017 - Apr 2018

CD-NPP20	HEA Note 15 - Commercial Renewable Energy Development and the Historic Environment 2021
CD-NPP21	PPG – Green Belts
CD-NPP22	UK Solar PV Strategy_part_2 2014
CD-NPP23	PPG - Historic environment - GOV 23.07.2019
CD-NPP24	Renewable and low carbon energy - GOV.18 June 2015
CD-NPP25	Overarching National Policy Statement for Energy 2011 EN-1
CD-NPP26	National Policy Statement for Renewable Energy Infrastructure EN-3
CD-NPP27	Environment and Climate Change - Hansard - UK Parliament
CD-NPP28	Digest of UK Energy Statistics July 2022
CD-NPP29	Clean Growth Strategy
CD-NPP30	Achieving net zero
CD-NPP31	British-energy-security-strategy-April 2022
CD-NPP32	BSI - Methods for Rating and assessing industrial and commercial sound
CD-NPP33	LODGE TO HILFIELD CASTLE_1103570_Listing
CD-NPP34	HILFIELD CASTLE_1103569_Listing
CD-NPP35	SLADES FARMHOUSE, Aldenham_1103614_Listing
CD-NPP36	Penne's Place moated site, Aldenham_1013001_Scheduling
CD-NPP37	ALDENHAM HOUSE, Aldenham_1000902_RPG
CD-NPP38	NCA 111 Northern Thames Basin
CD-NPP39	Government Food Strategy- 2022

#### C. Hertfordshire County Council Planning Policy / Guidance

REF	DOCUMENT
CD-HCCP1	Hertfordshire Minerals Local Plan Review 2002-2016 (2007)
CD-HCCP2	Hertfordshire Waste Core Strategy & Development Management Policies (November 2012)
CD-HCCP3	Hertfordshire Waste Site Allocations Document (July 2014)
CD-HCCP4	Hertfordshire Landscape Character Area Assessment (2001)
	a) Hertfordshire Landscape Character Assessment Area 16 b) Hertfordshire Landscape Character Assessment Area 22
CD-HCCP5	GreenArc Strategic Green infrastructure Plan (with Hertfordshire) 2011

#### D. Hertsmere Local Development Plan

REF	DOCUMENT
CD-HBCLP1	Hertsmere Core Strategy (adopted 2013)
CD-HBCLP2	Hertsmere Site Allocations and Development Management Policies Plan (adopted 2016)

#### E. Hertsmere Supplementary Planning Documents / Guidance

REF	DOCUMENT
CD-HSPD1	Biodiversity Trees and Landscape SPD Parts A-D
CD-HSPD2	Interim Policy Statement on Climate Change (adopted 2020)
CD-HSPD3	Borehamwood Plateau Landscape Character Area
CD-HSPD4	Hertsmere Borough Green infrastructure Plan 2011
CD-HSPD5	Hertsmere Climate Change and Sustainability Strategy
CD-HSPD6	Climate-Change-Action-Plan

## F. Inquiry Documents

CD-ID1	Appeal Statement - Appellant
CD-ID1a	Hilfield Metric 3.0 Assessment
CD-ID2	The Local Planning Authority's Appeal Statement
CD-ID5	Suggested Conditions
CD-ID6	Statement of Case – Rule 6 Party – COG
CD-ID6A	Appendix to Statement of Case - COG
CD-ID7	Statement of Case – Rule 6 Party – Aldenham Parish Council
CD-ID8	Statement of Common Grounds - Planning
CD-ID8i	Statement of Common Grounds Planning Summary table
CD-ID8A	Statement of Common Grounds - Heritage
CD-ID9	Local Planning Authority Proof of Evidence – Planning
CD-ID9a	Local Planning Authority Proof of Evidence – Heritage 1 of 2
CD-ID9b	Local Planning Authority Proof of Evidence – Heritage 2 of 2
CD-ID9c	Local Planning Authority Summary Proof of Evidence Heritage
CD-ID10	Proof of Evidence - R6P - Aldenham Parish Council
CD-ID10a	Summary Proof of Evidence Aldenham Parish Council
CD-ID10b	Appendices to Proof of Evidence Aldenham Parish Council
CD-ID11	COG Proof of Evidence Planning
CD-ID12	COG - Proof of Evidence - Landscape
CD-ID12a	COG - Appendices to Landscape Proof of Evidence
CD-ID13	CD-ID13 - COG Proof of Evidence Heritage
CD-ID13a	Appendix1_to COG Heritage PoE - Legislation Policy
CD-ID13b	Appendix2 to COG's Heritage PoE - Methodology
CD-ID13c	Appendix3 to COG's Heritage PoE - Figures
CD-ID13d	Appendix4 to COG's Heritage PoE - Plates
CD-ID14	COG - Proof of Evidence - Green Belt
CD-ID15	COG - Proof of Evidence - Noise
CD-ID16	Appellant Proof of Evidence - Planning
CD-ID16a	Summary of Appellant's Proof of Evidence – Planning
CD-ID17	Appellant Proof of Evidence - Landscape
CD-ID18	Appellant's Proof of Evidence - Heritage
CD-ID18a	Summary of Appellant's Proof of Evidence - Heritage
CD-ID19	Appellant's POE FIGURES 1 to 12
CD-ID20	Statement of Common Grounds – Noise

