

APPEAL BY GREEN SWITCH CAPITAL LTD

LAND AT GROVE FARM AND EAST OF RAILWAY LINE, BENTLEY

**CLOSING SUBMISSIONS
ON BEHALF OF THE APPELLANT**

XIC = Examination in Chief, XX = Cross-Examination, Re-X = Re-Examination

Introduction

1. There is no dispute with Babergh District Council (“the Council”) that there is a climate change emergency,¹ and that the Government has established critical targets in policy and statute to decarbonise the energy system by 2030 and achieve net zero carbon emissions (“Net Zero”) by 2050 in order to address that emergency.² Climate change poses a threat not only to the human life but also to cultural heritage and biodiversity.³ As a result of this and previous generations’ imprudent use of planet resources, we all now have a collective responsibility and imperative to act.⁴ If Net Zero is not met, the real world consequences (for populations, economies and the environment) are potentially catastrophic.⁵ The result is that difficult decisions will need to be made to balance competing considerations.⁶
2. It is also common ground, as the Council confirmed in Opening,⁷ that renewable energy is central to achieving those targets.⁸ Yet the state of grid infrastructure and the number of “zombie” projects in the queue for grid connections have previously been identified as major barriers to delivering on them.⁹ To remove those barriers, Government has

¹ Steven Stroud XX; CD E4.

² Steven Stroud XX.

³ Steven Stroud XX.

⁴ Steven Stroud XX.

⁵ Steven Stroud XX.

⁶ Steven Stroud XX.

⁷ ID2 Council Opening at §1.

⁸ Steven Stroud XX.

⁹ Steven Stroud XX.

introduced reforms to move towards a “first ready, first connected” model, which ensures that stagnant projects that cannot contribute to Net Zero do not take up grid capacity, and that other projects will be able to progress and facilitate the biggest grid upgrade in history.¹⁰ In real terms, this means the delivery of at least two schemes of the size of the Proposal (100MW) per week until 2030, and the tripling of solar deployment by 2035.¹¹ It is an enormous challenge.¹²

3. These Closing Submissions should be considered alongside the Appellant’s Opening Statement. As set out in Opening, the first Reason for Refusal (“RfR”) is concerned with the impacts that the Proposal would have on designated and non-designated heritage assets, whilst the second concerns the impact that it would have on landscape character and visual receptors at nearby locations.
4. It is apparent from policy and other appeal decisions that landscape and visual impacts and a location in the setting of a heritage asset are not barriers to the type of renewable energy development that the Proposal seeks to bring forward. Such impacts must always be placed in context. Here, the Appeal Site is not part of a designated landscape or a valued landscape for reasons Mr Mason has explained.¹³ It is not Green Belt, nor subject to any other protective designations. Any landscape and visual effects would be at most minor to moderate adverse, limited and highly localised.¹⁴ There would be less than substantial harm at the low or lower end of the scale to two designated heritage assets and five non-designated heritage assets which is outweighed by the Proposal’s many public benefits.¹⁵
5. In all, the Proposal represents sustainable development, which is supported by the NPPF, and accords with the development plan as a whole.

Heritage impacts

6. As is now clear, there are a number of designated and non-designated heritage assets in

¹⁰ Steven Stroud XX.
¹¹ Steven Stroud XX.
¹² Steven Stroud XX.
¹³ Jon Mason XIC and XX.
¹⁴ Landscape SOCG at §7.1.
¹⁵ Paul Burrell’s Proof at §§11.64-11.65.

the vicinity of the Appeal Site. However, impacts on those assets are, at most, at the low end of the scale of less than substantial harm.¹⁶ In the case of the Grade II* St Mary's Church, the impact is lower.¹⁷ That is because any harm to the significance of these assets derives primarily from a change in a limited number of glimpsed views to or from a small area within their setting.

7. In terms of how to ascertain the level of harm, and the application of that approach to each asset, Ms Garcia observed in XIC that she was the only expert before the Inquiry who had set out a clear, robust and structured assessment of what contributes to the special interest or significance of the assets and what will and will not change with the Proposal in place.¹⁸ She explained that, if the elements that contribute to significance are not identified clearly, it is difficult to understand how a site contributes to that special interest or significance or ascertain the harm.¹⁹ Likewise, if all of those elements are said to share equal importance, then any change to any element will result in a finding of harm.²⁰ That cannot be right.
8. With regard to the special interest of conservation areas, it is common ground between the main parties that:
 - a. The use of the word "special" in the language of the statute is important and denotes something more than ordinary.²¹
 - b. The requirement to identify and demonstrate that special interest is in part so that the concept of conservation is not devalued through the designation of areas that lack it.²²
 - c. When looking at landscape areas, the special historic interest is to be expressed or perceived in its character and appearance, which it is then desirable to preserve or enhance.²³

¹⁶ Heritage SOCG at §3.1.

¹⁷ Heritage SOCG at §3.1.

¹⁸ Laura Garcia XIC.

¹⁹ Laura Garcia XIC.

²⁰ Laura Garcia XIC, referring by example to Laurie Handcock's Proof at §5.14 ("*the setting of the Church makes a strong contribution to its significance overall*") and Alison Farmer's Proof at §120 ("*The Site and receiving landscape comprise an exceptional assemblage of related features which are interwoven in their history. Individually and collectively, they make a significant contribution to the special qualities.*").

²¹ Laurie Handcock XX.

²² Laurie Handcock XX.

²³ Laurie Handcock XX; Laura Garcia XIC.

- d. Conservation area designation is not generally an appropriate means of protecting a wider landscape but can protect open areas where the character and appearance concerns historic fabric.²⁴ Historic fabric could include historic field patterns, well-defined hedgerows, sinuous boundaries, medieval ridge and furrow, estate colours or markings, and designed parks and gardens.²⁵

9. As to special interest and significance, it is further agreed that:

- a. Different features of a conservation area will contribute towards its special character and the significance of the asset as a whole.²⁶
- b. Not all features will contribute equally, as per the NPPF.²⁷
- c. Some features will not contribute much or at all; they may contribute negatively or neutrally.²⁸
- d. When considering the impact of a development on a conservation area, one has to understand the contribution that the affected land makes to the whole and how that will be changed.²⁹
- e. If the area proposed for development makes a lesser contribution to the significance of the conservation area as whole, that will necessarily reduce harm that can arise.³⁰
- f. Change is permissible and indeed inevitable in conservation areas, which requires them to be managed in a way that preserves what is important.³¹
- g. If produced, conservation area appraisals need to provide a concise statement which defines the special interest that it is desirable to preserve,³² and may include bullet points which identify individual features that contribute positively to character and appearance and how they relate to the special interest.³³ The interest and importance of features must be set out clearly.³⁴

²⁴ CD F6 at §73; Laurie Handcock XX; Laura Garcia XIC.

²⁵ Laurie Handcock XX; Laura Garcia XIC.

²⁶ Laurie Handcock XX.

²⁷ Laurie Handcock XX.

²⁸ Laurie Handcock XX.

²⁹ Laurie Handcock XX.

³⁰ CD F6 at §34; Laurie Handcock XX.

³¹ CD F6 at §4; Laurie Handcock XX.

³² CD F6 at §39; Laurie Handcock XX.

³³ CD F6 at §39; Laurie Handcock XX.

³⁴ CD F6 at §34; Laurie Handcock XX.

10. With regard to the significance of the designated assets, it will be familiar to the Inspector that:

- a. There is a hierarchy of heritage assets, with Grade I/II* assets towards the top of that hierarchy and non-designated heritage assets towards the bottom.
- b. The significance of a particular asset has no bearing on whether it experiences harm or the level of that harm.
- c. Different policy tests apply for assets of different significance.

11. Moreover, it is agreed on the issues of setting and significance that:

- a. The setting of a heritage asset is the surroundings in which the asset is experienced, as per the NPPF.³⁵
- b. There is a difference between seeing an asset and experiencing an asset.³⁶ Not every view of an asset indicates that the viewer is within its setting.³⁷
- c. An historic association between an asset and land will not always be sufficient to bring the land within its setting.³⁸
- d. Different elements of the setting of an asset contribute to its significance in varying ways and in varying proportions.³⁹
- e. Certain elements of the setting of an asset may contribute neutrally or negatively.⁴⁰
- f. Indirect impacts through a change in setting are less likely to give rise to harm (and serious harm) than direct impacts on an asset itself.⁴¹
- g. In general, where an element of an asset's setting makes a small contribution to its significance, any loss or change to that element will only have a small impact on significance.⁴²

12. There is also common ground on the correct approach to assessing impacts arising from a change in views to and from an asset:

³⁵ Laurie Hancock XX.

³⁶ Laurie Hancock XX.

³⁷ Laurie Hancock XX.

³⁸ Laurie Hancock XX.

³⁹ Laurie Hancock XX.

⁴⁰ Laurie Hancock XX.

⁴¹ Laurie Hancock XX.

⁴² Mark Clifford XX.

- a. Not every view to or from an asset contributes to understanding its significance.⁴³
- b. Designed views contribute more to the understanding of an asset's significance than incidental views.⁴⁴
- c. Views where the relationship between assets or natural features can be understood hold more significance than ordinary views.⁴⁵
- d. A view with historical connections which reveals those connections, or which reveals the reason why an asset was put where it was, contributes more to the understanding of significance than a general view which may be pleasant but unplanned.⁴⁶
- e. If a proposed development is said to affect the setting of an asset due to a change in view, there must be a distinct visual relationship between the two that is more than remote or ephemeral and bears on one's experience of the asset in the surrounding landscape.⁴⁷
- f. Church towers and spires in particular are often widely visible across the landscape but are unlikely to be affected by small-scale development unless that development competes with them.⁴⁸ Such impact is more likely to be on landscape values rather than heritage values.⁴⁹

13. Despite being cast as the "outlier", Ms Garcia's assessments of harm are only a step lower than those of Mr Hancock,⁵⁰ and the closest to those of Historic England.⁵¹ She explained clearly in XIC that the lack of special historic interest on the Appeal Site and the reliance that others have placed on incidental views and its documented historic association with the Tollemache Family are some of the reasons why she has reached different, and more measured, judgements.⁵² We deal with each asset in turn.

Bentley Conservation Area

⁴³ Laurie Hancock XX.

⁴⁴ Laurie Hancock XX; CD F3 at §14.

⁴⁵ Laurie Hancock XX.

⁴⁶ Laurie Hancock XX.

⁴⁷ Laurie Hancock XX; CD H8 at §25.

⁴⁸ CD F3, p.7.

⁴⁹ CD F3, p.7.

⁵⁰ Heritage SOCG at §3.1.

⁵¹ CD B12b; Laura Garcia XX.

⁵² Laura Garcia XIC.

14. The designation of Bentley Conservation Area was prompted by a desire of local residents and Bentley Parish Council to add “another layer of protection” against what they deemed to be inappropriate development.⁵³ The Council was presented with a draft Conservation Area Appraisal and Management Plan (“CAAMP”), procured and produced in the context of the application for this Proposal, and proceeded with the designation on that basis.⁵⁴
15. It is a notable feature of this Conservation Area that it is now the 31st largest of the 10,000 in England,⁵⁵ having included within its boundary vast areas of agricultural land (referred to in the CAAMP as “manorial farmland” or “estate farmland”⁵⁶). When he was reviewing the designation, Mr Hancock was right to advise the Council that they would need to be satisfied that the wider landscape is “sufficiently well-preserved” to be included.⁵⁷ That is because the test in section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the assets and areas to be designated have a “special architectural and historic interest”.⁵⁸
16. The CAAMP is the starting point for ascertaining the special interest of the Conservation Area in this case,⁵⁹ and states that the special interest of the Conservation Area is derived predominantly from “its ancient manorial structure” and “its associated connection with the Tollemache family” and provides a bullet point list of key features.⁶⁰ The particular features of architectural and historic interest, comprising both built and natural features,⁶¹ are mapped on Figure 26.⁶² The analysis of how those features relate to the special interest is then provided in chapter 5.⁶³
17. In this case, whilst manorial farmland is identified as a key feature,⁶⁴ no areas of manorial farmland are identified as features of historic interest on Figure 26, and there is no *analysis*

⁵³ Laura Garcia’s Proof, App. 2 at §4.

⁵⁴ Laurie Hancock XX.

⁵⁵ Laurie Hancock XX; Laura Garcia’s Proof at §6.1.

⁵⁶ CD F1, p.62.

⁵⁷ CD F10 at §4.5.39.

⁵⁸ Laurie Hancock XX; Laura Garcia XIC.

⁵⁹ Alison Farmer XX.

⁶⁰ CD F1, p.4; Laurie Hancock XX.

⁶¹ Laurie Hancock XX

⁶² CD F1, p.25; Laurie Hancock XX.

⁶³ CD F1, pp.35ff; Laurie Hancock XX.

⁶⁴ Laurie Hancock XX.

of how any of those areas relate to the special interest – in that chapter or the CAAMP as a whole.⁶⁵ What that reveals is that the identification of areas of manorial farmland, such as the Appeal Site, is not rooted in any objective analysis of whether those areas express special interest.⁶⁶ It raises the question of why the farmland was included at all.⁶⁷

18. More particularly, nowhere can a decision maker find any suggestion in the CAAMP that the fields that make up the Site are fundamental to the special interest of the Conservation Area as a whole.⁶⁸ Ms Farmer’s position that the Site is a “key element” (which forms the basis of her finding of substantial harm) is not credible and not supported by the CAAMP (or indeed any other expert⁶⁹). The CAAMP does not itself differentiate between core and secondary features as Ms Farmer does.⁷⁰ But if the Site were considered to be integral to the Conservation Area, or so important as to be integral, she conceded that it is reasonable to expect there would be some acknowledgement or analysis within the CAAMP.⁷¹
19. Nor is there any indication that the Appeal Site contains any other expressions of special interest on the ground.⁷² As Ms Garcia explained, there is nothing on the Site which shows that it was part of an ancient manorial structure or has any connection with the Tollemache Family.⁷³ Nowhere on the Site is it possible to gain a collective experience of the manors, the manors and woodland, the historic core, the dispersed farmsteads, or any other unique combination or concentration of features.⁷⁴ Mr Hancock conceded that the western area of the Site has considerably more interaction with historic features than the eastern area, but he could not explain how the Site’s historic associations are expressed in the Site’s own character and appearance.⁷⁵ If the surrounding features did not exist, the Site would appear like any other agricultural field in England.⁷⁶ There is nothing in its physical fabric which denotes it as “manorial”.⁷⁷

⁶⁵ Laurie Hancock XX; Laura Garcia XIC.

⁶⁶ Laurie Hancock XX.

⁶⁷ Laura Garcia XIC.

⁶⁸ Laurie Hancock XX.

⁶⁹ Laurie Hancock XX; Laura Garcia XX.

⁷⁰ Alison Farmer XX.

⁷¹ Alison Farmer XX.

⁷² Laurie Hancock XX.

⁷³ Laura Garcia XIC.

⁷⁴ Alison Farmer XX; Laura Garcia XIC.

⁷⁵ Laurie Hancock XX.

⁷⁶ Laurie Hancock XX; Laura Garcia’s Proof at §6.18.

⁷⁷ Laurie Hancock XX.

