



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

## **Proof of Evidence - Planning**

### **Hertsmere Borough Council**

**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

**September 2022**

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## 1.0 INTRODUCTION, QUALIFICATIONS & EXPERIENCE

1.1 I hold a Bachelor of Arts (Honours) degree in Town & Country Planning from the University of the West of England and a Masters of Science in Development Planning from the University of Reading. I have worked in a professional capacity in Town & Country Planning for over 15 years working for private consultancies, Local Authorities and a medium sized housebuilders. I am a fully chartered member of the RTPI.

1.2 I am currently employed by LAUK Planning Limited as a Director. I have held this position since 2018. LAUK Planning Limited is an independent planning consultancy which offers Town & Country Planning Services to a range of public and private sector clients. The consultancy services I provide to the public sector involves major and complex casework. Prior to my current role, I was employed as a Planning Manager for Bewley Homes before which I was employed in a Team Manager position at Wokingham Borough Council.

1.3 My evidence is provided in support of the Local Planning Authority's (LPA) refusal of planning permission. I familiarised myself with the application documents and have visited the appeal site to ensure I fully understand the nature of the site and its context.

1.4 The LPA's proofs of evidence should be read alongside the Council's Statement of Case. This proof will explore all the relevant planning policy guidance and material considerations that are pertinent to this appeal. The appeal scheme will be assessed in this proof against this policy, guidance and material considerations. A planning balance exercise will also be undertaken in accordance with section 38(6) of the Planning & Compulsory Purchase Act 2004 and section 70(2) of the Town & Country Planning Act 1990. This proof provides evidence in respect of reason for refusal one and focuses on Green Belt issues. I will not challenge the assumptions made in the Appellant's Landscape & Visual Impact Assessment (LVIA) and so I take the Appellant's assessment as correct for the purposes of my analysis. I do however understand that other parties may call separate evidence on this topic.

1.5 A proof of Evidence has also been prepared on behalf of the LPA by Maria Kitts in respect of Heritage matters (**CD-POE-HBC2**). Ms Kitts' evidence articulates the specific harm to the Heritage Assets arising from the appeal development. Heritage matters are explored in this proof and I draw upon, but do not seek to duplicate, her evidence in Section 7. This proof of evidence summarises the harm identified by Ms Kitts and proceeds to undertake the balancing exercise that is required in accordance with paragraph 202 of the NPPF. The harm that can be apportioned to the Heritage Assets is also weighed into the overall planning balance set out in Section 10.

1.6 I understand my duty to the Inquiry and have complied, and will continue to comply, with that duty. The evidence that I have provided for this appeal has been prepared in accordance with the

guidance of my professional institution. I confirm that the opinions expressed in this proof of evidence are my true and professional opinions.

## **2.0 SITE DESCRIPTION**

- 2.1 The appeal site is described in detail in section 2 of the Committee Report (page 104) (**CD- PA27**) which will not be duplicated for the purposes of this statement. The development proposals are described in detail in Section 3 of the Committee Report (page 106) The Planning Statement of Common Ground (**CDID-8**) which has been prepared in collaboration with the Appellant makes reference to matters relating to the appeal site and the development proposals.
- 2.2 The site is located entirely within the Green Belt. The development impacts on the setting of four Listed Buildings and a Registered Park & Garden. A number of public footpaths bisect the site.

### **3.0 PLANNING HISTORY**

3.1 The current and most relevant planning history for this site is set out in the Statement of Common Ground (**CDID-8**) which has been prepared in collaboration with the Appellant.

## **4.0 REASONS FOR REFUSAL**

4.1 This appeal has been lodged following the refusal (**CD- PA22**) of Hertsmere Borough Council (the LPA) to grant planning permission for development comprising. The reasons for refusal are set out in the Statement of Common Ground which has been prepared with the Appellant. It is noted that the Planning Committee overturned the Officer Recommendation which was to grant permission subject to the satisfactory completion of a S106 Agreement to secure planning obligations and subject to the imposition of conditions.

## **5.0 THE POLICY FRAMEWORK**

5.1 Section 70 of the Town & Country Planning Act 1990 and section 38 of the Town & Country Planning Act 1990 provide that planning decisions must be made in accordance with the development plan unless there are material considerations to indicate otherwise

### **THE DEVELOPMENT PLAN**

5.2 Insofar as is relevant to this appeal, the development plan for Hertsmere comprises the following documents:

- Core Strategy (adopted 2013) (**CD-HBCLP1**)
- Site Allocations & Development Management Policies Plan (adopted 2016) (**CD-HBCLP2**)

### **Core Strategy**

5.3 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

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

5.4 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

## **MATERIAL CONSIDERATIONS**

### **NPPF & NPPG**

#### Green Belt

- 5.5 Chapter 13 of the NPPF (**CD-NPP1**) are of particular relevance in the determination of this appeal it is concerned with "*Protecting Green Belt Land*". Similarly the NPPG contains a useful chapter on "*Green Belt*" matters which I shall refer to in this proof (**CD-NPP21**).

#### Climate Change & Renewable Energy

- 5.6 Chapter 14 of the NPPF sets out the Government's objectives for "*Meeting the challenge of climate change, flooding and coastal change*" and the NPPG contains a specific chapter relating to "*Renewable Energy & Low Carbon Energy*" (**CD-NPP24**). Both of these chapters provide guidance that will be useful in the determination of this appeal.

#### Conserving & Enhancing the Historic Environment

- 5.7 Chapter 16 of the NPPF sets out guidance aimed at conserving and enhancing the historic environment to achieve the objective of conserving heritage assets, as an irreplaceable resource, in a manner appropriate to their significance. The NPPG also has a chapter concerned with the *Historic Environment* which provides advice relating to the enhancement and conservation of the historic environment (**CD-NPP23**).

### **Supplementary Planning Guidance**

- 5.8 In November 2020 the Council published supplementary guidance called "*Hertsmere Climate Change and Sustainability Interim Policy Position Statement (2020)*" (**CD-HSPD2**). This document was produced in recognition of the Council's commitment to achieving carbon neutrality as soon as possible and no later than 2050. The guidance provides clarifications on existing sustainability and climate change policies until the new Local Plan (2022 – 2038) is adopted. The position statement sets out the requirements which Hertsmere as LPA seek on relevant applications for planning permission in order to deliver on the requirements set out in the development plan,

the NPPF, Climate Change & Sustainability Strategy and the Government's commitments and emerging priorities on climate change.

- 5.9 In respect of Core Strategy policy CS17 (Energy and CO2 Reductions), the guidance clarifies that the Council will encourage new development of sources of renewable energy generation subject to existing policy caveats.

### **Other Climate Change Legislation & Policy**

#### Climate Change Act (2008) & Climate Change Act Amendment Order 2019

- 5.10 The Climate Change Act was passed in 2008 (**CD-NPP2**) and sets out emission reduction targets that the UK is legally obliged to comply with. It represented the first legally binding climate change mitigation target set by a country. In 2019, the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (**CD-NPP3**) was passed which increased the UK's commitment to a 100% reduction in emissions by 2050.

#### Declaration of Climate Emergency

- 5.11 In May 2019 a parliamentary motion was passed declaring "*an environment and climate emergency*". The declaration of the Climate Emergency led to the Climate Change Act Amendment order which accelerated the UK's commitment to reducing emissions.

- 5.12 Herstmere Borough Council also declared a climate emergency in September 2019.

- 5.13 The Government has also produced the following papers:

- Clean Growth Strategy Oct 2017 (Dept for Business Energy & Industrial Strategy) (**CD-NPP19**)
- Energy White Paper: Powering our Net Zero Future (Dec 2020) (**CD-NPP7**)
- Net Zero Strategy: Build Back Greener (Oct 2021) (**CD-NPP8**)

- 5.14 The documents referenced above show the importance of meeting net zero and sets out the Government's commitment for doing so together with the acknowledgment of the benefits of reducing emissions and promoting the use of renewable energy in place of fossil fuels. These documents are high level and only useful for the purposes of demonstrating the importance of clean energy and the role it can play in the pursuance of net zero. This is something that the LPA does not dispute. The above references documents provide no advice in terms of the appropriate locations for renewable energy schemes or how planning applications for such schemes should be determined. Their usefulness in this appeal is therefore limited.

