

## **Proof Of Evidence.**

### **Evidence of Nigel Cussen.**

Land East of Hawksworth and Northwest of Thoroton,  
Nottinghamshire, NG13 9DB.

On behalf of Renewable Energy Systems (RES) Ltd.

Date: April 2024 | Pegasus Ref: P24-0105

Appeal Ref: APP/P3040/W/23/3330045 | LPA Ref: 22/02241/FUL

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- only land near watercourses, including the appeal Site, is predicted to be in the low likelihood of BMV;
- and in general terms the land at the southern end of the Borough, moving into a high clay area, is expected to be the poorest.

10.59. Mr Kernon's response to the Rule 6 party sets out his conclusions at his section 6. Overall it is concluded that the BMV resource will be unharmed by the proposal.

10.60. Furthermore, this is not a situation where the level of need is so limited that if an alternative site were to be developed for solar in Rushcliffe, it would no longer be necessary to develop more, including the Site. In short, even if another better site were identified there would still be a substantial and urgent need for more and the assessment of the merits of the Appeal Scheme on this site would not be affected.

10.61. Moreover, any alternative site further afield could not make use of the grid connection offer that exists for the Site, and a fresh connection offer would therefore be required. Any such offer would be likely to be 5 years or more into the future. Thus any alternative site would be unable to deliver the same capacity in anything like the same timescale. In view of the tight and challenging timescale for delivering the Government's ambitious target for the deployment of new solar generating capacity, a delay of anything like that duration would mean that it was not a real alternative at all.

10.62. The Council has not identified any potential alternative site, let alone one that is suitable, available, preferable in terms of impacts and capable of meeting the same urgent need on the same timescale.

10.63. If the Inspector concludes that the adverse impacts of developing a solar farm on this site are outweighed by the benefits so that they are acceptable, the appeal should be allowed. That would remain the case even if the Council was able to show that it is also possible to develop another site elsewhere with fewer impacts. As ever, the issue is whether the proposed development is acceptable on this site, not whether this site is the best possible location for it.

### **Issue 5 – Whether flood risks have been adequately addressed**

10.64. The NPPF addresses flood risk in Chapter 14. That Chapter explains at paragraph 157 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 and support renewable and low carbon energy and associated infrastructure. Paragraphs 160 and 163 exhort local planning authorities to make positive provision for renewable and low carbon energy schemes and to approve applications where their impacts are, or can be made, acceptable. The very purpose of the appeal scheme is to support reductions in greenhouse gas emissions in the energy sector, thereby contributing to the primary objective expressed in Chapter 14 NPPF and National Policy Statements for energy infrastructure.

10.65. NPPF paragraph 165 provides that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk but recognises that development may be acceptable in such areas, provided they can be made safe for their lifetime without increasing flood risk elsewhere. Paragraph 169 recognises that in considering whether development could be located in areas of lower flood risk, wider sustainable





development objectives may be taken into account. Wider sustainable development objectives plainly encompass the urgent need for renewable energy projects which benefit from an existing grid connection offer.

