APP/N1920/W/22/3295268

Land North of Butterfly Lane, Land Surrounding Hilfield Farm and Land West of Hilfield Lane, Aldenham

---

CLOSING SUBMISSIONS

on behalf of Hertsmere Borough Council

Note on referencing
After the first mention, all participants in the inquiry are referred to by their initials in these submissions. No discourtesy is meant.

INTRODUCTION

1. The fundamental question which will almost certainly prove determinative in this appeal is this: does the benefit of renewable energy generation (together with other progressively less significant benefits) provide the very special circumstances necessary to justify inappropriate development in the green belt?

2. It would appear that the Secretary of State is yet to answer the above question in the affirmative, having regard to the SoS decisions which are before you. On the basis of the evidence which has been presented and tested over the course of the last three weeks, there is no reason to depart from that consistent approach in determining this appeal. The precedent value of the same to others operating in the industry has already been touched on by Ms Sedgley; the grant of permission here would undoubtedly presage a steam of similar proposals on green belt land, being cheaper than land outside precisely because of the strong planning constraints.

3. This is a case which has attracted an enormous amount of public opposition. It is easy to see why. 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

utterly 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.

4. 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.

5. The appeal scheme would connect to the national grid. It would therefore produce a national benefit, and not one which will 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 located in Hertsmere, just because the Appellant has signed a connection agreement with Elstree substation.

6. This is of course a case where officers recommended that permission should be granted. The Appellant has predictably used this fact to full advantage by repeatedly taking witnesses to various passages within the officer's report to committee. But it is one analysis, which has not been 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.[1] Members' views, expressed on behalf of the community they serve, have been represented in this appeal through independent experts Maria Kitts and Laura Ashton. It is submitted that members were right to reach the conclusion that they did, for the reasons given by those witnesses. These submissions will demonstrate why that is the case.

[1] EB XiC

GREEN BELT HARM

Approach

7. The NPPF confirms that:

    a. Inappropriate development is, by definition, harmful to the green belt and should not be approved except in very special circumstances ('VSC');

    b. VSC will not exist unless harm by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations;

    c. Any harm to the green belt should be given "substantial weight" in the planning balance.

8. It is settled law that all development in the green belt is inappropriate unless it falls within the categories set out in paragraphs 149-150 NPPF, in other words these are closed lists.[2]

9. It is also settled law that the reference in paragraph 148 NPPF to "any other harm resulting from the proposal" means any other harm and not just harm to the green belt.[3] 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.

---

[2] Fordent Holdings v SSCLG [2013] EWHC 2844 (Admin), paragraph 19

[3] Redhill Aerodrome Ltd v SSCLG [2014] EWCA Civ 1386

Green belt harm

10. It is common ground that the proposed solar development would be inappropriate development in the green belt and therefore harmful by definition.

11. 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

12. The scheme would cover 85ha of the green belt. This a very large area of land which is easily bigger than the nearest villages (Letchmore Heath, Patchett's Green, Aldenham).

13. The solar arrays would be arranged in repeating rows and would stand 3m high. PB 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 will be in the order of 100,000 individual panels.[4] This is a huge number which belies the Appellant's characterisation of the spatial impact as "limited".[5]

14. In addition to the arrays, there would be 36 shipping containers each 12m in length and approximately 3.5m high (including the 0.609m high concrete bases).[6] These will 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,[7] within a fenced compound. The rest would be dotted throughout the site and accessed via crushed stone access tracks which snake through the development. I have been unable to find an indication of their combined length, but it is apparent from the drawings that it would not be insignificant. It should be noted that the access tracks and inverters/transformers are located close to or alongside public rights of way in a variety of locations. The development would be enclosed within 2.2m high

[4] CD-NPP18 Draft EN-3 p. 79 para 2.47.2

[5] PB proof para 13.34

[6] DSDI 27 (storage containers) and DSDI 31 (battery containers)

[7] DSDI 26

perimeter fencing, with recurring posts for CCTV cameras. All these elements would have a spatial impact on the openness of the green belt.

15. 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 will allow some sense of space between rows, in reality this will only be appreciated one row at a time, in places where the arrays are perpendicular to a public right of way. Even in those situations, the perimeter fencing will still have an impact and the solar development in the wider field of view will still appear as a mass. The visualisation at fig. 9.6 of AK's appendices demonstrates this very clearly.

Openness: visual

16. The Appellant's LVIA concludes that there will be major-moderate adverse effects on visual receptors within the site throughout the 35 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"[8] but the choice of words lacks credibility in the context of a site of this vast size.

17. Several well-used public rights of way pass alongside and through the site. The experience of walking these paths will be fundamentally changed.[9] 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. No doubt there are people who would find this to be an interesting and not unwelcome experience; the huge public opposition to the scheme suggests that this is probably not the majority view.

[8] PB proof paras 13.33 and 13.34

[9] See the definition of a "large" scale of change used in the LVIA CD-PA15 p. 8, note that this is the scale of change that would occur for visual receptors within the site see LVIA p. 40

18. The proposed mitigation structure planting 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: she concluded that the proposed planting of hedgerows and trees would 'compound' the loss of openness caused by the built elements of the solar development.[10] 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.

