

Summary Proof Of Evidence.

Evidence of Nigel Cussen.

Land to the West of Wood Lane and Stocking Lane, Kingston Estate, Gotham.

On behalf of Renewable Energy Systems (RES) Ltd.

Date: March 2024 | Pegasus Ref: P24-0106

Appeal Ref: PO340/W/23/3329235 | LPA Ref: 22/00319/FUL

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1. Introduction

1.1. My name is Nigel Cussen. My Professional qualifications and experience are set out at section 1 of my Proof of Evidence.

1.2. My Proof of Evidence has been prepared on behalf of Renewable Energy Systems (RES) Ltd ('The Appellant') and relates to the planning appeal at Kingston Solar Farm.

1.3. The application details are as follows:

“Installation of renewable energy generating solar farm comprising ground-mounted photovoltaic solar arrays, together with substation, inverter stations, security measures, site access, internal access tracks and other ancillary infrastructure, including landscaping and biodiversity enhancements.” (LPA Ref 22/00319/FUL)

1.4. Section 2 of my evidence sets out the planning authority's stated reasons for refusal.

1.5. In my evidence I refer to the landscape evidence of Andrew Cook.



2. The Appeal Site and its Surroundings and the Appeal proposals and Planning History

- 2.1. Section 3 of my evidence outlines the appeal site and surroundings with reference to the Statement of Common Ground. Section 4 clarifies the appeal proposals and section 5 outlines the relevant planning history, with cross references made to the Statement of Common Ground prepared for the appeal.

3. Planning Policy Framework

3.1. Section 6 identifies the planning policies and guidance that will be of most relevance to the determination of this Appeal.

The Development Plan

3.2. As agreed in the Statement of Common Ground with the LPA, the statutory Development Plan applying in respect of the Appeal Site comprises:

- Rushcliffe Local Plan Part 1 – Core Strategy
- Rushcliffe Local Plan Part 2 – Land and Planning Policies
- The Gotham Neighbourhood Plan
- The East Leake Neighbourhood Plan

National Policy and Guidance

3.3. I refer specifically to the following material consideration in my evidence subsequently:

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- Overarching National Policy Statement for Energy (EN-1) as designated on 17 January 2024;
- National Policy Statement for Renewable Energy Infrastructure (EN-3) as designated on 17 January 2024.
- Climate Change Act 2008;
- Climate Change Act (2050 target amendment) Order 2019;
- UK Parliament declaration of an Environmental and Climate Change Emergency in May 2019;
- Energy White Paper: Powering our Net Zero Future published in December 2020;
- 'Achieving Net Zero' published by the National Audit Office in December 2020;
- Net Zero Strategy: Build Back Greener, dated October 2021;
- British Energy Security Strategy, dated 7 April 2022;
- 'Powering up Britain' suite of documentation, dated March 2023;



- The latest version of the 'Digest' of United Kingdom Energy Statistics, July 2023.

Supplementary Planning Guidance

3.4. I note the following documents and will refer to the weight to be attached to them later in my Evidence:

- Rushcliffe Borough Climate Change Strategy in 2009, updated in 2021 and reviewed again in November 2023. (Core Document CD 4.5)
- Rushcliffe Borough Solar Farm Development Planning Guidance, dated November 2022 (Core Document CD 4.6)

3.5. I also note that the Council are currently preparing a Solar Sensitivity Study for the Borough. The Council's Statement of Case for the appeal states that this will be made available to all parties if it has been finalised for public publication by the date of the appeal Inquiry. Accordingly the appellant reserves its position to comment further on this document in due course.

4. Main issues and other material considerations

Reason for Refusal

- 4.1. I consider that the LPA's single Reason for Refusal raises a number of interrelated points with regard to alleged harm upon the Green Belt, by reason of impacts on openness, visual amenity and impacts on users of public rights of way and bridleways.
- 4.2. I note that the reason for refusal does not include reference to wider impacts including landscape harm.