## **Other National Guidance**

### **Overarching National Policy Statement for Energy (EN-1)**

- 5.15 EN-1 (**CD-NPP25**) is not strictly relevant to this appeal as it provides guidance to the Infrastructure Planning Commission in dealing with application for energy projects in excess of 50 MW. It also, being published in 2011, pre-dates the NPPF the first version of which was published in 2012. It does however provide some guidance on issues that are of relevance to this appeal including Green Belt, heritage assets and landscape and visual impact. In respect of Green Belt it notes that:

*“When located in the Green Belt, energy infrastructure projects are likely to comprise ‘inappropriate development’. Inappropriate development is by definition harmful to the Green Belt and the general planning policy presumption against it applies with equal force in relation to major energy infrastructure projects. The IPC (Infrastructure Planning Commission) will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is outweighed by other considerations. In view of the presumption against inappropriate development, the IPC will attach substantial weight to the harm to the Green Belt when considering any application for such development while taking account, in relation to renewable and linear infrastructure, of the extent to which its physical characteristics are such that it has limited or no impact on the fundamental purposes of Green Belt designation”.*

- 5.16 A new draft version of EN-1 was published in September 2021 (**CD-NPP17**). Due to its draft status and the limitations described above, its content is held in no weight for the purposes of this appeal.

### **National Policy Statement for Renewable Energy Infrastructure (EN-3)**

- 5.17 EN-3 (**CD-NPP26**) was published in July 2011 and provides guidance in respect of decisions by the made by the IPC which comprises nationally significant renewable energy infrastructure. The document only relates to energy schemes relating to biomass and/or waste and onshore wind in excess of 50 MW and offshore wind in excess of 100 MW. EN-3 does not relate to solar projects and is subsequently not relevant to this appeal.

5.18 A new draft version of EN-3 was published in September 2021 (**CD-NPP18**) and the new draft document does contain guidance in respect of solar projects. Whilst it provides Green Belt advice in relation to other types of energy projects, it does not provide advice in respect of Green Belts and solar farms. It provides high level advice regarding issues including agricultural land, landscape and visual impact and heritage assets. Once again it can be afforded no weight in this appeal given its draft status and the fact that it only relates to IPC referable projects.

UK Government Solar Strategy 2014

5.19 The document referenced above (**CD-NPP22**) sets out the Government's vision for the "*strategic direction for solar PV in the UK*" making sure that "*policies support the appropriate deployment in a sustainable, cost-effective way.*" One of the key principles is that all proposals should be:

*"appropriately sited, give proper weight to environmental considerations such as landscape and visual impact, heritage and local amenity, and provide opportunities for local communities to influence decisions that affect them."*

To realise this principle the document notes that the NPPG:

*"makes clear that the need for renewable energy does not automatically override the need for planners to properly scrutinise the effects of renewables deployment. It underlines the need for planners to ensure that the impacts of proposed renewable energy deployments are acceptable, including impact on visual amenity and effects on cultural and heritage landscapes."*

5.20 Whilst it is apparent that this document was not intended to be used to determine planning applications, it points to relevant guidance and the government's priorities in delivering solar projects and is held in moderate weight for the purposes of this appeal.

Written Ministerial Statement on Solar Energy: Protecting the Local & Global Environment (March 2015)

5.21 This short-written statement (**CD-NPP16**) is limited in terms of its helpfulness in determining this appeal yet it does note that:

*"The National Planning Policy Framework includes strong protections for the natural and historic environment"* and observes that "*public acceptability for solar energy is being eroded by the public response to large-scale solar farms which have sometimes been sited insensitively.*"

Historic England Advice Note 15: Commercial Renewable Development & The Historic Environment (February 2021)

- 5.22 This advice note (**CD-NPP20**) describes the potential impacts on the historic environment of commercial renewable energy proposals, which could occupy large areas of sea. The advice note includes consideration of Nationally Significant Infrastructure Projects (NSIPs) but also covers other large-scale proposals that do not meet the criteria for inclusion in the NSIP regime. This document is directly relevant to the appeal proposals and is a material consideration that should be held in significant weight.

## 6.0 FIRST MAIN ISSUE: PUBLIC BENEFITS

- 6.1 It is necessary to carefully consider the public benefits of the appeal. This will assist in three purposes – establishing if the benefits amount to very special circumstances; whether the benefits outweigh the harm to the heritage assets; and will set the scene for the planning balance exercise in section 10 of this proof.
- 6.2 It is common ground between the LPA and the Appellant that there are a number of public benefits arising from the scheme. These are outlined in turn below.

### **RENEWABLE ENERGY**

- 6.3 There is clear policy support for renewable energy projects set out in planning policy and guidance. Core Strategy policy CS17 is a key policy in the determination of this appeal and provides that the Council will permit *“new development of sources of renewable energy generation subject to:*
- *local designated environmental assets and constraints, important landscape features and significant local biodiversity;*
  - *minimising any detriment to the amenity of neighbouring residents and land uses; and*
  - *meeting high standards of sustainable design and construction.”*
- 6.4 Paragraph 152 of the NPPF provides that *“The planning system should support the transition to a low carbon future...”* It adds that the planning system should, amongst other things, *“minimise vulnerability and improve resilience”* and *“support renewable and low carbon energy and associated infrastructure.”*
- 6.5 The NPPG also provides specific guidance relevant to *“Renewable and low carbon energy” (CD-NPP4)*. Paragraph 001 (Reference ID 5-001-20140306) explains the importance of planning for renewable and low carbon energy. The paragraph states that:
- “Increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. Planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.”*

- 6.6 Paragraph 5.10 to 5.21 of this proof reference a number of different documents that have been published by the Government and set out their commitment to a zero carbon future and promote the use of a range of renewable energy sources as a means to achieve this.
- 6.7 Renewable energy projects are promoted by planning policy and guidance, and a range of other Government publications, in recognition of the public benefits arising from the provision of renewable energy and the decreased reliance on fossil fuels. These are the key benefits of the scheme. Unlike harm to the Green Belt, where the NPPF provides direction that the harm should be held in substantial weight, no indication is given as to the level of benefit that should be afforded to renewable energy projects. It is therefore a matter for the decision maker to apportion weight to the benefits of such a scheme.
- 6.8 The provision of 49.9 W of renewable energy that provides for the electricity needs for 11,160 households and the energy security that goes with it is recognised as a significant benefit of the scheme. The Council does not dispute the benefits arising from the generation of renewable energy and this benefit is held in **significant weight**.
- 6.9 I note that significant weight was also apportioned by the SOS and Appeal Inspector to the benefits associated with renewable energy generation in the context of appeal reference 3148505 (**CD-ADHBC1**)

### **LANDSCAPE ENHANCEMENTS**

- 6.10 The Appellant references landscape enhancements as a benefit of the scheme. The landscape enhancements comprise structural planting which will serve to provide screening, an orchard, parkland including tree planting, and areas of grassland and wildflower planting.
- 6.11 Normally, in development management, landscaping schemes are held in neutral weight as a mitigatory factor rather than being a tangible benefit of a scheme. This is particularly true of structural planting that would provide screening. The biodiversity benefits of the planting and landscaping scheme are considered separately below. Whilst the orchard, parkland and wildflower planting on face value appear beneficial, the land that these areas will occupy is currently open countryside and so the benefit of these features is difficult to grasp. Particularly when sited in close proximity to features – the solar arrays and associated infrastructure - that will be harmful to the landscape and of a scale that dwarfs the extent of the landscaping scheme. For the duration of the development, I would subsequently suggest that the

landscaping should be held in **neutral weight** as would normally be the case with any other development scheme.