19. There is finally the issue of "channelling" or "tunnelling" of views, which the Appellant refuses to accept will occur, but which was considered likely by all relevant witnesses for the opposing parties. There are a number of locations where public rights of way will 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 will inevitably be 'channelled' along the right of way corridor. You have also heard evidence about the effect of this aspect of the design on perceptions of safety and comfort, and this is a factor bearing on the overall sense of openness which should be taken into account.

Purposes

20. It is also common ground that the proposal would conflict with the third identified purpose of the green belt in paragraph 138 NPPF, 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. You have also heard evidence that the second green belt purpose (preventing neighbouring towns from merging into one another) would be compromised,[11]

[10] CD-ADAP15, DL para 8

[11] EB XIC

and support for this is found in the 2017 stage 1 green belt assessment, the relevant parts of which are appended to the green belt assessment at the back of the Appellant's planning statement.[12]

21. In accordance with national policy, Paul Burrell rightly accepts that substantial harm should be given to each separate aspect of green belt harm (inappropriateness, openness and purposes).[13] No other conclusion can properly be reached.

Reversibility

22. 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 35 year operational period followed by 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 PB agreed, any decision made in that future time would be considered against a baseline of development on the site,[14] and if a solar farm use continued to be profitable there is no reason why an application would not be made to renew it.

23. In any case, as PB agreed, a 35 year operational period (plus a one year decommissioning period) is an extensive period of time.[15] The point has been made many times during the inquiry that this scheme would last for a generation, and that many participants will not live to see the end of the operational period.[16] Harm to the green belt would persist throughout that time. There are several appeal decisions before you where the Secretary of State has given limited weight

[12] See pdf pages 85 and 90 in particular

[13] PB in response to Inspector's questions

[14] PB XX by APC

[15] PB responding to Inspector's questions

[16] For example, Mr Jefferis said it would "see him out"

to the temporary nature of solar development for these reasons,[17] 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

24. 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 you demonstrate.

25. The Appellant has produced an alternative site assessment (ASA),[18] showing that a site search applying 8 exclusionary criteria was carried out within a 5km radius of Elstree substation. Although you have heard evidence as to the choice of a 5km radius, this is really a red herring. The real problem with the ASA is not the radius of the search area, but rather the fact that only the Elstree substation was considered. This is despite the fact that the Appellant tells you, in the DAS, that this is "one of several solar farm battery storage proposals being brought forward by the Applicant across England and Wales".[19] Ms Sedgeley's closing submissions referred to the ASA at paragraph 26(d); the full quote is "In 2019 the Applicant engaged with National Grid to identify substations within England and Wales which had spare capacity. Elstree substation was one of those identified". We have no way of knowing how many had capacity, or where they are. The Appellant

[17] See eg. CD-ADHBC10 Land Soth of Three Houses Lane at para. 19 SoS DL (30 year period is long term, duration and reversibility should be given limited weight); CD-ADHBC11 Land at Redeham Hall, para. 11 SoS DL (25 years a significant period of time, temporary nature of proposal should only be given limited weight); CD-ADBC12 Land to the west of College Farm, para. 10 SoS DL (25 years a significant length of time, prospect of eventual restoration does not justify discounting the harm caused).

[18] CD-PA44

[19] CD-PA5 p. 18 (pdf 22) para 6.1

suggests in the ASA that its "primary starting point was to first and foremost avoid any site located in the Green Belt"[20] – 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 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).[21] As a result, a green belt location was a cast iron certainty from the outset and no other option has been or indeed could have been considered.

26. The deficiency in the Appellant's ASA is similar to that seen in some of the appeal decisions which have been submitted to the inquiry:

    a. 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".[22] The Secretary of State agreed with the Inspector on this point.[23]

    b. 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

[20] CD-PA44 p.2 ara 1.2

[21] PB XX by LPA

[22] CD-ADHBC12 Land to the West of College Farm, para 119 IR

[23] Para 19 SoS DL.

Green Belt".[24] It is notable that the Appellant did not heed this warning from 2020, bearing in mind the decision concerns a nearby site.

c. 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.[25] This did not convince the Inspector that the appeal proposal needed to be in the green belt; he 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".[26] He 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.[27]

d. 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 while avoiding the harmful effect".[28] 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".[29]

27. 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

---

[24] CD-ADCOG1 Hilfield Farm, para 24 DL

[25] CD-ADHBC11 Land at Redeham Hall, para 18 IR

[26] CD-ADHBC11 Land at Redeham Hall, para 60 IR, confirmed in para 16 SoS DL

[27] See para 28 DL.

[28] CD-ADCOG3 Barrow Green Farm, para 17 SoS DL

[29] Para 47 IR

location. This is a factor which must count against the scheme when considering whether VSC exist.