Main Issues

- 4.3. The main issues for the appeal, confirmed at the CMC are as follows:
- Issue 1 – The effect of the proposal on the openness and purposes of the Green Belt;
 - Issue 2 – The effect of the proposal on the character and appearance of the landscape;
 - Issue 3 – The effect of the proposal on users of the public rights of way network; and
 - Issue 4 – Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.
- 4.4. In respect of Issue 1, I have noted Mr Cook's evidence that overall "there would be moderate (adverse) harm to the openness of the Green Belt though this would be limited and highly localised within the context of the local woodland landscape". I agree with this.
- 4.5. In terms of effect on the purposes of the Green Belt, I have concluded that the appeal scheme would result in limited harm to only one of these five purposes (purpose (c), safeguarding the countryside from encroachments), but that the strategic performance and function of the remaining Green Belt would remain intact.
- 4.6. Overall, I confirm that the development would be inappropriate development in the Green Belt and would by definition therefore result in harm to the Green Belt. As to the nature and extent of this harm, I consider the Appeal Scheme would result in moderate adverse harm to openness of the Green Belt, and that it would further result in moderate harm to the Green Belt by encroachment only, one of the five purposes of the Green Belt. In respect of the other four purposes, I do not consider there to be harm in this instance.
- 4.7. With regard to issue 2, I conclude that there are some beneficial effects of the proposal on the landscape and where there are negative effects these are at worst moderate, the adverse effects are highly localised and limited to the immediate site, due to the topography and existing woodland.
- 4.8. On the third issue, I conclude that the impact of the proposal on the users of the public rights of way will be limited to a small section of the bridleway close to the proposal and in this location the impact will be mitigated by appropriate enhanced hedgerow planting.



- 4.9. In my consideration of the fourth main issue, I note that all harm to the Green Belt should be afforded substantial weight, as is consistent with Graveley Lane, in the planning balance, but I consider that a moderate level of harm, as would occur here, is likely to be more easily outweighed by the benefits of the scheme.
- 4.10. I also note that the LPA Planning Officer's advice was that "the very special circumstances clearly outweigh the harm caused by the inappropriate development and other harms" (Core Document CD 2.1, paragraph 248).
- 4.11. I return in Section 11 of my evidence to consider this harm to the openness of the Green Belt, together with any other harm, and whether this harm clearly outweighed by other considerations.
- 4.12. I return in Section 11 to consider this harm to the openness of the Green Belt, together with any other harm, and whether this harm clearly outweighed by other considerations.
- 4.13. I have identified the relevant local and national planning policies and guidance and assessed the proposals against these. In section 5 of my evidence, I have concluded that the proposed development complies with the Development Plan policies taken as a whole.

Other Material Considerations

- 4.14. In accordance with paragraph 11 of the NPPF, proposals which accord with an up to date development plan should be approved without delay and under Section 38(6) of the Planning and Compulsory Purchase Act 2004 applications should be determined in accordance with the development plan unless other material considerations indicate otherwise. I address other material considerations in section 9 of my evidence.
- 4.15. I include in these other considerations the significant national policy impetus supporting increased generation of renewable energy and the NPSs, NPPF and NPPG which support this principle.
- 4.16. I also note the considerable body of evidence of appeal decisions issued over the last several years where the increasing government energy policy imperative to accelerate the delivery of renewable or low carbon energy schemes have been a key material consideration and policy driver.
- 4.17. I have considered matters raised by third parties and I have concluded that all material considerations raised have been addressed in the planning application and have been addressed in respect of the relevant planning policies.
- 4.18.

5. Planning Balance Summary, and Conclusions, including whether “very special circumstances” are demonstrated

- 5.1. Section 11 of my evidence explains how I believe the decision maker should approach the determination of this appeal, before going on to identify any material considerations that need to be weighed in the overall planning balance.

The Decision-Making Framework

- 5.2. The starting point for the determination of a planning application or appeal is the Development Plan. The planning system is “plan led” and planning law required that applications for planning permission must be determined in accordance with the Development Plan unless other material considerations indicate otherwise.
- 5.3. Before reaching a conclusion on this matter I turn to consider whether, in terms of national Green Belt policy and **Policy 21**, there are Very Special Circumstances which clearly outweigh the potential harm to the Green Belt and any other harm resulting from the Appeal Scheme.

