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LPA Ref: 21/0050/FULEI

HILFIELD SOLAR FARM, LAND NORTH OF BUTTERFLY LANE, SURROUNDING HILFIELD FARM AND LAND WEST OF HILFIELD LANE, ALDENHAM

APPELLANT'S CLOSING SUBMISSIONS

Introduction

1. This is a scheme that was rightly recommended for approval by the Council's planning officers after a detailed consultation process which led to significant changes to the scheme[1]. In doing so, the detailed and comprehensive officer's report to committee ("the OR") recognised the numerous and weighty benefits of the proposal which included[2]:
    a. The substantial amount of renewable energy that would be generated from the scheme that:
    "would be a significant contribution towards addressing the Climate Emergency that the Council has declared, and towards meeting local and national policy on reducing carbon emissions, addressing climate change, and meeting the UK's obligations under the Paris Agreement of 2016.";
    b. There would be environmental and biodiversity net gain benefits to the site and nearby nature reserves with:

[1] Ms Kitts XX – heritage amendments so that panels were removed from the north side of Butterfly Lane – esp field 19
[2] CD PA-27 para 12.10, page 100

"a 39% gain for habitat improvements and a 23% gain for hedgerow improvements";

c. Belstone Football Club and local walkers would benefit from the new permissive PROW's;

d. "local people, including school pupil, would benefit from the Educational Strategy".

COG suggest in closing there were clear errors in approach taken by the Officers in their assessment but in actuality what COG identify are simple challenges to the proper exercise of matters of planning judgment

2. Members disagreed, but in doing so they expressly recognised, in the first reason for refusal, the importance of renewable energy acknowledging:
"the wider environmental benefits associated with the increased production of energy from renewable sources".

As LA accepted in XX it was clearly an "on balance" decision.

3. Given the clear concessions made by the Council throughout the Inquiry, it is now somewhat difficult to understand how it can now credibly be argued that the planning balance is anything other than heavily in favour of granting permission. Very special circumstances exist and the appeal should be allowed.

The Council's Energy Plan

4. In Opening we submitted that the Council's policy documents all say the right things but the Council are yet to take the "ambitious actions" which they claim they are committed to. It has become apparent through the Inquiry that the situation is even more stark; the Council has said all the right things but does not have any real world plan to achieve its stated energy and climate objectives.

5. The NPPF sets out ambitious targets for meeting the challenge of climate change and these are targets that councils are required to reflect in their own development plans.

NPPF §152 states:

"*152. The planning system should support the transition to a low carbon future in a changing climate... It should help to… support renewable and low carbon energy and associated infrastructure*."

6. At §155(b) the NPPF indicates that plans should "*consider identifying suitable areas for renewable and low carbon energy*". At §158 the NPPF goes on to dictate that there is no requirement for applications to demonstrate the need for renewable energy and that "*even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions*". The NPPF is clear that renewable energy is key to the country's transition to a low carbon future and it requires LPAs to plan for it.

7. Further national guidance on planning for renewable energy is provided in the PPG[3]. There are numerous statements within the PPG of particular relevance to this Inquiry:

    a. "*The National Planning Policy Framework explains that all communities have a responsibility to help increase the use and supply of green energy*" (Paragraph: 003 Reference ID: 5-003-20140306);
    b. "*When drawing up a Local Plan local planning authorities should first consider what the local potential is for renewable and low carbon energy generation*." (Paragraph: 003 Reference ID: 5-003-20140306);
    c. "*When identifying suitable areas it is also important to set out the factors that will be taken into account when considering individual proposals in these areas*." (Paragraph: 005 Reference ID: 5-005-20150618)
    d. "*Policies based on clear criteria can be useful when they are expressed positively (ie that proposals will be accepted where the impact is or can be made acceptable).*" (Paragraph: 007 Reference ID: 5-007-20140306)

[3] CD-NPP4

In short, the PPG expects all communities to do their bit to increase the supply of renewable energy, when considering how they can do that their local plans should be informed by an up to date, realistic, capacity study and an up-to-date local plan can then provide for the delivery of renewables either by allocating land or setting out criteria based policies against which applications can be judged.

8. The Hertsmere development plan does none of this. Numerous witnesses before this Inquiry agree that it is out of date in this regard and none have suggested that it provides any allocations, criteria based policies or is informed by a capacity study[4].

9. Nationally the target for the reduction of carbon emissions is to be net zero by 2050; a target which is enshrined in law[5]. In December 2020 the National Audit Office acknowledged that meeting net zero is a colossal challenge, being a significantly tougher objective to achieve than the previous 80% target[6]. In October 2021 the net zero strategy further tightened in the UK with a commitment that the country will be powered entirely by clean energy by 2035[7], 15 years earlier than previously required. And contrary to the XX of Paul Burrell the latter cannot be read as favouring off-shore wind and disfavouring solar power – even if one only reads the "key policies" box – it states that unequivocally.

10. The development plan is not informed by these up to date targets and is in fact woefully out of date in this regard. The Core Strategy at 5.42[8] identifies that is has been informed by the 1997 Kyoto Agreement targets of reducing emissions to 60% by 2050 and that the capacity study that existed was the East of England Sustainable Development Round Table 2001 which identified 17% of the region's electricity could be produced by renewable sources by 2020. In any case, Hertsmere does not

[4] Para 5.42 of the CS (2013) promised joint working with adjacent authorities on an up to date criteria based policy which has never happened. And the only capacity study appears to have been that which informed the long since revoked East of England Plan, and the emerging (sic) local plan has stopped emerging but didn't make allocations in any event.
[5] s.1 of the Climate Change Act 2008
[6] CD-NPP30 page 6
[7] CD-NPP8, first bullet point, page 19
[8] CD-HBCLP1, para 64

generate 17% of its electricity by renewables, it produces around 6% of its electricity this way which is also significantly below the national figure of 33%.

11. The evidence that informs the development plan is grossly out of date, and there is no up to date evidence in the form of a capacity study or anything else – all that exists are the above statements of intent.

12. Judging the development plan against Hertsmere's own targets, it is once again out of date. This is a Council that has declared a Climate Emergency and is committed to achieving carbon neutrality as soon as possible and no later than 2050[9]. That is not reflected in the development plan.

