

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

OPENING STATEMENT

on behalf of Hertsmere Borough Council

INTRODUCTION

1. The proposed solar farm which forms the subject of this appeal would cover 85 hectares of the Metropolitan Green Belt with solar panels and associated structures. The wider red line site extends to 130 hectares and is split into two ‘parcels’, connected by underground cabling:
 - a. the ‘western parcel’ (approx. 50 hectares) lies to the east of the M1 and A41, north of the Hilfield Park reservoir and the aerodrome and south of the Elstree electricity distribution station. It is within the setting of Grade II* listed Hilfield Castle and Grade II listed Hilfield Lodge.
 - b. the ‘eastern parcel’ (approx. 80 hectares) lies south of Radlett, west of the A5183 Watling Street and north of Aldenham Park and the Haberdasher’s Aske’s Boys School. It is within the setting of Grade II listed Slade’s Farmhouse a Grade II listed registered park and garden (Aldenham House) and Penne’s Place moated site, a scheduled monument.
2. The solar farm is likely to consist of around 100,000 solar panels¹ arranged in rows and enclosed with fences within all but one of the 20 agricultural fields making up the site.²

¹ CD-NPP18 Draft EN-3 p. 79 para 2.47.2

² Field 19, immediately adjacent to Butterfly Lane and Slade’s Farmhouse, would be completely free from solar panels; all other fields would be subject to some development: see field number plan CD-PA5 Design and Access Statement p. 23 and compare with the masterplan at Fig. 5 of the appendices to Mr Kratt’s proof (CD-ID19)

3. The development would also require 36 structures the size of tall shipping containers. Twenty of these would be located in a group next to a new substation within the western parcel and would house battery storage units. The other sixteen would be dotted throughout the site and would house transformers and inverters to turn low voltage direct current into high voltage alternating current suitable for the national grid. Access tracks would be provided throughout the site.
4. The Council acknowledges that there is a pressing need to increase renewable energy generating capacity in this country, and that solar farms bring important benefits in terms of reducing carbon emissions and assisting with security of supply. Unsurprisingly, a solar farm on the scale proposed here (just on the threshold of being ‘nationally significant infrastructure’) is capable of generating a large amount of electricity from renewable sources. However, the inevitable consequence is that a very large area of land is required. In this case, that is land which national policy dictates should be kept permanently free from development. At the local level, protection of the rural environment and the green belt are fundamental to the vision and objectives of the local plan.³
5. Despite the adoption of various high-level strategies emphasising the need to increase renewable energy generation to achieve ‘net zero’, the government has not seen fit to relax green belt policy in favour of such developments. On the contrary: the government has made clear that proposals for all types of renewable energy development remain subject to existing green belt policy.⁴ If one moves beyond general statements of support for solar development to the more specific policy intended to guide the determination of planning applications, it is clear that the support is not unqualified. There is no general support for locating solar farms in the green belt and in locations where the significance of designated heritage assets will be harmed.

³ CD-HBCLP1 Core Strategy p.20 and 21 (pdf 18 and 19)

⁴ CD-NPP1 NPPF para 151

6. The Appellant places emphasis on the temporary and reversible nature of the proposed development, which could (and should) be secured by a planning condition. The Council has assessed the scheme on the basis that it would indeed be reversed after 35 years – although, as other parties have observed, there are a number of scenarios in which that might not happen. In any event, 35 years is a considerable period of time and will be perceived as effectively permanent by those living in the area. Whilst the reversibility of the proposed scheme should be taken into account, it does not significantly alter the balance to be struck.

MAIN ISSUES

7. The two main issues which were agreed at the CMC were:
 - a. The effect of the development on openness of the green belt and whether any benefits of the scheme amount to very special circumstances and clearly outweigh any harm.
 - b. The effect of the proposals upon the significance of designated heritage assets by way of effects upon their settings, and whether any public benefits are sufficient to outweigh any harm(s).

