



**Town and Country Planning Act 1990  
Section 78 Planning Appeal**

## **Hertsmere Borough Council Statement of Case**

**Appeal by:**

Elstree Green Limited

**Proposal:**

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.

**Appeal Site:**

Land North Of Butterfly Lane, Land Surrounding Hilfield Farm And Land West Of Hilfield Lane Aldenham

**June 2022**

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## 1.0 INTRODUCTION

1.1 This Statement of Case has been submitted on behalf of Hertsmere Borough Council ('the Council', as the Local Planning Authority (LPA)). This statement has been prepared to defend an appeal lodged under section 78 of the Town & Country Planning Act 1990 (as amended). The appeal has been lodged against the refusal of the LPA to grant permission for development comprising:

*"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."*

1.2 The appeal relates to Land North Of Butterfly Lane; Land Surrounding Hilfield Farm; and Land West of Hilfield Lane, Aldenham. The application was refused by the Council, following resolution by its Planning Committee<sup>1</sup> on the 19<sup>th</sup> November 2021 for two reasons which are as follows:

*"1. The proposal would be an inappropriate development that would be harmful to the openness of the Green Belt in which it would be located. The Council considers that the benefits that the scheme would bring are not such as would amount to very special circumstances sufficient to outweigh the harm to the Green Belt, even when the wider environmental benefits associated with the increased production of energy from renewable sources have been taken into consideration (pursuant to paragraph 151 of the National Planning Policy Framework 2021). As such, the proposal would be contrary to paragraphs 147 and 148 of the National Planning Policy Framework and contrary to Policy SADM26 (Development Standards in the Green Belt) of the Hertsmere Local Plan (Site Allocations and Development Management Policies Plan) 2016.*

*2. The proposal would cause less than substantial harm to the significance of the following neighbouring designated heritage assets by reason of its impact on their*

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<sup>1</sup> Planning Committee sat on 11<sup>th</sup> November 2021 ([Agenda for Planning Committee on Thursday, 11 November 2021, 6.00 pm \(moderngov.co.uk\)](https://www.moderngov.co.uk/2021/11/11/agenda-for-planning-committee-on-thursday-11-november-2021-6-00-pm))

*settings: Slades Farmhouse (listed building, Grade II, entry 1103614), Hilfield Castle (listed building, Grade II star, entry 1103569), Hilfield Castle Lodge (listed building, Grade II, entry 1103570), Aldenham House Registered Park and Garden (Grade II, entry 1000902) and Penne's Place (Scheduled Monument entry 1013001). The public benefits of the development would not be sufficient to outweigh the less than substantial harm that would be caused to the significance of those designated heritage assets, and therefore the proposal is considered unacceptable, pursuant to Policy CS14 (Protection or Enhancement of Heritage Assets) of the Hertsmere Local Plan (Core Strategy) 2013 and pursuant to paragraph 202 of the National Planning Policy Framework 2021.”*

1.3 The Committee Report is included as an addendum to this Statement (**Appendix 1**). It is noted that the Planning Committee overturned the Officer Recommendation which was to grant permissions subject to the satisfactory completion of a S106 Agreement to secure planning obligations and subject to the imposition of conditions. The same list of recommended conditions will be provided to be considered in the event that the Inspector determines to allow this appeal (**Appendix 2**).

## **2.0 SITE DESCRIPTION**

2.1 The appeal site is described in detail in section 2.0 of the Committee Report (page 104) which will not be duplicated for the purposes of this statement. Section 7 of the Committee Report (page 111) provides a summary of planning history that is of relevance to the site. The development proposals are described in detail in Section 3 of the Committee Report (page 106)

2.2 The site is located entirely within the Green Belt. The development impacts on the setting of 4 Listed Buildings and a Registered Park & Garden. A number of public footpaths bisect the site.