13. The Council has explicitly adopted strategies that commit it to producing more renewable energy in Hertsmere. The Council's Climate Change and Sustainability Strategy v.1.4, dated 26th June 2020 states in terms:

    "*In order to meet the energy needs and our net zero emissions commitment before 2050, a significant amount of renewable energy capacity will need to be deployed within Hertsmere*"

    And goal number 2 of its Climate Change Action Plan is that it should:

    "*reduce reliance on fossil fuels and reduce emissions by increasing renewable energy capacity*"

14. These objectives are not reflected in the development plan, nor its actions in refusing this application.

15. On a practical level there is simply no plan within Hertsmere to meet the national objectives of net zero by 2050, nor the locally set objectives of deploying "*a significant amount of renewable energy capacity*" within the Borough. LA accepted the view of the Council's Climate Change officer that roof top mounted solar panels

[9] CD-HSPD2

and similar small scale renewable schemes would not be enough to meet the "step change" that was required in renewable energy production. The only suggestion that was offered by the Council or Rule 6 parties as to how renewable energy targets could be met was by importing it from "somewhere else". Such a suggestion is at complete odds with the requirement that "all communities" do their part and Hertsmere's own commitment to significantly increase its renewable capacity. This is a council without a plan and it is dependent on developer led schemes, such as the appeal proposal, coming forward if it is to stand any chance of making the changes required to meet renewable energy objectives[10].

16. Whether the Council's development plan is judged against national planning policy and guidance, against the national energy strategy and evidence or against Hertsmere's own energy and climate strategies it is out of date and it is nigh on impossible to contend otherwise.

17. Hertsmere has committed to delivering a step change in renewable generation within its district – but has taken no concrete steps to achieve that and has no plan in place as to how it can secure that. And most tellingly LA accepted that she doesn't take issue with the conclusions of the Climate Change officer that if this district is to achieve its own stated objective then the only way it could do it would be large scale solar generation in the Green Belt. With respect one wonders why on earth we are here.

18. The lip service given in closing submissions by the other parties to the Inquiry which on the one hand "acknowledge" the importance of renewable energy but then seek to downplay that benefit is similarly disappointing and indicative of the chronic failures that have occurred in planning for renewable energy delivery in this locality.

[10] WB's XX included the theme that Hertsmere ought to be judged against the performance of other Metropolitan GB authorities (despite there being no evidence of how any of those are doing). With respect that is a singularly bad point – if there was a robust up to date capacity study available that showed that Hertsmere had truly considered what it could do (including reviewing is GB) and it had concluded that there really are no sites – then the point would have some force. But so far as one can tell such a study hasn't been considered/commissioned/let alone published.

Landscape and Visual Impacts

19. Whilst the Inquiry heard evidence from landscape witnesses it is not a reason for refusal[11]. The Appellant accepts that in the short to medium term there will be landscape and visual harm but very firmly contends that in the longer term there will be improvements as a result of the legacy plan and that medium /long term effects during operation are not greater than moderate outside the immediate site boundary and beyond. With regards to the harms that do occur, as is shown in GD's appendix E, where there are differences between AK and GD in regards to visual impacts, they are small or as GD accepted in XX the experts assessment is either the same or "half a notch" difference. The consequence of this is that these matters do not need to be addressed at length in closing. There are visual impacts and they need to be weighed in the overall planning balance.

20. The LVIA demonstrates that due to the comparatively small scale, mass and height of the solar panels in combination with the existing landscape and topography and proposed mitigation, views of the site will be "localised"[12] and limited to impacts within 150m of the appeal site. That view was endorsed by the Council officers and the previous advisers of the Parish Council. GD accepted in XX that views of the appeal site would be limited in distance beyond the site itself. The potential for harm is therefore relatively limited, and pretty much limited to the site itself or those stood next to it.

21. The extent of visual harm will be informed by how solar panels are perceived and the Appellant contends it is wrong to treat them as in some way innately offensive to look at. As was acknowledged by Council officers the perception of solar panels was something that "divided opinion" and representations were received to the application which set out that the solar farm "*would make for an interesting, unusual and*

[11] It wasn't even urged as a RfR by the third parties until half an hour into Ms Scott's evidence when she told the inquiry that it ought to have been. Having said nothing to that effect up to that point – that doesn't seem to have been the most well thought out of contributions to the debate.

[12] Ie local to the site.

educational walk, and some have pointed out that there are other areas of countryside to walk in nearby for those who don't want to walk past solar panels"[13].

22. GD's opinion on the impacts of the solar farm were all shaped by his opinion that the solar panels would appear as a solid mass. Whilst this was expressed as an opinion the Appellant submits that it is not supported by the factual evidence let alone common sense. Solar panels are not a solid object akin to a building, they are constructed by resting a panel on a frame and so are by definition not opaque solid forms. This is true of both individual solar panels but rows of solar panels as well, with the result that there will be visual permeability through the solar farm from many angles. The Inspector will no doubt be aware from experience what a solar panel looks like but in any case has the benefit of visualisations here which illustrate what a solar panel looks like and the visual permeability of them from relevant viewpoints[14]. This flaw has led GD to overstate the impacts of the development.

23. AK's evidence was clear that solar development is capable of proper integration within the landscape as a 'low lying' form of development and that the receiving landscape character provides a strong existing landscape framework along with proposed mitigation, to properly integrate the proposals. The layout has been specifically designed to address landscape sensitivities and is well designed and pays proper regard to strategic landscape guidance for the local character area including provision of green infrastructure outcomes.

24. The main difference in outcome between GD and AK is the assessment of the impact on the Aldenham Plateau character area. GD assesses the impact on this LCA to be the same as that to the Borehamwood Plateau despite the development of the solar farm exclusively occurring in the Borehamwood Plateau. GD's position is not credible. When considering landscape impacts it is the landscape itself that is the receptor. The Borehamwood Plateau will receive 85ha of development whereas the Aldenaham Plateau will receive none, it is therefore nonsensical to suggest that the two landscapes are altered in the same way. GD's assessment in this regard lacks any

[13] CD PA27 – 10.99

[14] AK Appendices: Figure 9.1: Viewpoint 1 - A41 Photomontage (Left) Sheet 4 of 6; Figure 9.5: Viewpoint 9 - Footpath Aldenham 040 Photomontage Sheet 2 of 2; Figure 9.6: Viewpoint 11 - Footpath Aldenham 040 Photomontage (Left) Sheet 4 of 6

rationality and is unsupported by any guidance. AK's evidence on this point should be preferred. To the extent that intervisibility is a relevant consideration, it does not elevate impacts to the extent argued by GD. AK's evidence in relation to GLVIA best practice, is correct.

25. GD's other criticisms of the Appellant's evidence did not stand up to scrutiny in XX. Initially he sought to maintain that there had been an insufficiency of information provided by the Appellant but conceded that he had enough information to form a view of the appeal scheme and so did the Inspector (and by extension so must the SoS) and he further accepted that the LVIA was fit for purpose, a point acknowledged by later witnesses including the PC's expert Ms Brown who actively relied upon it. Accordingly, this too was a criticism that went nowhere. For the same reasons the criticism by the PC in closing that there are insufficient photo-montages go nowhere.