20. Irrespective, Mr Hancock and Ms Farmer adopt the view that the Appeal Site is included within the Conservation Area and the Proposal will therefore have an adverse impact on the Conservation Area as a result.⁷⁸ Both refer back to the opportunity to see features of special interest across the Site because of its (contemporary) openness.⁷⁹ In that way, as Mr Hancock fairly accepted in XX, the Site has almost a “setting role” to other features.⁸⁰ But here the Site is not being assessed as part of the setting of a heritage asset: it is being assessed to see whether it displays the special interest of the Conservation Area through its own character and appearance.⁸¹ That is the beginning and end of it. The fact that the Site may have a “setting role” to other features which do reveal that special interest does not mean that they imbue a special interest to the Site itself.⁸² For that reason, Ms Garcia was right to find that the Site makes a negligible contribution to the significance of the Conservation Area as a whole.⁸³
21. In that connection, Mr Hancock quite fairly agreed in XX that there are many features of the Conservation Area that do reveal its special interest and which would not change with the Proposal in place:
- a. There would be no direct impact on or change to any historic fabric.⁸⁴
 - b. The historic core, in which the special architectural interest comes to the fore, would remain.⁸⁵
 - c. Dispersed farmsteads would continue to be dispersed.⁸⁶
 - d. Ancient woodland would be physically untouched, as clarified with Ms Farmer.⁸⁷
 - e. The high quantum of highly graded manors would not be reduced.⁸⁸
 - f. The ancient routes and tracery of footpaths could still be followed.⁸⁹

⁷⁸ Laurie Hancock XX.

⁷⁹ Laurie Hancock XX.

⁸⁰ Laurie Hancock XX.

⁸¹ Laura Garcia XIC.

⁸² Laurie Hancock XX; Laura Garcia XX.

⁸³ Laura Garcia’s Proof at §6.27.

⁸⁴ Laurie Hancock XX.

⁸⁵ Laurie Hancock XX.

⁸⁶ Laurie Hancock XX.

⁸⁷ Laurie Hancock XX; Alison Farmer XX.

⁸⁸ Laurie Hancock XX.

⁸⁹ Laurie Hancock XX.

g. The spatial structure of Conservation Area as a whole would be unaffected.⁹⁰

22. To the extent that other areas of manorial farmland reveal any special interest, they would not be affected.⁹¹ Ms Garcia was criticised for observing that the Proposal would not affect the last area of manorial farmland,⁹² but explained in XIC that it is relevant to look at how much of the Conservation Area will be affected in order to assess the extent of the harm (in this case, 5.6%).⁹³ She did not say that the fact that there would be an impact on only two fields means there is no harm,⁹⁴ as had happened in *R(Irving) v Mid-Sussex District Council* [2016] EWHC 1529 (Admin).⁹⁵ Rather she placed it in the wider context, which is an agreed and correct approach.⁹⁶
23. The nature of the Proposal is also material to understanding how and what extent of harm arises.⁹⁷ Solar farms are notably different from urban development such as housing estates and distribution centres,⁹⁸ in that they are a more open form of development with airspace below and between rows of panels.⁹⁹ Solar farms are commonly built in the countryside and can be perceived as development within the fields where they are found.¹⁰⁰ There is no permanent human presence and no adverse noise impacts in this case.¹⁰¹
24. Insofar as there is a management objective that any development which introduces alien features should be resisted, that objective does not suggest that such development would undermine the designation of the Conservation Area and recognises that landscaping may soften any adverse impacts.¹⁰² At most it reveals a concern that landscaping might not be successful in the future.¹⁰³ It follows that if the success of mitigation could be assured, for example through a Construction and Environment Management Plan that will be in place

⁹⁰ Laurie Handcock XX.

⁹¹ Laurie Handcock XX.

⁹² Laura Garcia's Proof at §6.76; Laura Garcia XX.

⁹³ Laura Garcia XIC.

⁹⁴ Laura Garcia XIC.

⁹⁵ CD H42.

⁹⁶ Laura Garcia XIC.

⁹⁷ Laurie Handcock XX.

⁹⁸ Laurie Handcock XX.

⁹⁹ Laurie Handcock XX.

¹⁰⁰ Laurie Handcock XX.

¹⁰¹ Laurie Handcock XX.

¹⁰² CD F1, p.74; Laurie Handcock XX.

¹⁰³ CD F1, p.74; Laurie Handcock XX.

for the lifetime of a scheme, that would go some way to meeting the concern expressed.¹⁰⁴

25. As to visual impacts, Mr Hancock agreed with Ms Garcia that:

- a. There are no designed views over the Appeal Site.¹⁰⁵
- b. There are no longer any public footpaths through the Appeal Site.¹⁰⁶
- c. There will be no impact on the ability to walk along other routes around the Appeal Site and through the Conservation Area.¹⁰⁷
- d. All of the routes through the Conservation Area are enclosed to some extent by planting.¹⁰⁸
- e. Available views from or to the Appeal Site are incidental views largely through gaps in hedgerows and accesses and seasonal changes in vegetation.¹⁰⁹
- f. Views over the Appeal Site have been opened up because of the removal of internal field boundaries within the Site in more recent times.¹¹⁰
- g. Most of the features identified as having special interest have no visual interaction with the Appeal Site at all.¹¹¹
- h. Detracting features which interact with the western part include modern residential properties along Church Road and Potash Lane and modern agricultural buildings at Grove Farm and Falstaff Manor.¹¹²
- i. Detracting features which interact with the eastern part include the adjacent railway, pylons and overhead lines.¹¹³

26. Although Mr Hancock and Ms Farmer identified harm as a result of an impact on several key views identified in the CAAMP, Mr Hancock acknowledged that the key question is what those views reveal about the special interest of the Conservation Area.¹¹⁴ The answer to that question is not found in the CAAMP itself, despite what guidance recommends.¹¹⁵

¹⁰⁴ Laurie Hancock XX.

¹⁰⁵ Laurie Hancock XX.

¹⁰⁶ Laurie Hancock XX.

¹⁰⁷ Laurie Hancock XX.

¹⁰⁸ Laurie Hancock XX.

¹⁰⁹ Laurie Hancock XX.

¹¹⁰ Laurie Hancock XX; Laura Garcia XIC.

¹¹¹ Laurie Hancock XX.

¹¹² CD F1, p.64; Laurie Hancock XX.

¹¹³ CD F1, p.64; Laurie Hancock XX.

¹¹⁴ Laurie Hancock XX.

¹¹⁵ Laurie Hancock XX.

What we do know is that the number of key views across the Site, which has no historic fabric, stands in stark contrast to the number of key views to rare and highly graded assets, such as the Grade I Listed Bentley Hall Barn.¹¹⁶ That is a patent anomaly and cannot be right or justified as a matter of approach.

27. Ultimately, Mr Handcock himself recognised that there is overlap in what the views over the Appeal Site are said to reveal (in the case of views 1-3 and views 5-7),¹¹⁷ and he agreed with Ms Garcia that the revealed features can be appreciated better in other locations, such as Pond Hall Lane.¹¹⁸ For her part, Ms Garcia recognised that the view towards the Grade II* Listed Church of St Mary contributes to the significance of the Conservation Area, but she fairly concluded that the contribution was negligible given its glimpsed nature.¹¹⁹
28. The suggestion that there is also an important kinetic experience between these views and along historic routes is not one that is supported by Ms Garcia or the CAAMP, which only identifies one kinetic view along the former railway line at view 33.¹²⁰ Even then, there is no reference anywhere to kinetic views being of importance to the special interest of the Conservation Area.¹²¹ There is no evidence at all to support Mr Martin's position that the Site forms part of a central area within a central circuit of lanes.¹²² Importantly, none of the key views or kinetic views around the Site are protected from change and may be obscured by new hedgerow planting at any time.¹²³
29. Overall, Ms Garcia reasonably concluded that harm arises from a slight, temporary change in a key view towards the Church and from the temporary change in character of the fields to energy generation.¹²⁴ Her approach is not reductionist but entirely proportionate, robust and based on a methodology of assessment.¹²⁵ In her assessment, because the Site makes a minimal contribution to the special interest of the Conservation Area, the level of harm

¹¹⁶ Laurie Handcock XX.

¹¹⁷ Laurie Handcock XX.

¹¹⁸ Laurie Handcock XX.

¹¹⁹ Laura Garcia's Proof at §6.33.

¹²⁰ CD F1, p.38; Laura Garcia XIC.

¹²¹ Laura Garcia XIC.

¹²² CD F1, p.9; Laura Garcia Re-X.

¹²³ Laurie Handcock XX; Laura Garcia XIC.

¹²⁴ Laura Garcia's Proof at §6.86.

¹²⁵ Laura Garcia XX.

would be at the low end of the less than substantial scale.¹²⁶

Grade I Listed Bentley Hall Barn and Grade II* Listed Bentley Hall and Meeting Hall Stables

30. The Grade I Listed Bentley Hall Barn and Grade II* Listed Bentley Hall and Meeting Hall Stables are highly graded assets that together have legible a group value within the Conservation Area. A detailed analysis of the significance of each of these assets is set out in Ms Garcia's proof.¹²⁷

31. In XX, Mr Hancock agreed with Ms Garcia on a number of key points:

- a. The significance of this Complex is derived primarily from its physical fabric, with the Barn an especially rare survival of a Tudor brick farm.¹²⁸
- b. The Complex has a strong group value which as a whole is greater than the sum of its parts.¹²⁹
- c. The setting, while important, contributes less to significance.¹³⁰
- d. Within that setting, the greatest contribution to significance is made by the gardens, which is where the Hall and Meeting Stables are best experienced.¹³¹
- e. Another important feature of the setting is the designed lime tree avenue to the north which creates a sense of anticipation and arrival.¹³²
- f. There is no longer any functional relationship between the Complex and the Appeal Site and there has not been one for some time.¹³³
- g. There is no intervisibility between the Complex and the Appeal Site.¹³⁴

32. Nevertheless, in finding harm, Mr Hancock relied to a great extent on the past association that the Complex and the Appeal Site have with the Tollemache Family, although it post-dated the relocation of the seat to Helmington Hall in 1510.¹³⁵ Ms Garcia recognised that

¹²⁶ Laura Garcia's Proof at §6.85.

¹²⁷ Laura Garcia's Proof at §§8.34-8.43.

¹²⁸ Laurie Hancock XX.

¹²⁹ Laurie Hancock XX.

¹³⁰ Laurie Hancock XX.

¹³¹ Laurie Hancock XX.

¹³² Laurie Hancock XX.

¹³³ Laurie Hancock XX.

¹³⁴ Laurie Hancock XX.

¹³⁵ Laurie Hancock's Proof at §5.25.

association in her evidence but emphasised that it had long been severed and can only be appreciated through historic records, which would remain.¹³⁶ The size of the Barn alone does not demonstrate that association. In the absence of any visual or physical connection between them, she concluded that the historic association was not sufficient in this case to bring the Site within the setting of the affected assets.¹³⁷

33. Mr Hancock also expressed a concern that those arriving at the Complex from the south could carry in their memory views they may have had of the Proposal along the way.¹³⁸ That concern was not shared by Ms Garcia, however, who observed that the Complex is over 300m away from the Site, and that the assets within it are appreciated only after one passes the Church and enters a much more secluded and enclosed space.¹³⁹ By that point, any memory of the Proposal would be long gone.¹⁴⁰ Even if one did remain, it is important to keep in mind that the southern approach was never intended to be the primary approach to the Complex in any event.¹⁴¹
34. Fundamentally, the Proposal would not affect the physical fabric of this Complex, from which the significance is principally derived. It would also not change the most important parts of the setting: the gardens, group value and historic approach would prevail. All that would change is a small component of the wider agricultural landscape. Mr Hancock has ultimately fallen into the error of equating change with harm: whilst there will be a small change to the distant rural context, there will be no harm.¹⁴²

Grade II* Listed Church of St Mary

35. Also within Bentley Conservation Area lies the Grade II* Listed Church of St Mary. Both Mr Hancock and Ms Garcia draw attention to the Church's 12th century origins and later association with the Tollemache Family, with notable alterations made in the 14th and 19th centuries.¹⁴³

¹³⁶ Laura Garcia's Proof at §8.55.

¹³⁷ Laura Garcia's Proof at §§8.54-8.55.

¹³⁸ Laurie Hancock XX.

¹³⁹ Laura Garcia XIC.

¹⁴⁰ Laura Garcia XIC.

¹⁴¹ Laura Garcia XIC.

¹⁴² Laura Garcia XIC.

¹⁴³ Laurie Hancock XX.

36. Critical points of agreement relating to setting and significance of the Church include the following:

- a. The Church's significance is derived principally from its physical fabric, which demonstrates its historic and archaeological interest and would be unaffected by the Proposal.¹⁴⁴
- b. The greatest contribution of the Church's setting to its significance is made by the tree-enclosed churchyard from where it is best appreciated.¹⁴⁵
- c. The other buildings and land that were once associated with the Church, as well as the settlement from which the congregation came, are also important elements of its setting which also contribute to significance.¹⁴⁶
- d. The wider agricultural land contributes the least to the Church's significance, which includes the Appeal Site.¹⁴⁷
- e. The historic connection between the Church and the Appeal Site is not expressed in the physical fabric of the Site.¹⁴⁸

37. In terms of available views to the Church, Mr Hancock conceded that:

- a. The available mapping shows the Church within a plot that is wooded and very well surrounded by trees.¹⁴⁹
- b. The track leading to Church Farm has significant tree planting, some of which may have been in place for hundreds of years.¹⁵⁰
- c. The evidence before the inquiry is that the Church is an asset that favours enclosure over exposure to adjacent land.¹⁵¹
- d. The designation of the Conservation Area means the extent of tree cover is likely to remain that way in the future.¹⁵²

¹⁴⁴ Laurie Hancock XX.

¹⁴⁵ Laurie Hancock XX; Laura Garcia XIC.

¹⁴⁶ Laurie Hancock XX.

¹⁴⁷ Laurie Hancock XX.

¹⁴⁸ Laurie Hancock XX; Laura Garcia XX.

¹⁴⁹ Laurie Hancock XX.

¹⁵⁰ Laurie Hancock XX.

¹⁵¹ Laurie Hancock XX.

¹⁵² Laurie Hancock XX.

- e. By 1967, Little Bush provided further enclosure to the south.¹⁵³
- f. The Church is not a dominant feature in the wider landscape.¹⁵⁴
- g. Views to the Church from Church Road and Potash Lane are not designed views; they are incidental views from the verge and through vegetation.¹⁵⁵
- h. Views of the Church from the Appeal Site are limited to distant views of the tower, which can be difficult to identify among the treeline unless the viewer knows what they are looking for.¹⁵⁶ That impacts on any “experience” that one might have of the asset.
- i. There is no evidence before the inquiry which suggests that the views of the Church tower from the Appeal Site are designed views.¹⁵⁷ There were many more hedgerows curtailing views within and across the Appeal Site historically.¹⁵⁸
- j. With the Proposal in place, there will be more open land and tree planting acting as a visual and physical buffer to the Church, even in winter.¹⁵⁹

38. In that context, Mr Hancock’s suggestion that the Church tower was designed to be seen is simply not credible. It is not well expressed in long views from surrounding countryside like other churches.¹⁶⁰ The fact that it is decorated with ornate flushwork is not itself any evidence of that intention and may indicate a closeness to God, status or wealth.¹⁶¹ Mr Hancock fairly recognised that the detail is best observed up close in the churchyard and becomes less discernible as one moves further away.¹⁶²

39. In fact, the Appeal Site is barely discernible in the immediate context of the Church.¹⁶³ It is setback behind intervening vegetation, modern properties and open land.¹⁶⁴ There are no open views,¹⁶⁵ and any change to the Site would be perceived as a small change within the wider agricultural landscape some distance away. Views back to the Church from the

¹⁵³ Laurie Hancock XX.