## **3.0 POLICY CONTEXT**

### **THE DEVELOPMENT PLAN**

3.1 Insofar as is relevant to this appeal, the development plan comprises the following documents:

- Core Strategy (adopted 2013)
- Site Allocations & Development Management Policies Plan (adopted 2016)

3.2 The following Core Strategy Policies are considered to be of particular relevance to the appeal:

- 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
- CS17 Energy and CO2 reductions
- CS22 Securing a high quality and accessible environment

3.3 The following Site Allocations & Development Management Policies Plan policies are considered to be of particular relevance to the appeal:

- SADM11 Landscape Character
- SADM22 Green Belt Boundary
- SADM26 Development Standards in the Green Belt
- SADM29 Heritage Assets
- SADM30 Design Principles

### **OTHER MATERIAL CONSIDERATIONS**

#### **NPPF**

3.4 Chapter 13 and Chapter 14 of the NPPF are of particular relevance in the determination of this appeal. They relate to “*Protecting Green Belt Land*” and “*Meeting the Challenge of Climate Change, Flooding and Coastal Change*” respectively.

## **NPPG**

3.5 The Council will refer, in particular, to the following sections of the Planning Practice Guidance: Green Belt, Renewable & Low Carbon Energy and Heritage Assets.

## **SUPPLEMENTARY PLANNING GUIDANCE/ADVICE**

3.6 The Council will make reference to the following supplementary planning guidance:

- Hertsmere Climate Change and Sustainability Action Plan (October 2020)
- Hertsmere Climate Change and Sustainability Interim Policy Position Statement (2020)

## **LEGISLATION**

3.7 The Council will make specific reference to section 66 of the Planning (Listed Buildings & Conservation Areas) Act 1990, which apply to all decisions concerning listed buildings and provides specific protection for buildings and areas of special architectural or historic interest.

3.8 The policies, guidance and legislation referred to above will be explored in detail in the Council's proof of evidence and will be referred to in the Public Inquiry Hearings.

## 4.0 THE COUNCIL'S CASE

### **REASON FOR REFUSAL 1 – GREEN BELT**

4.1 Reason for refusal 1 relates to inappropriate development in the Green Belt. It is the Council's case that the proposed development would amount to inappropriate development that would be harmful to the openness of the Green Belt. The NPPF at paragraph 147 provides that *"inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances"*.

4.2 The proposed development is considered to represent an urbanising influence and conflicts with the fundamental aim of Green Belt policy which is to keep land permanently open. The proposed development prejudices the Green Belt purpose of safeguarding the countryside from encroachment.

4.3 The Council, in their evidence, will refer to the Supreme Court judgement in respect of Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council [2020] (**Appendix 3**) and Sales LJ in Turner [2016] EWCA Civ 466 (**Appendix 4**) which together show that the concept of openness is a broad policy concept and refers back to the fundamental aim of Green Belt policy referred to above. The courts held that visual effects can be a consideration in determining a development's impact on openness. The Council will also refer to Central Bedfordshire Council V SSCLG [2017] EWHC 1952 (ADMIN) (**Appendix 5**). This judgement is relevant because it held that an amelioration in visual impact cannot mitigate spatial harm and visual impact cannot be used to demonstrate that no impact or harm is caused. It was held that imperceptible development can still have a spatial impact. These matters will be explored in more detail and applied to the appeal case in the Council's evidence.

4.4 The Appellant acknowledges in their statement of case that *"an impact on openness"* would arise from the development. The Council refutes the Appellant's claim that the *"proposed development would not materially harm the sense of perceived openness of the Green Belt due to the low-profile nature of the proposed development"*. The Council, in their proofs of evidence, will show that material harm can be apportioned to both the perceived sense of openness and actual Green Belt openness. The Council will show that harm arises from the development when considering openness from a point of view of spatial and visual impacts. The visual harm arising from the development relates to visual amenity as well as



the visual aspect of openness. Whilst the reasonably low profile nature of the development is not disputed, a maximum height of three metres is not regarded to be insignificant, and is exacerbated by the sheer expanse of the development.

4.5 It is the Council's case that there will be adverse effects to the landscape character and visual receptors that cannot be mitigated through screening or planting. The Council, does not accept that the proposed enhancements will have a positive impact on the wider site to the extent that they would outweigh that harm.