26. He criticised the detail provided in the landscaping mitigation reports, the detail with regards to the reinstatement programme after decommissioning and the detail of the education strategy. However, he accepted that these were all matters that could be dealt with by condition. They are matters that are dealt with by condition 11 which the parties all agree is a legal effective one[15]. This was another of GD's criticism's that went nowhere.

27. GD and various other witnesses raised concerns about "channelisation" of public rights of way. It is not accepted that this would occur. The term suggests being 'hemmed in' in the sense of a dark ginnel, where robust folk will fear to tread. What is proposed is a 10 m wide corridor – at the edge of which will be a fence (sometimes only one side) and beyond that by 3 to 5 m would be the start of the array – the suggestion that this will be an uncomfortable let alone scary experience is, with respect risible. Even to the extent that it might be unwelcome to a future walker who would prefer to walk through the countryside it is not accepted that this would be a material planning harm sufficient to weigh decisively against the proposals. These routes would be generous (double the width of Butterfly Lane by example) and

[15] There are different versions of condition 11 before the Inquiry but there is no dispute that it is possible to secure mitigation through the operational span of the solar farm and beyond.

characterised by wildflower meadow, in places existing or new hedgerow or tree planting and forward views to the surrounding landscape. Conditions secure that the minimum distance from the centre line of any PROW that runs through the solar farm to the nearest boundary be it fence, hedge or other will be 5m. That is a meaningful distance and it is secured as a minimum. The cross sections attached to AK's proof of evidence illustrate the range of different PROW boundaries that will be experienced and it is difficult to see how any of them could be said to be harmful. This was the view reached by the Council's officers who concluded the buffer would "prevent walkers from feeling unduly hemmed in"[16].

28. The PC refer to the Radlett Neighbourhood Plan (2021) is 400m but acknowledge it is not engaged. It is of no relevance but for the reasons already set out the concern about the usability of footpaths is not justified. The over the top characterisation of COG in closing of the impacts on PROW are defeated by a simple application of common sense.

29. Landscape and visual matters are rightly not a reason for refusal. VS' was the only witness who suggested they should be but this was a suggestion made for the first time at the Inquiry[17], was unsupported by evidence and with respect undermined by her own acknowledgement that she was not a landscape expert. The Appellant of course accepts that there would be short and medium term harms but they would diminish as the mitigation planting matures and once the operational period ends then there would be a long term benefit, a proposition that was not meaningfully challenged before the Inquiry.

Heritage

30. Putting to one side the evidence of JB, the self confessed outlier, then the difference between the parties is relatively limited. There are five assets that in reality need to be considered and it is the Appellant's contention that there is only harm to three of

[16] CD PA27 – 10.100

[17] Part way through her XX – so presumably it came as a bit of a surprise to her team as well as the rest of the inquiry that she had formed such a view.

them; and even then it is firmly submitted that for the reasons given by GS the harm is no greater than the low end of less than substantial harm.

31. In opening we highlighted that intervisibility and co-visibility between a heritage asset and new development does not automatically create harm. This is a trite proposition that is all too often forgotten or misunderstood as it has been by the Council. Change only matters if it affects significance. In order to understand what the impact on the significance of a heritage asset actually is, you have to understand what the actual significance of the asset is and from where and what it draws that significance.

32. Unfortunately, methodological issues appeared to become more muddled before the Inquiry by the Council and COG's repeated references to cumulative assessments. That is to say cumulative effects of a single development. However, when the guidance and the evidence of their own witnesses, as well as that of the Appellant's, is properly understood then there is actually agreement in how assessment of heritage impacts should be approached.

33. NPPF and the relevant legislation requires that when considering heritage assets what is to be considered is the impact on their heritage significance. The first step in doing this is to understand what is the significance of the asset in question. Once that is understood an assessment can be made as to whether the significance of the asset would be harmed by the proposed development. That assessment is carried out by comparing the significance of the asset as it stands now i.e. the baseline and what the situation would be once the development is carried out.

34. That the relevant assessment is against the existing baseline versus the post development position was agreed by <u>all</u> the heritage witnesses who gave evidence to the Inquiry. Past degradation of the asset leads to the existing baseline it doesn't add to the harm that arises. This approach is not altered by the guidance in Historic England's GPA 3 regarding cumulative change[18]. As GS explained the purpose of that paragraph is to serve as a reminder when carrying out the baseline versus proposed

[18] CD NPP11 p4 "Cumulative Change"

assessment to have particular regard to the sensitivity of an asset that may have been so extensively harmed by previous development so that it is particularly vulnerable to any further changes, severing last link between an asset and its original setting. There is nothing in the language of this one paragraph that suggests it is anything other than the existing baseline that needs to be assessed.

35. There are two simple ways to test the validity of the suggestions made by the Council and COG in their XX of GS that there has been a failure to consider cumulative change:

    a. Their own witnesses have carried out their assessments against the existing baseline and agreed in XX that it is against that position that the impact of significance of the proposed development should be judged; and
    b. Nobody has pointed to any policy or guidance that indicates what should be used as the baseline for an assessment if it is not the existing baseline.

    The suggestion that there has been a failure by the Appellant to consider cumulative change is the reddest of red herrings which quite frankly occupied an inappropriate amount of the inquiry's time[19]. The suggestion made by the Council repeatedly in closing that GS' methodology is flawed due to her consideration of cumulative change is simply incorrect and is not supported by the evidence of the Council's own heritage witness or that of the other heritage witnesses.

36. The criticisms made of GS methodology in closing also ignore her reference in XX to GPA3 concerning little-changed settings. The exact reference is as follows from paragraph 9 on page 4 of GPA 3:

    "*Settings of heritage assets which closely resemble the setting at the time the asset was constructed or formed are likely to contribute particularly strongly to significance but settings which have changed may also themselves enhance significance, for instance where townscape character has been shaped by cycles of*

[19] Just as much as the wasted time spent in XX of AK by WB about the visual impact methodology, during which the witness wasn't actually taken to appx 2 of the LVIA which sets out in detail the visual methodology as pointed out in ReX.

change over the long term."

GS is plainly correct to consider the current contribution the setting of heritage assets make to their significance.