- 10.66. A Flood Risk and Drainage Impact Assessment (titled Technical Appendix 4: Flood Risk and Drainage Impact Assessment) was submitted in support of the refused planning application. It provides an assessment of flood risk at the site that falls predominantly within low risk flood zone 1 with small areas of medium risk flood zone 2 and high risk flood zone 3a associated with watercourses and ditches that run through the appeal site. Mitigation measures were also proposed. 3.15 Paragraph 4.23 of the Flood Risk Assessment confirmed it has been prepared in accordance with National Planning Policy Guidelines and paragraph 4.25 that the authors of the Flood Risk Assessment are qualified drainage engineers with significant relevant experience.
- 10.67. The Local Planning Authorities delegated Officer report considers Flood Risk at the end of page 25 to the first paragraph of page 27 of that report. It clarifies the relevant policies from the local plan are Core Strategy policy 2 (Climate Change) as well as Local Plan Policy 17 (Managing Flood Risk) and 18 (Surface Water Management).
- 10.68. The officer's findings were as follows:
- a. Most of the appeal site lies within Flood Zone 1, defined as land having a less than 1 in 1000 annual probability of river or sea flooding. Small areas of the site falls within Flood Zone 2 and 3a which follow the watercourse/drains within the site. However, only a small area of solar panels are located in flood zone 2 and 3a;
  - b. In relation to Flood Risk Vulnerability and Flood Zone 'Compatibility', the Local Planning Authority accepted the development passed both the Sequential Test and the Exception Test. Furthermore, the Local Planning Authority also accepted a small proportion of the solar array in Flood Zones 2 is compatible with respect to flood risk;
  - c. Rain falling onto the photovoltaic panels would runoff directly to the ground beneath the panels and infiltrate into the ground at the same rate as it does in the site's existing greenfield state. Existing drainage features would be retained, and the site would remain vegetated through construction and operation of the solar installation to prevent soil erosion;
  - d. The photovoltaic panels would not result in a material increase in surface water run-off and proposed Sustainable Drainage Strategy (SuDS) arrangements would result in a betterment in comparison to the sites current drainage arrangement because extreme flows are not currently managed;
  - e. A SuDS was proposed, involving the implementation of sustainable drainage in the form of swales at the low points of the application site to intercept extreme storm run-off flows which may already run offsite and, as previously mentioned, are a betterment in comparison to the sites current drainage arrangement that does not manage or mitigate extreme storm run-off flows. The swales do not form part of a formal drainage scheme for the development but are provided as a form of 'betterment';
  - f. The proposed drainage strategy would ensure that the development would have a negligible impact upon site drainage, and surface water arising from the developed site would mimic the surface water flows arising from the site prior to the proposed



development. The natural drainage regime would be retained except in the extreme storm event when a benefit is achieved by reducing the extreme storm run-off flows;

- g. Nottinghamshire County Council is the Lead Local Flood Authority had raised no objections to the scheme from a surface water or flood risk perspective. It should be noted that under the Flood and Water Management Act of 2010 the LLFA has the duty of leading the coordination of flood risk management from surface water, groundwater and ordinary watercourses in the local area. LLFAs are county councils and unitary authorities. LLFAs are required to prepare and maintain a strategy for local flood risk management in their areas, coordinating views and activity with other local bodies and communities through public consultation and scrutiny, and delivery planning. They must consult Risk Management Authorities and the public about their strategy. LLFAs are also responsible for carrying out work to manage local flood risks in their areas. Under the Land Drainage Act of 1991 they have the power to regulate ordinary watercourses to maintain a proper flow by issuing consents for altering features on ordinary watercourses and enforcing obligations to maintain flows in watercourses. They undertake a statutory consultee role providing technical advice on surface water drainage to local planning authorities regarding major developments (10 or more dwellings) and play a lead role in emergency planning and recovery after a flood event;
  - h. The Environment Agency has not objection to the scheme on the basis that finished flood levels would be set no lower than 18.20m AOD and the finished floor levels of other vulnerable infrastructure would be set no lower than 300mm above ground levels; (i) Overall, the development was acceptable in terms of flood risk and drainage and in accordance with relevant planning policy
- 10.69. Since the Local Planning Authority refused planning permission they have since confirmed in paragraph 7.10 of their Statement of Case that this position has changed on the basis that the Council consider that a sequential test had not been submitted with the refused planning application. Thus, the Local Planning Authority are now of the opinion that their previous conclusion was incorrect when applying National Policy on sequential tests. The Council has requested the Appellant to submit a sequential test either at the Statement of Case or Proof of Evidence stage, and the Council will correspondingly respond as to whether the sequential test is passed at either the Proof of Evidence or Proof rebuttal stages. It suggests that the search area for the sequential test is requested to be Borough-wide, noting the scale of development proposed.
- 10.70. The Appellant considers this to be unreasonable behaviour by the Local Planning Authority due to the fact flood risk was not raised as a reason for refusal; sequential test and exception test were both consideration and information was provided within the flood risk and drainage impact assessment; Government advice is clear the sequential and exception test information can be presented in any format; the Local Planning Authority confirmed the Sequential Test and Exception Test information provided was accepted and that both tests were past. At no point was additional flood risk, sequential test or exception test information requested by the Local Planning Authority. There are also no objections from statutory consultees Nottinghamshire County Council as Lead Local Flood Authority or the Environment Agency.
- 10.71. It should be noted that any flood risk to users of the Appeal Site would be low: the site would attract on average one vehicle per month for maintenance when the development is operational. Furthermore, the Scheme would have a negligible effect on flooding on the site.