GREEN BELT

8. National policy requires that harm to the green belt must be given substantial weight and should not be approved except in very special circumstances. The Appellant must show that the harm to the green belt by reason of inappropriateness, and the other harm resulting from the proposal, is clearly outweighed by other considerations.
9. The proposal would cause the following green belt and ‘other’ harm:
 - a. ‘Definitional’ harm resulting from inappropriate development in the green belt. This is common ground.

- b. Harm to the openness of the green belt, both in spatial and visual terms. Again, it is common ground that such harm would occur. Self-evidently, the placing of approximately 100,000 solar panels within 2.2m high fenced enclosures, together with associated infrastructure, will cause significant harm to the openness of the green belt across this large site. This will be plain to see from the well-used network of public footpaths which criss-cross the site. The visualisation provided for footpath Aldenham 040 illustrates the type of effect that will occur.⁵ Whilst solar panels are 'low lying' compared with a typical building, at a height of 3m these structures would be taller than the people who would walk alongside and between them (the panels would be around twice my height, for example). The Appellant describes the effect on openness as 'localised', but that must be understood in the context of a site which covers 130 hectares and is easily bigger than the nearest villages (Letchmore Heath, Patchett's Green, Aldenham). The effect should not be downplayed.
- c. Harm to green belt purposes; specifically, the proposal undermines the role of the green belt in protecting the countryside from encroachment. Again, this is common ground.
- d. Harm to the character of the local landscape. The Appellant's assessment is that there will be 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 of the temporary planning permission.⁶ It is therefore common ground that harm to landscape character will occur. The Council does not dispute the Appellant's assessment of landscape (or visual) impacts, but it is understood that other parties take issue with it.
- e. Harm to the significance of heritage assets, through development in their settings. I turn to the this in a moment, but it is common ground that less

⁵ CD-ID19 Appendices to Alister Kratt's proof, fig. 9.6 (viewpoint 11)

⁶CD-PA15 LVIA p. 44 (pdf 47)

than substantial harm would be caused to the significance of at least three designated heritage assets, including a Grade II* listed building.

10. It follows that there is a large measure of agreement as to the nature of the harms that would arise, albeit the extent of the harm and the weight to be given to it is disputed. The outcome of this appeal will undoubtedly turn on the question of whether the public benefits associated with the scheme constitute ‘very special circumstances’ to clearly outweigh all of this harm.

HERITAGE

11. The proposed solar farm lies within the setting of three listed buildings, a scheduled monument and a registered park and garden.

12. There is a statutory duty to have “special regard” to the desirability of preserving a listed building or its setting. Preservation in this context means avoiding harm. If a proposed development would cause harm, that must be given “considerable importance and weight” and gives rise to a “strong presumption against granting planning permission”.⁷

13. There is no equivalent statutory duty in respect of scheduled monuments and registered parks and gardens, however the NPPF adopts a unified approach to all designated heritage assets, which is consistent with the statutory duty for listed buildings.⁸

14. It is common ground that the proposed solar farm would cause harm to the significance of Hilfield Castle (Grade II*), Hilfield Lodge (Grade II) and Slade’s Farmhouse (Grade II), through development in the setting of these listed buildings. This harm should be considered cumulatively with the harm already caused to the settings and significance of these buildings by modern development. All four heritage experts who have provided evidence to the inquiry agree that less

⁷ CD-ADHBC2 East Northamptonshire DC v SSCLG [2014] EWCA Civ 137, paras 22-24

⁸ CD-ADAP2 Jones v Mordue [2015] EWCA Civ 1243, para 28

than substantial harm would occur, although views differ as to where such harm should be placed within that range.