¹⁵⁴ Laurie Hancock XX.

¹⁵⁵ Laurie Hancock XX.

¹⁵⁶ Laurie Hancock XX; Laura Garcia XIC.

¹⁵⁷ Laurie Hancock XX.

¹⁵⁸ Laurie Hancock XX; Laura Garcia XX.

¹⁵⁹ Laurie Hancock XX.

¹⁶⁰ Laura Garcia XIC.

¹⁶¹ Laura Garcia XIC. In response to the Inspector’s question, Mr Hancock agreed that it may have been done to glorify God.

¹⁶² Laurie Hancock XX.

¹⁶³ Laurie Hancock XX; Laura Garcia XIC.

¹⁶⁴ Laurie Hancock XX; Laura Garcia XIC.

¹⁶⁵ Laura Garcia XIC.

Site are not designed views and take in the tower only.¹⁶⁶ The architectural interest cannot be appreciated in them.¹⁶⁷

40. Insofar as Mr Handcock reiterated his opinion that the Proposal would stay in a person's memory as they approach the Church from the south, Ms Garcia did not agree, noting that there is an existing and perceptible transition as one enters the historic core.¹⁶⁸ The Church is not visible at all along the southern approach and a person would have passed several other modern interventions (including modern 21st century houses) before arriving upon it.¹⁶⁹ The Proposal itself would be well screened and long past.¹⁷⁰
41. Consequently, Ms Garcia was firm in her view that the Proposal would only give rise to a lower level of less than substantial harm to the Church.¹⁷¹ That view is consistent with the view of Historic England.¹⁷² It is not clear how Mr Handcock has reached a different conclusion given his concession that the Appeal Site contributes the least to significance of all its elements.

Grade II Listed Maltings House

42. As to Maltings House, Ms Garcia explained that the point is a cumulative one: the DNO substation will be sited some distance to the west of the asset within the vicinity of existing infrastructure alongside the railway line.¹⁷³ The question is whether the introduction of the substation would cause any additional harm over and above existing infrastructure.¹⁷⁴ That question has to be considered in circumstances where the western range of the House has lost its heritage interest, and mitigation planting will screen the substation to a greater extent.¹⁷⁵
43. Indeed, there was substantive agreement between the experts on the following key points:

¹⁶⁶ Laurie Handcock XX; Laura Garcia XIC.

¹⁶⁷ Laurie Handcock XX.

¹⁶⁸ Laura Garcia XIC.

¹⁶⁹ Laura Garcia XIC.

¹⁷⁰ Laura Garcia XIC.

¹⁷¹ Laura Garcia XIC.

¹⁷² CD B12b; Laura Garcia XX.

¹⁷³ Laura Garcia XIC.

¹⁷⁴ Laurie Handcock XX.

¹⁷⁵ Laura Garcia XIC.

- a. The House was always a dwelling with no agricultural function.¹⁷⁶
- b. There is a later extension to the House on the western range.¹⁷⁷
- c. The House is enclosed by robust hedge and tree planting, particularly to the north and west.¹⁷⁸
- d. The House is best appreciated from its immediate setting.¹⁷⁹
- e. The House has a group value with other buildings which would not be impacted.¹⁸⁰
- f. The House has a particular sense of separation from the other assets and the historic core of Bentley.¹⁸¹
- g. There is a change in the character as one leaves that area and crosses the railway.¹⁸²
- h. The wider setting is already influenced by energy and transport infrastructure.¹⁸³
- i. The substation will be visible in the periphery of views to the principal facade of the House from Church Road, but mitigation planting will reduce the effects.¹⁸⁴
- j. There is no historical or functional association between the House and the Appeal Site.¹⁸⁵

44. It became apparent during his XX that Mr Hancock had identified some harm (albeit at the bottom level) under a mistaken understanding that the access track to the substation will be fenced.¹⁸⁶ the Landscape Masterplan makes clear that will not be the case.¹⁸⁷ He also fairly acknowledged that the proposed screening around the substation would lessen the impact when compared to existing infrastructure which did not have that treatment.¹⁸⁸

45. Ultimately, in Ms Garcia's view, the small change in views would not reduce opportunities to appreciate the House and reach a level that is harmful.¹⁸⁹ The House would still be read as part of an agricultural landscape. She emphasised the distinction between a change to

¹⁷⁶ Laurie Hancock XX.

¹⁷⁷ Laurie Hancock XX.

¹⁷⁸ Laurie Hancock XX.

¹⁷⁹ Laurie Hancock XX.

¹⁸⁰ Laurie Hancock XX.

¹⁸¹ Laurie Hancock XX.

¹⁸² Laurie Hancock XX.

¹⁸³ Laura Garcia XIC; Laura Garcia's Proof at Plates 45-48; Laurie Hancock XX.

¹⁸⁴ Laura Garcia XIC; Laurie Hancock XX.

¹⁸⁵ Laurie Hancock XX.

¹⁸⁶ Laurie Hancock XX.

¹⁸⁷ CD C4; Laurie Hancock XX.

¹⁸⁸ Laurie Hancock XX.

¹⁸⁹ Laura Garcia's Proof at §9.34; Laura Garcia XIC.

a view and an impact on significance, concluding that the first did not affect her opinion on the second.¹⁹⁰

Falstaff Manor

46. In the case of Falstaff Manor, being the manor which the Appeal Site was primarily and most recently held as one title with, Mr Hancock and Ms Garcia agree that:
- a. The significance of the Manor is derived primarily from its physical fabric and its historic interest.¹⁹¹
 - b. Within its setting, the most important contributor to the Manor's significance is the plot of land within which it sits, including the garden.¹⁹²
 - c. Other contributors include the group of agricultural buildings to the immediate west of the Manor and the manorial estate with which it had a connection.¹⁹³
 - d. Most of the manorial land with which it was connected, in particular as part of a single title, has been sold.¹⁹⁴
47. Whilst Mr Hancock suggested that the Manor's significance was at the "upper end of the range", he fairly accepted that national policy does not identify different gradings of non-designated heritage assets and that he had not provided any methodology that could assist the Inspector in doing so herself.¹⁹⁵
48. In finding harm in the middle of the range of less than substantial, Mr Hancock relied to a great extent on the evidence of Mr Alston that the Manor is "locally reputed" to have a medieval core,¹⁹⁶ notwithstanding that there is no evidence to support such a reputation¹⁹⁷ and Mr Alston explained it may instead be 18th century.¹⁹⁸

¹⁹⁰ Laura Garcia's Proof at §9.32.

¹⁹¹ Laurie Hancock XX.

¹⁹² Laurie Hancock XX.

¹⁹³ Laurie Hancock XX.

¹⁹⁴ Laurie Hancock XX.

¹⁹⁵ Laurie Hancock XX.

¹⁹⁶ Laurie Hancock XX.

¹⁹⁷ Laurie Hancock XX.

¹⁹⁸ Laurie Hancock XX.

49. Mr Hancock nevertheless agreed with Ms Garcia's assessment¹⁹⁹ that there are no views from the Site of the Manor and no views from the Manor of areas of the Appeal Site where the development would be located.²⁰⁰ Mitigation planting to the north of the Manor will further limit opportunities for intervisibility.²⁰¹ She also noted that the Manor is not visible from the PRoW along the southern boundary or from Church Road when travelling south and through the Site.²⁰²
50. Even if there would be an opportunity for views from the footpath to the south, when the vegetation thinned in winter, Mr Hancock and Ms Garcia agreed that those views would be very filtered and limited.²⁰³ This Manor is not an asset that is readily perceived from the public realm. In all, the Proposal would not ruin the viewer's ability to appreciate its significance.

Church Farm House and Barn

51. Church Farm House and Barn are located on land that was once part of the Church House estate, but their construction post-dates the separate sale of the Church House and Falstaff Manor holdings.²⁰⁴ As such, any suggested historic association between the Farm and the Site is a tenuous one.²⁰⁵
52. With that in mind, Mr Hancock and Ms Garcia explained:
- a. The significance of the House and Barn is derived primarily from their built form.²⁰⁶
 - b. Within their setting, the greatest contributor to significance are the grounds, access from Church Road and neighbouring Engry Wood.²⁰⁷
 - c. None of those key contributors will be affected as a result of the Proposal.²⁰⁸

¹⁹⁹ Laura Garcia's Proof at §§10.14 and 10.18-10.19.

²⁰⁰ Laurie Hancock XX

²⁰¹ Laura Garcia XIC.

²⁰² Laura Garcia's Proof at §10.16.

²⁰³ Laurie Hancock XX; Laura Garcia XX.

²⁰⁴ Laura Garcia XX; Laura Garcia's Proof at §§13.3-13.5.

²⁰⁵ Laura Garcia XX.

²⁰⁶ Laurie Hancock XX.

²⁰⁷ Laurie Hancock XX.

²⁰⁸ Laurie Hancock XX.

53. As became clear in XX, the justification for Mr Hancock’s finding of a middle level of less than substantial harm to the House and Barn hinged upon his assessment that Church Road was the “*principal historic route of approach*” and that there would be an impact on the experience of moving along that road from the south in areas where the Appeal Site could be seen. Of course, Mr Hancock acknowledged that Church Road is not part of the asset, and he did not explain whether or what the road contributes as part of its setting.²⁰⁹ Ms Garcia expressed her confusion at how harm could be justified in that way.²¹⁰
54. Taken in the round, Ms Garcia’s position that there would be a low harm to the House and Barn has to be preferred. She did agree with Mr Hancock that some impact would arise from a change in views towards and across the Site,²¹¹ which, although not as open as to the north-east, would reduce its sense of isolation and the ability to understand its historic surroundings.²¹² She noted however that the legibility of the Farm as a historic farmstead is more difficult from public locations, including on Pond Hall Lane.²¹³

Grove Farm

55. Similarly, Mr Hancock identified a middle to upper level of harm to Grove Farm on the basis that there would be a visual and “experiential” impact as the Proposal would occlude views that exist from Church Road in particular.²¹⁴ However, he did not explain where or how one can appreciate the historic interest of the Farm from Church Road, or how views (such as there are) contribute to its significance.²¹⁵ As the Inspector will well know, harm to a view does not become a heritage concern unless it harms significance.²¹⁶
56. Ms Garcia did not disagree that there would be an impact on views but found that impact in the limited change in the character of the views from the Farm out to the surrounding agricultural land and the Appeal Site, which is over 150m away.²¹⁷ She clarified – and Mr

²⁰⁹ Laurie Hancock XX.

²¹⁰ Laura Garcia XIC.

²¹¹ Laura Garcia’s Proof at §13.20.

²¹² Laura Garcia’s Proof at §§13.18 and 13.20.

²¹³ Laura Garcia XX.

²¹⁴ Laurie Hancock XX.

²¹⁵ Laurie Hancock XX.

²¹⁶ Laurie Hancock XX.

²¹⁷ Laura Garcia’s Proof at §§11.24-11.25.

Handcock agreed²¹⁸ – that the Farm and the Site would not be seen together on Pond Hall Lane, where the historic interest of the Farm *can* be appreciated.²¹⁹ The same is true of Church Road and Potash Lane.²²⁰

57. Critically, the Farm would continue to be surrounded by agricultural land and understood in an open rural setting.²²¹ The majority of contributors to the Farm’s significance would remain unchanged with the Proposal in place.²²² That being so, Ms Garcia was reasonable to conclude that there would only be a low level of harm.²²³

Red Cottages and Potash Cottages

58. In the case of Red Cottages/Potash Cottages, Mr Handcock identified harm in the middle of the range on the basis that the Proposal would be visible from the Cottages but – again – did not explain how the presence of the Proposal would affect the *significance* of those assets.²²⁴ Nor did Mr Alston, whose assessment that the Cottages date to the 16th century is not expressed in its external fabric.²²⁵
59. Again, Ms Garcia agreed with Mr Handcock that there would some visual impact – in this case, on distant views²²⁶ – but assessed that impact to be less harmful in the context of the modern residential development to the immediate north and east and the generous buffer of 90-120m planned to setback the nearest elements of the Proposal.²²⁷
60. Ultimately, both experts noted that there is no historic or current association between the Cottages and the Appeal Site,²²⁸ in clear contrast to the many other assets, and agreed that the Cottages’ more immediate field surroundings would remain present and intact.²²⁹ The

²¹⁸ Laurie Handcock XX.

²¹⁹ Laura Garcia’s Proof at §11.24; Laura Garcia XX.

²²⁰ Laura Garcia’s Proof at §11.24; Laura Garcia XX.

²²¹ Laurie Handcock XX.

²²² Laurie Handcock XX.

²²³ Laura Garcia’s Proof at §11.26.

²²⁴ Laurie Handcock XX.

²²⁵ Laura Garcia XX.

²²⁶ Laura Garcia’s Proof at §12.26.

²²⁷ Laura Garcia’s Proof at §§12.26-12.27.

²²⁸ Laurie Handcock XX; Laura Garcia’s Proof at §12.25.

²²⁹ Laurie Handcock XX; Laura Garcia’s Proof at §12.27.

resulting harm would therefore be negligible to low at most.²³⁰

Bentley House and Glebe Cottage

61. As to Bentley House and Glebe Cottage, Ms Garcia explained that neither is visible from the Appeal Site, nor can the Site be viewed from them.²³¹ She did not consider the historic Tollemache association to be sufficient in this case to bring the Site within their setting as it was no longer extant and had long been severed.²³²
62. Mr Hancock himself acknowledged in XX that there is no intervisibility,²³³ and even if the historic association were sufficiently strong, it is difficult to reconcile his assessment of harm with the evidence that there is no opportunity to appreciate the association outside the four corners of the historic records, which would remain.²³⁴ That perhaps explains his comment in XX that it was not something alone to trouble the Inquiry with.²³⁵ Ms Garcia confirmed that there would be no impact on the significance of the House or the Cottage and therefore no harm.²³⁶

Conclusion

63. At the close of the inquiry, the Council and the R6 maintained that there would be harm to all of the heritage assets across the spectrum of less than substantial harm (and in the case of Bentley Conservation Area, the R6 alleged substantial harm), but the Appellant does not agree, particularly in light of the concessions Mr Hancock and Ms Farmer made. In all cases, there would be no impact on any features that make the primary contribution to significance, and the Appeal Site makes only a very small contribution to significance as part of the wider agricultural surroundings.
64. Importantly, and materially, any harm would be reversed upon decommissioning and the

²³⁰ Laura Garcia's Proof at §12.28.