4.6 It is the Council's case that, whilst the proposal is for a time-limited permission, the siting of solar panels for a period of 35-years would create long-term harm and is a duration that clearly conflicts with the permanence objective of Green Belt policy.

4.7 Whilst it is acknowledged that there is support in planning policy and guidance for renewable energy schemes, this support is caveated that they can only be acceptable where the environmental impacts arising from the development are acceptable. In this instance environmental harm arises from the development when considering its impact on the Green Belt and the countryside and the nearby heritage assets. On this basis there is a conflict with these supportive.

4.8 The Council will show that the application submission has not satisfactorily demonstrated very special circumstances. Whilst there are benefits arising from the scheme these do not individually or cumulatively clearly outweigh the harm to the Green Belt. It is the Council's case that the benefits of the scheme do not amount to very special circumstances and do not outweigh the harm to the Green Belt and the other harm caused. The Council's evidence will refer to linked appeal references 3136031 and 3136033 which were called in by the Secretary of State (**Appendix 6**) and the Inspector's decision to dismiss the Appeals upheld. The Appeal decisions and subsequent referral to the SOS follow a similar approach to that taken by the Council in the refusal to grant permission for the development that is now the subject of this Appeal.

## **REASON FOR REFUSAL 2 - HERITAGE**

4.9 It is the Council's case that the proposals would cause less than substantial harm to the significance of the following heritage assets:

- Slades Farmhouse (listed building, Grade II, list entry no. 1103614);
- Hilfield Castle (listed building, Grade II\*, list entry no. 1103569);
- Hilfield Castle Lodge (listed building, Grade II, list entry no. 1103570);
- Aldenham House Registered Park and Garden (Grade II, list entry no. 1000902); and
- Penne's Place (Scheduled Monument, list entry no. 1013001).

4.10 The less than substantial harm arises from the detrimental impact that the development would have to the significance each of these heritage assets derives from its setting. The public benefits associated with the development are not sufficient to outweigh the harm caused to the heritage assets.

4.11 The apportionment of less than substantial harm has been verified by no less than three consultees comprising Historic England, The Gardens Trust and Place Services (the Council's Heritage Consultants). The nature of the harm afforded to each of the assets is discussed in turn below.

### **Heritage assets affected**

#### **Slades Farmhouse**

4.12 Slades Farmhouse is the focal point of the farmstead surrounded by its associated farmland. The proposed solar panels to the north and east of the historic farmstead are harmful in removing part of the historic agrarian landscape surrounding the farm to which the farmhouse has, and historically had, a functional link. The appreciation of the farmhouse set within an agricultural landscape, both in views from and towards the farmhouse and historic farmstead, is an integral element of the farmhouse's setting. The application results in some loss of the agrarian landscape around the farm and impacts on views towards the farm which allow an appreciation of its significance.

### Hilfield Castle & Hilfield Lodge

4.13 Hilfield Castle is a country house set within landscaped grounds with the rural landscape beyond, and Hilfield Lodge is located at the entrance to the estate set alongside a lane with a rural character. The landscape surrounding these assets is open, rural and agrarian in character. Although the extent of the designed parkland around the Castle has reduced, the agrarian openness remains as the prevailing character. The proposed development will remove part of the rural character of their settings, affect the isolated character and undermine the appreciation of historic associations with the surrounding landscape, all of which can be appreciated in views, including Viewpoint 1 of the LVIA.

4.14 The northern extent of the former parkland of Hilfield Castle extends into the area proposed to be developed with PV panels. This area is now arable fields, however, it is of historic interest and may have archaeological interest. The development of part of the former parkland is considered to be harmful.

4.15 With regards to Hilfield Lodge, its setting will be compromised by developing the fields to the west and by altering the historic rural character of Hilfield Lane which permits an appreciation of the historic function of the Lodge. The proposed PV panels have been set back from Hilfield Lane opposite the Lodge, however, this mitigation does not remove the harm. The resulting loss of the rural, agrarian landscape and character of the rural lane undermines the setting of the Lodge.