28. The above decisions also serve to expose the flaw in the Appellant's repeated 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",[30] and the fact that the borough is significantly behind the national average in terms of generation of energy from renewable sources.

29. None of this means that a site must be found within this borough for a solar farm of just below NSIP scale. It does not justify the Appellant's failure to consider alternative grid connections which are outside the green belt.

30. There is no quota or target for local authorities to meet in respect of renewable energy generation.[31] 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.[32] 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

31. Elected members did not identify landscape and visual impact as being a reason for refusing planning permission, and accordingly the LPA has not sought to challenge the Appellant's assessment of the likely landscape and visual effects. The Rule 6 parties have done so, and you will of course need to reach your own

[30] CD-NP4 PPG on Renewable and low carbon energy, para

[31] See LA proof

[32] As agreed by AK and PB in XX by COG

conclusions in light of all the evidence you have seen as heard, which will also include the impressions formed on your site visits.

32. So 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, I do not repeat those points.

33. It is common ground that the appeal scheme would result in a major-moderate adverse effect on the Borehamwood Plateau LCA for 10 years, reducing to a moderate and adverse effect for the remaining 25 years the solar farm will be in place. The development would cover a significant portion (11%) of the LCA.[33]

34. Given the scale of the site, the harmful landscape and visual effects should carry significant weight.

ANY OTHER HARM – HERITAGE

35. The impact on designated heritage assets is the subject of the second RfR. Harm to the significance of heritage assets must be properly weighed and balanced against public benefits in the paragraph 202 NPPF 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

36. The approach to the assessment of heritage impact is largely common ground. In cross examination Gail Stoten agreed the following principles:

[33] AK XX by COG

a. Section 66[34] 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.[35]

b. The NPPF reflects s. 66, providing that great weight must be given to the conservation of designated heritage assets, and this is irrespective of whether the identified harm is substantial or less than substantial.[36]

c. 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.[37]

d. The weight to be given to the harm is not uniform. This is consistent with paragraph 199 NPPF which confirms that "the more important the asset, the greater the weight should be".[38] Thus harm to assets identified in the NPPF as being "of the highest significance" (including Grade II* listed buildings and scheduled monuments) should carry more weight than an equivalent level of harm to a Grade II listed building.

e. Whist greater wight 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.

f. Under s. 66 harm to the fabric of a listed building and harm to its setting are treated equally. The "setting" is defined as the area in which the asset is experienced,[39] and it is important to consider how the experience and appreciation of a heritage asset is affected by development in its setting.

[34] Of the Planning (Listed Buildings and Conservation Areas) Act 1990

[35] See CD-ADHBC2 Barnwell Manor Wind Energy Ltd v East Northamptonshire DC [2014] EWCA Civ 137, paras 22-24, 28

[36] CD-NPP1 NPPF para 199

[37] See CD-ADAP4 Palmer v Herefordshire Council [2016] EWCA Civ 1061, para 5

[38] Palmer, para 5

[39] CD-NPP1 NPPF Glossary (p. 71)

This is confirmed in Historic England's GPA 3,[40] which is guidance that should be taken into account in the determination of this appeal.

g. 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

37. The concept of 'cumulative change' was the subject of much debate during the heritage evidence. The concept is referred to in both GPA3 and the PPG. In GPA3 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."

38. GS 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 clearly relevant here: all of the designated heritage assets in play have been subject to unsympathetic development in their settings. It applies with particular force to Slade's 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).

39. As MK explained,[41] 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

[40] CD-NPP11 GPA 3 p. 4 para 9 (first block of text above the bullet points); p. 8 steps 2 and 3; p. 11 para 30

[41] XIC

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,[42] thereby increasing the overall degree of harm which is found to occur.

40. MK's understanding of the guidance on cumulative change is consistent with the NPPF which:

    a. Seeks to avoid harm and promote enhancement to significance;[43]

    b. Confirms that heritage assets are irreplaceable and should be conserved so that they can be enjoyed by existing and future generations;[44]

    c. Identifies that 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",[45] and therefore plainly wants applicants and decision makers to identify which aspects of the existing setting are negative rather than simply treating them as neutral 'baseline'.

41. GS' suggestion that the GPA3 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 roundly rejected. This is given as one example of a situation where development will further detract from significance.[46]

42. It is clear from GS' assessment that she has treated past unsympathetic development in the setting as reducing the level of harm which would be produced

[42] This was how GS characterised the issue at points in her XIC and XX

[43] Para 189

[44] Para 189

[45] CD-NPP1 NPPF glossary (p. 71)

[46] As GS accepted in XX by COG

by the development. She confirmed this in terms during my cross examination.[47] 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 para 202 balance (even giving the necessary great weight). That is obviously contrary to policy and guidance. The logical consequence of her 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.