37. The original scoping of what heritage assets needed to be considered was done by the Desk Based Assessment. The name of that assessment is a misnomer and as it confirms at 3.2 the relevant information sources were "*supplemented by a **site visit** in July 2020 which confirmed the current ground conditions and land use within the site and the locations of previously recorded heritage assets, and also considered the baseline setting of designated heritage assets in the study area*."[20]. When GS was asked to act in the appeal, as she explained to the Inquiry, she considered all the relevant background documents and carried out a site visit before deciding she could support the appeal. She approached things from first principles and considered each of the assets that were potentially affected before determining which ones needed further consideration. She ultimately came to the view that there were only 5 assets which required particular attention. She is not alone in that view, it is also the opinion of MK and JE.

38. It was suggested in closing by the PC that GS accepted in XX that she had advised against the inclusion of Field 1. The reason the parallel scheme was submitted was explained by PB and the Appellant has never waivered in its position that the appeal proposals are acceptable and the Council were wrong to refuse planning permission. As was made clear by GS in her evidence she gave advice on what improvements could be made which is plainly not the same as an acceptance that there is an existing problem.

39. On any sensible approach those 5 assets: Slade's Farmhouse, Penne's Place, Aldenham House, Hilfield Castle and Hilfield Lodge are the assets that need to be considered[21]. When considering the respective assessment of impacts on those assets, as MK acknowledged the dispute between herself and GS is limited to whether there

[20] CD PA13 – page 3, 3.2
[21] The respective parties positions are summarised at CD DSDI2

is harm to Aldenham House and Penne's Place and the level of harm to Slades Farm, in each of those instances MK considered her assessment of impact was "one step up" from that of GS. JE agrees that there is no harm to Penne's Place but places the other impacts as higher, however, he has not appeared before the Inquiry and so, regrettably has not been subject to XX. JB considers that there is a medium level of harm to Slade's Farmhouse, Hilfield Castle and Hilfield Lodge.

40. Inevitably the Inspector will have to form an opinion on the credibility of the various heritage witnesses who have appeared before the Inquiry. When doing so it is worth bearing in mind that the High Court has confirmed that "substantial harm or total loss" means harm that would "have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced"[22]. A medium level of less than substantial harm is therefore something that is on its way to very much reducing the significance of an asset. Given that the only impacts that arise in this case arise through indirect impacts on peripheral aspects of part of their setting rather than direct impacts on a heritage asset it is submitted that assessments of a medium level of less than substantial harm should be treated with a high degree of caution.

41. The heritage significance of Slade's Farm is primarily derived from its physical form, in particular the early parts of its fabric, and its SW elevation. It is from the garden that these features are best understood and it is the garden which is the element of its setting that makes the most significant contribution to its significance. The small cluster of surviving farm buildings give some legibility to its origins as a farmhouse. Slade's Farm was clearly re-orientated to face Sawyers Lane, as can be seen from comparing the building on the 1786 map to the later maps.

42. Slade's Farm's relationship with its wider setting has fluctuated over time. The position now is that it no longer has a functional agricultural relationship with the wider agricultural land. JB in particular sought to downplay the significance of this distinction but cannot escape from the simple fact that the Slade's Farm does is not the centre of management of the surrounding fields, and that reduces the extent to

[22] CD ADAP3 - *R DCLG and Nuon UK Ltd v. Bedford Borough Council* EWHC 2847, para. 25

which that historical connection can be experienced. This is clearly legible through the introduction of other land uses, including the coach depot, to its immediate surrounds. Furthermore, that is not a new phenomenon, as GS shows the historic mapping shows the changing nature of the tenancy of the surrounding fields.

43. This is not to say that the fields which form part of the Appeal site make no contribution to the significance of the asset, they do but that contribution is limited for the reasons set out above and articulated at length by GS in her evidence. As a result of Ms Kitt's intervention, fields 19 and 20 are free from solar panels and those are the fields closest to the SW elevation of Slade's Farm which is the principal elevation of the asset. That is a conscious decision on behalf of the Appellant to minimise the impact on Slade's Farm. There is active mitigation proposed in the area around Slade's Farm in particular the establishment of hedgerows to re-establish the legibility of the former route of Sawyer's Lane. There will be some views from Slade's Farm of solar panels but they will all appear with a setback and will notably be absent from the field to the south-west, and there will be some views of Slade's Farm where solar panels will be apparent, but the views from where the asset's significance is best understood will be unaffected. This all leads inexorably to the conclusion that there is an impact but it is at the low end of less than substantial harm.

44. As GS explained from the evidence available it is not possible to know what the original setting of Penne's Place was, when it was a moated manor house 700 years ago. However, what we do have is extensive map evidence that its remnants have been deliberately secluded and cut off from the wider landscape for the last 150 years at least. This is something that has most recently been accentuated by its treatment by the school as indicated by the level of vegetation surrounding it as well as it being fenced off. That seclusion has been the design intention of the later historic development of Penne's Place was not meaningfully dispute by any of the witnesses before the Inquiry. Given the importance of seclusion, despite the proximity of the appeal site to Penne's Place it makes no contribution to its significance and the appeal proposal would not harm its significance. Even if the Appellant's evidence is not accepted and there is some contribution to significance from the appeal site then there has been no proper articulation as to why there would be harm. There may be some limited glimpsed intervisibility of the scheme beyond an appropriate set back but that

does not equate to harm to significance. JE's forthright rejection of an effect is compelling.

45. The only body who has suggested anything other than the lowest level of harm to Penne's Place was Historic England. They have not sought to take any part in the Inquiry and as GS explained there is nothing in their representation that suggests they visited the site or that they considered the early map evidence and the simplistic idea that comes across in their representation is that open landscape beyond Penne's Place forms part of its setting. None of the experts before the Inquiry agree with the approach of Historic England and it is submitted that the evidence the Inquiry has had the benefit of hearing live should be preferred.

46. When considering the impact from a development in the setting of a heritage asset it is key to understand the totality of the setting not merely the location in which the development takes place. This is necessary to understand the particular contribution that is made from any given element of the setting and how a change in that location would affect significance. This is a principle which is key in order to properly understand whether there is an impact on Aldenham House RPG. There are planned views from Aldenham House RPG but not of the appeal site. The designed views are clearly the SW view down the wide elm avenue that was demonstrably designed as an outwards view from the original core of the parkland. This is best demonstrated by the physical sinking of the lane out of the view on the south-western side of the parkland, with surviving associated retaining structure adjacent to the road, as well as evidence from the map regression evidence which culminates in the 1895-99 OS Map[23] which shows the relationship between the parkland, the elm avenue and the designed SW view. The south-western focus of Aldenham House RPG is clear as is the contrast between its south-western and north-western elements. The north-western edge simply does not demonstrate the elements of such a designed view, with no sinking of the lane and instead features secluding vegetation.