- 6.12 The landscaping scheme will endure after the decommissioning of the solar farm. If its maintenance is secured by condition, the landscaping scheme is recognised as a benefit of the scheme. The weight that this benefit is afforded is however is tempered by the harm from the preceding 35 years where there will be severe and long-term harm to the Green Belt, landscape and countryside and the fact that the land will, for the large part, merely revert to its current use. The benefit is tempered such that the landscaping that endures beyond the development is held in **limited positive weight** as a public benefit.

### **BIODIVERSITY AND ECOLOGICAL ENHANCEMENTS**

- 6.13 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. 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. It would appear that different metrics show different figures. In any event the figures are well in excess of the 10% BNG expected of development and, subject to this benefit enduring for the life of the development and beyond, it should be held in **significant weight** in the planning balance.

### **IMPROVING SOIL & AGRICULTURAL LAND QUALITY AND AIDING FARM DIVERSIFICATION**

- 6.14 The appellant cites improvements to soil and agricultural land quality as a benefit of the scheme. No evidence has been provided to show how this benefit will be realised and what this benefit would actually entail. Soil quality doesn't appear to be an existing problem because the land at present is being used for arable cultivation. The alleged benefit only appears to arise through the land being rested and being grazed instead of cultivated. Improvements in soil quality subsequently could be achieved through other less impactful ways than the installation of a solar farm. Farm diversification could also be realised through another less impactful means and again the appellant has provided no evidence to demonstrate the specifics of this alleged benefit. These alleged benefits are subsequently held in **no weight** for the purposes of the determination of this appeal.

### **PERMISSIVE FOOTPATHS**



6.15 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 and the walks will change in character from an experience of passing through the open countryside to an experience of passing through an environment comprising unattractive man-made structures. As explored elsewhere in this statement, the enjoyment of the existing footpath network and its recreational value, as a means to appreciating the intrinsic beauty of the countryside, will be compromised by the scheme. Furthermore, one of the new permissive rights of way is merely a diversion of an existing footpath and the other only serves to link two existing paths. The footpaths are not regarded as a net improvement and this alleged benefit is subsequently held in **neutral weight**.

### **EDUCATION STRATEGY**

6.15 No details of any education scheme have been provided to date. Until such a time as details of the strategy are provided this is held in **no weight** as a public benefit.

### **ECONOMIC BENEFITS**

6.16 There will be economic 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**.

6.17 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 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.

## 7.0 SECOND MAIN ISSUE: HERITAGE

- 7.1 The second main issue in the determination of this appeal relates to reason for refusal 2 and is concerned with the appeal development's impact on heritage assets.

### **BACKGROUND**

- 7.2 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on LPAs when determining applications for development which affects a listed building or its setting to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural and historic interest which it possesses. The Court of Appeal decision in the case of *Barnwell vs East Northamptonshire DC* 2014 (**CD-ADHBC2**) provides that in enacting section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, Parliament's intention was that '*decision makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise*'. The Ancient Monuments & Archaeological Areas Act 1979 provides specific protection for monuments of national interest and the Historic Buildings & Ancient Monuments Act 1953 makes provision for the compilation of a register of gardens and other land (parks and gardens, and battlefields).
- 7.3 Section 16 of the National Planning Policy Framework (NPPF) provides the national policy on conserving and enhancing the historic environment. The NPPF applies equal protection to all types of designated heritage assets including Listed Building, Scheduled Monuments and Registered Parks & Gardens. Decision-making policies in the NPPF and in the local development plan are also to be applied, but they cannot directly conflict with or avoid the obligatory consideration in these statutory provisions.
- 7.4 Paragraph 199 of the NPPF onwards provides guidance on "*considering potential impacts*". 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."*

- 7.5 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.”*
- 7.6 Paragraph 202 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.”*

### **SIGNIFICANCE**

7.7 The proof of evidence prepared by Ms Kitts (**CD-POE-HBC2**) has confirmed that the proposals would cause harm to the significance of the following heritage assets:

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

7.8 The significance of these assets and the contribution made by their settings are summarised in turn below.

7.9 **Hilfield Castle** is of architectural and artistic interest as an attractive, well-detailed late eighteenth century Gothic Revival country house in a prominent position at a high point in the landscape. The historic design features, materials and construction techniques employed contribute to its archaeological interest as do the adaptations and extensions made to address changing fashions and needs of its occupiers. Its historic interest derives from its association with the architect Sir Jeffry Wyattville and its construction by the Earl of Clarendon. Its surroundings and setting contribute to the ability to experience and appreciate the heritage asset's significance.

7.10 **Hilfield Castle Lodge** is of architectural and artistic interest as a good example of a late eighteenth century lodge in a Gothic Revival style, mirroring the style of the main house. Its historic interest derives from its design by Sir Jeffry Wyattville for the Earl of Clarendon. It is of archaeological interest in demonstrating the building techniques and use of materials of the late eighteenth century and the popular Gothic Revival architectural style. It also provides an understanding of the development of small country estates at this time and the desire for

lodges mimicking the style of the main house flanking entrance drives. The setting contributes to an experience and appreciation of its significance.

- 7.11 The architectural and artistic interest of **Slades Farmhouse** derives from its style, materiality and construction techniques. Its fabric is also of archaeological interest in demonstrating the evolution of domestic architecture, the use of traditional materials and construction techniques, and changing architectural fashions of the region. Its historic interest derives from its age and legibility as a historic farm complex which formed part of a significant and prominent historic rural economy which has shaped the landscape here. The surrounding landscape and setting contribute to the experience and appreciation of the heritage asset's significance.
- 7.12 The significance of **Penne's Place Moated Site** derives from its archaeological and historic interest as a good example of a double moated site which had well documented connections with the Penne family dating back to the thirteenth century. Its adaptation to form part of the Pulhamite water garden in the nineteenth century also contributes to its historic interest as part of the Aldenham House designed landscape. The site is also recognised as retaining significant archaeological potential as many moated sites provide favourable conditions for the survival of organic remains. Its setting within the parkland and the wider landscape contributes to an appreciation of the asset's significance.
- 7.13 **Aldenham House Registered Park and Garden** derives its significance from its historic, archaeological and artistic interest as a designed landscape and parkland developed from the eighteenth century incorporating the remains of a thirteenth century moated site, a country house with seventeenth century origins and elements of a late nineteenth century landscape including Pulhamite water gardens and an arboretum. The surrounding landscape contributes to the experience and appreciation of the heritage asset's significance.

### **HARM**

- 7.14 Ms Kitts' evidence (**CD-POE-HBC2**) shows that there would be harm to the setting and significance of Hilfield Castle, Hilfield Castle Lodge, Slades Farmhouse, Penne's Place and Aldenham House RPG and therefore their setting would not be preserved. The impacts are either visual impacts on the settings of the heritage assets or impacts that affect the experience of the assets and the ability to appreciate their significance. The harm would be caused by the proposed development to the significance of the designated built heritage assets.