## G. Appeal Decisions and Judgements- referenced by the Council

REF	DOCUMENT
CD-ADHBC1	Hangman Hall Farm - 3266505
CD- ADHBC 2	Barnwell vs East Northamptonshire DC 2014
CD- ADHBC 3	R (Liverpool Open and Green Spaces Community Interest Company) v Liverpool City Council [2020]
CD- ADHBC 4	Recovered appeal reference 3136031 and 3136033 Rectory Farm, Upton Warren 2016
CD- ADHBC 5	Recovered appeal reference 3147854 Land at Snodworth Farm, Langho
CD- ADHBC 6	Recovered appeal references 3012014 and 3013836 Land North of Dales Manor BP, Sawston

CD- ADHBC 7	Wildie v Wakefield MDC [2013] EWHC 2769 (Admin)
CD- ADHBC 8	Green Farm Iron Acton Bristol - 3004513
CD- ADHBC 9	Haivering Solar Farm Brentwood - 3134301
CD- ADHBC 10	Three Houses Lane North Herts - 3131943
CD- ADHBC 11	Redeham Hall Tandridge - 3146389
CD- ADHBC 12	College Farm Aldridge – 3148504
CD- ADHBC 13	Common Lane – 3140162 3140163* typo error in PoE
CD- ADHBC 14	Park Farm, Stratford on Avon 3029788

### **I. Appeal Decisions and Judgements – referenced by the Appellant**

<b>REF</b>	<b>DOCUMENT</b>
CD- ADAP1	Forge Fields
CD- ADAP2	Mordue
CD- ADAP3	Nuon
CD- ADAP4	Palmer
CD- ADAP5	Catesby Estates and SSCLG v Steer judgment CoA
CD- ADAP6	Barnwell
CD- ADAP7	R (on the application of William Corbett) v The Cornwall Council v Stephen Tavener
CD- ADAP8	Land North of Halloughton
CD- ADAP9	Cleeve Hill Solar Park - Decision Letter
CD- ADAP10	Cleeve Hill - Examining Authority's Report of Findings and Conclusions
CD- ADAP 11	Land West of Wolverhampton West Primary Substation 3292837
CD- ADAP 12	Cowley Road SODC Committee Report
CD- ADAP 13	Cowley Road Decision Notice January 2022
CD- ADAP 14	Land South of Monk Fryston Substation -3290256
CD- ADAP 15	Cranham Golf Course, St Marys Lane - 2227508
CD- ADAP 16	Land at Rowles Farm, Bletchington - 2207532

### **J. Appeal Decisions and Judgements– referenced by COG**

<b>REF</b>	<b>DOCUMENT</b>
CD- AD-COG1	POE Appendix 1 Hilfield Farm 3240825
CD- AD-COG2	POE appendix 2 Land at Redeham Hall, Surrey 3146389
CD- AD-COG3	POE Appendix3 Land at Barrow Green 3133066

### **ANNEX D DOCUMENTS SUBMITTED DURING THE INQUIRY**

DSDI 1 - Inspector's Site Visit Itinerary (PDF 311kb)  
 DSDI 2 - Heritage SoCG Summary table  
 DSDI 3 - Construction Traffic Management Plan Oct 2022 Rev A Complete  
 DSDI 4 - Appellant Opening Statement  
 DSDI 5- LPA Opening Statement  
 DSDI 6 APC Opening statement  
 DSDI 7 COG Opening Statement  
 DSDI 8 Member of Public Statement - Redacted  
 DSDI 9 Representation to PINs on Solar Farm  
 DSDI 10 Photos - tendered 20-10-22  
 DSDI 11 Statement of Common Ground -General