47. The Heritage significance of Aldenham House and Gardens is overwhelmingly within the asset itself. That is where the very extensive, clearly designed elements are

[23] GS PoE page 44 para 5.15

contained; the water gardens, lake, bridge and the more open parkland elements are in the southern area of the RPG, whereas the northern area is made up of more secluding vegetation and the arboretum which has expanded to fill the northern area. This growth means that any potential views out to the north, including of the appeal site, are greatly inhibited. This has only been further exacerbated by the school acting to secure its boundaries with fencing.

48. The witnesses who have identified harm to Aldenham House RPG did not meaningfully dispute the historic development described by GS or the analysis she provided of the current experience of the asset and its surroundings. Their evidence is in essence that there would be glimpsed views of the solar farm and there is therefore harm. That is not how proper assessments of heritage impacts work. The appeal site makes up a very small proportion of the setting of Aldenham House RPG, and it does not contribute to the heritage significance of the asset, the core of which is that contained within the asset itself and the result is that the appeal proposal would not harm its significance.

49. Notably MK told the inquiry that it was on her advice that panels were moved back from the north side of Butterfly Lane – once that was done, mindful of the effect of mitigation - the glimpsed views from the northern gateway will be maintained and no harm will be caused.

50. GS and MK agree that there is harm to Hilfield Castle and Lodge and that harm is at the low end of less than substantial harm. As set out above, the level of harm ascribed by JE and JB is difficult to understand. In any event the Appellant submits that the assessment given by GS and crucially her explanation for that assessment is correct.

51. Hilfield Castle was sited to give it a dramatic context, in line with the picturesque aesthetic traditions of the time. The views that are most important to it are the views to the South, that is where the earliest part of parkland was located and it is the southern façade of the building that is the most important. JB tried to suggest that all façades were equally important, but this ignores the geometry of the building, the level of architectural detailing to each façade and the location of the important views to the south over the ponds or lake and the rising ground beyond. The 1804 plan

shows that there was briefly parkland to the west and further north of the Castle but that this was established later than that to the south and came about not from contemporary specimen planting but hedgerow removal.

52. The parkland to the west of the Castle did was not long-lived and by the 1839 tithe map it was largely lost. The surroundings of the Castle have now changed dramatically; to its immediate north-east is the aerodrome and SE the reservoir. Its northern border has limited intervisibility with the surroundings due to the continued growth of vegetation which acts to seclude that edge of the Castle's grounds and inhibit views of the electrical transforming station. The vegetation on the western boundary also limits views.

53. The significance of the Castle derives primarily from its architectural style, the main contribution that its setting makes to significance is through the remaining grounds of the asset. Parts of the appeal site do make some contribution to significance as they were once parkland but that is no longer apparent and intervisibility is limited and so the harm to the significance of Hilfield Castle can only be at the low end of less than substantial harm.

54. The impact on the Lodge is similarly at the low end of less than substantial harm and the explanation for this largely mirrors that for the Castle, in that its current grounds contribute most to its significance through setting. The primary elevation of Hilfield Lodge is its southern façade which faces south towards the lake which survives to this day. The Appellant again accepts that because parts of the appeal site were once parkland and have some intervisibility with the asset then there is limited harm to the significance of Hilfield Lodge.

55. What is however notable is that the introduction of specimen trees to the north-west and west of the castle will enhance the legibility of those areas as former parkland for the first time in over a century. GS explained that such enhancements were proposed at her instigation – and they are plainly a heritage benefit, which will long outlive the 35 operational years of the solar farm.

56. In closing it is not proposed to address the additional structures that are claimed by JB to be non-designated heritage assets and would direct the Inspector to GS's proof and rebuttal which fully address these. The Appellant would instead simply re-iterate that if an asset is not on a local list in an area where one has been established with clear criteria and periodically reviewed then that gives a strong indication that it is not a non-designated heritage asset. Whilst in theory such an asset could be a non-designated heritage asset, for a professional to reach such a conclusion there would have to be an assessment against a clearly compiled set of robust criteria. This is lacking here.

57. The landscaping mitigation strategy that is now before the inquiry is not simply a landscape strategy but a heritage mitigation and improvement strategy that has been informed by both AK and GS. The result of this will be in the long term a heritage gain, which is in particular brought about by the re-instatement of trees to areas of former parkland. To his obvious discredit, GD sought to take issue with this claiming that trees were out of character with the local area, that is obviously wrong as a matter of fact, but in any event there can be no dispute that they represent a heritage gain as they re-introduce features that are lost. Indeed in closing the Council accept that there are heritage benefits but they take issue with the extent of them.

58. The heritage benefits do not change the position that during the life of the solar farm there would be some heritage harm and the Appellant entirely accepts that the policy consequence of this is that the NPPF para 202 balance is engaged.

Green Belt Impacts

59. The appeal site is located in the Green Belt and is by definition inappropriate development. Substantial weight should be attached to that definitional harm as it should to any other Green Belt harm.

60. Assessing Green Belt harm requires an assessment of whether the five purposes are harmed. The Council and the Appellant that there is harm to purpose (c) by encroachment into the countryside. This occurs because of the simple fact that there is

development within the Green Belt. All the landscape witnesses are in broad agreement that the extent of visibility of the solar farm in the wider landscape is limited and as PB explained this acts to temper the extent to which the development is perceived as encroaching into the countryside as does the existence of other development in the surrounding area, eg the aerodrome. This is the only Green Belt purpose that would be harmed, albeit that the Appellant has not sought to ever shy away from the fact that for over 85 hectares there would be a change to the character of the land which would impinge upon the openness of the green belt causing harm which should be afforded substantial weight.

61. COG through EB seek to suggest that there is harm by way of failing to check the unrestricted sprawl of large urban areas. There is no such harm. Whilst there could be a semantic debate about the extent to which there are large urban areas near the site this does not matter as the key point is that the appeal site does not adjoin any urban area and so by definition cannot extend one let alone be said to be causing an unrestricted sprawl. Nearby settlements would remain physically and visually separate from the solar farm.

62. The essential characteristic of the Green Belt is its openness; this has a spatial element and may also have a visual element. Visually, for reasons already touched upon, the impact is surprisingly limited given the overall scale of the development. The appeal site due to the topography of the surroundings and the presence of existing and proposed vegetation is well contained with views limited to the appeal site itself and a range of about 150m around it. The limited nature of its visibility is largely agreed before the Inquiry.