15. There is a greater divergence in expert opinion as regards Penne's Place moated site (scheduled monument) and Aldenham House (RPG). For the Council, Maria Kitts will explain why she considers that the proposed solar farm would reduce the contribution made by setting to the significance of those heritage assets, and the ability to appreciate that significance. She will explain why, in her opinion, the Appellant's heritage expert has underestimated the effect.
16. Whilst none of the designated heritage assets are considered likely to suffer a high level of harm, the size of the appeal scheme means that it would intrude into the settings of multiple heritage assets. This produces a cumulative effect on the historic environment in the local area.
17. The existence of less than substantial harm is common ground, and the statutory presumption against granting planning permission is therefore engaged. The Appellant must demonstrate public benefits which are sufficient to outweigh the harm, to provide the clear and convincing justification required by national policy.

BENEFITS

18. A table has been agreed which summarises the weight given to the various benefits (and harms) by the expert planning witnesses for the Council and the Appellant respectively. Both witnesses regard the weightiest benefits as being (i) the generation of 49.9 MW of renewable energy (contributing to carbon reduction targets and energy security) and (ii) enhancements to biodiversity/ecology arising from delivery of the Landscape and Ecological Management Plan.⁹
19. For the Council, Laura Ashton will explain why these benefits carry significant weight, but not the 'substantial' weight which the Appellant contends for.

⁹ CD-PA11

20. In contrast to green belt and heritage harm, there is no policy requirement to give renewable energy generation substantial weight. The proposed solar farm would supply the national grid, so a green belt location is not necessary or inevitable: the DAS confirms that this is “one of several solar farm battery storage proposals being brought forward by the Applicant across England and Wales”.¹⁰ Renewable energy generation need not come at the expense of the green belt.

21. The other claimed benefits, alone or in combination, barely move the dial towards justifying the harms I have already discussed. They attract, at best, limited weight in the planning balance and appear unlikely to affect the outcome of this appeal.

PLANNING BALANCE

Very special circumstances

22. The public benefits associated with the proposed solar farm do not clearly outweigh the harm to the green belt by reason of inappropriateness and the other harms arising from the scheme. The NPPF requires harm to the green belt to be given substantial weight. Harm to the significance of designated heritage assets must also be given the greatest weight, as a matter of statute and policy. There is also acknowledged harm to landscape character and visual amenity.

23. There are significant benefits of the proposal, but they do not provide the very special circumstances needed to justify the inappropriate development of 85 hectares of the green belt.

Heritage balance – para 202 NPPF

24. The benefits of the proposed solar farm do not outweigh the less than substantial harm caused to heritage assets, bearing in mind the cumulative effect of such harm on the historic environment, the fact that it could have been avoided or further reduced, and the fact it has not been shown to be necessary for the solar farm to be developed in this location.

¹⁰ CD-PA5 page 18 section 6.1 (pdf 22)

Section 38(6)

25. These conclusions lead to the following implications for the development plan:
- a. Non-compliance with CS 13 and SADM 26 relating to the green belt
 - b. Non-compliance with CS 14, CS 22 and SADM 29 relating to development affecting heritage assets/the historic environment
 - c. Non-compliance with CS 17 which provides support for renewable energy generation subject to local designated environmental assets and constraints – in this case, unjustified harm to the green belt.
 - d. Non-compliance with CS 12, SADM 11 and SADM 30 relating to the character of the area and natural environment, including the landscape.
 - e. Non-compliance with SP 1 relating to sustainable development.
26. The proposed solar farm development is not in accordance with the development plan as a whole.
27. The Appellant refers to various policy and strategy documents relating to the generation of renewable energy, all of which support the proposition that this should be accorded significant weight in the balance. Many of these documents are pitched at a high level and do not directly relate to the planning system; where they do, they do not provide support for the delivery of such projects in the green belt. They do not represent material considerations which indicate that the appeal should be allowed notwithstanding the clear development plan conflict. There are no such material considerations in this case.
28. The Council will accordingly ask you to recommend that the appeal is dismissed, and planning permission refused.

Emma Dring

18 October 2022



● ● ● **cornerstone**

● ● ● **barristers**