43. 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 will sit alongside the existing negative elements of setting. As GS accepted, the effect of past unsympathetic development in the setting may be to make the parts which remain intact more important or precious.[48]

Measures to mitigate or reduce harm

44. 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.[49]

[47] In respect of Slade's farmhouse, GS identified past changes in the setting which she regarded as having diminished the contribution of the appeal site to the significance of the farmhouse (loss of working farm complex, loss of associated landholding, unsympathetic modern commercial development) – see GS proof paras 3.25 and 3.11. In reaching her conclusion that the solar farm development would cause a low level of less than substantial harm, she confirmed that these past unsympathetic changes had been treated as reducing the impact of the proposed solar development and resulting in her assessment that harm would be at a low level.

[48] This point was also put to MK in xx by the Appellant

[49] CD-NPP11 p. 14

45. 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 from development. From an early stage it was the LPA's assumption that the Appellant would seek to introduce that amended scheme into this appeal, either as Wheatcroft amendment or as an alternative proposal to be considered. For reasons which are not clear, when this did eventually happen it was so late in the process that the amendment was not permitted.

46. The evidence before you shows that:

    a. The purpose of removing field 1 from the resubmission scheme was to address the LPA's second RfR by further reducing the harm to heritage assets;[50]

    b. 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;[51]

    c. On GS' and MK's assessment harm would still occur to Hilfield Castle if field 1 was removed (as both find that development of the land to the north of the Castle identified by GS 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. Therefore, the removal of field 1 from the scheme would (i) completely avoid harm to Hilfield Lodge and (ii) reduce the harm further in respect of Hilfield Castle; grade ii*

    d. GS confirmed that she would have preferred field 1 to be removed from the appeal scheme because it would reduce the level of harm to heritage;

    e. The submitted planning statement for the resubmission application (which would have been confirmed as accurate through the signing of a

[50] DSDI-21 Planning Statement for application 22/0948/FULEI, para 7.48

[51] Para 7.49

declaration on the application form) 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".[52] In other words, an identical renewable energy benefit is claimed from both schemes.

f. PB suggested that the figures in the resubmission Planning Statement might need to be revised,[53] however he could not say with certainty that the resubmission scheme would be unable to generate as much electricity as the appeal scheme.[54] He could not say how many panels would be installed in either scheme.[55] There is no clear evidence before you as to precisely how much electricity either scheme would be capable of exporting to the grid in the absence of a power plant component limiting the exported electricity to 49.9MW. Mr Humphreys has indicated this morning that it is a simple case of adding up inverters, this has not been led in evidence and tested and I caution against placing much weight on this; if it is right then query why a power plant controller is needed to ensure 49.9MW cap? All we have in evidence is the submitted information, which indicates no difference. If there is a difference then there is no evidence as to how significant it is. Even if Mr Humprhey's is right and a conclusion can be drawn as to relative generating capacity based on numbers of inverters, it can be noted that there are just two inverters in field 1.

47. 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.

[52] DSDI-21 Planning Statement for application 22/0948/FULEI, para 1.3

[53] XX by LPA

[54] XIC

[55] XX by COG

48. 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

49. All the heritage experts who have provided evidence to the inquiry agree that there would be harm to the significance of Hilfield Castle, Hilfield lodge and Slade's Farmhouse. All except GS agree that there would also be harm to Aldenham House RPG. MK and Jacob Billingsley also conclude there would be some harm to the scheduled monument of Penne's Place moated site.

50. At the beginning of the inquiry all the heritage experts agreed a table summarising their assessments of the level of less than substantial harm ('LTSH') identified for each of the heritage assets they had assessed.[56] None of the witnesses departed from these stated positions during their oral evidence, and therefore this document remains an accurate summary of the respective positions.

51. The LPA relies on the evidence of MK in full, and considers that GS 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) her erroneous approach to the issue of cumulative change, discussed above, and (ii) her focus on intervisibility and the availability of views, which leads her to pay insufficient regard to wider aspects of the experience and appreciation of heritage assets from within their settings.

52. The key points arising in respect of the individual assets are as follows.

[56] CD-ID8i

Hilfield Castle (Grade II)*

53. 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 concept of cumulative change is relevant here, and 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.

54. You will have formed a view on the site visit (and through the photographic material) as to the extent to which the experience and appreciation of this prominent[57] building will be affected by the transformation of parts of its setting from open undeveloped land to solar farm, and the effectiveness of proposed mitigation planting particularly in winter views - although information on this is limited.

55. It is common ground between MK and GS that the harm would be "low" in the spectrum of LTSH, although GS' conclusion is arrived at after netting off the heritage benefits of new specimen trees. It is noted that other experts have identified a higher level – most notably JB whose evidence was tested at the inquiry and who came across as a careful and thorough witness.

Hilfield Lodge (Grade II)

56. Again, 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 (following MK's pre-application advice), this has not gone far enough and harm remains, essentially for the reasons given by MK which relate to the loss of the agrarian surroundings and erosion of the historic illustrative value of the land as part of a country estate. JB's assessment is based on similar considerations.

[57] MK proof para 4.31

Although GS agrees LTSH, the reasons for the level of harm she identifies are opaque in her proof and were not significantly clarified through her oral evidence.