- 7.15 The proposed development will have a negative effect on the setting of **Hilfield Castle**. The modern development and infrastructure on the site will reduce the ability to appreciate and understand the heritage asset's significance as a relatively isolated rural residence set within a wider agrarian landscape of which the appeal site is an important remnant. The resulting **less than substantial harm** to the heritage asset's significance is considered to lie at the **low end** of the scale.
- 7.16 In their current undeveloped state, the fields of the appeal site provide an appropriate rural setting for the **Lodge to Hilfield Castle** from which the significance of the asset as part of a country estate can be appreciated. The resulting **less than substantial harm** to the heritage asset's significance is considered to lie at the **low end** of the scale.
- 7.17 The proposed development will damage the rural setting of **Slades Farmhouse** and erode appreciation of the functional and historic relationship of the heritage asset with its rural surroundings, undermining the ability to appreciate and understand its significance. The proposed development will remove the appreciation of the historic functional link between the agrarian landscape and the farmhouse and will add incongruous modern structures its setting. The resulting **less than substantial harm** to the heritage asset's significance is considered to lie in the **low-mid** part of the scale.
- 7.18 The appeal site is a relatively unchanged remnant of the agrarian landscape in which the **Penne's Place Moated Site** has been located for hundreds of years. It permits an understanding of the asset's position and status within the historic undeveloped landscape which contributes to an appreciation of its significance. The proposed development will remove part of this landscape setting. The resulting **less than substantial harm** to the heritage asset's significance is considered to lie at the **lowest end** of the scale.
- 7.19 The proposed development will have both a detrimental impact on the setting of Aldenham House Registered Park and Garden. The appeal site contributes positively to the significance of the RPG due to its undeveloped state and as a remnant of the historic agrarian landscape surrounding the RPG. The proposed development which will undermine the experience and appreciation of the significance of the heritage asset as an ordered, designed landscape set within a working landscape. The resulting **less than substantial harm** to the heritage asset's significance is considered to lie at the **lowest end** of the scale.
- 7.20 As advocated by the NPPF the harm to the heritage assets should be held in great weight. This is supported by Barnwell (**CD-ADHBC2**) which provides that harm to a listed building should not be

weighed with equal weight to other opposing issues but given considerable importance and weight, and that such harm creates a strong presumption against the grant of planning permission. The presumption is a statutory one as set out in the Planning (LB & CA) Act 1990 Section 66(1). Even harm at the lowest harm of the spectrum should be given special regard. Furthermore the NPPF at, paragraph 199 advocates an approach whereby the more important the asset the greater weight should be given to the asset's conservation. In the context of the Appeal development, Hilfield Castle is Grade II\* Listed. According to Historic England just 5.8% of Listed Buildings are Grade II\* Listed. Accordingly, the harm arising from the development apportioned to Hilfield Castle – even if it is at the lower end – should not be taken lightly.

7.21 Based on the assessment and facts above, in my view, the harm to the setting of the heritage assets arising from the appeal development should be held in **substantial weight**. This is not only due to the special regard of preserving the assets' settings but also due to the number of assets that are impacted by the development and the cumulative impact this would have on the appreciation of the historic environment within the locality.

#### **NPPF PARA 202 BALANCE AND SUMMARY**

7.22 In summary, 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. In accordance with local and national policies, as the proposal causes harm to designated heritage assets, this harm should be weighed against the public benefits of the proposal.

7.23 The public benefits associated with the development are outlined in full in section 6 of this proof. The benefits associated with the generation of renewable energy are held in significant weight as is the biodiversity net gain arising from the ecological enhancements. The other alleged benefits of the scheme are held in no to limited weight.

7.22 Applying NPPF para 202, **the significant weight apportioned to the public benefits** associated with the solar farm, in terms of the generation of renewable energy and the biodiversity net gain, **does not outweigh the harm to the heritage assets, which is held in substantial weight**. As noted elsewhere in this proof, it is not essential for the solar farm to be in this location and the harm to the heritage assets is subsequently regarded as unwarranted and unnecessary.

7.23 A similar approach to my assessment above was taken in the context of appeal reference 3266505 (**CD-ADHBC1**) where the benefits associated with a 35 MW solar farm was found not to outweigh the less than substantial harm to a Registered Battlefield and appeal reference

3136031 and 3136033 (**CD-ADHBC4**) where the less than substantial harm to a Grade II Listed Building was found not to be outweighed by the benefits associated with an 8.94 MW solar farm

## 8.0 THIRD MAIN ISSUE: GREEN BELT

### **INTRODUCTION**

- 8.1 The LPA's key policy in respect of Green Belt is Core Strategy CS13 which, whilst largely deferring to the advice contained in the NPPF, provides that *"There is a general presumption against inappropriate development within the Green Belt, as defined on the Policies Map and such development will not be permitted unless very special circumstances exist"*.
- 8.2 The NPPF sets out that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 137 of the NPPF provides that the essential characteristics of Green Belts are their openness and their permanence.
- 8.3 Paragraph 138 of the NPPF apportioned five purposes to the Green Belt. The purpose that is considered to be of most relevance to this appeal is purpose "c" which is *"to assist in safeguarding the countryside from encroachment"*. The Green Belt designation in the vicinity of the appeal site is considered to play a key role in safeguard the countryside from encroachment.
- 8.4 The NPPF at paragraph 148 of the NPPF provides that Local Planning Authorities should ensure that substantial weight is given to any harm to the Green Belt. It has already been noted that inappropriate development should not be approved except in very special circumstances. It is clarified in paragraph 148 that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm arising from the proposal, is clearly outweighed by other considerations.

### **HARM BY REASON OF INAPPROPRIATENESS: DEFINITIONAL HARM**

- 8.5 The NPPF, from page 43, provides guidance on how Local Authorities should deal with proposals affecting the Green Belt. Paragraph 147 of the NPPF provides that *"inappropriate development"* is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It is common ground between the Appellant and the LPA that the development amounts to *"inappropriate development"* and is therefore harmful by definition and should not be approved except in very special circumstances.



## **OTHER HARM: OPENNESS OF THE GREEN BELT**

8.6 Whilst the appeal development is harmful merely by virtue of the fact that it is inappropriate, the definitional harm, I consider it important to fully explore the specifics of the harm to the Green Belt that arises from the development.

8.7 R (Liverpool Open and Green Spaces Community Interest Company) v Liverpool City Council [2020] EWCA Civ 861 (**CDADHBC3**), is a useful case to refer to as it brings together and helpfully summarises earlier judgements in respect of the application of Green Belt policy and guidance and the concept of openness. It clarifies that “*openness*” is a “*broad concept of policy*” rather than law and “*its meaning is to be derived from the words the policy-maker has used, read sensibly in their ‘proper context’*”. It provides that “the policy imperative on preserving the ‘openness’ of the Green Belt requires realism and common sense” and emphasises the importance of “*the exercise of planning judgement by the decision maker*”.

### **Spatial Impact**

8.8 In the case of R (Liverpool Open and Green Spaces Community Interest Company) v Liverpool City Council [2020] EWCA Civ 861 (**CDADHBC3**) it is provided that the concept of openness means “*the state of being free from built development*” and clarifies that despite this, harm to openness can be “*caused by forms of development other than buildings*”. This is pertinent to this case as the spatial impact of the development arises from the change from a green field site of agrarian rural character to a development comprising substantial built form. The substantial built form will be an urbanising influence within the landscape. The built form is extensive and would comprise 85 hectares of land containing solar arrays; access roads; 16 no. x inverters at 12 m x 2.4 m x 2.9 m each; 12 no x battery stores in the form of shipping container type structures; and 1 no. x substation which will be 12.5 m x 5.5 m and 4 m in height, which would all be enclosed in 2.2 m high fencing. The solar arrays themselves are by no means small scale, they are tilted to 3 m height and are 4.6 m deep.

8.9 The large scale of the development means that there will be a significant spatial impact arising from the development which will clearly be harmful to the openness of the Green Belt.

### **Visual Impact**

8.10 The Landscape and Visual Impact assessment that was submitted in support of the application (**CD-PA15**) is useful in articulating the visual harm that arises from the development. It is

considered only right in this instance to consider visual impact in the context of this appeal and its subsequent impact on openness.

8.12 The Council's own Landscape advisor verified the outcomes of the assessment in their consultation response. The effects for visual receptors within the site would be Major-Moderate and Adverse for the duration of the development. The scale of change to these receptors would be Large, affecting a wide extent of the receptor group in both the Medium and Long-term/Semi-permanent time period. The high magnitude of change results in the Major-Moderate and Adverse effects. It should also be noted that there will be a long term/semi-permanent Moderate and Adverse effect to receptor group 2 which includes receptors of/at Hilfield Castle, Hilfield Lane and Elstree Aerodrome and include residents, visitors, employees and road users.