DSDI 12 GLVIA 3rd edition 2013  
DSDI 13 LPA Culled Google Maps Photos of permissive path routes  
DSDI 14 LEMP April 2021  
DSDI 15 Definitive Map Clarification Note 24.10.22  
DSDI 16 Definitive Map Photos 24.10.2022  
DSDI 17 Definitive Map Viewing Request - Aldenham PRoW 31 32 and 44  
DSDI 18 Draft Conditions Schedule 27.10.2022  
DSDI 19 Statement of Common Ground - Noise 26.10.2022  
DSDI 20 Transport Note 27.10.2022  
DSDI 21 Planning Statement 1355502  
DSDI 22 8398\_013 Landscape Strategy Plan  
DSDI 23 Note on Glint & Glare for Planning Condition 01.11.2022  
DSDI 24 Conditions 01.11.22  
DSDI 25 Hilfield Solar Farm Note 31.10.2022  
DSDI 26 Hilfield Substation Elevations REV03  
DSDI 27 Hilfield Storage Container Elevations 40ft REV03  
DSDI 28 Hilfield Proposed Site Plan REV19B  
DSDI 29 Hilfield Inverter Transformer Stations REV03  
DSDI 30 Hilfield Control Room Elevations REV03  
DSDI 31 Hilfield Battery Container Elevations 40ft REV03  
DSDI 32 TN06 Hilfield Solar Farm Speed Survey Summary 22.11.01  
DSDI 33 Note on FRA Condition 01.11.2022  
DSDI 34 8398\_013A Landscape Strategy Plan  
DSDI 35 Hilfield Inquiry Note Photomontages 02.11.22  
DSDI 36 Appellant Note on Capacity 03-11-22  
DSDI 37 Hilfield Conditions 04.11.22  
DSDI 38 I'm Your Man Limited v Secretary of State for the Environment  
DSDI 39 Aldenham Solar Farm Appeal Comments 2022\_v2  
DSDI 40 Aldenham Solar Farm Appeal Comments 2022\_v3\_page7  
DSDI 41 EE-01-P01 Site Location Plan  
DSDI 42 Closing Submissions on Behalf of the Combined Objectors Group  
DSDI 43 Closing Submissions on Behalf of the Combined Objectors Group  
Appendix 1  
DSDI 44 APC Rule 6 Closing Submissions  
DSDI 45 Appellant's Closing Submissions  
DSDI 46 Hilfield Conditions 03.11.22  
DSDI 47 LPA Closing Submissions Including Additional Oral Points  
DSDI 48 Email to Planning Inspector from 1-2 Medburn Cottages  
DSDI 49 Hilfield Solar Farm Appeal Additional Information PRoW Measurements

## **ANNEX 5 – DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY**

### **Further Comments on behalf of the Appellant, 12th May 2023**

In response to the invitation from PINS to comment on the six documents below by email of 4th May 2023, the Appellant wishes to draw attention to the following matters in respect of each document:

#### Revised draft National Policy Statement (EN-1), March 2023

A revised Draft of NPS EN-1 was published in March 2023. The Appellant considers that the guidance set out in EN-1 (and also EN-3 below) should be afforded significant weight as it is the latest statement of Government planning policy on solar farms.

Section 3.3 of the NPS sets out a useful synopsis of the need for new electricity infrastructure, noting that demand for electricity could more than double by 2050 (paragraph 3.3.2), whilst the specific need for additional generating plants and energy storage are highlighted (paragraph 3.3.4). The specific benefits of providing electricity storage are identified and explained (paragraph 3.3.6).

The role of wind and solar is addressed at paragraphs 3.3.20–3.3.24 – explaining that a ‘secure, reliable, affordable net zero system in 2050 is likely to be predominantly of wind and solar’. The role of storage is addressed at paragraphs 3.3.25-3.3.31 – explaining that ‘storage has a key role to play in achieving net zero and providing flexibility to the energy system’.

#### Revised draft National Policy Statement (EN-3), March 2023

The revised Draft of NPS EN-3 includes a specific Section 3.10 on ‘solar photovoltaic generation’. The Introduction highlights that solar is a key part of the government’s decarbonisation strategy (3.10.1), that solar has an important role in delivering the government’s goals for greater energy independence, restates the five-fold increase in solar deployment before 2035, and that the Government is supportive of solar that is co-located with other functions, which specifically identifies storage (paragraph 3.10.2).