Slade's Farmhouse (Grade II)

57. GS has underestimated the degree of harm arising because

    a. She wrongly reduced the level of assessed harm by reference to previous unsympathetic changes to the setting of the asset, contrary to the approach required by GPA3;

    b. She attached particular weight to fluctuations in the landholding associated with the tenancy of Slade's farmhouse, and ignored the relevance of continuous ownership by the Aldenham Estate and the consequent control exerted over the land, which is obviously an important factor in its long and undisturbed agricultural use;

    c. She has focussed particularly on the intervisibility between Slade's farmhouse and field 20 immediately opposite it and has not paid sufficient attention to effects on experience and appreciation of the building in the wider rural landscape.

58. GS' assessment of harm also factors in heritage benefits arising from the double hedge feature, which she sees as significantly beneficial. It logically follows that, if that benefit is stripped out, she would conclude an increased level of harm.

Aldenham House (RPG)

59. GS' approach to this heritage asset is hard to understand. She considers that the agricultural land in field 20 immediately opposite the main gates into the RPG makes a contribution to significance through "historic illustrative value as a country estate"[58], but denies any such contribution from any other part of the agricultural land to the north which falls within the appeal site – even though that

[58] GS proof para 5.42

land is also part of the Aldenham Estate and therefore has the same historical associations and continuity of agricultural use.[59]

60. Contrary to the guidance in GPA3, GS has focussed narrowly on the area of land that is visible from the gates of the RPG and in so doing has underestimated the effect of the appeal scheme.

61. Of particular relevance is a public right of way using footpaths Aldenham 051 and Aldenham 044 which leads directly out of the RPG, across Butterfly Lane and into field 16 of the appeal site, where unscreened views of solar panels will be immediately apparent as shown on the landscape strategy plan. That path then leads up alongside solar development in field 15 and between solar development in field 14. Users of those paths are moving between the RPG and its setting, bringing the concept of dynamic or kinetic views into play. On arriving at or leaving the RPG boundary they will experience the change between the agrarian character of the setting (which is illustrative of the country estate) and the distinctly designed landscape of the RPG. GS 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, and she is alone in holding this view.

Penne's Place moated site (SM)

62. GS' error in respect of Penne's Place was again the choice of too narrow a focus. She considers that significance only derives from the changes brought to the moated site through its 19th century integration into the parkland of the Aldenham Estate, and denies any contribution from the agricultural land to the north which is illustrative of an earlier period.

63. There is no justification for this. GS agreed that it is important to understand different layers of development and change over time.[60] Historic mapping shows that prior to the integration of the moated site into the parkland, it was

---

[59] As agreed by GS in XX by LPA

[60] GS XX by LPA

surrounded by agricultural land, and indeed at one stage it was held in the same tenancy as Slade's farmhouse.[61] The idea that the agricultural land to the north of the asset holds no historic illustrative value[62] cannot be sustained.

64. The 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.[63]

<u>Heritage benefits</u>

65. At the instigation of GS, two new elements were added to the proposed landscaping drawings: (i) specimen trees within fields 1 and 5 to "give clearer legibility to these areas as having formerly been parkland"[64] associated with Hilfield Castle, and (ii) a 'double hedge' feature immediately to the west of Slade's farmhouse to re-establish the "legibility of the former line of Sawyer's Lane"[65] - a feature shown on historic mapping which is no longer present.

66. Although described as mitigation measures in GS' proof she confirmed that these features were intended as enhancements which she had offset against harms in an internal balance rather than mitigation measures which would reduce the harm caused by the solar development.[66] As Mr Beglan and Ms Sedgley have observed, it will be important to bear this in mind in the balance so as not to have any double counting.

67. So far as the parkland trees are concerned, MK's view was that this would only be a slight enhancement, and GS confirmed that the weight of that enhancement

---

[61] See GS proof para 3.6 and plate 3

[62] GS XX by LPA

[63] See MK appendix B p. 39-40 views 10 and 11 and landscape strategy plan rev A

[64] GS proof para 6.46

[65] GS proof para 3.29

[66] GS XX by LPA

would only start to be felt during the 35 year operational period and would be clearer afterwards.

68. The double hedgerow feature at Slade's Farmhouse was poorly thought out from a landscaping perspective, and has now been amended in the new landscape strategy plan to include information about the height at which the hedges should be maintained, following GS' evidence that if the effect of the double hedge was to reduce or remove views between Slade's farmhouse and field 20 that would have a small adverse effect on significance.[67] A section of proposed structural planting has also been removed immediately to the north to carry the line of Sawyer's Lane further, following MK's evidence that the planting shown on the earlier plans would inhibit the legibility of the feature.[68] However, the re-established route would still 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. Even with an interpretation board (which would clearly be necessary for anyone other than GS to understand the purpose of the feature[69]), the weight to be given to this feature as a heritage benefit is negligible.

69. In totality the heritage benefits proposed are very limited.

Weight to be accorded to heritage harm

70. 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. PB's mathematical approach to the task of applying weight to heritage harm defied rational explanation, was not heralded in his written evidence, and finds no support whatsoever in any policy or guidance. His conclusion of moderate weight is clearly unsound.