8.13 Whilst I accept that the harm will be localised, I do not accept the Landscape Officer's comment that the "*enhancements proposed as part of the Landscape Ecology proposal will have a positive impact on the wider GI network and ecological value of the site that could outweigh this harm*". In my view the development proposals amount to a large-scale development that is easily the size of a settlement where there would be a change from an agricultural character to one containing built form. Visual receptors within the site will experience Major-Moderate and Adverse impacts for the duration of the development, the LVIA acknowledges that the recreational experience within the site would change substantially and this should not be taken lightly. Significant harm is thus considered to arise from the landscape and visual impacts associated with the development and this is harmful to the openness of the Green Belt. There will be adverse effects to the landscape character and visual receptors for the duration of the development that, as shown by the submitted LVIA, cannot be mitigated through screening or planting and this in turn will have an impact on the openness of the appeal site and its surroundings.

#### **Summary of Impact on Openness**

8.15 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. There will be spatial and visual impacts arising from the development which will have a detrimental impact on the openness of the Green Belt. The harm arising from the development's impact on openness is held in **substantial weight**.

### **OTHER HARM: GREEN BELT PURPOSES**

- 8.16 In addition to the definitional harm associated with the development, together with impacts on openness, the development is prejudicial to the key Green Belt function of the site. As set out at paragraph 138 of the NPPF the key Green Belt purpose of the appeal site is to safeguard the countryside from encroachment. The development proposals are considered to represent the encroachment of built form and man-made influences into the countryside and thus prejudices its fundamental purpose.
- 8.17 The appeal development, due to its long duration, is also considered to prejudice the essential characteristic of the Green Belt which is its permanence. A development that compromises the openness of a site for 35 years could hardly be regarded to permanently maintain the site's openness. It is noted that the Appeal Inspector in deciding recovered appeal references 3012014 and 3013836 (**CD-ADHBC6**) remarked, in considering the duration of an impact on openness, that a period of 25 years *"is such a long period of time that for a generation of local people it might as well be permanent"*. The Appeal Inspector in the context of appeal references 3136031 and 3136033 (**CD-ADHBC 4**) also acknowledged that a period of *"25 years is a significant length of time and comprises a substantial part of the average person's lifetime"* and thus afforded the temporary nature of a solar farm limited weight as a mitigatory factor. As directed by paragraph 148 of the NPPF any harm to the Green Belt should be held in substantial weight. I accordingly hold the harm the development causes to the Green Belt function of the site in **substantial weight**.

### **OTHER HARM: LANDSCAPE IMPACT**

- 8.19 The site comprises an agricultural landscape of medium to large fields, well established field boundary hedgerows and roadside vegetation, which contribute to the landscape fabric and character of the site. The development area falls within the Borehamwood Plateau Landscape Character Area, as identified within the Hertfordshire Landscape Character Area Assessment (2001) (**CD-HCCP4**). Its key characteristics are gently undulating landform, a number of private schools set in mature landscaped grounds and fragmentation and disruption of the M1/A41 corridor including pylons and associated built development. The assessment states that the LCA should be *"improved and restored"*.
- 8.20 Whilst it is noted that the development facilitates some improvements- the planting up of broken hedgerows and the creation of an orchard and wildflower meadow as a whole the proposed solar farm exacerbates the fragmentation and disruption of the landscape. In its harm

to the setting of Aldenham Park historic parkland with woodland and perimeter belts and Hilfield Castle, it further harms features of local landscape value.

8.21 To consider the development's impact from a landscape impact point of view, large scale effects on the character on the site - a *"total or major alteration to key elements, features, qualities or characteristics, such that post development the baseline will be fundamentally changed"* - are expected to arise from the development. Borehamwood Plateau is accepted to be of Local/District Value and is of Medium susceptibility to the development which means that *"undue consequences may arise"*. The effects on the Borehamwood Plateau Landscape Character Area have been shown to be Major-Moderate and Adverse. In the long term this reduces to Moderate and Adverse. For the purposes of the LVIA that supported the planning application long-term is defined as 10-25 years. As the anticipated duration of the development is 35 years, the impacts of the development endure ten years beyond what is normally defined as a long-term impact in LVI terms. The proposed duration of the appeal development at 35 years is defined by the LVIA as semi-permanent. I hold the harm to the landscape character in **significant weight**.

#### **OTHER HARM: HERITAGE IMPACTS**

8.22 Another form of harm that arises from the appeal proposals is harm to heritage assets and this need to be duly considered in the assessment of *"other harm caused"*. As set out in section 7 of this proof and explored in detail in Ms Kitts proof, the development proposals would cause less than substantial harm to the setting of five heritage assets: Slade's Farmhouse; Aldenham Registered Park & Garden, Penne's Place Scheduled Monument, Hilfield Castle and Hilfield Lodge. Whilst, with the exception of Slade's Farmhouse where less than substantial low to mid end harm is apportioned, the harm is at the lower end of the spectrum it is harm nonetheless and paragraph 199 of the NPPF advocates that great weight should be afforded to an asset's conservation irrespective of the level of harm. Due to the number of assets whose significance will be harmed by the development proposals and the wide geographic area over which they are spread, together with the fact that one asset is Grade II\* Listed. I would suggest that this is a cumulative impact the harm of which should be held in **substantial weight**.

## **VERY SPECIAL CIRCUMSTANCES**

- 8.23 As has already been established, the development is inappropriate development and by definition it is harmful to the Green Belt. It should only be approved in very special circumstances. In order for the development proposals to be acceptable in Green Belt terms, as set out in the Case of Wildie [2013] EWHC 2769 para 29 (**CD-ADHBC7**), in considering whether to allow development in the Green Belt, the decision maker must first consider the “definitional” harm arising from the inappropriate development as well as such further harm to the Green Belt as identified as being caused by the development in that case, then secondly consider countervailing benefits said to be served by the development. The decision maker must then consider whether those benefits clearly outweigh the harm so as to amount to very special circumstances. The key to whether very special circumstances exist is whether other considerations, or benefits of the scheme outweigh the harm to the Green Belt and any other harm caused.
- 8.24 As directed by paragraph 148 of the NPPF, substantial weight is apportioned to the harm arising from the development in respect of openness (spatial and visual) and other harms (landscape character [significant weight], Green Belt function [substantial weight] and the impact of settings of the nearby heritage assets [significant weight]). It is subsequently necessary to consider if very special circumstances exist that outweigh the harm caused by the development by reason of its inappropriateness and the other harms arising from the development.
- 8.25 As noted above paragraph 151 of the NPPF provides specific advice relating to renewable energy projects. It clarifies that elements of many renewable energy project will comprise inappropriate development. Paragraph 151 provides that:
- “in such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.”*
- 8.26 I note the use of the words may include, which implies that wider environmental benefits arising from energy production from renewable sources will not always amount to very special circumstances. The latest iteration of the NPPF was published in July 2021 and post-dates the Government’s published commitment to reduce carbon emissions and 2050 target to emit zero emissions. No change to the Government’s approach to renewable energy projects in the Green Belt was included the latest iteration of the NPPF and so it is clear that the protectionist

approach to Green Belt development prevails even in the light of the changing climate and more ambitious targets set in the pursuance of a zero carbon/emissions. There are many examples of appeal decisions and recovered appeal decisions, relating to solar energy projects, where very special circumstances have not outweighed harm to the Green Belt. These include appeal references 3029788 (**CD- ADHBC 14**); 3136031 and 3136033 (**CD- ADHBC 4**); 3012014 and 3013863 (**CD- ADHBC 6**); 3147854 (**CD- ADHBC 5**); 3004513 (**CD- ADHBC 8**); 3134301 (**CD- ADHBC 9**); 3131943 (**CD- ADHBC 10**); 3146389 (**CD- ADHBC 11**); 3148504 (**CD- ADHBC 12**); 3140163 (**CD- ADHBC 13**)

8.27 As noted in section 6 above I apportion significant weight to the benefits arising from the generation or renewable energy. There are clear benefits arising from the generation of renewable energy at a time of climate emergency and questionable energy security. I cannot however, apportion substantial weight to this benefit, because:

(a) Unlike heritage and Green Belt matters, there is no guidance that points towards apportioning substantial weight. I strongly suspect that paragraph 151 of the NPPF would be worded differently if that was the intention. For the most part, the appeal decisions referred to above apportion significant rather than substantial weight to the benefits associated with the generation of renewable energy.