²³¹ Laura Garcia's Proof at §14.21.

²³² Laura Garcia's Proof at §§14.27-14.28.

²³³ Laurie Hancock XX.

²³⁴ Laura Garcia's Proof at §14.27.

²³⁵ Laurie Hancock XX.

²³⁶ Laura Garcia's Proof at §14.29.

baseline would be restored in its entirety.²³⁷ It is a particular feature of solar development that it sits lightly on top of land and can be removed without a trace.²³⁸ Historic England considers that the reversibility of development is a way of avoiding or minimising harmful impacts – meaning that reversibility *must* have a bearing on the weight given to the harm, contrary to what Mr Hancock would suggest.²³⁹

65. Further, at the end of the 40 years, mitigation planting would have established and resulted in the restoration of a number of historic field boundaries on the Appeal Site.²⁴⁰ Ms Garcia noted that the OS maps show trees along those historic boundaries which tend to represent more substantial hedgerow trees, as also shown (and visible today) along Pond Hall Lane and Church Road.²⁴¹ She noted that the re-establishment of a smaller field pattern would be more reflective of the historic pattern, and she therefore disagreed with Mr Hancock (in his evidence at inquiry²⁴²) and Ms Farmer that there would be any permanent harm in heritage terms.²⁴³

Landscape and visual impacts

66. Solar farm developments are characterised by a low vertical profile, light footprint, and reversible nature. As Ms Garcia and Mr Mason have explained, the same characteristics are shared by this Proposal.²⁴⁴ Mr Mason explained that the operational requirements of a solar farm have been accommodated within a landscape-led layout, with mitigation designed in from the outset, in particular through:

- a. the retention of all existing vegetation around the Appeal Site perimeter (save for two very short sections of hedgerow at site access points);
- b. the incorporation of buffer zones to prevent the Proposal impacting or impinging on retained vegetation, including a minimum 6m buffer between existing field boundaries and the solar farm fencelines, increasing in depth in proximity to veteran

²³⁷ Laura Garcia XIC.

²³⁸ Laura Garcia XIC.

²³⁹ Laura Garcia XIC; CD F8, p.17.

²⁴⁰ Laura Garcia XIC.

²⁴¹ Laura Garcia XIC, referring for example to CD A8, p.54.

²⁴² Mr Hancock had previously agreed that the harm to all assets would be time-limited to 40 years: Heritage SOCG at §2.26.

²⁴³ Laura Garcia XIC.

²⁴⁴ Jon Mason XIC.

trees and the ancient woodland;

- c. new hedgerow planting across the Appeal Site to address the erosion of the historic landscape fabric, guided by reference to the historic field pattern, with most of the new hedgerows either coinciding with the original field pattern or replicating its scale while facilitating an efficient operational layout;
- d. the creation of several smaller fields along the northern and southern boundaries of the Appeal Site, to be managed as species-diverse wildflower meadows;
- e. the planting of new tree belts to bolster the existing screening and enclosure along Church Road and Potash Lane, in keeping with their existing treed character; and
- f. the establishment of a softer woodland edge to protect the ancient and veteran trees in Enry Wood.²⁴⁵

67. The temporary period of operation is also a matter that factors into the assessment of the significance of landscape impacts. Here, that period is 40 years. And whereas the Council and the R6 have been keen to reference that period in human generations, in heritage and landscape terms it is far more limited.

68. Several criticisms were levelled by Ms Bolger and Ms Farmer at the Landscape and Visual Impact Assessment (“LVIA”) that accompanied the application, in particular in relation to the selection of viewpoints and the visualisations, which Ms Bolger described as “less helpful than they could be”. However, Ms Bolger was clear in XX that she had not asked for any additional viewpoints or visualisation materials to be included or assessed and had not done that assessment herself.²⁴⁶ Mr Mason was likewise clear that the omission of the Suffolk Coast & Heaths Additional Project Area (“APA”) and its related documentation in the LVIA did not materially affect the conclusions that it reached, given it had taken into account the various qualities that were identified and the assessment outcomes were correct.²⁴⁷ So far as Ms Bolger was concerned, by the time of the inquiry, nothing material had been left out of account, and the Inspector had been furnished with the information required to reach a decision.²⁴⁸ We turn therefore to the substantive differences between the parties.

²⁴⁵ Jon Mason XIC and XX.

²⁴⁶ Michelle Bolger XX.

²⁴⁷ Jon Mason XIC and XX.

²⁴⁸ Michelle Bolger XX.

Valued landscape

69. The first key difference between the parties is whether the Appeal Site is part of a valued landscape within the meaning of the NPPF: Ms Bolger and Ms Farmer consider that it is, while Mr Mason is clear that it is not. However, several matters of principle are not (and cannot be) in dispute:
- a. Valued landscapes are not commonplace.²⁴⁹
 - b. The concept provides a means of identifying landscapes which are not designated, for example as National Landscapes, but which exhibit features that are sufficiently important and sensitive to justify protection.²⁵⁰
 - c. Nearly all landscapes are of value to the communities who live there and experience them.²⁵¹ That value alone does not elevate a landscape to a valued landscape.²⁵²
 - d. What one is looking for in a valued landscape is a quality which takes it out of the ordinary.²⁵³ Something that is extra-ordinary.²⁵⁴
 - e. Valued landscapes are more likely to be landscapes of the highest sensitivity.²⁵⁵
70. With those principles in mind, Mr Mason, Ms Bolger and Ms Farmer have each assessed the receptor as the Appeal Site and its immediate context.²⁵⁶ Though the Site itself is large, the visual envelope beyond the Site boundary is agreed to be very limited.²⁵⁷ That position is evident from the ZTVs, which show that visibility is within a localised geographic area and contained well within the 1km study area, and that visibility of the Site decreases very quickly as one moves away.²⁵⁸ The same is clear from Ms Farmer's analysis of permeable views, many of which are private, but all of which are on the Site boundary (and a worst case scenario).²⁵⁹ The limited visibility of the Site is due to its relatively level topography,

²⁴⁹ Michelle Bolger XX.

²⁵⁰ Michelle Bolger XX.

²⁵¹ Michelle Bolger XX.

²⁵² Michelle Bolger XX.

²⁵³ Michelle Bolger XX.

²⁵⁴ Michelle Bolger XX.

²⁵⁵ Michelle Bolger XX.

²⁵⁶ Landscape SOCG at §7.1.

²⁵⁷ Michelle Bolger XX; Jon Mason XIC.

²⁵⁸ CD A5.

²⁵⁹ Alison Farmer XX.

significant hedgerow and tree planting, areas of rising land and the built development on Potash Lane.²⁶⁰ Consequently, it is common ground that the effects of the Proposal in landscape character and visual terms are localised.²⁶¹

71. The landscape around the Appeal Site has been subject to multiple studies of landscape assessment and appraisal, some of which can be reviewed and some of which is no longer available, including the evidence base for the Dodnash Special Landscape Area (“SLA”) and the APA.²⁶² The available studies can assist in describing landscape character and in identifying valued attributes across wider areas, but they do not seek to assess the landscape value of specific, defined geographical parcels (such as the Appeal Site), nor do they provide a single definitive conclusion that their study areas (or parts of them) are “valued” as a whole. Both Mr Mason and Ms Bolger have considered the available studies and recognised that landscape value within these larger areas is variable.²⁶³ Accordingly, the fact that the Site lies within broader mapped areas such as the Dodnash SLA and the APA cannot, of itself, dictate a single outcome:²⁶⁴ it requires individual assessment of the Site and the landscape unit that would actually receive and experience the Proposal.²⁶⁵ In that context, the studies are best treated as contextual evidence, particularly where the underlying justification for mapped designations cannot now be reviewed, rather than as determinative of landscape value for any particular parcel of land.²⁶⁶

72. A highly relevant study is the Suffolk Coast & Heaths AONB Natural Beauty Assessment (“NBA”) from 2017.²⁶⁷ The study sought to identify areas with sufficient natural beauty to qualify for inclusion in a candidate area that could form the basis for an extension to the AONB.²⁶⁸ Notwithstanding that the rationale behind the designation of the APA could not be ascertained, it was taken to provide a useful starting point for assessment.²⁶⁹ The APA was then sub-divided into different areas, and the Appeal Site fell mainly within Area

²⁶⁰ Michelle Bolger XX.

²⁶¹ Michelle Bolger XX; Alison Farmer XX.

²⁶² Michelle Bolger XX; Alison Farmer XX.

²⁶³ Michelle Bolger XX.

²⁶⁴ Alison Farmer XX.

²⁶⁵ Michelle Bolger XX; Jon Mason XIC and XX.

²⁶⁶ Cf. the Suffolk & Essex Coast & Heaths National Landscape Management Plan 2023–2028: Jon Mason’s Proof at §3.3.12.

²⁶⁷ CD G8.

²⁶⁸ CD G8 at §1.1.5.

²⁶⁹ CD G8 at §4.2.2.

D3: Shotley Peninsula Plateau.²⁷⁰ Ultimately, the Site was not proposed for inclusion.²⁷¹

73. In its discussion of landscape quality, the NBA is very careful in its description of different areas:

- a. It describes the area broadly as a “rural, largely flat, open plateau landscape” with a “large-scale and simple character of moderate landscape quality.”²⁷²
- b. It describes one “small area” of higher landscape quality as the group of “notable halls including Bentley Old Hall, Bentley Park, Bentley Manor and Bentley Hall” together with their “wooded estate features and patterns, set in the wider plateau landscape.”²⁷³ All of these halls are north of the Appeal Site.²⁷⁴
- c. It also describes an area of higher landscape quality as comprising the “significant close grouping of ancient woodlands” as “centred round Bentley Old Hall, Bentley Park, Bentley Manor and Bentley Hall”, which is clarified in the following section as “Bentley Long Wood to Old Hall Wood and Wherstead Wood”. These woods are, again, north of the Appeal Site.²⁷⁵

74. Similarly, in its discussion of scenic quality, the NBA highlights the same areas:

- a. It notes that “there are relatively few remaining hedges or hedgerow trees and a lack of other features to provide visual interest or draw the eye” on the wider plateau.²⁷⁶
- b. It describes the hamlet of Potash, directly adjacent to the southern boundary of the Appeal Site,²⁷⁷ as “largely modern in character with relatively few houses reflecting the local vernacular.”²⁷⁸
- c. It describes a “small area” of higher scenic quality in the “immediate vicinity of Bentley Hall and Bentley Park”, to the north of the Appeal Site, “surrounded in all directions by lower quality typical plateau arable land”,²⁷⁹ which would include the

²⁷⁰ Michelle Bolger XX.

²⁷¹ Michelle Bolger XX.

²⁷² CD G8, p.70.

²⁷³ CD G8, p.70.

²⁷⁴ Michelle Bolger XX.

²⁷⁵ CD G8, p.70.

²⁷⁶ CD G8, p.71.

²⁷⁷ Michelle Bolger XX.

²⁷⁸ CD G8, p.71.

²⁷⁹ CD G8, p.71.

Appeal Site itself.

- d. It describes scenic quality as also being higher in the area of “the encircling estate woodlands around Bentley Hall”, being “Bentley Long Wood to Old Hall Wood and Wherstead Wood” to the north of the Appeal Site.²⁸⁰

75. Overall, the NBA found that the areas of higher landscape and scenic quality are “limited in extent” within an area which overall “lacks distinction due to the intensity of modern agricultural use”.²⁸¹

76. Another relevant study is the Bentley Neighbourhood Plan Landscape Appraisal (“BLA”) produced in 2019.²⁸² Like the NBA, the BLA considered that the northern part of the Parish could be recognised as a valued landscape due to its historic patterns of settlement, ancient woodland, remnant parkland and rural lanes.²⁸³ Whilst the extent of this “northern part” is not defined, the BLA identifies the designated buildings around Bentley Hall as “key built landmarks” and the associated parkland as one of four landscape features that contribute to “local sense of place”.²⁸⁴ None of the important views identified throughout the Parish are of the Appeal Site.²⁸⁵ The management guidelines for the Parish include the planting and reinstating of hedgerows and trees to reinforce local character and improve landscape legibility.²⁸⁶

77. Most recently, the Suffolk Coast & Heaths APA Valued Landscape Assessment (“VLA”) was carried out in March 2020.²⁸⁷ The VLA sought to articulate the valued aspects of the areas of landscape within the APA that did not form part of the extension to the AONB.²⁸⁸ The Appeal Site fell within Area 1: Wooded Plateau, which extends from the south of the village of Bentley to the north of the village of Belstead.²⁸⁹ The assessment of the Plateau revealed the following:

²⁸⁰ CD G8, p.71.

²⁸¹ CD G8, p.74.

²⁸² CD G7.

²⁸³ CD G7 at §4.7.2.

²⁸⁴ CD G7 at §4.2.2.

²⁸⁵ Michelle Bolger XX.

²⁸⁶ Michelle Bolger XX; CD G7 at §6.3.3.

²⁸⁷ CD G9.

²⁸⁸ CD G9, p.1.

²⁸⁹ CD G9, p.15.

- a. The landscape reflects the typical characteristics of plateau farmland in Suffolk.²⁹⁰
- b. Perceptually, it is a modern utilitarian agricultural landscape.²⁹¹
- c. The area “further south”, near the Site,²⁹² was identified as one with intact woodland areas, where the “pattern has generally been disrupted by field boundary loss” but “the historic pattern of church and hall complexes sitting isolated within a wider rural landscape remains intact”.²⁹³

78. The VLA did not proceed to make findings that the Plateau should be regarded as a valued landscape.²⁹⁴ Rather, it provided evidence which could be used to inform judgements on whether areas are part of a valued landscape within the meaning of the NPPF.²⁹⁵ With the articulation of value, it also identified the associated pressures, which for the Plateau included “the loss of field boundaries and habitat networks with the creation of larger scale simple landscapes.”²⁹⁶ That evidence collectively indicates that the Appeal Site does not have characteristics or landscape fabric that exhibits special qualities or extraordinary value.

79. Mr Mason agreed with the finding in the above assessments, noting that all of the higher quality areas and features are discernible further north of the Appeal Site and the modern influences and detractors at Potash.²⁹⁷ He explained that there is considerably more time depth in the area around Bentley Hall, with its intact and unusual assemblage of historic buildings set within an area with a distinct wooded valley character.²⁹⁸ By contrast, the Site is part of a large swathe of agricultural land which has been simplified with modern agricultural operations and is comparatively lower in quality.²⁹⁹ Unlike Ms Bolger and Ms Farmer, Mr Mason took care to assess not only the quality of the features around the Site but also the quality of the Site itself, this being the largest part of the agreed assessment area.³⁰⁰ In doing so, he considered that the clear and obvious simplification of

²⁹⁰ CD G9, p.17.

²⁹¹ CD G9, p.17.

²⁹² Michelle Bolger XX.

²⁹³ CD G9, p.16.

²⁹⁴ Michelle Bolger XX.

²⁹⁵ CD G9, p.1.

²⁹⁶ CD G9, p.53.

²⁹⁷ Jon Mason XIC and XX.

²⁹⁸ Jon Mason XIC.

²⁹⁹ Jon Mason XIC.