[67] GS XX by LPA

[68] MK XX by Appellant

[69] GS said in XX by LPA that if she looked the double hedge feature 'blind' she would identify it as a former trackway

71. LA is right to give substantial weight to the assessed impacts on heritage bearing in mind:

    a. the statutory duty for listed buildings and the content of national policy makes clear that (like green belt) heritage is a 'higher order' consideration;

    b. Two of the assets affected (Hilfield Castle and Penne's Place moated site) are "assets of the highest significance" under the NPPF;[70]

    c. 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

72. 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 the appeal scheme. If VSC are to be found, it will be on this basis and not because of any of the other benefits, either alone or in combination.

73. The LPA considers that this benefit attracts significant weight in the planning balance, but not the substantial weight argued for by the Appellant.

74. 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 NPPF does not prescribe any particular weight to the generation of renewable energy. In addition to not defining renewable energy, or solar specifically, or certain scales

[70] CD-NPP1 NPPF para 200

of solar, as "not inappropriate", the government has not seen fit to amend the NPPF to prescribe weight - notwithstanding the wider context of climate crisis and issues with energy security.

75. In all of 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 being given. In fact, taking the SoS decisions, "substantial" weight has only been given to this factor on one occasion.[71] In the remainder of cases the SoS has given "significant" weight[72] and, in one case, "great" weight.[73]

76. The weight to be given to the generation of renewable energy should not be increased by reference to Hertsmere's performance against the national average, as suggested by the Appellant in cross examination. I have already explained why in the section above dealing with the (lack of) justification for a green belt location. Constraints have to be taken into account. Furthermore, the adopted Climate Change and Sustainability Strategy indicates that a strategic approach is considered appropriate, rather than encouraging speculative development on the green belt.[74] Indeed the strategy also 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.[75]

77. The inquiry has been provided with a significant number of energy policy and strategy documents which provide general support for the delivery of renewable

[71] CD-ADHBC 9 Havering Grove Farm, para 19 SoS DL;

[72] CD-ADHBC 10 Land South of Three Houses, para 202 SoS DL;

CD-ADHBC 11 Land at Redeham Hall, para 13 SoS DL;

CD-ADHBC12 Land W of College Farm, para 26 SoS DL

CD-ADHBC 13 Land at Common Lane, para 8 SoS DL

CD-ADHBC 14 Land at Park Farm, para 14 SoS DL

[73] CD-ADHBC 8 Green Farm, para 13 SoS DL

[74] CD-HSPD5 p.8 – the local plan is identified as the mechanism for identifying areas suitable for the deployment of renewable energy projects, including within strategic housing allocations.

[75] P. 2

energy projects. None of these are instruments of planning policy,[76] they are high level documents which cover a number of sectors and technologies.

78. The recent net zero strategy suggests a preference for offshore wind over solar,[77] and the most recent document of all, the British Energy Security Strategy (April 2022), contains a proposal to strength planning policy for solar "in favour of development on non-protected land" and to encourage large sale projects to locate on previously developed or lower value land where possible.[78] 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

79. The Appellant has calculated biodiversity net gain of 90% in area units and 25% in linear units.[79] 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 green wedge.[80] The degree of net gain that would be achieved is not particularly surprising given that the land is currently in arable use.

80. 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 eg. green belt harm, and

[76] PB XX byu LPA

[77] CD-NPP 8 Build Back Greener – see p. 103; wind mentioned 110 times in the document compared to 24 mentions for solar; PB agreed that offshore wind is a "focus" but rightly pointed out that all renewable technologies were encouraged.

[78] CD-NPP31 p. 19

[79] CD-PA29 BNG metric 3.0 report, pdf p. 8

[80] See the BNG 3.0 metric report p. 4-6 (landscaping elements considered) and identification of areas given over to modified and neutral grassland respectively by way of habitat creation (which accounts for 461 of the 584 biodiversity units post-development)

partly because the open areas which are delivering that BNG are provided in part to mitigate the harm that the appeal scheme would cause:

a. the skylark area was originally going to be covered in solar arrays[81] but these were removed for reasons of residential amenity[82] and for the amenity of Butterfly Lane[83];

b. The Hilfield green wedge was also originally going to be covered in solar arrays,[84] but was "designed to allow views to be retained through to Hilfield Castle … and wider countryside to the east";[85]

c. Parkland was proposed in order to "maintain an immediate rural outlook for residential dwellings in these areas".[86]

Landscape enhancement (and submissions on securing post-decommissioning)

81. LA'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 35 year 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. The Council adopts Mr Beglan's submissions at para 53 of his closing submissions as regards the tensions between landscape and visual purposes, heritage considerations and openness which arise when designing landscape mitigation, and in respect of which issues have been explored during the inquiry (e.g. the double hedge at Slade's) – I have also mentioned this above. There are issues with leaving matters over for future consideration, the proposed conditions

[81] CD PA 5 DAS p. 24 and 26

[82] CD PA 5 DAS p. 27

[83] AK XX by LPA

[84] CD PA 5 DAS p. 24 and 26

[85] DSDI 14 LEMP April 2021 p.26 para 4.4.2

[86] DSDI 14 LEMP April 2021 p.26 para 4.4.3

leave flexibility ("based on" and "in accordance with") and officers would have to do their best to try and appreciate and resolve such tensions so far as possible – also a point I have raised previously. The current condition does the best we can but it is not very satisfactory given the scale of the scheme and the accepted levels of impact. 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.