(b) The benefits of the scheme are not reliant on the location of the appeal site or indeed location in the Green Belt. Furthermore, the power generated from the development will not be realised locally, rather it will go towards national grid. Renewable energy to meet the energy needs of 11,160 homes in Hertsmere could be generated anywhere in the UK and not necessarily in the Green Belt. Unlike housing targets, as set out in NPPG paragraph 003 reference ID: 5-003-20140306; whilst Local Planning Authorities are obliged to design their policies to maximise renewable and low carbon energy development; there is no quota which the Local Plan has to deliver. This is most likely in recognition of the “national” nature of energy resources and the variation in constraints amongst Local Authority Areas.

I have dealt with a number of Planning Applications for large scale solar farms that have not been in such close proximity to a substation, and so the close proximity to the substations not essential. The development of this particular site to provide a solar farm is therefore clearly not essential. The Secretary of State and the Appeal Inspector in deciding recovered appeal references 3012014 and 3013836 (**CD-**

**ADHBC6**) attached no weight to the assertion that a connection to the National Grid is an essential requirement.

- 8.28 I consider my approach to be reasonable and supported by policy because - as explored in more detail in section 9 below - at every level of planning policy and guidance; where renewable energy projects are encouraged their promotion is caveated by the fact that their environmental impact needs to be acceptable.
- 8.29 The ecological benefits of the scheme that, in terms of biodiversity net gain, significantly exceed the expected gains are also held in significant positive weight as a benefit arising from the scheme.
- 8.30 The other benefits of the scheme outlined in chapter 6 above – landscape enhancements, footpath improvements, economic benefits, education strategy, farm diversification and improvements to soil and agricultural land quality are held in weight which varies in apportionment including none neutral, and very limited positive weight and subsequently do not amount to very special circumstances because they do not outweigh the substantial harm to the Green Belt arising from the development together with any other harm caused.
- 8.31 Whilst both the generation of renewable energy and ecological benefits are both held in significant weight, together they do not outweigh the definitional harm to the Green Belt together with the substantial weight apportioned to harm to openness, the significant weight apportioned to harm to landscape character, substantial weight apportioned to harm to nearby heritage assets and the substantial weight given to the Green Belt purposes.
- 8.31 **Whilst there are benefits arising from the scheme these do not individually or cumulatively clearly outweigh the harm to the Green Belt.** 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.
- 8.32 I note that even when, the Secretary of State and the Appeal Inspectors in deciding recovered appeal references 3012014 (28 MW Solar Farm) and 3013836 (14 MW solar farm) (**CD-ADHBC6**) and 3147854 (5 MW Solar Farm) (**CD-ADHBC5**) apportioned substantial weight to the production of renewable energy and moderate weight to some other benefits, they found that this did not clearly outweigh the substantial weight apportioned to the Green Belt on the grounds of inappropriateness together with significant weight to the development's impact on openness and encroachment into the countryside. They found that the clear harm to the openness and Green Belt purposes could not be justified by very special circumstances.

## 9.0 PLANNING BALANCE AND CONCLUSION

### INTRODUCTION

9.1 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. 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.

### COMPLIANCE WITH THE DEVELOPMENT PLAN

9.2 This section will consider the implications for development plan policy and will identify which policies are breached, those which are supportive of the appeal development, and whether there can be said to be compliance with the plan read as a whole. As previously noted the development plan comprises the Core Strategy Local Plan (**CD-HBCLP1**) and the Site Allocations & Development Management Plan (**CD-HBCLP2**) and the policies within these documents are the starting point for decision taking.

9.3 Consideration should be taken of the vision and strategy that underpins the development plan. The community and stakeholder engagement that fed into the production of the Core Strategy identified Green Belt protection as one of the key priorities of the borough residents (paragraph 1.18). It is noted that the generation of renewable energy was not identified as a key priority during the community engagement in the plan making. Based on the community engagement, Table 4 (page 21) of the Core Strategy Local Plan sets out the objectives for the plan. Green Belt protection is a key objective. Accordingly, the spatial vision at paragraph 2.56 notes that the protection of the natural environment is a priority of the plan and highlights the vision whereby *“The openness of the Borough outside the urban areas will also be protected by maintaining the Green Belt.”* Renewable energy projects get little mention in terms of the priorities and vision of the plan. It is clear that Green Belt protection is central to the delivery of the plan. The consultation during the making of the Site Allocations & Development Management Plan also revealed that continued protection of the Green Belt remains a priority for residents in the Borough.



- 9.4 Paragraph 5.49 of the Core Strategy notes that *“Larger, commercial renewable energy source developments, whilst broadly acceptable in principle, will need to be considered on their merits including their impact on designated and non-designated landscapes in the Green Belt.”*
- 9.5 The text that precedes both the Core Strategy and the Site Allocations & Development Management Plan and sets out the vision and priorities for the plan puts Green Belt protection at the heart of planning policy. The preceding text together with the context of the policies prioritises the reduction of emissions, improving energy efficiency and the more prudent use of resources above the development of renewable energy projects. In my view this is most likely due to recognition of the constrained nature of the borough whereby 80% of the land is Green Belt and Green Belt protection is a priority amongst its residents. Renewable energy projects are not afforded the same level of importance in the plan as Green Belt protection.
- 9.6 Accordingly arising from the vision and priorities follow the development plan policies which are considered below.

#### **Green Belt Policy**

- 9.7 Core Strategy policy **CS13** relates to the Green Belt. The policy states (inter alia) that:

*“There is a general presumption against inappropriate development within the Green Belt, as defined on the Policies Map and such development will not be permitted unless very special circumstances exist. Development proposals, including those involving previously developed land and buildings, in the Green Belt will be assessed in relation to the NPPF.”*

It has already been established in section 8 and 9 above that the development proposals are inappropriate and very special circumstances do not exist that outweigh the harm to the Green Belt and any other harm caused. There is subsequently a clear **conflict** between the appeal development and this policy.

- 9.8 The Council’s Site Allocations & Development Management Policies (2016) policy **SADM22** refers to the Green Belt boundary which is shown on the proposals map. Policy **SADM26** relates to Development Standards in the Green Belt. The policy sets out principles to which proposals for development in the Green Belt must comply. The principles, to take the relevant sections, are as follows:

*“(i) developments should be located as unobtrusively as possible and advantage should be taken of site contours and landscape features in order to minimise the visual impact;*

*(ii) buildings should be grouped together: isolated buildings in the countryside should be avoided;*

*(iii) existing open and green space in the area, including garden areas, should be retained;*

*(iv) the scale, height and bulk of the development should be sympathetic to, and compatible with, its landscape setting and not be harmful to the openness of the Green Belt;*

*(v) developments should use materials which are in keeping with those of the locality, and, where modern materials are acceptable, they should be unobtrusive;*

*(vi) existing trees, hedgerows and other features of landscape and ecological interest should be retained and enhanced in order to enrich the character and extent of woodland in the Community Forest in line with Policy SADM12;”*

9.9 There is partial compliance with this policy in that trees hedgerows and ecological interests are proposed to be enhanced as part of the appeal development and yet there is conflict with criteria i, ii, iii and iv. This is on the basis that the extent of the development could not reasonably be described as “unobtrusive” and the scale of the development – as set out in the spatial considerations of Green Belt openness in section 8 of this proof - is not considered to be compatible with the openness of the Green Belt. Furthermore, there are impacts that cannot be mitigated by planting or screening. In the long-term open and green space will not be retained. This state will be semi-permanent and for many will endure for a lifetime. Criterion ii and v are not considered to be relevant. Forming an overall view on compliance, balancing requirements met versus those in breach, the appeal development clearly **conflicts** with this policy taken as a whole.