³⁰⁰ Michelle Bolger XX.

the landscape that had occurred in this area could not be ignored and did not agree with their view that it formed part of a valued landscape.³⁰¹

80. Mr Mason further illustrated that conclusion by reference to the journey that one would take from the modern village of Bentley along Church Road towards the historic complex around Bentley Hall. He explained that, contrary to the suggestion by Ms Bolger that the historic character begins on reaching the junction with Potash Lane (being the southern boundary of Bentley Conservation Area), the immediate experience there is modern semi-detached housing with stone cladding and solar panels.³⁰² Further on, views towards the Appeal Site occur through field accesses or gaps in hedgerow.³⁰³ There is also an overhead powerline tracing poles alongside the road.³⁰⁴ Church Road then passes the modern property of Little Bush and the private track to Church Farm before crossing the threshold into the more enclosed historic core around Bentley Hall.³⁰⁵
81. Criticism was levelled at the LVIA and Mr Mason's proof for not referencing JLP Policy LP18 and the VLA within the text,³⁰⁶ although Mr Mason clarified that he had synthesised the special qualities identified in the VLA in his section 4 and then set out and commented on them in his Appendix JM1.³⁰⁷ As such, he clearly had full regard to the VLA and agreed with Ms Bolger's acknowledgement in XX that nothing had been left out of account.³⁰⁸ He considered that those special qualities would be preserved by the Proposal.³⁰⁹
82. Insofar as Ms Farmer contended that the Appeal Site fell within the setting of the Suffolk Coast & Heaths AONB, Mr Mason and Ms Bolger confirmed in XX that they did not agree.³¹⁰ The basis for Ms Farmer's contention was the notion that the Site forms part of a route between areas of the Suffolk Coast & Heaths AONB.³¹¹ However, Mr Mason noted that it is not possible to perceive the special qualities of the AONB from the Site and was

³⁰¹ Jon Mason XIC.

³⁰² Jon Mason XIC; Michelle Bolger XX.

³⁰³ Jon Mason XIC; Michelle Bolger XX.

³⁰⁴ Jon Mason XIC; Michelle Bolger XX.

³⁰⁵ Jon Mason XIC; Michelle Bolger XX.

³⁰⁶ Jon Mason XX.

³⁰⁷ Jon Mason Re-X.

³⁰⁸ Jon Mason XX.

³⁰⁹ Jon Mason XX.

³¹⁰ Michelle Bolger XX; Jon Mason XX.

³¹¹ Alison Farmer XIC.

firm in his view that there is no functional connection.³¹² The consequence is that there would not be any opportunity for the Proposal to affect land within the AONB to trigger the duty in section 85(A1) of the Countryside and Rights of Way Act 2000.³¹³

83. Even if the Inspector found that the Appeal Site did form part of a valued landscape, that finding does not mean that the Site cannot be developed.³¹⁴ The effect is that, on either case, it is necessary to follow the exercise through and determine the nature of the impacts and their significance.

Landscape character

84. Other relevant assessments of landscape character are set out in the Shotley Peninsula and Hinterland Landscape Character Assessment (“LCA”)³¹⁵ from 2013 and the Joint Babergh and Mid Suffolk District Council Landscape Guidance (“DCLG”) published in 2015.³¹⁶ Within the LCA, the Appeal Site forms part of the Shotley Peninsula Plateau and Samford Valley Landscape Character Areas.³¹⁷ Each of those areas is expansive, yet there are clear references in the assessment of those areas to features around the Site, for example:

- a. The Plateau is described as having a rural, settled character with a consistent pattern of wooded skyline across large scale open arable fields, which would fairly include the Site.³¹⁸ Negative forces for change are identified as the fragmentation of habitats and a lack of hedgerow management, which Ms Bolger agreed were present around the Site, such that the reinforcement of the historic pattern of hedgerow boundaries and the restoration and maintenance of tree belts are recommended in the landscape strategy.³¹⁹ There is no suggestion that new hedgerow should be avoided.³²⁰
- b. As to the Valley, the railway line and pylons running north to south are identified as

³¹² Jon Mason XIC.

³¹³ Being to seek to further the purpose of conserving and enhancing the natural beauty of the AONB: Paul Burrell Re-X.

³¹⁴ CD H22.

³¹⁵ CD G6.

³¹⁶ CD G5.

³¹⁷ CD G6, p.12; Michelle Bolger XX.

³¹⁸ CD G6, p.23; Michelle Bolger XX.

³¹⁹ CD G6, p.25; Michelle Bolger XX.

³²⁰ Michelle Bolger XX.

major detractors in an otherwise historic landscape, which are in close proximity to the eastern part of the Site.³²¹ The railway and pylons are in turn listed as negative forces for change, together with the mismanagement and neglect of hedgerows.³²² It follows that the reinforcement of hedgerows is not to be avoided but supported.

85. Similar observations are made in the later Joint Babergh and Mid Suffolk District Council Landscape Guidance.³²³ The District as a whole is described as retaining a leafy, wooded character due to the number of hedgerows and pockets of woodland.³²⁴ The Appeal Site falls more specifically within the Ancient Estate Claylands and Ancient Estate Farmlands Local Character Areas, which are characterised respectively by ancient woodlands³²⁵ and a pattern of rectilinear modern fields.³²⁶ With a view to maintaining the character of the District and those areas:

- a. The general guidance is supportive of the retention of historic landscape features,³²⁷ respect for existing patterns of vegetation and enclosure,³²⁸ and the conservation of the character of rural green lanes (including their associated hedges)³²⁹ – which is exactly what the Proposal will achieve here. The Proposal might impinge on some views of landscape features, such as Engry Wood, but would not “dominate” those features as they exist in the landscape.³³⁰ many other experiences and views of those features will remain. And far from prohibiting new planting, the guidance requires that “special attention” is given to any new landscaping to minimise its impact on landscape character.³³¹
- b. The aim for the Ancient Estate Claylands is to retain, enhance and restore landscape character in particular by strengthening the landscape with appropriate planting.³³² A key design principle is to protect and maintain ancient woodlands and old existing

³²¹ CD G6, p.32; Michelle Bolger XX.

³²² CD G6, p.32; Michelle Bolger XX.

³²³ CD G5.

³²⁴ CD G5 at §1.6.4.

³²⁵ CD G5, p.26.

³²⁶ CD G5, p.31.

³²⁷ CD G5 at §2.3.4.

³²⁸ CD G5 at §2.3.4.

³²⁹ CD G5 at §2.15.1.

³³⁰ CD G5 at §2.3.4.

³³¹ CD G5 at §2.3.4.

³³² CD G5, p.29.

hedge lines.³³³ Both acknowledge that existing and new planting is a positive feature of the area which should be maintained and encouraged.³³⁴

- c. Likewise, the aim for the Ancient Estate Farmlands is to reinforce hedgerows that are locally native species and to safeguard ancient woodland and the mosaic pattern of pasture, heath and woodland.³³⁵ Key design principles include incorporating tree belts, woodland or hedgerows into the design and layout of proposals and enhancing field boundaries with local hedging and tree species.³³⁶ In this area, the guidance is again promoting new planting as an appropriate way of managing landscape and visual effects.³³⁷

86. Set in that context, the experts agreed that the susceptibility and sensitivity of the Appeal Site and its surroundings were medium/high.³³⁸ As for landscape value, there was a step between them, but the content of the above assessments reveals that the value judgements made by Ms Bolger and Ms Farmer (that the area demonstrates high value³³⁹) downplays the Site's detractors and degradation.³⁴⁰ Both conceded in XX that the baseline condition includes the railway line, large-scale pylons and overhead powerlines to the east.³⁴¹ And despite some consternation about whether the internal boundaries were ever "substantial", it is agreed that they were there, and that the Site has consequently lost its historic pattern.³⁴²

87. Ms Bolger maintained that her assessment of value was high, yet accepted in XX that:

- a. her own consultation response drew a contrast between the "distinctive" Bentley Church/Hall complex and the "typical" wooded arable landscape;³⁴³

³³³ CD G5, p.29.

³³⁴ Michelle Bolger XX.

³³⁵ CD G5, p.34.

³³⁶ CD G5, p.34.

³³⁷ Michelle Bolger XX.

³³⁸ Landscape SOCG at §7.1.

³³⁹ Landscape SOCG

³⁴⁰ Inspector's Questions to Michelle Bolger.

³⁴¹ Jon Mason XIC; Michelle Bolger XX.

³⁴² Landscape SOCG at §2.4; Michelle Bolger XX; Alison Farmer XX; CD G7, p.12.

³⁴³ CD B32, p.11.

- b. she was aware of the quality of the ancient woodland as described in various studies when giving that response;
- c. there are no footpaths that go through the Appeal Site, nor is there evidence of any particular concentration in this part of the District;
- d. the presence of pylons and modern agricultural barns are relevant to the assessment of “perceptual (wildness and tranquillity)”; and
- e. there was no reason behind her decision to increase her assessment of “functional” value.³⁴⁴

88. By reference to his GLVIA Box 5.1 and TGN 02/21 assessments,³⁴⁵ Mr Mason explained that the value of the character of the Appeal Site and its immediate surroundings is more appropriately judged as medium/high, given that:

- a. there is a mix of landscape quality, as described in various studies;
- b. within the framework of older woodland and trees, the Appeal Site itself comprises two large, monolithic, modern fields that bear very little trace of their historic fabric;
- c. the loss of the historic field boundaries, and degradation of those that remain, means that the landscape is denuded of detail and quality, and its natural heritage, cultural heritage and landscape condition are diminished;
- d. the association with the Tollemache Family is not well preserved or perceived;
- e. the simplified arable farmland and network of footpaths are typical and not distinctive;
- f. an interrelationship between heritage assets and historic landscape elements is also commonplace throughout Suffolk; and
- g. the road and rail noise, modern utilitarian agricultural practice and pylons reduce tranquillity.³⁴⁶

89. As to the magnitude of change with the Proposal in place, the experts were not far apart. All agreed it was medium, with Mr Mason finding that it would reduce to small over time in view of the establishment of effective screening.³⁴⁷ Ms Bolger agreed with him in XX

³⁴⁴ Michelle Bolger XX.

³⁴⁵ CD C16 B2

³⁴⁶ Jon Mason XIC and XX.

³⁴⁷ Landscape SOCG at §7.1.

that the duration of effect is a factor, as well as the nature of the development.³⁴⁸ Here the Proposal is a form of development that is almost exclusively found in the countryside, as are utilitarian agricultural sheds.³⁴⁹ It would be a lower height than other development and sit on, rather than in, fields.³⁵⁰ The panels themselves are quiet and do not create emissions or human activity.³⁵¹ As to the surrounding framework, there would be no physical impact on any asset or feature outside the red line boundary.³⁵²

90. In terms of the significance of landscape effects, Mr Mason recognised that the character of the Appeal Site will change with the Proposal, identifying a moderate/major adverse effect at year 1, but considered that the effect would reduce over time to a minor/moderate adverse effect at year 15 as new planting matures.³⁵³ He explained in XIC that solar farms can be harmful without mitigation, but noted that the low profile of the solar arrays means they are inherently capable of being mitigated.³⁵⁴ The Site has an existing framework of visual and physical containment because of the hedgerows and trees around the perimeter, and that framework would be extended and reinforced to ensure that valuable landscape features are retained and protected.³⁵⁵
91. Ms Bolger suggested in XX that she did not disagree that hedgerow and tree planting is generally regarded as a positive thing in landscape character terms,³⁵⁶ which aligns with the position in her proof and the Landscape Statement of Common Ground. Yet Ms Bolger and Ms Farmer both advanced a case in XIC that the proposed addition and arrangement of hedgerows would have a negative impact in this case.³⁵⁷ It is a peculiarity of solar farm schemes that hedgerows come to be regarded as a negative feature in the landscape. That position cannot be sustained in light of the guidance above: Ms Bolger acknowledged in XX that the published character assessments consistently refer to hedgerows and trees as desirable landscape elements in the area.³⁵⁸

³⁴⁸ Michelle Bolger XX.

³⁴⁹ Michelle Bolger XX.

³⁵⁰ Michelle Bolger XX.

³⁵¹ Michelle Bolger XX.

³⁵² Michelle Bolger XX.

³⁵³ Landscape SOCG at §7.1.

³⁵⁴ Jon Mason XIC.

³⁵⁵ Jon Mason XIC.

³⁵⁶ Michelle Bolger XX.

³⁵⁷ Michelle Bolger XIC; Alison Farmer XIC.

³⁵⁸ Michelle Bolger XX.

92. Moreover, the proposed internal hedgerow framework is not simply a response to the solar arrays: it is a landscape-led measure intended to recreate the historic smaller-scale field pattern that has been eroded, by planting new hedgerows on historic alignments where possible (c. 45%) and otherwise to replicate the historic scale and grain across the Appeal Site.³⁵⁹ The historic mapping and aerial photograph consistently show field boundaries of some form in the same locations before modern agricultural practices intensified. That is the best evidence before this inquiry.³⁶⁰ The fact that the boundaries were hedgerows can in turn be interpreted from their demarcation with trees, in the same way as the boundaries along Church Road and Potash Lane (which are vegetated to this day).³⁶¹ Mr Mason was clear that such an interpretation is a conventional approach to reading historical maps.³⁶² Whereas Mr Martin opined that there could have been an open field system, he considered the Site was in a transition area between areas thought to have been more open to the east and areas thought to have been more enclosed to the west.³⁶³ Mr Mason stated that there are many reasons why the Site may have been hedged, including to provide a source of wood products or to contain livestock within an arable rotation.³⁶⁴ Whilst nobody could say conclusively what form the boundaries took, the balance of probabilities was in his view that there would have been substantive vegetation.³⁶⁵ That being so, it was entirely orthodox and reasonable for Mr Mason to have identified beneficial landscape effects associated with the reintroduction of hedgerow planting.

93. Mr Mason therefore maintained his view that open views across the Appeal Site, on which Ms Bolger and Ms Farmer relied, have resulted from the degradation and gradual removal of field boundaries over time.³⁶⁶ It follows that the views would have been foreshortened in the past, as would result from the hedgerow and tree planting that is positively sought, on historic lines or otherwise. In circumstances where those open views have not been identified more recently as valuable or to be preserved, a judgement that landscape effects would remain the same at year 15³⁶⁷ cannot be supported.

³⁵⁹ Alison Farmer XX; Jon Mason XX; Jon Mason's Proof, p.13.

³⁶⁰ Jon Mason XX.

³⁶¹ Jon Mason XIC; CD G7, p.10.

³⁶² Jon Mason Re-X.

³⁶³ Edward Martin XIC.

³⁶⁴ Jon Mason XIC and XX.

³⁶⁵ Jon Mason XIC and XX.

³⁶⁶ Jon Mason XIC.

³⁶⁷ Landscape SOCG at §7.1.

94. Ms Farmer also expressed a concern about the Appellant’s proposal for a rewilded edge to Engry Wood on the western area of the Appeal Site. In XX, it became apparent that her concern was based on a misunderstanding that the proposal involved a form of woodland regeneration or woodland planting.³⁶⁸ Even if it did, Ms Farmer acknowledged that there would be scope to secure an appropriate treatment of the woodland edge when final details of the landscaping are agreed in accordance with Condition 17.³⁶⁹

Visual effects

95. Finally, on visual effects, it is common ground that there are no designed or planned views over the Appeal Site that would be blocked by the Proposal.³⁷⁰ The views that do exist are incidental ones, and the effects on those views would be limited due to the Site’s visual containment as a result of a combination of the local topography and the layering effect of hedgerows and trees.³⁷¹ It is telling that the Council did not seek to challenge the visual containment of the Site.