### Aldenham House Registered Park & Garden

4.16 Aldenham House and Stable Block are the principal buildings within the Aldenham House Registered Park and Garden. Their immediate setting is that of the designed landscape and it is accepted that the buildings themselves will not be affected by the development. The wider agricultural landscape surrounding the rural designed landscapes of Aldenham House Park makes a contribution to its significance. It provides a contrast between the functional agrarian landscape and the more ornamental and status-driven functions of parkland, groves and pleasure grounds and other features within the landscape park, as well as permitting an appreciation of the working agricultural countryside which supported the estate.

4.17 The later established woodland to the south of Butterfly Lane and the landscape buffer as proposed is insufficient to mitigate the harm caused by the loss of the agrarian land surrounding the Park, due to the loss of the character of the wider agrarian landscape which has historically provided the context to the designed landscape.

#### Penne's Place Scheduled Monument

4.18 Penne's Place Scheduled Monument is located within Aldenham House Registered Park and Garden and comprises the remains of a medieval moated site. The impact of the proposed development is lessened due to the secluded and well-screened nature of the asset. However, the loss of part of the agrarian landscape to the north of Butterfly Lane, which has historically formed the setting of the Scheduled Monument, results in harm to the significance of the heritage asset. The wider agrarian landscape contributes to an understanding of the historic rural context of the site prior to the construction and laying out of the later Aldenham House and Park.

#### **Public Benefits**

4.19 Paragraph 202 of the NPPF clarifies that *"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."*

#### Renewable energy

4.20 There are clearly public benefits arising from the provision of renewable energy and the decreased reliance on fossil fuels. The Council does not dispute the benefits arising from the generation of renewable energy and this benefit is held in great weight. The NPPF at paragraph 151 states that *"very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources"*. The NPPF makes clear that the onus is on the developer to demonstrate it and the use of the words *"may include"* suggests that such benefits do not always amount to very special circumstances and introduces the possibility that renewable energy projects will not always be acceptable in the Green Belt.

### Landscape Enhancements

4.21 The Appellant references landscape enhancements as a benefit of the scheme. Given the wider harm to the landscape and the openness of the Green Belt, very limited weight is afforded to this “benefit”.

### Biodiversity and Ecological Enhancements

4.22 The Appellant claims a 89.99% Habitat Biodiversity Net Gain (BNG) in their statement of case. This appears to be a new figure prepared to support the appeal as the Planning Statement that supported the application claimed 39.54% based on Metric 2.0. The revised planning application for the appeal site (planning application reference 22/0948/FULEI) provides a different figure. If the 89.99% is correct, as it is in excess of the 10% BNG expected of development, it should be held in significant weight in the planning balance.

### Improving Soil & Agricultural Land Quality and Aiding Farm Diversification

4.23 The improvements to soil and agricultural land quality and the aiding of farm diversification are benefits but they are held in limited weight because these benefits could be realised without the need for a solar farm through alternative agricultural practises or another farm diversification scheme and are benefits that are unlikely to be felt beyond the farm itself.

### Permissive Footpaths

4.24 The benefits associated with the provision of two new permissive rights of way are held in limited weight due to the overall harm to the footpath network arising from the scheme. Large sections of the footpath network will pass through “tunnels” formed by the proposed fencing. As explored elsewhere in this statement, the enjoyment of the existing footpath network will be compromised by the scheme. Furthermore, one of the new permissive rights of way is merely a diversion of an existing footpath and is subsequently not regarded as a net improvement.

### Education Strategy

4.25 The education strategy will most likely be limited in its reach and impact. Furthermore the education provided is not unique to the appeal site and could subsequently be offered in

the absence of the development proposals. The Education Strategy is subsequently held in limited weight.

### Economic Benefits

4.26 There will be economics benefits associated with the construction phase of the development arising from the creation of jobs and construction spend. Given the temporary nature of these benefits, this is held in limited weight.