#### **Renewable & Low Carbon Energy Policy**

9.10 Core Strategy policy **CS17** relates to “Energy and CO2 Reductions”. The policy provides that the Council will permit “new development of sources of renewable energy generation subject to:

- *local designated environmental assets and constraints, important landscape features and significant local biodiversity;*
- *minimising any detriment to the amenity of neighbouring residents and land uses; and*
- *meeting high standards of sustainable design and construction.”*

9.11 This policy provides measured or caveated support to renewable energy projects. It is a clarified policy; it supports projects that generate renewable energy but only where the environmental impacts (environmental assets and constraints) and the impact upon the amenity of land users are acceptable. The development proposals are in **conflict** with this policy because the scheme fails to protect environmental assets and constraints – namely the Green Belt and countryside – and, furthermore, harms the amenity of land users as detailed in the Landscape and Visual Impact assessment that supported the planning application. The specifics of the Green Belt harm and conflict with Green Belt policy and guidance have been explored in detail in sections 8 and 9 of this proof.

### **Heritage Policies**

9.12 Site Allocations and Development Management Policies policy **SADM29** relates to “Heritage Assets” The policy provides that planning applications will be considered in accordance with the NPPF. The policy states that:

*“When applications are submitted for proposals affecting any heritage asset the applicant must clearly explain what the proposal is for and provide sufficient detail to allow for an informed decision to be made. When assessing proposals, the Council will have regard to the significance of the heritage asset and the potential harm to it. The Council will not permit development proposals which fail to protect, conserve or where possible enhance the significance, character and appearance of the heritage asset and its setting. The scale, design, use and character of the proposal will be taken into account, as well as the detailed provisions following:” [to take the relevant sections]*

#### **Listed Buildings**

*“The Council will not permit development proposals which would materially harm the setting or endanger the fabric of a listed building. Listed Building Consent will not be granted for alterations or extensions that would be detrimental to the special architectural or historic character of a listed building. “*

### Historic Parks and Gardens

*Proposals relating to registered or locally important historic parks and gardens should:*

*(i) avoid any harm to the historic asset; and*

*(ii) where possible, enhance its significance, character, appearance and setting.*

*The scale, design, character and materials of the proposed development must respect the appearance and landscape of the park and garden.”*

9.13 Notwithstanding the weighing of the harm against the public benefits of the scheme, the appeal proposals are considered to **conflict** with this policy due to the material harm to the setting of 4 Listed Buildings and the setting to the historic park and garden

9.14 Core Strategy policy **CS14** relates to the “Protection or enhancement of heritage assets”. The policy requires all development proposals to “*conserve or enhance the historic environment of the Borough in order to maintain and where possible improve local environmental quality. Development proposals should be sensitively designed to a high quality and not cause harm to identified, protected sites, buildings or locations of heritage or archaeological value including Conservation Areas, Listed Buildings, Historic Parks and Gardens, Scheduled Ancient Monuments or their setting, and identified and as yet unidentified Archaeological Remains*”. Again the appeal proposals are in **conflict** with this policy due to the harm caused to the Listed Buildings, Scheduled Ancient Monument and Historic Park and Garden.

9.15 Core Strategy policy **CS22** is concerned with “*Securing a high quality and accessible environment*”. The policy requires that (inter alia) “*Development proposals should take advantage of opportunities to improve the character and quality of an area and conserve the Borough’s historic environment.*” In the context of the appeal development, the proposals are not considered to conserve the historic environment – it causes significant harm to it – and due to its scale and form does not improve the character and quality of the area. Therefore there is a policy **conflict**.

### Other Policies

9.16 In addition to the topic-based policies outlines above there are a number of other Core Strategy and Site Allocations & Development Management Policies that are relevant to this

appeal and require due consideration as to the development's adherence or conflict with these policies.

- 9.17 Core Strategy **SP1** sets out how the Council will make a sustainable contribution to delivering the Core Strategy Spatial Vision and sets criteria against which all development proposals in the borough will be assessed. I find partial compliance with criterion ii in that the appeal development will provide opportunities for habitat creation and enhancement. I do however find a conflict with criteria iv, v and vii in that the development proposals are not appropriate in scale, appearance and function to the local context and are harmful to the character and quality of the local area; it will prejudice features of the natural environment and amounts to inappropriate Green Belt development. These areas of the conflict and the scale of the conflict with the relevant criteria of this policy leads me to conclude that there is an overall **conflict** with this policy.
- 9.18 Core Strategy policy **SP2** sets out the presumption in favour of sustainable development and reiterates the NPPF advice that planning applications that accord with the policies in the Core Strategy will be approved without delay, unless material considerations indicate otherwise. The text above has already identified that there is a serious level of conflict with development plan policies that indicate that planning permission should not be granted.
- 9.19 Core Strategy policy **CS12** relates to the enhancement of the natural environment. For the reasons set out in section 8 and 9 of this proof I find a **conflict** with this policy in the appeal development's failure to conserve and enhance the natural environment of the Borough including landscape character.
- 9.20 SADMP policy **SADM11** requires development proposals in the borough to be managed to help conserve, enhance and/or restore the character of the wider landscape across the borough. Whilst the development proposals enhance some landscape features, hedgerows for example, this is only a mitigatory factor in the wider harm to the landscape character as outlined in paragraphs 8.19-8.21 of this proof. Those paragraphs explore how the LVIA that supported the application demonstrates that the appeal development would cause Major-Moderate and Adverse harm to the landscape. I subsequently find clear **conflict** with policy SADM11.
- 9.18 SADMP policy **SADMP30** sets the design principles for development in the borough. It provides that development which complies with the policies in this Plan will be permitted provided it, to take the relevant sections:

*“(i) makes a positive contribution to the built and natural environment;*

*(ii) recognises and complements the particular local character of the area in which it is located, and*

*(iii) results in a high quality design.*

*In order to achieve a high quality design, a development must:*

*(i) respect, enhance or improve the visual amenity of the area by virtue of its scale, mass, bulk, height, urban form; and*

*(ii) have limited impact on the amenity of occupiers of the site, its neighbours, and its surroundings in terms of outlook, privacy, light, nuisance and pollution.”*

9.19 For the reasons set out in section 8 of this report, the appeal development conflicts with criteria “i” and ii because it fails to make a positive contribution to the natural environment and it is not complementary to the character of the area in which it is located. There is also conflict with criteria i and ii due to the fact that the development is harmful to the visual amenity of the area on account of its scale, mass height and form and will be harmful to outlook when considering the visual impacts arising from the development. I find a **conflict** with the policy taken as a whole.

#### **Development Plan Conclusion**

9.20 A number of areas of clear policy conflict have been identified above and importantly it is policy conflict that goes to the heart of the development plan’s vision and strategy. Approving the appeal development would amount to a departure from the development plan. I shall proceed to consider if there are any material considerations that indicate that the plan should not be followed on this occasion.

#### **OTHER MATERIAL CONSIDERATIONS**

9.21 The **NPPF** is a material consideration in the determination of this appeal. The Green Belt sections of the NPPF have been explored in detail elsewhere in this proof and a clear conflict is found in the guidance. In respect of climate change and renewable energy, paragraph 158 of the NPPF provides that *“When determining planning applications for renewable and low carbon development, local planning authorities should:*

*a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and*

*b) approve the application if its impacts are (or can be made) acceptable. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas.”*

9.22 I would suggest that there is conflict with the guidance from the point of view that the impact of the development on the Green Belt cannot be made acceptable. There is nothing in this guidance that would justify a departure from the development plan. Rather it reinforces the development plan.

9.23 The **NPPG** provides more extensive guidance on renewable energy projects. The NPPG provides specific guidance relevant to “*Renewable and low carbon energy*” (**CD-NPP24**). Paragraph 001 (Reference ID 5-001-20140306) explains the importance of planning for renewable and low carbon energy. The paragraph states that:

*“Increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. Planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.”*

Whilst the guidance highlights the importance and value of renewable it caveats that the environmental impact needs to be acceptable.