82. The position following decommissioning of the solar farm has been a moveable feast throughout the inquiry. The first time there was a concrete indication of what was proposed was in fig 12C attached to Alister Kratt's proof of evidence. The Council raised concerns as to how it would be possible to secure landscaping post-decommissioning when the proposed temporary permission would have expired (which was the effect of draft condition 2 at that time). The Council's view was that, following the expiry of planning permission, any condition relating to landscaping would cease to have effect.[87] The Council does not accept the Appellant's submissions on restoration conditions circulated on 2 November. 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.

83. Happily, this issue no longer arises because matters have moved on. The Appellant and the LPA have now agreed that condition 2 should provide a 35 year time limit for the <u>operational period</u>, 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 LPA's concerns about the conditions purporting to have continued existence following the expiry of permission. Nevertheless, issues remain.

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

84. It is understood from AK's evidence[88] that the elements which are proposed for retention post-decommissioning are:

    a. New planting as shown on fig 12C and as annotated on the landscape strategy plan – this is essentially all of the structure planting and new tree planting, save for the elements to be removed in fields 1 and 5;

    b. The skylark area (although fig 12C is inconsistent with the landscape strategy plan in that the former shows retention of this area whereas this is not indicated as being retained on the latter);

    c. The Aldenham Brook green corridor (although the same inconsistency exists in respect of this element)

85. AK said he anticipated that the management measures associated with the skylark area and the green corridor (described in the LEMP) would continue post-decommissioning.[89]

86. The Appellant's proposed condition 11 appears to be intended to reflect AK's evidence, but in fact does not do so because the implementation clause only requires adherence to the approved landscape management strategy <u>during the operational period</u>. Nevertheless, the intent seems to be to impose a requirement to retain and manage the landscaping elements referred to above for a period of 25 years after the solar farm has been completely removed from the land.[90]

87. The LPA considers that the Appellant's proposed condition 11 falls foul of the tests set out in para 56 NPPF and should not be imposed:

[88] AK XX by LPA

[89] AK XX by LPA

[90] The strategy is proposed to be in accordance with fig 12C "for the post development phase" (undefined), to include details of "areas of new planting and habitat enhancement which will be retained post-decommissioning" and "details of the post decommissioning landscape management regime for a period of 25 years".

a. 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 it acceptable.[91] 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.

b. 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 will cease to relate to the solar farm, and instead will be delivering unrelated benefits to landscape character and biodiversity.

c. 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 25 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 having to be complied with at specific times of the year, and which would interfere with an otherwise unrestricted lawful agricultural use.

88. For these reasons the LPA's alternative version is to be preferred. No weight can be attributed to landscape enhancements post-decommissioning. If that is not accepted, the LPA invites you to accept LA's assessment that such benefits should (if secured) carry only limited weight.

Economic benefits

89. The Appellant attaches significant weight to these, but that is wholly unrealistic. Construction jobs would be short term,[92] and there is next to no employment during the operational phase (one maintenance visit per month is to be

[91] AK XX by LPA

[92] Described as "transient" in CD- ADHBC 13 at para 76 IR and para 9 SoS DL

expected[93]). There is no evidence of the extent of any jobs created in the supply chain,[94] and again this would only apply for a limited period. The investment of private finance into a profit-making development 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. LA is quite correct to ascribe only limited weight to these matters.

Soil quality

90. This can be achieved through good stewardship, 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 PB's proof, then taking measures to improve soil quality are exactly the sort of action that one can expect it to undertake.

91. It is noted that the report on soil health which is appended to the ALC 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).[95]

[93] PB XX by LPA

[94] PB XX byt LPA

[95] CD-PA 14 ALC report, appendix 5 Soil health p. 2-3

92. The Council also adopts Mr Beglan's submissions on this issue. LA is correct to give no weight to this benefit.

Permissive paths

93. The southern permissive path does no more than provide an alternative route to an existing public right of way which will remain available for use. The permissive path is highly unlikely to be used in preference because the public right of way follows the desire line. The evidence does not support the claim that the public right of way is preventing the football club from using their land in the way they wish, even if it did, the public right of way will remain so the scheme would not change that state of affairs. There is no benefit here.

94. The northern permissive path would replace an existing tolerated path (which is sufficiently well established to be shown on OS maps) 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. However, the proposed path would take a longer route past utilitarian solar development rather than the current direct route through an open agricultural field. Overall, this is not a benefit.

Education strategy

95. 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?

96. 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 no VSC to justify the harm.