63. The level of visual impact on openness is further moderated by the nature of the structures proposed themselves. As already explained solar panels are not dense structures, they are, as their name indicates, panels that are mounted on frames. This means their top surface is solid but below them they are largely open. Their height is limited being approximately 3m tall and these features combine to create a development which will not be widely apparent beyond its immediate local and within its immediate local the impact on visual openness is reduced by the extent to which the fields where panels are located remain visually permeable.

64. Spatially there will be an impact on openness as the appeal introduces development to a site which is currently undeveloped. But again the spatial impact on openness is tempered by the physical make up of the development proposed. Each field where solar panels are located will not become a solid block of development. If a solar panel is considered as a 3d shape it is only the top face that is solid, the remaining faces do not feature any physical form other than the frame at their edges. This is at a real contrast to typical form of built development.

65. The Appellant obviously accepts that there will be a loss of openness arising from the extensive are proposed to be developed but it is entirely too simplistic of an approach to suggest that the spatial impact on openness mirrors the size of the solar farm. That said substantial harm should of course be afforded to the definitional harm, the spatial harm and the visual harm.

Other Matters

66. A number of other matters have been raised during the currency of the Inquiry which have little to no material bearing on the overall planning balance that must be undertaken.

67. COG had initially raised noise concerns but through the proactive engagement of the relevant experts a SoCG has been entered into which covers this topic and it is agreed that noise concerns can be adequately addressed by condition.

68. The Rule 6 parties have referred to flood risk but have actively accepted they have brought no evidence on this point, as they reiterated in closing, and do not dispute the findings of the technical work on this topic. The Inspector has been provided with a note which sets out the position of the Appellant and the position of the LLFA but in any case it is a matter that goes to conditions not the principle of development.

69. Mention was latterly made of dogs not on leads chasing skylarks. This is not a concern that has been flagged in any of the evidence, and is something that is controllable in any event.

70. It has been suggested that even though there would be a condition imposed on any planning permission granted by this appeal that would limit the operational life span of the solar farm there was nonetheless a possibility that it could continue beyond that date. That is not a relevant consideration. Any future application to extend the lifespan of the solar farm would have to be considered with regards to the development plan, material considerations and planning law as it stood at that point in time, none of which are knowable at this time. What the result of any such application could be cannot be predicted at this time and in any event that is not the application that is before this Inquiry. The task that faces this Inspector (and the SoS) is the determination of the appeal scheme that is before it.

71. There has also been concerns raised about the effectiveness of the conditions regarding decommissioning and long term landscape management. These concerns are legally unfounded for the reasons set out in the note already submitted to the Inquiry which we append for ease of reference.

72. COG in closing refer to harm to agricultural land due to a concern about "wetness". There is no relevant evidence before the Inquiry that justifies such a concern and as ever the Inquiry has sufficient information to form a view on this issue.

The Planning Balance

The Appeal Proposal

73. At the close of the Inquiry it is worth focusing on what permission is actually being sought for; that is a solar farm with a generating capacity of up to 49.9MW, or providing power for the equivalent of 11,160 homes per annum. There are two inter-related elements to the proposal the solar panels and the battery stores. The solar

panels generate electricity which can either go straight into the national grid or can be stored in the batteries and then later discharged into the national grid when there is a need for the electricity. The benefit of having both is that it allows the productivity of the solar farm to be maximised as surplus energy produced at times when production might be high but demand low can be retained and used when required.

74. The location of schemes such as the appeal proposal is primarily driven by the need to be close to an available grid connection and a substation with capacity. The Appellant identified Elstree Substation as such a suitable location. In determining the site was then selected following a site search using a 5km isochrone from that substation. The full detail of that site search is before the Inquiry and contained in the 'Alternative Site Assessment Note'. Criticism, albeit based upon no evidence, has been made of this however all such criticisms are demonstrably unfounded.

75. The 5km search radius is consistent with those in the sites LA has experience of dealing with. Further, the draft national energy policy EN3[24] recognises that that commercial feasibility and minimising overall costs are key considerations, this again justifies the 5km search radius.

76. COG suggest that the size of sites that were sought inevitably meant that a site in the Green Belt would be identified. This is very much a "so what?" point. In order for the solar farm to be viable and to effect the step change sought **within the District by its own Strategy,** it must be over a certain size and the search criteria must reflect that. Hertsmere is committed to increasing renewable energy provision in its borough and as numerous witnesses confirmed this inevitably means renewable schemes will have to be delivered in the Green Belt. There is no suggestion that there is no other more suitable Green Belt site that should have been considered and as the site search shows the Brownfield Register was fully considered. COG notably in closing point to no planning policy or guidance which supports the complaints they have raised and indeed the Council specifically accept in closing that there is no requirement for a Green Belt sequential assessment.

[24] CD NPP-18

77. A suggestion is made by the PC in closing that there was concession that a connection can be made to an overhead line, this was in a purely hypothetical discussion and there was no evidence given on whether a solar farm of the nature and scale proposed here could do so. Neither the Council or Rule 6 parties have produced anything by way of an alternative site assessment or have produced evidence on other sites that could or should have been considered.

Decision making framework

78. There has been discussion and XX at the Inquiry at the extent to which policies feature in the reason for refusal and the extent to which the heritage policies and green belt policies in the development plan are consistent with the NPPF. However, this debate does not really matter for the simple reason that the very special circumstances test is determinative.

79. NPPF para 148 is all encompassing and requires the harms to the Green Belt and any other harm, which means any other harm not simply harm to the Green Belt, to be weighed against the benefits of the scheme to see whether all those harms are clearly outweighed. If very special circumstances exist then the Green Belt policies contained within the local plan are also complied with and the development plan as a whole would be complied with. No one is contesting before the Inquiry that if very special circumstances exist then permission should be refused.

80. The heritage balance at NPPF 202 must also be passed but that is passed if the heritage harms are outweighed by the public benefits of the scheme, and so given that the heritage harms must also be taken into account in the NPPF 148 test then inevitably if very special circumstances exist then the heritage balance will also be passed.

81. The meaningful contentious policy debates are those relating to policy CS17 of the Core Strategy and NPPF 151.

82. Remarkably CS17 is the only policy in the development plan which deals with renewable energy schemes of this nature. The only criteria of which it is alleged could

be breached is the requirement to consider "environmental assets". As EB pointed out in XX the policy does not say Green Belt; it does not and had it intended to it could have. As PB explained Green Belt is not something that is typically considered to be an environmental asset it is instead a pure policy designation. There is nothing in the language of CS17 or its supporting text that suggests the reference to environmental assets includes the Green Belt or that the policies acts to bar renewable energy projects from the Green Belt, the lack of any reference to Green Belt is stark.