9.24 NPPG paragraph 003 Reference ID: 5-003-20140306 adds that:

*“The National Planning Policy Framework explains that all communities have a responsibility to help increase the use and supply of green energy, but this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities.”*

9.25 I find that the advice contained in the NPPG provides support for the Development Plan policy as opposed to justifying a departure from it. It provides caveated support for renewable

energy projects and most importantly highlights that renewable energy cannot override environmental protections and the concerns of the community. The NPPG makes clear that the environmental protection provided by the Green Belt should not be overridden and that the community's concerns should be taken into account. In this instance there has been strong and widespread public objection to the scheme.

- 9.26 The **public benefits arising from the scheme** are also material considerations in the determination of this appeal that should be weighed into the planning balance with the purpose of establishing whether they would warrant a departure from the development plan. The benefits associated with renewable energy generation and biodiversity net gain are both held in significant weight. The other benefits alleged by the Appellant are held in no to limited weight. Two significant benefits, together with the collection of no to low level benefits, are not sufficient to justify a departure from the development plan particularly where the NPPG clearly states that need for renewable energy does not override environmental protection and where material consideration (the NPPF and NPPG) indicate that Green Belt harm should be held in substantial weight.
- 9.27 Paragraph 5.22 of this proof references "*Historic England Advice Note 15: Commercial Renewable Development & The Historic Environment (February 2021)*" and notes that as advice that is directly relevant to the scheme it is a material consideration in the determination of this appeal that should be held in significant weight. Paragraph 70 is of particular interest to this appeal as it relates to solar farms. Paragraph 70 notes that "*Harmful visual impacts on the settings of heritage assets can be avoided or reduced through sensitive design and layout, and mitigation measures such as tree and hedge planting to screen the development.*" This sets the expectation that harmful impacts on the settings of heritage assets can be avoided. This is not the case in the context of the appeal development and so the scheme is considered to be in conflict with this advice. On this basis Advice Note 15 is a material consideration that weighs against the proposals.
- 9.28 Paragraphs 5.15 to 5.22 of this proof explores **various other Government publications** that provide some context to policy on climate change by highlight the threat of climate change and the role that renewable energy schemes can play in tackling it. They are ultimately broad-brush high-level documents and were not written with the intention of determining individual planning applications and particularly not at the scale of the one being heard at the Inquiry. None of these documents, with the exception if the one referred to above, provides direct guidance for determining this planning application, some are not relevant at all and are held



in limited weight. They do provide some scene setting for the purpose of the development and do refer to some issues that should be taken into account in assessing renewable energy projects which include Green Belt, heritage assets and landscape and visual impacts. Other than providing a useful reminder of other environmental factors and protections that need to be considered they are limited in terms of the weight that can be afforded to them in the determination of this appeal.

**OVERALL CONCLUSION: SECTION 38(6)**

- 9.29 This section of this proof has identified that 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. Whilst there are policies and guidance that 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.
- 9.30 The specifics of the Green Belt harm and conflict with Green Belt policy and guidance have been explored in detail in sections 8 and 9 of this proof. This harm and conflict, together with the planning policy analysis above, reveals a conflict with the development plan for the borough when read as a whole.
- 9.31 As stated above, in this situation, the statutory presumption is that permission should not usually be granted. Decisions that depart from an up-to-date development plan may be taken, but only if material considerations in a particular case indicate that the plan should not be followed. The assessment above shows that 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. I consider that the appeal should be dismissed.

## 10.0 SUMMARY

- 10.1 I am a Chartered Town & Country Planner, a Director of LAUK Planning Ltd and have over 15 years professional experience spanning planning consultancy and development management in Local Government. This proof is provided in support of the Local Planning Authority's (LPA) refusal of planning permission and provides evidence in support of the Council's reasons for refusal with particular focus on Green Belt Issues. The appeal scheme will be assessed in this proof against this policy, guidance and material considerations.
- 10.2 My proof is supplemented and should be read alongside the Heritage Proof of Evidence prepared by Ms Maria Kitts. This proof summarises the harm to relevant Heritage Assets as identified by Ms Kitts and proceeds to undertake the balancing exercise that is required in accordance with paragraph 202 of the NPPF.
- 10.3 Section 70 of the Town & Country Planning Act 1990 and section 38 of the Town & Country Planning Act 1990 provide that planning decisions must be made in accordance with the development plan unless there are material considerations to indicate otherwise. Section 5 of this proof sets out the full range of development plan policies and material considerations that require assessment in the determination of this appeal.
- 10.4 Section 6 of this proof considers the public benefits arising from the development that are also material considerations in the determination of this scheme and accordingly apportions weight to the various benefits.
- 10.5 Section 7 of this proof considers harm to nearby Heritage Assets that arises from the scheme. The development causes harm to five heritage assets including two Grade II Listed Buildings, a Grade II\* Listed Building, a Grade II registered Park and Garden and a Scheduled Monument. **Substantial weight** is apportioned to the harm caused to the settings of these Heritage Assets.
- 10.6 In accordance with paragraph 202 of the NPPF the harm to the apportioned to the Heritage Assets need to be balanced against the public benefits of the scheme. The **significant weight** apportioned to the public benefits associated with the solar farm, in terms of the generation of renewable energy and the biodiversity net gain, does not outweigh the harm to the heritage assets, which is held in substantial weight.
- 10.7 Section 8 of this proof looks at Green Belt issues with particular reference to the guidance contained in the NPPF. The NPPF at paragraph 148 of the NPPF provides that Local Planning Authorities should ensure that substantial weight is given to any harm to the Green Belt.

Inappropriate development should not be approved except in very special circumstances. It is clarified in paragraph 148 that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm arising from the proposal, is clearly outweighed by other considerations.

- 10.8 Section 8 continues by articulating the harm to the Green Belt arising from the development – harm in addition to the definitional harm. Whilst both the generation of renewable energy and ecological benefits are both held in **significant weight**, together they do not outweigh the definitional harm to the Green Belt together with the **substantial weight** apportioned to harm to openness, the **significant weight** apportioned to harm to landscape character, substantial weight apportioned to harm to nearby heritage assets and the **substantial weight** given to the Green Belt purposes. **Whilst there are benefits arising from the scheme these do not individually or cumulatively clearly outweigh the harm to the Green Belt.** 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.
- 10.9 Section 9 of this proof provides the planning balance and conclusion. 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. 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.
- 10.10 Section 9 considers the implications of development plan policy and will identify which policies are breached, those which are supportive of the appeal development, and whether there can be said to be compliance with the plan read as a whole. The analysis finds a number of areas of clear policy conflict and importantly it is policy conflict that goes to the heart of the development plan’s vision and strategy. There is conflict with Core Strategy policies SP1, SP2, CS12, CS13, CS14 and CS22 and Site Allocations & Development Management Plan Policies SADM11, SADM26, SADM29 and SADM30. Approving the appeal development would subsequently amount to a departure from the development plan.
- 10.11 In accordance with Section 38(6) section 9 continues by considering if there are material considerations that would warrant a departure from the development plan. It is noted that there are a number of material considerations that weigh strongly against the appeal

proposals including the advice contained in the NPPF and NPPG and Historic England Advice Note 15.

- 10.12 Public benefits are material considerations that would weigh in favour of the development. The benefits associated with renewable energy generation and biodiversity net gain are both held in **significant weight**. The other benefits alleged by the Appellant are held in no to limited weight. Two significant benefits, together with the collection of no to low level benefits, are not sufficient to justify a departure from the development plan. Particularly in the light of the **substantial weight** apportioned to harm to the Green Belt and the Heritage Assets.
- 10.13 This proof has shown that there are no material considerations of sufficient weight to justify a departure from the plan. Accordingly, the development is not considered to represent a sustainable form of development and the appeal should be dismissed.