97. 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.[96] This is a clear indication of the relative weight placed by him on protection of the green belt vs. generation of renewable energy. Those schemes were all significantly smaller in scale than the current appeal scheme,[97] and thus the renewable energy benefits were smaller - but the corollary is that the level of harm to the green belt was much lower.

98. A finding that VSC exist in this case – which would be primarily on the basis of the benefits associated with renewable energy generation, would plainly set a precedent and would be seen as a foot in the door for other solar schemes in the green belt. It would undoubtedly be viewed by those in the industry as indicating a significant shift in policy and approach, particularly at this time of governmental flux.

HERITAGE BALANCE

99. The public benefits do not outweigh the LTSH 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 will be caused by the appeal scheme has not been clearly and convincingly justified, that field 1 does not produce measurable public benefits.

100. In these circumstances the para 202 balance is not in favour of the appeal scheme.

[96] The Cleve Hill NSIP scheme in CD-ADAP 9 was not in the green belt, and the

[97] Ranging from 3.6Mw (CD-ADHBC 12 Land to W of College Farm) to 7.76MW (CD-ADHBC 8 Green Farm)

POLICY AND MATERIAL CONSIDERATIONS

The development plan

101. Whatever criticism may be made of the evidence base for the local plan, or areas where it takes a different approach from national 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.

102. PB confirmed that no case was being made under para 11(d) NPPF.[98] Clearly the "most important policies" are not out of date. Both the CS and the SADM were examined and found sound by reference to the 2012 NPPF;[99] the substance of which has not changed significantly on the issues which are relevant to this appeal.

Green belt policy

103. Policy CS13 follows and applies national policy on the green belt. The policy is breached because VSC have not been demonstrated. SADM 26 is also breached. It contains criteria which are relevant whenever development in the green belt is being advanced.[100] 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, development should still be as unobtrusive as possible and should be sympathetic in scale, height and bulk.[101]

---

[98] PB XX by LPA

[99] CD-HBCLP 1 p. 11 para 1.9, CD-HBCLP 2 p. 11 para 1.29

[100] In CD-ADOCG 1 Hilfield Farm para 38 DL the Inspector considered that SADM 26 only applied to development which was not inappropriate; the LPA does not agree with that interpretation but considers it right to bring it to your attention.

[101] See criteria (i), (iv) and (v)

104. PB 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.[102] He was 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.[103] That is the position here.

Heritage policy

105. CS 14 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 plainly found to be sound when examined against the 2012 NPPF, 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.

106. SADM 29 does incorporate the NPPF, and the proposed solar farm would conflict with the policy for reasons explained in LA's proof. In addition, it would conflict with CS 22 ("conserve the Borough's historic environment").[104]

Policy concerning landscape matters

107. The agreed landscape and visual harm produces a conflict with policies CS 12 ("proposals must conserve and enhance the natural environment of the Borough, including … landscape character"), CS 22 (proposals should "take opportunities to improve the character and quality of an area"), SADM 11 ("proposals will be assessed … to ensure that they conserve or improve the prevailing landscape quality, character and condition") and SADM 30 ("development which complies with the policies in this plan will be permitted provided it makes a positive contribution to the built and natural environment …

[102] PB XX by LPA

[103] PB XX by LPA

[104] LA proof para 9.13

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")

108. For the reasons set out above, 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 35 years will still result in the breaches just identified.

CS 17

109. This policy (read together with the interim policy statement on climate change[105]) encourages new development of renewable energy generation subject to three caveats, of which the first – "local designated environmental assets and constraints" – is relevant.

110. PB 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).[106] 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 para 5.4 of the core strategy.[107]

111. The effect of this interpretation is that compliance with CS 17 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.

---

[105] CD-HSPD 2

[106] PB XX by LPA

[107] CD -HBCLP 1 p. 56

112. Even if the LPA is wrong about the interpretation of CS 17 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 development would remain contrary to the plan as a whole.

SP 1

113. For the reasons explained in LA's proof para 9.17, this key spatial strategy would be breached. PB agreed that criteria (v), (viii) and (xiii) would be breached, which must amount to breach of the policy, although he prayed in aid the reversibility of the scheme. For reasons already given, that can carry little weight and does not alter the fact of conflict with the policy.

Material considerations

114. There are none which indicate an outcome otherwise than in accordance with the development plan.

115. The national policy statements and their drafts deserve a brief mention:

a. 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 NPPF (albeit it was published in 2011 and thus pre-dates the NPPF).[108]

b. 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

[108] CD-NPP 25 p. 101 para 5.10.17

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."

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

d. Draft EN-1 and EN-3 cannot be given any weight as material considerations in favour of the appeal scheme. They have been "knocking around for some time"[109] and are not progressing (the government has yet to respond to consultation responses and there is no timeline). In any event 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 – this obvious omission is the sort of thing that would probably be picked up through consultation.

OVERALL CONCLUSION

116. 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 you to recommend that the SoS refuses permission and dismisses the appeal.

[109] LA XiC

Emma Dring

4 November 2022

cornerstone
barristers