83. It would be surprising if the policy were to be construed as amounting to a prohibition on renewable energy development in the Green Belt and it would certainly be inconsistent with national policy. NPPF 151 states "*very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.*" That paragraph has to have some meaning. As PB observed the benefits of renewable energy are the only thing in the Green Belt section of the NPPF that receive any such recognition. The clear steer of this paragraph is that the benefits of renewable energy are capable of amounting to very special circumstances. CS17 is not breached, but rather supports these proposals

84. That such benefits can amount to very special circumstances is shown by the additional appeal decisions submitted by PB to the Inquiry. The purpose of providing those decisions, as he explained, is to demonstrate that solar energy projects have been found to show very special circumstances and be approved in the Green Belt and to counter the skewed consideration of renewable projects presented in the Council's evidence. That is not to say that they all energy projects in the Green Belt will demonstrate that very special circumstances exist but that they may. It is disappointing that LA only sought to present appeal decisions where renewable schemes had been refused permission, that is clearly not an accurate reflection of the spread of available appeal decisions. It is even more disappointing that this overtly selective approach was continued in the Council's closing.

85. If VSC are demonstrated then CS13 is passed and on Ms Dring's thesis put to PB in XX – there is compliance with the development plan.

<u>The Balance</u>

86. When carrying out the balancing exercise great weight should be attached to harm to heritage assets. As PB explained the weight to be attached to harm depends on the extent of that harm. It is a matter of plain logic that if a given asset were to experience substantial harm then that would weigh more heavily in the planning balance than if the same asset were to experience harm at the low end of less than substantial harm. PB attaches moderate weight to the harm to the heritage assets, that does not mean he has not treated that as a material consideration of great importance but instead it reflects the significance of the assets and the extent to which those assets are harmed.

87. PB ascribes moderate weight in the overall planning balance to the effect on landscape character and visual amenity. For the reasons already explained these negative impacts are limited to the duration of the lifetime of the solar farm and in the long term there will be beneficial landscape impacts which are secured by condition.

88. Substantial weight should be attached to the harm to the Green Belt and those harms have already been identified.

89. The renewable policies of the development plan are out of date by any metric. The consequence of this is not to engage the tilted balance in NPPF para 11 as we are concerned with a site in the Green Belt and that remains the relevant policy test. But when carrying out the planning balance the plethora of clear failings of the development plan with regards to renewable energy must be considered. As must the Council's very real world failure to meet its own publicly stated energy commitments. This is a Council that needs a step change in renewable energy delivery and it has no plan of any description be it planning or otherwise to achieve that.

90. The Appeal proposals will have a capacity of 49.9MW which equates to an electricity generating power for over 11,160 households in Hertsmere and would result in savings of carbon dioxide emissions during its operational period of c. 11,515 tonnes of CO2 per annum. The significance of such benefits is stark. As PB explained the linked benefit of renewable energy is that it contributes to the country's energy security, the importance of this is obvious. The importance of these benefits is articulated at great length in the Officer Report and whilst the judgments exercised

there are disputed, the facts that lead to them are not and it is commended to the Inspector.

91. The attribution of weight to the benefits from renewable energy by the other parties is disappointing and further exemplifies why there has been such a failure to meet climate change and renewable energy objectives. For example, COG suggest in closing it should attract "some weight" and "moderate weight"; this is not "proper[…] recognition" of the benefits they claim and is instead a woeful understatement of the importance of renewable energy. There is not one mention in the closing of COG or the Parish Council of the need for energy security a blatant material benefit of the appeal proposal.

92. That a solar farm would generate such benefits is inevitable, but what perhaps marks the Appeal Scheme out are that these are not the only benefits that would be delivered. The Appeal Scheme is part of the Aldenham Estate's wider vision and aspirations for environmentally responsible long term management. The Estate very much sees this as a legacy project whose benefits will live on long beyond the lifespan of the solar farm itself.

93. This vision has seen the Scheme create an ecological management plan which will achieve an overall Biodiversity Net Gain of 90% in area derived units and 25% in linear derived units. That is a level of benefit way beyond any anticipated in national policy, local policy or legislation. Further environmental benefits will arise from the increase in soil quality under the solar pv panels. This may seem counterintuitive to those who do not regularly deal with such developments but the conversion of arable land to grassland under solar pv panels can improve soil health by processes such as increasing soil organic matter and hence soil organic carbon, increasing soil biodiversity and improving soil structure[25].

94. Consistent with the Estate's aspirations is the provision of the two permissive public rights of way. One to allow the Belstone Football Club to make use of a corner at the rear end of their playing fields that is currently disused and the second to link into the

[25] CD–PA14a, paragraph 5.1.6, page 12

existing public rights of way network improving connectivity and enhance opportunities for outdoor recreation. These are not benefits of the highest order but they are benefits and should be treated appropriately in the planning balance.

95. The advantages of this solar farm are not simply made up of its obvious renewable energy benefits but the more local environmental and social enhancements as well.

96. When weighing the benefits of the scheme against the harms of the scheme it is not a purely mathematical exercise but instead what is needed is a single exercise of judgement to assess whether there are very special circumstances which justify the grant of permission notwithstanding the particular importance of the Green Belt. When that is done it is submitted that very special circumstances do exist and that all harm is outweighed.

Conclusion

97. This is a Council that is supposedly committed to delivering more renewable energy within its administrative boundaries but has no plan to do so. This is a glaringly obvious point that the Rule 6 Parties and Council wholly ignore in closing which only serves to demonstrate the obvious failings at the heart of their defence of this appeal.

98. The Council is dependent on developers such as the Appellant bringing forward schemes such as this to meet its climate and energy objectives. The Council should have followed the clear recommendation of its Officers and approved this scheme without delay. The evidence in this case and during the inquiry has vindicated that recommendation in the clearest possible way and the Appellant would respectfully invite you to recommend to the SOS to allow this appeal.

PAUL G TUCKER KC

FREDDIE HUMPHREYS

4TH NOVEMBER 2022

KINGS CHAMBERS

MANCHESTER – LEEDS – BIRMINGHAM – LONDON

APPENDICES

APPENDIX 1: APPELLANT'S SUBMISSIONS ON RESTORATION CONDITIONS

APPENDIX 2: APPELLANT'S SUBMISSIONS ON CAPACITY

PINS Ref: APP/N1920/W/22/3295268

LPA Ref: 21/0050/FULEI

HILFIELD SOLAR FARM, LAND NORTH OF BUTTERFLY LANE, SURROUNDING HILFIELD FARM AND LAND WEST OF HILFIELD LANE, ALDENHAM

APPELLANT'S SUBMISSIONS ON RESTORATION CONDITIONS

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1. In the seminal case of *I'm Your Man Ltd v Secretary of State for the Environment* [1998] 9 WLUK 37 the High Court considered what was necessary to create a temporary planning permission. The case was concerned with a grant of planning permission for use of buildings for "sales, exhibitions and leisure activities for a temporary period of seven years". No condition was imposed requiring cessation of that use at the end of seven years. The question that the court posed for itself was "*Would continuance of the use beyond seven years constitute a breach of planning control? In other words, was the permission in effect permanent or temporary*."