Material Considerations and Weight

- 5.4. In considering the weigh that should be afforded to each consideration in the overall planning balance, I apply the following scale ranging from higher to lower weight (which should be equated to no weight):
- Substantial
 - Significant
 - Moderate
 - Limited

- 5.5. Such weight may also be regarded ‘positive’ as a benefit, ‘adverse’ as harm, or where applicable of ‘neutral’ effect.

- 5.6. Set out below is an assessment of each of these material considerations following be a conclusion on whether the benefits outweigh any adverse impacts identified when taken as a whole.

Material Considerations which are Benefits

1. Increasing Renewable Energy Generation

- 5.7. I am of the opinion that, due to the imperative to deliver renewable energy schemes which can assist in decarbonising the UK’s electricity supply, that the benefit of a 49.9MW solar farm’s renewable energy generation should be afforded **substantial** weight in determining this appeal.

2. Climate Emergency

- 5.8. Through the generation of renewable energy, I consider that the appeal scheme will contribute towards assessing the climate emergency. By providing a positive, deliverable action on these statement of intent, I consider that the declaration of climate emergencies at both the national and local level is a material consideration which should be afforded **substantial** weight in the planning balance.

3. Energy Security

- 5.9. Given the above recent policy statements, I am of the opinion that delivering energy security is both 'urgent' and of 'critical importance' to the country and as such should be afforded very **substantial** weight in the planning balance.

4. Best Available Technology

- 5.10. In my opinion, that the appeal scheme benefits from the utilisation of the most efficient technology currently available and this is a material consideration of **moderate** beneficial weight in determining this appeal.

5. Good Design

- 5.11. Given this positive approach to design and incorporating mitigation measures, I consider that **moderate** weight should be afforded to this consideration in the planning balance.

6. Lack of Alternative Sites

- 5.12. I consider that the lack of suitable alternative sites with the benefits of a grid connection offer, is a material consideration of **significant** weight in this appeal.

7. Biodiversity Net Gain

- 5.13. Overall, as noted in the revised ecology summary the appeal scheme will result in a Biodiversity Net Gain over 120% for habitats and 22% for hedgerows through the implementation of the appeal scheme as agreed in the Statement of Common Ground with the LPA (Core Document CD 7.9). I further note the size of this net gain will far exceed the national requirements of the Environment Act 2021.

- 5.14. I attach **moderate** weight to this consideration as a benefit of the Appeal Scheme.

8. Green Infrastructure

- 5.15. The proposed enhancements to the existing landscape structure will greatly improve green infrastructure, as set out in section 3 of Mr Cook's evidence. I attach **moderate** weight to this consideration as a benefit of the Appeal Scheme.

9. Farm Diversification

- 5.16. The NPPF at paragraph 84 acknowledged that the diversification of agricultural businesses should be enabled.

5.17. The diversification of the agricultural farmland increases the profitability of the landowner's farming business with the ability to continue a reduced level of agricultural use on the appeal site.

5.18. I attach **moderate** weight to this consideration as a benefit of the Appeal Scheme.

10. Economic Benefits

5.19. The appeal scheme also represents a significant financial investment, with benefits to the local economy during the construction period including from the temporary jobs created (both direct jobs on-site and indirect/induced roles in the wider economy).

5.20. Annual business rate contributions in the region of £164,000 pa will also benefit the local economy through income to the local area over the 40 year life of the project.

5.21. I also attach **limited** weight to this consideration as a benefit of the Appeal Scheme.

Material Considerations which are harms

1. Openness and purposes of the Green Belt

5.22. In Section 7 of my Evidence, I have already considered the potential harm of the appeal scheme to the openness and purposes of the Green Belt and have concluded that the development would be inappropriate development in the Green Belt, and would by definition therefore result in harm to the Green Belt.