4.27 The Appellant cites business rates as a public benefit arising from the scheme. In the absence of full details of the rateable value and any relevant rates relief it is hard to apportion weight to this “benefit”. Business rates are liable to change over time, for example, rates payable on renewable energy schemes have been frozen from 2023. It would be unusual to use a tax to justify inappropriate development. Notwithstanding this, this benefit is held in limited weight due to the fact that the Local Authority will keep only half of any rates collected.

### Heritage Balance

4.28 The NPPF at Paragraph 199 onwards provides guidance on “*considering potential impacts*” in respect of Heritage Assets. Paragraph 199 states 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.*” Paragraph 200 continues by explaining that (inter alia) “*Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.*”

4.29 It is the Council’s case that, as per the NPPF guidance, substantial weight should be afforded to the harm to the significance of the heritage assets by reason of impact on their settings given the importance of the assets in question. Whilst there are public benefits associated with the scheme these are not considered to outweigh the harm to the heritage assets in question.

## **5.0 PLANNING BALANCE AND CONCLUSION**

5.1 Section 38 (6) of the Planning & Compulsory Purchase Act 2004 states that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Local Planning Authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

5.2 There are considered to be conflicts with the following policies and areas of guidance:

### **Core Strategy**

SP1

SP2

CS13

CS14

CS17

CS22

### **Site Allocations & Development Management Policies**

SADM11

SADM26

SADM29

SADM30

5.3 It is noted that the policy framework surrounding renewable and low carbon energy follows the principle that planning permission should be granted provided that impacts are acceptable. At all levels of policy and guidance surrounding renewable and low carbon energy there is a caveat that the environmental impacts need to be acceptable. On this occasion the impacts are not acceptable, the impact on the Green Belt, the impact on the landscape and rural character of the area, and the impact on the Heritage Assets are considered to amount to unacceptable environmental impacts that weigh heavily against the scheme.

5.4 The Council, in their proofs of evidence, will refer to Appeal reference 3266505 (**Appendix 7**). This is an example of an appeal that was dismissed on the basis that a proposed solar farm conflicted with the development plan when considered as a whole together with the NPPF. The benefits of the scheme were afforded significant weight yet the material considerations were not sufficient to outweigh the conflict with the development plan and harm to the countryside, nearby heritage assets and the potential impact on buried archaeological remains.

5.5 The development proposals are contrary to the guidance in the NPPF together with Core Strategy policies SP1, SP2, CS12, CS13, CS14 and CS22 and Site Allocations & Development Management Plan Policies SADM11, SADM26, SADM29 and SADM30 for the reasons described above. Whilst there are policies and guidance that clearly support the provision of renewable energy projects, the proposals are in conflict with these due to the environmental harm arising from the scheme. The proposals are subsequently contrary to Core Strategy policy CS17 and the advice in the NPPF and NPPG relating to renewable and low carbon energy.

5.6 The appeal schemes conflicts with an up-to-date development plan and there are no material considerations of sufficient weight to justify a departure from the plan. The development is not considered to represent a sustainable form of development. There are no material considerations of sufficient weight to justify a departure from the development plan and in those circumstances, the Council considers that the appeal should be dismissed.



## **6.0 DOCUMENTS**

6.1 So far as possible, the documents which may be referred to during the course of the Public Inquiry have been referenced in the foregoing statement. There are however a number of areas of uncertainty in relation to the Appellant's proposals and position such that the Local Planning Authority reserves the right to refer other documents as may become relevant during the course of these proceedings.

6.2 The documents listed within this statement may be inspected on the Council website:

<https://www6.hertsmere.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QMMLTNIF00P00>

## **7.0 INDEX OF APPENDICES**

Appendix 1 – Committee Report

Appendix 2 – Suggested Conditions

Appendix 3 - Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council [2020]

Appendix 4 - Sales LJ in Turner [2016] EWCA Civ 466

Appendix 5 - Central Bedfordshire Council V SSCLG [2017] EWHC 1952 (ADMIN)

Appendix 6 - Appeal references 3136031 & 3136033 and SOS Decision

Appendix 7 - Appeal reference 3266505