96. In accordance with the LVIA, Mr Mason recognised that users of Church Road, Potash Lane and Pond Hall Lane would be impacted, but concluded that the largest effects (on viewpoints 1, 2, 3 and 12) would reduce to minor adverse or negligible in the medium and long term as there are (and would be) limited opportunities to appreciate the Proposal.³⁷² The clearest views would occur at field accesses and would be “glimpsed”.³⁷³ Likewise, in the case of residential receptors, effects would be major to moderate adverse in year 1 and reduce to minor adverse in the medium to long term as mitigation establishes.³⁷⁴ The LVIA records that it took into account all of the elements of the Proposal and its construction, including the solar panels, gates, fencing and CCTV.³⁷⁵

97. During the inquiry, there was some discussion about viewpoint 2 and whether the related

³⁶⁸ Alison Farmer XX.

³⁶⁹ Alison Farmer XX.

³⁷⁰ Michelle Bolger XX.

³⁷¹ Michelle Bolger XX.

³⁷² Jon Mason’s Proof at §6.9.1.

³⁷³ Jon Mason’s Proof at §6.12.4.

³⁷⁴ Jon Mason’s Proof at §6.10.1.

³⁷⁵ Jon Mason XX; CD A4 at §§2.1.1 and 5.2.5; CD A2 at §§3.1.1 and 3.3.4.

visualisation was a fair representation of what would actually be seen. Mr Mason clarified that the access would not be a modern or industrial access, comprising an informal stone track, hedgerow along the north of the track to screen the solar arrays, and a timber gate³⁷⁶ that is sympathetic to the deer stock fencing in use around the Appeal Site.³⁷⁷ He explained that the gate is not fully visible in that visualisation because it is set back as far as possible to avoid any juxtaposition with Church Road.³⁷⁸

98. Insofar as it was suggested by Ms Bolger and Ms Farmer that mitigation planting would introduce inappropriate enclosure in the landscape, in particular around Engry Wood, Mr Mason did not agree. He acknowledged that solar panels and hedgerows would partially screen the profile of Engry Wood (illustrated by reference to viewpoints 1, 3 and 5), but emphasised that it is not possible to discern the sinuous nature of the edge of the woodland from that distance and made clear that the profile of the treeline would remain visible:³⁷⁹ it would not be screened or removed from view.³⁸⁰ Moreover, he noted by reference to summer photography that, when there is a crop in the field, the degree of visibility of Engry Wood is similar to what would be possible with the mitigation planting in place.³⁸¹ Consequently he did not accept that the mitigation would deprive this landscape of such views.³⁸²

99. It was also suggested by Ms Bolger and Ms Farmer that the proposed mitigation planting may take longer to establish than Mr Mason's conclusions would suggest, perhaps taking 10-15 years before the first improvements are seen, or may fail entirely due to the dry East Anglian climate and potential damage by deer.³⁸³ Mr Mason again disagreed, noting that this is an area with good quality agricultural land to support plant growth, and that the planting could be appropriately specified to be resilient to dry conditions and protected from deer and thereafter managed proactively to ensure that it reaches a height similar to development components within c. 5 years.³⁸⁴ The appropriate specification of planting

³⁷⁶ As shown on Figure 11e: CD C16 B3.

³⁷⁷ Jon Mason XIC.

³⁷⁸ Jon Mason XIC.

³⁷⁹ Jon Mason XIC; CD A5, p.9; CD C16 B3 Figures 11a, 11c, 11e and 11f.

³⁸⁰ Jon Mason XIC.

³⁸¹ Jon Mason XIC.

³⁸² Jon Mason XIC.

³⁸³ Michelle Bolger XIC; Alison Farmer XIC.

³⁸⁴ Jon Mason XIC and XX.

and its ongoing management could and would be secured by condition.³⁸⁵ Ms Bolger ultimately accepted that the mitigation will reduce effects on receptors over time.³⁸⁶

100. Other points raised against Mr Mason were that there would be an impact on the existing walking experience around the Appeal Site,³⁸⁷ and that the Inspector can take into account the impact on successive views insofar as they offer a kinetic experience.³⁸⁸ Mr Mason did not disagree with those points but observed that pleasant walks would still be available to enjoy and that people would continue to use those walks because the impact would not be so harmful as to affect their experience.³⁸⁹ He also gave his view that if the purpose of the views in the CAAMP was to record a kinetic experience, that experience had not been captured or explained.³⁹⁰ He noted, as did Ms Garcia, that there is only a single view along a route, namely the view along the former railway line at view 33.³⁹¹
101. The R6 separately criticised Mr Mason on the approach taken to the Uplands as a receptor, noting that the Uplands was not discussed in the LVIA or in his proof.³⁹² In response, Mr Mason explained that the ZTVs, which only provide an indication as to the likely pattern of visibility, were prepared taking into account the presence of a dense belt of vegetation on the Upland's boundary and on the basis that the LVIA had not picked up the existence of a perimeter path around the garden that runs alongside the Appeal Site boundary in that location.³⁹³ He nevertheless confirmed that there is space for further planting in that area of the Site which could provide effective screening, notwithstanding the topography.³⁹⁴ In respect of the filtered views from the house itself, he clarified that those are private views, which fall outside the scope of the LVIA.³⁹⁵
102. Overall, the Proposal would be visually well contained due to its low profile and vegetated surroundings. Beyond the Appeal Site itself, there would be only glimpsed views of the

³⁸⁵ Alison Farmer XX.

³⁸⁶ Michelle Bolger XX.

³⁸⁷ Alison Farmer XIC.

³⁸⁸ Jon Mason XX.

³⁸⁹ Jon Mason XX.

³⁹⁰ Jon Mason XX.

³⁹¹ Jon Mason XIC; CD F1, p.38.

³⁹² Jon Mason XX.

³⁹³ Jon Mason XX.

³⁹⁴ Jon Mason XX.

³⁹⁵ Jon Mason Re-X.

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Proposal and no ability to see its full extent from any one location. Mr Mason reasonably concluded that visual effects would therefore be limited, localised and reduce over time.³⁹⁶

Conclusion

103. Mr Mason concluded that there would not be any unacceptable landscape or visual effects. At the end of its 40-year period of operation, the Proposal would be fully decommissioned and all built structures removed (including in this case the substations and access tracks).³⁹⁷ However, by that time, the hedgerows and trees which are consistent with the landscape principles for the area will be established, mature and remain in place, leaving a positive legacy in landscape structure.³⁹⁸

Impact on BMVAL

104. In the end, the R6 (and interested parties) presented little evidence on the alleged impact on BMVAL. Mr Poole clarified in XIC that he was not suggesting that impact on BMVAL was a determinative matter justifying a refusal of permission, but rather that it was a factor weighing against the Proposal when considering the NPPF.³⁹⁹
105. To the extent that Mr Poole has taken that stance because the Appellant has not justified the use of BMVAL by the “most compelling evidence”,⁴⁰⁰ he agreed in XX that there had been a number of significant changes in the legal and policy context since the adoption of the Written Ministerial Statement of 25 March 2015 (“WMS”) and the revision of paragraph 013 of the Planning Practice Guidance on Renewable and Low Carbon Energy on 27 March 2015 (“the PPG”) on which he relied.⁴⁰¹ Those changes include the legally binding commitment to Net Zero made in 2019, numerous versions of the NPPF, the Clean Power Action Plan published in 2024 and two versions of EN-1 and EN-3.⁴⁰² The Action Plan specifically recognised that the PPG is outdated and requires updating to reflect new

³⁹⁶ Jon Mason’s Proof at §6.12.5.

³⁹⁷ Jon Mason’s Proof at §2.2.4.

³⁹⁸ Jon Mason’s Proof at §9.4.7.

³⁹⁹ Ian Poole XX.

⁴⁰⁰ Ian Poole’s Proof at §§4.15-4.16 and 4.19.

⁴⁰¹ Ian Poole XIC.

⁴⁰² Ian Poole XX.

policies.⁴⁰³ It is right to place greater weight on more recent policy and guidance,⁴⁰⁴ none of which has such a requirement.

106. For completeness, the Appellant notes that the R6 has indicated that it intends to rely on the decision in *Lullington Solar Park Ltd v SSLUHC* [2024] EWHC 295 (Admin),⁴⁰⁵ and the approach taken by an inspector to the WMS formed the basis for one of two grounds of challenge in that case. The circumstances of the case are, however, different to this one, as the continued relevance of the WMS had been agreed between the parties. Moreover, the High Court had not been referred to the decision in *R(Bramley Solar Farm Residents Group) v SSLUHC* [2023] EWHC 2842⁴⁰⁶ or the following conclusion of Lang J at [179]:

“I agree with the Secretary of State and BSL that the PPG does not mandate the consideration of alternatives. Still less does it require a sequential test be adopted. Where national policy requires a sequential test to be applied (e.g. sequential tests for town centre uses or flooding in the Framework) it expressly provides as much.”

107. Critically, the inspector in the appeal had not considered the impact that subsequent policy developments had on the weight that should be given to the WMS at any stage. That is an important question for the Inspector here. Mr Poole has agreed with Mr Stroud that greater weight should be given to subsequent developments in national policy.⁴⁰⁷
108. Further to Lang J’s finding on sequential tests in *Bramley*, Mr Keron clarified that NPPF §187(c) does not require that BMVAL is used “effectively”⁴⁰⁸ as Mr Poole had suggested: it simply requires that the economic and other benefits of BMVAL are “recognised”.⁴⁰⁹ Mr Keron’s evidence assessed the economic impacts of the intended use of BMVAL and concluded that the impacts on food production would be negligible.⁴¹⁰ He explained that the Appeal Site would not be taken out of productive or effective agricultural use in any

⁴⁰³ Paul Burrell XX; CD D20, p.54: “*The Planning Practice Guidance for renewable energy, which adds further detail to the policy contained within the NPPF, contains outdated guidance which requires updating to reflect new policies.*”

⁴⁰⁴ Ian Poole XX; CD H27 at §21.

⁴⁰⁵ CD H43.

⁴⁰⁶ CD H44.

⁴⁰⁷ Ian Poole XX; CD H27 at §21.

⁴⁰⁸ Cf. Ian Poole’s Proof at §9.7.

⁴⁰⁹ Tony Keron XIC.

⁴¹⁰ Tony Keron’s Statement at §4.8.

event, noting the scope for onsite sheep grazing during the lifetime of the Proposal and its restoration to arable land thereafter.⁴¹¹ It is also fair to note that the Proposal would lead to rural diversification for the landowner, and that schemes such as this generate their own economic benefits – not only in respect of construction, but from investment in the energy industry more generally. Mr Poole did not challenge this evidence, or quantify any economic impact in his own.

109. Mr Keron further noted that, in accordance with the thrust of the NPPF and JLP Policy CP15, the Proposal has been designed to prioritise poorer quality land where possible: it would avoid the higher quality Grade 2 BMVAL at the western edge of the Appeal Site in favour of the lower quality Grade 3a/3b BMVAL to the centre and east.⁴¹² He was clear that solar farms do not result in the downgrading or loss of BMVAL given the construction is light touch and soil is not displaced, disturbed or deprived of water in a material way.⁴¹³
110. Ultimately, the deployment of solar to meet national targets will need around 0.4% of total UK land⁴¹⁴ and around 1% of utilised agricultural land of England.⁴¹⁵ Given the particular prevalence of BMVAL (comprising ~50% of agricultural land outside National Parks and National Landscapes⁴¹⁶), it is inevitable that solar development will need to come forward on BMVAL, and Mr Poole fairly agreed in XX that the prevailing national policy context does not prevent it.⁴¹⁷

Impact on biodiversity

111. Likewise, the R6 produced no expert evidence to challenge the evidence of Mr Fearn and focussed their questioning of him on the concern that the Proposal would displace ground nesting birds. Mr Fearn observed that the many other species identified in statements from interested parties are quite typical of the region and present because of the quality of the hedgerows and surrounding habitats around the Appeal Site, which would remain.⁴¹⁸ The

⁴¹¹ Tony Keron's Statement at §§3.10-3.11.

⁴¹² Tony Keron XIC.

⁴¹³ Tony Keron XIC.

⁴¹⁴ CD D23, p.7.

⁴¹⁵ Tony Keron XIC.

⁴¹⁶ Tony Keron XIC.

⁴¹⁷ Ian Poole XX.

⁴¹⁸ Howard Fearn XIC.

arable fields on which the solar arrays will be located are currently an ecological desert,⁴¹⁹ and the Appeal Site would improve substantially as a foraging resource for birds, bats and other wildlife due to the reduction in arable farming practices and the implementation of the amended landscaping scheme.⁴²⁰

112. Skylark and yellow wagtail are the only ground nesting bird species that were identified in the surveying work carried out by Mr Fearn's team, which was conducted in accordance with appropriate guidance and metrics.⁴²¹ Mr Fearn, who has a specialism in ornithology, explained that the installation of solar panels would not entirely displace ground nesting birds, as they would have improved opportunities to feed and forage, but would displace their nests.⁴²² In that regard, he explained that both species are already affected by farming processes because farming conditions and crops change each year, and that any loss of the measurable population would be insignificant (a fraction of 1%) when measured at any meaningful ecological level.⁴²³
113. Importantly, Mr Fearn considered that there is compliance with JLP Policy LP16, as do the Council.⁴²⁴ Contrary to Mr Poole's understanding,⁴²⁵ mitigation measures are set out in the Ecological Assessment Report which seek to avoid disturbing ground nesting birds, as required by law, and to provide alternative habitat in other areas of the Site.⁴²⁶ Insofar as it requires populations of protected species to be maintained as identified "on site", he explained that this was an impossible requirement as it is simply not feasible to maintain any species at that scale, particularly mobile species such as birds.⁴²⁷ He observed that the policy did not comply with the NPPF or the standing guidance of Natural England in that respect.⁴²⁸
114. An additional challenge was put to Mr Burrell (not to Mr Fearn) that the R6 did not agree

⁴¹⁹ Howard Fearn XIC.

⁴²⁰ Howard Fearn XIC.

⁴²¹ Howard Fearn XIC. In XX, the R6 made reference to other survey figures but did not provide any evidence to support those figures or explain how they had been recorded. Mr Fearn was careful to distinguish the presence of birds from bird nests.

⁴²² Howard Fearn XIC.

⁴²³ Howard Fearn XIC.

⁴²⁴ Steven Stroud XX.

⁴²⁵ Ian Poole XIC.

⁴²⁶ Howard Fearn XIC; CD C4; CD C6.

⁴²⁷ Howard Fearn XIC.