5.23. I have noted that the proposal only affects one of the 5 purposes of the Green Belt, namely encroachment. I have explained that I consider the degree of harm in this respect is moderate and that the strategic performance and function of the remaining Green Belt would remain intact.

5.24. I have identified moderate (adverse) harm to the openness of the Green Belt though this would be limited and highly localised within the context of the local woodland landscape.

5.25. All such harm to the Green Belt should be afforded **Substantial adverse weight** in the planning balance.

2. Effect on Landscape

5.26. In respect of Landscape and Visual matters, which Mr Cook explains in his evidence I have concluded that there are some beneficial effects of the proposal on the landscape and where there are negative effects these are at worst moderate, the adverse effects are highly localised and limited to the immediate site, due to the topography and existing woodland.

5.27. The appeal scheme has a proposed operational lifespan of 40 years, and that at the end of this period the appeal scheme would be decommissioned, the equipment removed from the site and the restored site would then continue in agricultural use. The appeal scheme is therefore considered to be a temporary development.

5.28. Whilst I acknowledge that the duration of 40 years is a significant period of time, it is nevertheless not permanent and will be completely reversible when the planning permission expires. This is in notable contrast to many other forms of development, such as housing or

commercial buildings, where such development would be a form of built development that would endure in perpetuity.

5.29. Having regard to all the foregoing, and given Mr Cook's evidence on the nature and extent of landscape and visual effects in which he concludes that there would be limited adverse visual effects and minor adverse effects in terms of landscape character of the site itself and the immediate environs, but no change to the character of the wider area.. I consider that these matters should be afforded **limited adverse** weight.

3. Effect on Public Rights of Way

5.30. I have concluded that the impact of the proposal on the users of the public rights of way will be limited to a small section of the bridleway close to the proposal and in this location the impact will be mitigated by appropriate enhanced hedgerow planting.

5.31. All existing PROWs will be protected and enhanced where possible, and PROW widths will remain, or be wider than stated in the Definitive Mapping supplied by Nottinghamshire County Council.

5.32. Furthermore, the proposed development will introduce a new Permissive Path to the area enhancing public access. In the case of *Graveley Lane*, the Inspector and Secretary of State agreed that the provision of permissive paths within the scheme should be afforded moderate positive weight as they would provide a benefit to local residents and other walkers in the countryside (*Core Document CD 5.20, paragraph 33*).

5.33. Having regard to all the foregoing, and given Mr Cook's evidence presented, I consider that these matters should be afforded **limited adverse** weight.

Material Considerations with are Neutral

5.34. I consider that the following material considerations should be afforded neutral weight in the overall planning balance.

- Effects on Heritage
- Effects on flood risk
- Effects on residential and visual amenity
- Effects on transport matters

5.35. I therefore consider that the impact of the appeal scheme is acceptable in all of the above matters. I note that the acceptability of impacts identified above supports the overall suitability of the site for the development and, in the context of Paragraph 163 (b) of the NPPF (Core Document CD 3.1 A), provides positive weight in favour of granting planning permission for the proposal.



Overall Conclusions and Green Belt 'Very Special Circumstances' Balance

- 5.36. In my Evidence, I have given individual consideration to the reasons for refusal, relevant planning policy and other material considerations. In having examined the benefits outlined above, and also the moderate harm to the openness of the Green Belt (which should be afforded substantial weight), and to any other harms such as in respect of Landscape effects. I consider that 'very special circumstances' are clearly demonstrated by the substantial benefits arising from the scheme. As such, as was concluded at *Graveley Lane*, "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, and therefore very special circumstances exist" (*Core Document CD 5.20*, paragraph 39).
- 5.37. I have concluded that the proposals accord with the relevant Local and National planning policy and I have identified that there are material considerations that weigh in favour of granting planning permission. There are no material considerations which indicate planning permission be refused.



6. Planning Conditions

- 6.1. I am of the opinion that appropriate control over the form of the Proposed Development can be achieved through the imposition of planning conditions.
- 6.2. A set of conditions on a without prejudice basis is being agreed with the LPA.

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

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