#### Powering Up Britain – Energy Security Plan, March 2023

The Government published a suite of documentation under the Powering Up Britain in March 2023. This included an Energy Security Plan ('The ESP'). The Government states that 'Low cost renewable generation will be the foundation of the electricity system and will play a key role in delivering amongst the cheapest wholesale electricity in Europe' (page 34).

The ESP continues to examine the role of solar over pages 37/38, and it reaffirms the Government’s commitment to aim for 70GW of ground and rooftop capacity by 2035. It again states that this amounts to a fivefold increase on current installed capacity. The ESP then concludes on this matter 'We need to maximise deployment of both types of solar to achieve our overall target'.

The ESP considers ground mounted solar, which is noted as being readily deployable at scale (as is the case with the Proposed Development). It continues to say that the Government 'seeks' large scale solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land (the latter category being the case with the Appeal Site which is not BMV grade 1.8. The ESP restates that the Government considers that meeting energy security and climate changes goals is 'urgent' and 'of critical importance to the country', and further that 'these goals 'can be achieved together with maintaining food security for the UK'.

The ESP further encourages deployment of solar technology that delivers environmental benefits, with consideration for ongoing food production or environmental management. The Proposed Development would assist in delivering both food production through sheep farming, and environmental benefits through delivering a significant increase in Biodiversity Net Gain as was explained at the Inquiry.

APP/W1525/W/22/3300222 (Chelmsford, Essex) – 06022023

The appeal allowed a solar farm and BESS in the metropolitan Green Belt. The parallels with the Hilfield Appeal also concern the sites being currently farmland and both would be in place for 40 years.

Whilst clearly each Proposed Development needs to be determined on its own merits, it is noted that some considerations are very applicable to the Hilfield appeal. The Inspector noted that the then older draft NPS (September 2021) can be a material consideration (paragraph 78), that the Council had not allocated any sites for renewable energy (paragraph 84), that the Inspector afforded substantial weight to harm to the Green Belt in terms of inappropriateness and loss of openness (paragraph 87), and that whilst there is support for renewable energy projects in the Green Belt, it does not confer automatic approval (paragraph 90). Yet the benefits of renewable generation were held by the Inspector to be 'substantial' and the delivery of suitable renewable energy projects is fundamental to the transition to a low carbon future (paragraph 91), and that the solar farm requires grid capacity and a viable connection to operate (paragraph 92). Overall, these benefits were deemed to be of a sufficient magnitude to outweigh the substantial harm to the Green Belt and all other harm, and that national green belt policies would be satisfied (paragraph 93).

APP/V1505/W/22/3301454 (Herongate, Basildon), 05042023

The appeal allowed an addition to a solar farm which had previously been granted in the Green Belt. Again, whilst substantial weight was given to the harm to the openness of the Green Belt, on the basis of the weight applied in respect of climate change (paragraph 30), the Inspector did not need to even weigh the further benefits such as biodiversity and economic benefits in the very special circumstances balance (paragraph 31).

APP/C3240/W/22/3293667 (Telford, Shropshire), 27th March 2023

The appeal for a solar farm was allowed by the Secretary of State. Despite applying great weight to conserving and enhancing the landscape and scenic beauty of the AONB and further to the 'valued landscape' in the specific terms of Framework para 174(a) (paragraphs 13,14 and 30), in balancing the benefits of the proposal, he afforded significant weight to the production of electricity, and also significant weight to the provision of enhanced biodiversity planting and additional permissive footpath links.

### **LPA's response to additional documents submitted by the Appellant**

The Draft NPS' (En-1 and EN-3)

The consultation on these drafts closes on 25 May 2023. Thereafter the Government will need to examine the responses, issue a formal response, and publish revised drafts if necessary. Whilst the new drafts represent progress compared with the 2021 versions considered during the inquiry, given their status they can carry no more than limited weight at this time.

Draft EN-1 continues to affirm that the normal policy approach to the Green Belt applies. It recognises (para 5.11.37) that very special circumstances "may include the wider environmental benefits associated with increased production of energy from renewables and other low carbon sources". This is not in dispute; the disagreement is whether those (and other) benefits are sufficient in this case.

The changes to the section of draft EN-3 on solar photovoltaic generation appear to be presentational. Text has been split up into shorter paragraphs and the consideration of impacts is structured differently (it is now organized by reference to stages of the decisions making process rather than impact by impact).

"Powering Up Britain"

This is a high-level strategy which expressly builds on British Energy Security Strategy CD-NPP31 and the Net Zero Strategy CD-NPP8 and has a consistent message to other similar strategies and plans presented during the inquiry.