⁴²⁸ Howard Fearn XIC.

with the approach that had been taken to calculating the biodiversity value of grassland that would grow below the solar arrays in the Biodiversity Metric Calculation Tool.⁴²⁹ Mr Burrell is not an ecologist, but he noted the findings of the review by Place Services that the tool had been completed appropriately and in line with the landscape proposals.⁴³⁰ The approach was not changed when the calculation was updated to reflect the amendments.⁴³¹ Mr Burrell was clear that there was no suggestion by other experts that the BNG metric had been completed otherwise than in accordance with the relevant guidelines.⁴³²

Impact on living conditions

115. The R6 also expressed concerns about a number of other impacts on living conditions. In terms of residential amenity, which was discussed principally with regard to the Uplands, Mr Mason was clear that the distance between the Uplands and the Appeal Site prevented the Proposal from giving rise to any amenity impacts.⁴³³ Whilst there may be a change in certain views from the house, which to some would be less attractive,⁴³⁴ those views are already filtered by vegetation and could be screened further.⁴³⁵ Mr Burrell remained firm in his view that the Lavender test was not failed in this case:⁴³⁶ the Proposal would not be an unpleasantly overwhelming and unavoidable presence rendering residential receptors an unattractive place to live.
116. With regard to noise, Mr Burrell relied on the evidence of Mr Kettlewell. Mr Poole fairly acknowledged that he was not a noise expert, and that Mr Burrell had produced evidence from Mr Kettlewell setting out the technological reasons why a different scheme in the District appeared to generate higher levels of noise than the Proposal.⁴³⁷ Mr Poole further agreed that the Noise and Vibration Assessment had been carried out in accordance with the British Standard and that noise would in all cases be at or below the background noise

⁴²⁹ Paul Burrell XX.

⁴³⁰ CD B23a, p.2.

⁴³¹ CD C7.

⁴³² Paul Burrell Re-X.

⁴³³ Jon Mason Re-X.

⁴³⁴ Paul Burrell XX.

⁴³⁵ Jon Mason XX; Paul Burrell XX.

⁴³⁶ By reference to the photographs that had been submitted by residents prior to writing his proof and his observations from publicly accessible locations: Paul Burrell XX.

⁴³⁷ Ian Poole XX; Paul Burrell's Rebuttal, App. R1.

level.⁴³⁸ Acoustic barriers around the transformer stations would be able to mitigate noise from those and would be seen in the context of the solar arrays.⁴³⁹ Ultimately, he conceded that there was no risk of any significant adverse noise impact.⁴⁴⁰

117. As to glint and glare, whilst the R6 may not have understood how there could not be any adverse impacts on residential receptors and road users, Mr Burrell relied upon the expert evidence of Pager Power and the conclusions that they had reached in the Glint and Glare Assessment.⁴⁴¹ Mr Poole acknowledged the findings in the assessment that receptors 129 to 137 on Potash Lane, with which the R6 was specifically concerned, had a “geometric potential” to perceive solar reflections but the sun would not be shining for some of that time.⁴⁴² The assessment also found that the reflective panel area would be significantly screened by the existing screening,⁴⁴³ and in practice would be further screened by new planting in the Appellant’s control.⁴⁴⁴

118. For his part, Mr Burrell observed that there was no evidence that Pager Power had done anything other than apply their own methodology and guidance, which is widely used in the industry.⁴⁴⁵ That guidance indicates that technical modelling is not recommended for local roads given any solar reflections experienced by a user of those roads would be low impact in the worst case scenario.⁴⁴⁶ If there was any scope for a material impact, Pager Power would have recommended mitigation measures, like they had in other assessments that Mr Burrell had seen.⁴⁴⁷ As it was, the assessment concluded that there would not be a significant adverse impact from glint and glare.

Other matters

119. Two other matters that arose during the inquiry related to the feasibility of boring a cable route under the railway line and the absence of a proposal for an alternative route for users

⁴³⁸ Ian Poole XX.

⁴³⁹ Ian Poole XX; Paul Burrell XIC.

⁴⁴⁰ Ian Poole XX.

⁴⁴¹ CD A18.

⁴⁴² Ian Poole XX.

⁴⁴³ Ian Poole XX.

⁴⁴⁴ Paul Burrell XIC; CD C5.

⁴⁴⁵ Paul Burrell Re-X.

⁴⁴⁶ CD A18, p.18.

⁴⁴⁷ Paul Burrell Re-X.

of the nearby bridleway. In relation to the former, Mr Burrell explained that Network Rail will not usually engage with proposals until a client has planning permission but that it is not unusual for proposals to traverse beneath existing infrastructure.⁴⁴⁸ He did not agree that the cable route would require separate planning permission.⁴⁴⁹ In answer to the latter, Mr Burrell explained that he was not aware of any proposal for an alternative route but it could be looked at as part of the Construction and Environmental Management Plan.⁴⁵⁰

Planning Balance

120. The starting point in this appeal is section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that the determination in this appeal must be made in accordance with the development plan unless material considerations indicate otherwise.
121. The Council's development plan does not allocate land for solar development or identify where such development should go, as encouraged by NPPF §165(b).⁴⁵¹ Nor is there any evidence that the Council is looking into the matter, for example by identifying areas of search or consulting National Grid.⁴⁵² In the absence of any actual or proposed allocations, the key determining factors will be the availability of a grid connection and land.⁴⁵³ Within the Council's area, those factors are found in the countryside, where large-scale solar farms tend to be.⁴⁵⁴
122. Mr Burrell has carried out a detailed analysis of the Proposal against all policies identified in the RfR in his proof.⁴⁵⁵ A critical point of disagreement between the parties arose in the context of JLP Policy LP25, which is the principal policy engaged by the Proposal.⁴⁵⁶ By the end of the inquiry, it had become evident that:
 - a. JLP Policy LP25 establishes a presumption in favour of permitting renewable and

⁴⁴⁸ Paul Burrell XIC.

⁴⁴⁹ Paul Burrell XX.

⁴⁵⁰ Paul Burrell XX.

⁴⁵¹ Steven Stroud XX.

⁴⁵² Steven Stroud XX.

⁴⁵³ Steven Stroud XX.

⁴⁵⁴ Michelle Bolger XX.

⁴⁵⁵ Paul Burrell's Proof, s.8.

⁴⁵⁶ Paul Burrell XIC.

low carbon development.⁴⁵⁷ That is so even where there would be impacts on a list of receptors, provided that they have been effectively mitigated. It is the Council's case that the impacts on landscape and heritage have not been effectively mitigated, meaning there is a conflict with this policy as a result. However, it is important to bear in mind that this policy accepts that there may be some harm to those receptors, and insofar as they are the subject of other policies, Policy LP25 contains its own policy test.

- b. JLP Policy LP25 does not preclude energy development from being sited within the countryside: to the contrary, it operates as an exception to spatial policy JLP Policy SP03. Any form of development in the countryside will inevitably result in harm to the countryside in landscape and visual terms. A level of harm has had to be baked into the policy or energy development would never be approved. That must include the landscape and heritage harms that Mr Mason and Ms Garcia find to be limited.
- c. The third limb of JLP Policy LP25 imposes a further requirement that an applicant who is promoting energy development within the setting of a heritage asset (among other areas) must "convincingly demonstrate" that potential harm can be effectively mitigated and that there are no alternative sites available within the District. That is notwithstanding that the starting point in the determination of planning applications is that land may be developed which is acceptable for planning purposes, and the fact that other land exists which would be yet more acceptable does not justify the automatic refusal of planning permission.⁴⁵⁸
- d. For the reasons set out in detail in his proof, Mr Burrell argued that the requirement to demonstrate that there are no alternative sites available is inconsistent with the NPPF because it is clearly more onerous than §168 and imposes a more restrictive policy test.⁴⁵⁹ It is no answer that the NPPF is silent on this point: the NPPF is clear where sequential tests are required and provides guidance (together with the PPG) to enable those tests to be carried out.⁴⁶⁰ The parameters of the NPPF tests are in

⁴⁵⁷ Paul Burrell's Proof at §8.3.

⁴⁵⁸ Steven Stroud XX.

⁴⁵⁹ Paul Burrell XIC; Paul Burrell's Proof at §§8.16-8.21. Consistency with the NPPF was not argued or addressed in the *Woodlands Farm* decision: CD H1.

⁴⁶⁰ Steven Stroud XX.

turn fixed and objectively ascertainable, which is not the case under JLP Policy LP25.⁴⁶¹ The contention that a conflict with the third limb could result in the refusal of a scheme because there are alternative sites would also run counter to EN-1.⁴⁶² This limb is therefore out of date, even though it may have been found sound several years ago.⁴⁶³ It sets a higher threshold and additional barrier for renewable energy projects to clear than is present in the NPPF. That is the very definition of inconsistency; it makes it harder for schemes in this District to satisfy the principal policy, and potentially frustrate the delivery of renewable energy schemes which the NPPF would regard as acceptable.

123. Even if the Inspector were to disagree that there was an inconsistency between JLP Policy LP25 and the NPPF, the Appellant completed (and has since updated) an Alternative Sites Assessment (“ASA”). Mr Stroud quite properly agreed that such an assessment had to be reasonable and proportionate.⁴⁶⁴ Yet the ASA was criticised by the Council and the R6 because of its area of search and sifting out of BMVAL and conservation areas. Neither of those criticisms is fair:

- a. With regard to the area of search, it is a matter of fact that an opportunity to connect to the grid is a critical pre-requisite to the development of energy infrastructure,⁴⁶⁵ and a narrower search area which focuses on cable routes with capacity (and more specifically where land has “available” grid connection opportunities) is reasonable and proportionate.⁴⁶⁶ Mr Burrell explained that his knowledge of the available grid capacity was necessarily limited to the cable route in respect of which the Appellant had received a grid connection offer: there is no data available on others.⁴⁶⁷ Further, the acknowledgement that the initial 2028 connection date is no longer guaranteed has no bearing on the fact that a connection is known to be available to this specific

⁴⁶¹ Steven Stroud XX.

⁴⁶² CD D6 at §4.3.24: “*The Secretary of State should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, and should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals.*”

⁴⁶³ Paul Burrell XX; Paul Burrell’s Proof at §8.22. The JLP was examined under the 2021 NPPF, which did not include the clear recognition of the benefits of renewable and low carbon energy development in §168(a).

⁴⁶⁴ Steven Stroud XX.

⁴⁶⁵ Paul Burrell XIC.

⁴⁶⁶ Paul Burrell XIC.

⁴⁶⁷ Paul Burrell XIC.

cable route in the future.⁴⁶⁸

- b. For similar reasons, Mr Burrell did not agree with the criticism of the approach that had been taken to screening out higher quality BMVAL. It has been established as a matter of fact that the Appeal Site has only a small area of Grade 2 land (7.1%). In Mr Burrell's view, it would be nonsensical to set that data to one side and rely on the higher level ALC mapping of the Site instead.⁴⁶⁹ By contrast, he explained that higher level mapping is the best data available for alternative sites in the absence of individual site surveys, which would not be reasonable or proportionate to require: applicants would have to enter agreements with numerous landowners and carry out intrusive investigations at significant time and cost.⁴⁷⁰ The R6 appears to think that Mr Kernon dismissed the use of ALC mapping entirely, but that is wrong. He stated in XX that MAFF advised against using higher level ALC mapping for sites under 200 acres, but in the absence of detailed survey the maps are all that is available.⁴⁷¹
- c. The R6 indicated that it would rely on the decision in *Lullington* as support for the proposition that the higher level ALC mapping could not sensibly be used as a sieve to narrow areas of search. To be clear, the High Court had not been asked to address the appropriateness of using such mapping, and that is not sustainable in light of the evidence of Mr Burrell and Mr Kernon. Rather the Court was asked to review the rationality of an inspector's finding that there was an omission in the ASA because the claimant did not conduct any soil surveys beyond the appeal site. The claimant argued that this finding was not consistent with the inspector's acknowledgement that it was not practicable for them to investigate every possible location for a solar farm. Although the Court upheld the rationality of that finding, it did not (and could not) set out any general principles about how, when or why ASAs should be carried out. It is a matter of planning judgement.⁴⁷² Importantly, the High Court did not say that: (i) ASAs must include surveys of surrounding sites or take additional practical steps to investigate alternative locations; (ii) the claimant had breached any national or local policy in failing to do either of those things; and (iii) the inspector was right

⁴⁶⁸ Paul Burrell XX.

⁴⁶⁹ Paul Burrell XIC.

⁴⁷⁰ Steven Stroud XX; Paul Burrell XIC.

⁴⁷¹ Tony Kernon XX.

⁴⁷² Absent any guidance (or indeed requirement) in the NPPF or PPG.

to apply a test of “compelling evidence” in the terms of the WMS. The judgement made by the inspector in *Lullington* is ultimately difficult to reconcile with the fact that soil sampling alone is not sufficient to establish ALC, as noted in *Burcot*.⁴⁷³

- d. With regard to conservation area status, Mr Burrell explained that it was correct not to treat that status as an inherent limitation on site selection from the outset, bearing in mind that the exercise is seeking to find alternative sites to the Appeal Site which is in a conservation area itself.⁴⁷⁴ Each conservation area will need to be assessed individually, taking account of its features and the special qualities for which it has been designated.⁴⁷⁵ Likewise the sensitivity of a conservation area will vary across its extent.⁴⁷⁶

124. As to the sites identified in the ASA, all of which have been visited by Mr Burrell and Mr Mason,⁴⁷⁷ Mr Burrell noted that there was some support for sites C1 and C2.⁴⁷⁸ However, he explained that both sites are crossed by a number of public rights of way and that there would be a loss of amenity for users if new planting were introduced.⁴⁷⁹ He also observed that they had more highway constraints which made them less preferable than the Appeal Site.⁴⁸⁰ In terms of the timescale within which either site could connect to the grid, being a further relevant factor to whether a site is sequentially preferable,⁴⁸¹ new schemes would be many years behind the Proposal in the connection pipeline.⁴⁸² Overall, in Mr Burrell’s view, neither site was sequentially preferable.

125. Although Mr Handcock considered that three of the alternative sites had advantages in heritage terms, he fairly recognised that his assessment was limited because he had not visited the sites, it was not immediately clear how the sites were connected to heritage assets, and there was no defined scheme to assess.⁴⁸³ Ms Bolger indicated that one (C1)

⁴⁷³ H27 at §47.

⁴⁷⁴ Paul Burrell XIC.

⁴⁷⁵ Paul Burrell XIC.

⁴⁷⁶ Paul Burrell XIC.

⁴⁷⁷ Paul Burrell XX; Jon Mason XX.

⁴⁷⁸ Paul Burrell XIC.

⁴⁷⁹ Paul Burrell XIC.

⁴⁸⁰ Paul Burrell XIC.

⁴⁸¹ Steven Stroud XX; CD H1 at §§40-41; CD A40 at §3.14.

⁴⁸² Paul Burrell XIC.