2. Robin Purchas QC sitting as a Deputy High Court Judge concluded that there was no power under the planning acts to impose a limitation on development through the description of development. If the described development that was subject of a planning permission was to be restricted in some way it must be done by condition. The consequence of that in *I'm Your Man* was that a planning permission that was described on its face as a "temporary permission" was not a temporary permission but rather a full permission because there was no condition imposed limiting the period of time for which the use could occur. As Robin Purchas QC observed:

"*Thus, on the main issue in this application I accept Mr Brown's submission that the 1995 permission permitted change of use of the appeal buildings to sales, exhibition and leisure activities and did not impose any limit on the period for that use would be subject to enforcement under Part VII of the 1990 Act*."

3. In order for a temporary permission to be enforced against, it can only be enforced against as a breach of condition:

   "*That conclusion is reinforced in my mind by considering the position as to enforcement at the end of the seven year period. I remain unpersuaded by the submission made by Mr Singh that the continuance of the use beyond seven years would in itself constitute a material change of use. It is at least partly for that reason that the Act provides under Section 72(1)(b) for a condition requiring the discontinuance of use at the end of the period*."

   As a temporary condition is enforceable then that means the relevant permission remains extant and so any other conditions attached to it would also be enforceable.

4. That a condition is the mechanism by which a temporary permission is created is also recognised in the PPG under the "Use of planning conditions" section:

   "***When can conditions be used to grant planning permission for a use for a temporary period only?***

   Under section 72 of the Town and Country Planning Act 1990 the local planning authority may grant planning permission for a specified temporary period only.

   Paragraph: 014 Reference ID: 21a-014-20140306"

   s.72 of the 1990 Act being the section which creates the power to grant conditional planning permission.

5. The editors of the Planning Encyclopedia at P72.25 consider the above caselaw and concur with the above approach but go on to glean a series of principles from the *I'm Your Man* jurisprudence, the first of which is of relevance:

   "where it is intended to grant planning permission for a limited period, that intention will not be fulfilled simply by granting the permission as applied for, or for some specified limited period, ***unless it is reinforced by a planning condition requiring the cessation of the use or the removal of the buildings or works, at the end of the period, and the restoration of the land****. Only where such a condition is imposed will the permission fall within the statutory definition of "planning permission granted for a limited period" under s.72(2);"*

6. Applying this principle here, in this case, what is applied for is full planning permission for:

   "*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*." ("the Development")

7. There is no time limit within the description of development. Thus, if planning permission is granted and no conditions are imposed once the permission is implemented the Development could be completed and operated without restriction. To prevent that from happening, the only way the Development could be controlled is by the imposition of conditions on the planning permission.

8. If there is a requirement to time limit the operation of the Development and require the removal of the operational development from the land the mechanism by which that can be achieved is by condition. If there was a failure to then remove the Development from the land that would be enforceable because there was a breach of condition rather than the carrying out of development without planning permission. Such a time limiting condition is enforceable because the planning permission would remain extant because it was an implemented permission. The presence of a time

limiting condition does not in any way terminate the existence of the planning permission, insofar as the enforceability of conditions is concerned. Were the matter otherwise then the sort of condition envisaged by Robin Purchas QC in *I'm Your Man* would have been unenforceable, and his judgment would then have made no sense. The corollary of this is that any other conditions attached to the planning permission, for example reinstatement, restoration and landscape conditions, would also remain enforceable. This is precisely the view of the editors of the Planning Encyclopedia (supra).

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HILFIELD SOLAR FARM, LAND NORTH OF BUTTERFLY LANE, SURROUNDING HILFIELD FARM AND LAND WEST OF HILFIELD LANE, ALDENHAM

APPELLANT'S SUBMISSIONS ON CAPACITY

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1. The Planning Act 2008 ("the 2008 Act") creates a control regime for development of nationally significant infrastructure projects ("NSIP").

2. S.31 dictates that:

   "*Consent under this Act ("development consent") is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.*"

3. S.32 of the 2008 Act gives "development" the same meaning as that contained in the Town and Country Planning Act 1990. Accordingly, development of a NSIP requires consent under the 2008 Act. Any development of a NSIP without gaining such a consent would amount to a breach of planning control and would be liable to enforcement.

4. S.14(1)(a) of the 2008 Act defines NSIP as including "the construction or extension of a generating station". Further detail on this is provided in s.15:

   "(1)The construction or extension of a generating station is within section 14(1)(a)

only if the generating station is or (when constructed or extended) is expected to be within subsection (2), (3), (3A) or (3B).
(2)A generating station is within this subsection if—
(a)it is in England,
(aa)it does not generate electricity from wind,
(b)it is not an offshore generating station, and
(c)its capacity is more than 50 megawatts…"

5. As such any solar farm with a generating capacity of more than 50MW would be a NSIP and would require consent to be granted for its development under the 2008 Act.

6. The appeal proposals have not sought consent under the 2008 Act and have sought planning consent under the 1990 Act. This means that if planning permission were granted the scheme that was then built out could not have a capacity of more than 49.9 MW as to do so would be to operate as an NSIP. If it did have a capacity of more than 49.9 MW then it would be liable to enforcement under the planning legislation as it would not benefit from the requisite planning consent, that being consent under the 2008 Act.

7. The consequence of this for the appeal is that there is no need to impose a condition limiting the generating capacity of the appeal scheme as this is already limited by the legislation. Imposing a condition would simply act to duplicate a planning control that already exists; it would be akin to imposing a planning condition to remove a permitted development that did not exist.

8. If, contrary to the above, the Inspector was of the opinion that there was a need to impose a restriction on the operating capacity of the appeal proposal then this could only be done by way of condition. As per the principles in *I'm Your Man Ltd v Secretary of State for the Environment* [1998] 9 WLUK 37 there is no power under the planning acts to impose a restriction on a planning permission through the description of development, it can only be done by condition.

PAUL G TUCKER KC

FREDDIE HUMPHREYS

3RD NOVEMBER 2022

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