In respect of solar it says (p. 37-38):"The Government seeks large scale ground-mount solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land"

In the "forward look" section it mentions PD rights for rooftop solar, but nothing in respect of ground-mounted to suggest any change in policy direction.

Appeal decisions

The Appellant has provided three recent appeal decisions where solar development was allowed. In general, each case falls to be decided on its merits and the proposals, sites, and issues in each of these cases were different to the Butterfly Lane appeal. Taking each appeal in turn:

APP/W1525/W/22/3300222 (Chelmsford, Essex)

49.9MW solar farm in the Green Belt. It was concluded that there would be no harm to designated heritage assets and only negligible harm to one NDHA (para 27). The site comprised 6 fields clustered round the A130, with pylons and a water treatment works adjacent (para 30); this together with the existence of other locally approved solar farms was clearly material to the balance (para 89).

APP/V1505/W/22/3301454 (Herongate, Basildon)

A 3ha site which was part of a larger proposal - the remaining 35ha had already been approved by the neighbouring LPA (paras 3 and 4). The site formed approximately one quarter of a field, the rest of which would be covered with solar panels under the approved scheme. Therefore there would be limited additional harm to the Green Belt (paras 9, 19). This was a critical point in the planning balance (para 30).

APP/C3240/W/22/3293667 (Telford, Shropshire)

A SoS decision, allowing a 30MW (see IR para 5.15) solar farm against the recommendation of his Inspector. The site was not in the Green Belt, and furthermore the proposal was found to be in accordance with development plan as a whole (para 28). Note that SoS gave 'significant' (not substantial) weight to generation of electricity (para 29) – see para 75 of the LPA's closing submissions on this point.

### **Aldenham Parish Council Rule 6 party**

Revised draft National Policy Statement EN-1 (March 2023)

Revised draft National Policy Statement EN-3 (March 2023)

Powering up Britain: Energy Security Plan (March 2023)

The former two are drafts, and all three are of only peripheral relevance. They do nothing to alter the fundamental tests addressed in APC's closing submissions.

Notably, and in-keeping with this:

- a. The enhanced status of the Green Belt is re-iterated in EN-1 [5.11.2].
- b. It continues to be made plain that the Government is looking for solar farms to be developed on brownfield or industrial land: 'where possible, utilise previously developed land, brownfield land, contaminated land and industrial land' (EN-3 at [3.10.14]).
- c. It continues to be made plain that 'Applicants should explain their choice of site, noting the preference for development to be on brownfield and non-agricultural land' (see EN-3 at [3.10.6]). As previously highlighted, the Appellant has not done so.
- d. The Energy Security Plan maintains the focus on brownfield sites for ground-mounted solar: the Government is 'looking for development mainly on brownfield, industrial and low and medium grade agricultural land' (top of p.38). This allows for the possibility of medium grade agricultural land

(top of p.38) but clearly does not contemplate the Green Belt; no mention is made of the Green Belt whatsoever.

#### APPEAL DECISIONS

These are cherry-picked by the Appellant and not binding. All are fundamentally different to the present appeal.

APP/W1525/W/22/3300222 (Chelmsford, Essex)

There were other nearby solar farms: Material considerations were the grant of planning permission for two other nearby solar farms since permission was initially refused [2]. There was no harm to any listed buildings [22-23].

There was much less landscape harm: In Chelmsford the adverse impact was found to reduce to minor or negligible [35-48]. Here, the Appellant's own LVIA concludes that there is 'a high magnitude of major-moderate adverse effects for receptors within the Site' (CD-PA15 LVIA p.44). APC has already made submissions as to why arguments that such harm would reduce over time are unconvincing.

The decision is also an example of an appellant providing visual representations of the likely long-term visual effects relied on [36]; a notable and unhelpful omission here.

AAPP/V1505/W/22/3301454 (Herongate, Basildon)

There were other nearby solar farms: Approximately 35 hectares of surrounding agricultural fields had approval for a solar farm, including (i) approximately three quarters of the same field in which the appeal site was located being covered with solar panels, and (ii) three fields to the north being similarly affected [19].

The site did not concern heritage assets. The question of whether any benefits outweighed the harm did not arise. The site did not concern landscape harm [7]. The site was much smaller: Only 2.4MW [18]. Its effect on the Green Belt is not comparable. No public rights of way: The only public right of way was on the far side of another solar farm that already had permission [20].

APP/C3240/W/22/3293667 (Telford, Shropshire)

The site was not in the Green Belt. The question of 'very special circumstances' did not arise. The site did not concern heritage assets. The question of whether any benefits outweighed the harm did not arise. As a result, the scheme was found to be in accordance with the development plan [28]. That is not the case here.

#### **The Combined Objectors Group (COG) Rule 6 party**

The Combined Objectors Group (COG) Rule 6 party requests the Inspector to consider the following points with regards to the email received on 4 May 2023 concerning three additional appeal decisions as well as their comments

on the Revised draft National Policy Statement EN-1 (March 2023), Revised draft National Policy Statement EN-3 (March 2023) and Powering up Britain: Energy Security Plan (March 2023).

The COG is mindful that the Public Inquiry was formally closed on 4 November 2022 and no submissions were allowed to be submitted after the closing.

The COG wishes to respond in a lawful way but note that the Revised draft National Policy Statement EN-1 (March 2023) and Revised draft National Policy Statement EN-3 (March 2023) are still in draft form and are out to public consultation until 25 May 2023 and the Inspector should be mindful of this point.

#### Revised draft National Policy Statement EN-1 (March 2023)

The COG considers the most significant changes to this document relate to the critical national priority for increased offshore wind which whilst highly supported by the COG are not pertinent to this appeal. Nevertheless, although the document concludes that there is a critical national priority for the provision of nationally significant new infrastructure, the appeal site does not meet the size requirement for significant national infrastructure, as it is under 50MW in size.

#### Revised draft National Policy Statement EN-3 (March 2023)

It is noted that in paragraph 2.61 there is reference to specific renewable generation proposals below 50 MW being brought into the NSIP regime under section 35 of the Planning Act 2008. However, this appeal site is not listed on NSIP. Additionally, COG wishes to highlight paragraph 3.10.16 which emphasises the preference for solar farms on brownfield and non-agricultural land.

#### POWERING UP BRITAIN

The COG considers that there is nothing in the section “accelerating deployment of renewables”, nor elsewhere in the report, that should override the considerations put forward by the COG in the appeal, with regard to Green Belt, Heritage, Landscape and Visual Impact, agriculture, and the conclusions in COG’s planning balance.

#### APPEAL CASES

The COG considers that the appeal decisions submitted are late in terms of when they have been brought into the equation for this appeal process and are readily distinguishable from the appeal scheme.

APP/W1525/W/22/3300222

This appeal was for 49.9 MW, the largest of 3 sites in the Chelmsford area. The other two sites were 8MW and 36.7 MW totalling hundreds of acres near a huge reservoir and straddling the A130. None of the sites affect local

towns or residents, nor do they lead to coalescence, and the site in question only represents a small part of the vast Chelmsford Green Belt. Public footpaths are not used for pedestrian access.

This appeal is fundamentally different to the Butterfly Lane scheme as only 8MW will be located in Green Belt land whilst 36.7MW are adjacent, whereas the scheme in question is entirely within Green Belt land.

The solar arrays were said to be relatively modest in mass and footprint in their spacing, reducing the overall scale of the development. After decommissioning the land will be returned to its former condition, whilst the land subject of our appeal, as has been admitted, will never revert to agricultural use.

#### APP/V1505/W/22/3301454

This appeal site was for only 3 ha of an overall 38 ha site, plus underground cabling. Permission was already granted for 35 ha plus underground cabling which establishes a precedent. In the determination of "very special circumstances" different considerations applied because this was "the last piece of the jigsaw", and the cabling would not be visible. In view of the earlier permissions, the appeal was allowed on the basis of there being "limited additional harm." COG accepts this point and considers the fact that there is no extant permission for a solar farm on the Butterfly Lane site to be a material consideration and therefore the two schemes are not comparable. Furthermore, the site here only affected one footpath and one bridle way rather than the multiple PROWs which are the subject of this case.

#### APP/C3240/W/22/3293667

This appeal was for 30MW. This 98-acre site will only have 74 acres with panels and the land will be returned to agricultural use after decommissioning. The fact that plans exist to enhance the car park area so people can park and walk, highlights how different this is from the current case, where residents have direct pedestrian access from their homes. Additionally, whilst the site is located in an Area of Outstanding Natural Beauty (AONB) this scheme was not located on Green Belt land.



# Department for Levelling Up, Housing & Communities

[www.gov.uk/dluhc](http://www.gov.uk/dluhc)

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

## SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

## SECTION 2: ENFORCEMENT APPEALS

### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

## SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

## SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.