⁴⁸³ Laurie Handcock XX.

was better in landscape terms, but then conceded in XX that it was on a north facing slope (which is less practical for a solar scheme) and within the Belstead Brook Local Character Area where the special qualities in the VLA were said to be particularly well expressed.⁴⁸⁴

126. The bottom line is that all of the alternative sites identified in the ASA may be needed in order to achieve Net Zero,⁴⁸⁵ and there is no cap in national policy on the total number of schemes that should be permitted to come forward.⁴⁸⁶ Both of those matters further reduce the weight that could be given to any identified conflict with JLP Policy LP25.
127. Relatedly, insofar as the R6 contended that the consideration of alternatives arises outwith JLP Policy LP25 due to the scale of the harm arising in this case, it is trite that alternative schemes only become material (or attract weight in the planning balance) where they are neither “vague” nor “inchoate” and there is a real possibility that they will come forward if planning permission is refused.⁴⁸⁷ Plainly, there are no alternative real world schemes for the Inspector to put weight on in this case.⁴⁸⁸
128. The remainder of the policies in the RfR are also complied with in this case:
- a. JLP Policy SP03 is a spatial policy that sets out four criteria against which proposals for new development will be considered where they are situated outside settlement boundaries. One of those criteria is compliance with policies set out in Table 5, of which Policy LP25 is one. As Mr Burrell concluded that the Proposal does comply with Policy LP25, for the reasons set out above, he further concluded that there was compliance with Policy SP03.⁴⁸⁹
 - b. JLP Policy SP09 requires new development to contribute to the conservation and enhancement of the natural environment. Given the Proposal would not impact upon any protected sites, the relevant sections require: (i) the conservation, enhancement and management of the environment and green infrastructure; and (ii) the provision

⁴⁸⁴ Michelle Bolger XX.

⁴⁸⁵ Paul Burrell XIC.

⁴⁸⁶ Steven Stroud XX.

⁴⁸⁷ *R(Save Stonehenge World Heritage Site Limited) v SST* [2021] EWHC 2161 (Admin) at [270].

⁴⁸⁸ Steven Stroud XX.

⁴⁸⁹ Paul Burrell's Proof at §8.33.

of BNG. In that regard, Mr Mason explained that the revised landscaping proposals incorporate extensive hedgerow and tree planting in line with the principles in local character assessments,⁴⁹⁰ whilst Mr Fearn confirmed that those proposals would in turn secure BNG in excess of 100% in habitats and linear units.⁴⁹¹ Accordingly, Mr Burrell did not identify any conflict.⁴⁹²

- c. JLP Policy LP17 is a landscape policy which requires new development to conserve and enhance landscape character and to take steps to identify and minimise adverse landscape and visual effects. The application was supported by an LVIA to that end. However, Mr Burrell rightly observed that the language of “conserve and enhance” in the NPPF applies only to higher status landscapes and should not therefore be set as the standard for all landscapes in the way that this policy seeks to do.⁴⁹³ Viewing the Appellant’s landscape evidence in the round, Mr Burrell nevertheless concluded that the Proposal would integrate with the existing landscape character and enhance landscape features in order to minimise landscape and visual impacts.⁴⁹⁴ Mr Stroud acknowledged in XX that the policy did not prohibit landscape harm.⁴⁹⁵
- d. BEN 7 is an equivalent landscape policy in the Bentley Neighbourhood Plan (“NP”) which more closely reflects the language in the NPPF and requires that landscape character should be considered in preparing development proposals. It then sets out a series of mitigation measures that should be secured where any adverse impacts on landscape character have been identified. Mr Burrell again relied on Mr Mason’s evidence that the impacts of the Proposal on landscape character would be limited and localised and appropriately mitigated.⁴⁹⁶
- e. JLP Policy LP18 relates more particularly to the conservation and enhancement of AONBs and sets out a presumption against major development in those locations. As the Appeal Site is not within an AONB, that presumption is not engaged. Rather it is the Council’s case that the third limb of the policy is relevant because it requires

⁴⁹⁰ Jon Mason XIC.

⁴⁹¹ Howard Fearn XIC.

⁴⁹² Paul Burrell’s Proof at §§8.34-37.

⁴⁹³ Paul Burrell’s Proof at §8.38.

⁴⁹⁴ Paul Burrell’s Proof at §8.39.

⁴⁹⁵ Steven Stroud XX.

⁴⁹⁶ Paul Burrell’s Proof at §§8.67-8.68.

development within the APA to have regard to the VLA. Mr Burrell agrees, and its omission in his proof was a drafting mistake: he explained in XX that he intended to rely on the evidence of Mr Mason. Mr Mason in turn acknowledged that the VLA was not referenced expressly in the LVIA but the qualities within it were identified and the assessment outcomes were correct.⁴⁹⁷ That being so, there was substantive compliance with the third limb as the Proposal was designed with those qualities in mind. In any event, as Ms Bolger and Mr Stroud acknowledged, the third limb does not dictate that a scheme should be refused where the VLA has not been taken into account.⁴⁹⁸ Whether there is any conflict will require consideration of matters such as the extent to which previous harm has impacted the Site, for example because of changes in farming practices⁴⁹⁹ and the loss of field boundary planting.⁵⁰⁰ Proposals to reinstate the historic landscape pattern on the Site accordingly support a finding of compliance with this limb.

- f. JLP Policy LP19 is an overarching policy relating to the historic environment which seeks to ensure that development which may impact heritage assets will secure their continued protection or enhancement. Mr Burrell did not find any conflict with this policy or the NPPF in view of the application documents and Ms Garcia's evidence that the harm to heritage assets is on the low or lower end of less than substantial.⁵⁰¹ In respect of criteria 3(d) and 7 in particular, Mr Burrell concluded that the Proposal has minimised its impact where possible and appropriate mitigation will be secured by condition.⁵⁰²
- g. NP BEN 11 and BEN 12 in turn reflect JLP Policy LP19 and the NPPF. In the same way, Mr Burrell relied on the application documents and evidence of Ms Garcia in his assessment that the public benefits would outweigh the harm that she identified to designated heritage assets⁵⁰³ and that the harm to non-designated heritage assets had been appropriately assessed and balanced.⁵⁰⁴

⁴⁹⁷ Jon Mason XIC and XX.

⁴⁹⁸ Michelle Bolger XX; Steven Stroud XX.

⁴⁹⁹ Steven Stroud XX.

⁵⁰⁰ Michelle Bolger XX.

⁵⁰¹ Laura Garcia XIC and XX.

⁵⁰² Paul Burrell's Proof at §§8.45-8.53.

⁵⁰³ Paul Burrell's Proof at §8.65.

⁵⁰⁴ Paul Burrell's Proof at §§8.71-8.73.

- h. JLP Policy LP24 sets out a series of design criteria against which new development in the District will be assessed. Mr Burrell noted, however, that many of the criteria are more directly relevant to residential development.⁵⁰⁵ The detailed design of the Proposal is a reflection of its purpose and dictated by its function.⁵⁰⁶ To that extent, there is less opportunity to reflect local character in the scale, mass, form, siting, design, materials, texture and colour of them. Where opportunity does exist is in the landscaping, and Mr Mason explained how the Proposal incorporates characteristic landscape mitigation and enhancement which responds to the existing and historic character of the Appeal Site and its immediate surroundings.⁵⁰⁷ Insofar as the policy refers to heritage, Mr Stroud agreed that it must be read consistently with JLP Policy LP19.⁵⁰⁸ Mr Burrell therefore found that the requirements were satisfied overall.⁵⁰⁹
- i. In a similar way, NP BEN 3 sets out a series of design principles that development must meet in order to be supported. Mr Burrell considered that those most relevant to a solar farm scheme are addressed in the same way as for JLP Policy LP24⁵¹⁰ and the requirements have therefore been met.⁵¹¹ The required checklist was submitted with the application.⁵¹²

129. Accordingly, Mr Burrell maintained that the Proposal complies with the development plan when read, as it must be, as a whole.⁵¹³ Even were there conflict with one part of a policy, or one or more policies, such a conflict would not automatically lead to conflict with the development plan.⁵¹⁴

130. Looking to the national level, since the review of the JLP under the 2021 NPPF, there has been an evolution and strengthening in the policy context:

⁵⁰⁵ Paul Burrell's Proof at §8.54.

⁵⁰⁶ Steven Stroud XX.

⁵⁰⁷ Jon Mason XIC.

⁵⁰⁸ Steven Stroud XX.

⁵⁰⁹ Paul Burrell's Proof at §8.60.

⁵¹⁰ Paul Burrell's Proof at §8.64.

⁵¹¹ Paul Burrell's Proof at §8.65.

⁵¹² Paul Burrell's Proof at §8.63; CD A2.

⁵¹³ Paul Burrell's Proof at §8.74.

⁵¹⁴ Paul Burrell's Proof at §8.74.

- a. In 2021, with the publication of the Net Zero Strategy, the previous Government set out the ambition that the UK should be entirely powered by clean energy by 2035, subject to security of supply, whilst meeting a 40-60% increase in demand.⁵¹⁵ Low carbon energy infrastructure will need to be deployed at an “*unprecedented*” scale and pace to meet that goal.⁵¹⁶
- b. National Policy Statement (“NPS”) EN-1, originally and as amended, identifies low carbon infrastructure as a “*critical national priority*”⁵¹⁷ (“CNP”) and sets out the Government’s expectation for 2050 that a secure, reliable and affordable net zero consistent system is likely to be composed “*predominantly of wind and solar*”.⁵¹⁸
- c. NPS EN-3 notes that solar is a “*cost-effective, versatile and effective technology*”.⁵¹⁹ It identifies solar forms as “*one of the most established*” and “*the cheapest form of electricity generation*”.⁵²⁰
- d. In December 2024, Government adopted an even more ambitious target that the UK should be powered entirely by clean energy by 2030 (“Clean Power 2030”), with high ambition to secure 43-50GW of offshore wind, 27-29GW of onshore wind, 45-47GW of solar power.⁵²¹ Clean Power 2030 acknowledges the benefits of renewable energy production not only in relation to combatting climate change but also as an important means of supporting economic growth.⁵²²

131. For the purposes of decision taking, EN-1 explains that:

- a. Residual impacts (which do not relate to habitats or marine zones) are unlikely to outweigh the urgent need for CNP infrastructure: there is a presumption of consent in such cases. As such, in all but the most exceptional circumstances, it is unlikely that consent will be refused on the basis of residual impacts.⁵²³ That includes cases

⁵¹⁵ CD D12, p.78.

⁵¹⁶ CD D12, p.102.

⁵¹⁷ CD D4 at §§4.2.16-4.2.17.

⁵¹⁸ CD D4 at §3.3.23.

⁵¹⁹ CD D6 at §§2.10.1-2.10.2.

⁵²⁰ CD D6 at §2.10.5.

⁵²¹ CD D20, p.10.

⁵²² Steven Stroud XX.

⁵²³ CD D4 at §4.2.28.

where proposals would result in the whole-sale demolition of a designated heritage asset.⁵²⁴

- b. The Secretary of State will take as the starting point that CNP infrastructure has met policy tests including the exceptional circumstances required for siting in nationally designated landscapes or for the substantial harm or loss of significance to heritage assets.⁵²⁵

132. Mr Stroud acknowledged in XX that the presumption of consent introduced by EN-1⁵²⁶ is a remarkable policy intervention by Government in favour of renewable and low carbon energy production.⁵²⁷ It follows from that presumption that there is a need for the Proposal that is urgent. To be clear, the Appellant does not argue that EN-1 provides *the* policy for determining the Proposal. What it is, is a powerful material indication indicating that harm – in some cases, substantial harm – will be permissible to enable the country to meet its climate change goals.⁵²⁸ Large-scale and small-scale solar schemes will be required.⁵²⁹

133. In addition, EN-3 confirms that:

- a. solar is “*at the heart*” of Clean Power 2030;⁵³⁰ and
- b. the Clean Power 2030 Action Plan identifies a deployment range of between 45-47GW by 2030, but with scope to exceed the clean power capacity range.⁵³¹

134. The NPPF states clearly at §5 that NPSs “*form part of the overall framework of national planning policy, and may be a material consideration in preparing plans and making decisions on planning applications*”. In the present case, it is common ground that EN-1 and EN-3 are relevant and important material considerations.⁵³²

135. In the most recent iteration of the NPPF, Government reaffirmed the scale of the Net Zero

⁵²⁴ Steven Stroud XX.

⁵²⁵ CD D4 at §4.2.30.

⁵²⁶ Paul Burrell XIC.

⁵²⁷ Steven Stroud XX.

⁵²⁸ Paul Burrell XIC.

⁵²⁹ Paul Burrell XIC.

⁵³⁰ CD D6 at §2.10.2.

⁵³¹ CD D6 at §2.10.3.

⁵³² Steven Stroud XX.

challenge and the need to address it with urgency.⁵³³ The focus of the NPPF is on speeding up delivery of renewable and low carbon infrastructure, with a notable change in emphasis in NPPF §§161 and 168 introducing a presumption that local planning authorities should support applications for all forms of low carbon energy and its associated infrastructure without any counterpoint relating to acceptability of impacts. The draft NPPF continues this direction of travel by strengthening the presumption even further.⁵³⁴

136. Put simply, Government policy at all levels – in plans, policy statements and statements of intent – is overwhelmingly in favour and supportive of a significant increase in the delivery of this type of scheme. It has led to a suite of permissions being granted for solar schemes in recent years, including schemes within both valued landscapes and the settings of heritage assets.⁵³⁵
137. In terms of the Proposal's benefits, the first major benefit is that the Proposal would bring forward a solar farm with an export capacity of 40MW, which is enough to power 28% of over 9,786 homes in the District.⁵³⁶ Mr Burrell and Mr Stroud agreed that irrespective of the impact of the grid reforms, the Proposal would contribute to achieving Net Zero – the legally binding target set out in statute – and could contribute as early as 2035.⁵³⁷ Given the dynamism and risk of attrition in the grid connection pipeline, Mr Burrell believed the Proposal would come forward even sooner than that.⁵³⁸
138. The Council and the R6 placed a significant amount of emphasis on the amount of GW in the pipeline until 2035, but of course the Appellant is not required to demonstrate need,⁵³⁹ and Mr Stroud agreed that interim delivery targets are a stepping stone to Net Zero and a minimum.⁵⁴⁰ There is also no guarantee that all of those schemes will come forward.⁵⁴¹ By contrast, the Proposal is being positively progressed by the Appellant. That being so,

⁵³³ CD 5.32, p.7.

⁵³⁴ Paul Burrell XIC.

⁵³⁵ CD H16 (*Thaxted*), CD H21 (*Halloughton*), CD H23 (*Horton Kirby*), CD H25 (*Overton*), CD H26 (*Wandon End*), CD H27 (*Burcot*), CD H28 (*Runwell*), CD H30 (*Kemberton*), CD H31 (*Rayleigh*), CD H38 (*Kenilworth*) and CD H35 (*Kelham*).

⁵³⁶ Paul Burrell's Proof at §11.9.

⁵³⁷ Steven Stroud XX; Paul Burrell XIC and XX.

⁵³⁸ Paul Burrell XIC and XX.

⁵³⁹ NPPF §168(a).

⁵⁴⁰ Steven Stroud XX; Paul Burrell XX.

⁵⁴¹ Paul Burrell XX.

due to the overriding imperative to decarbonise the energy system and achieve Net Zero, Mr Burrell maintained that substantial weight should be given to this contribution.⁵⁴² Mr Stroud confirmed in XX that he would be prepared to do the same.⁵⁴³

139. Second, Mr Burrell explained that the energy generated from the solar farm would offer a further, distinct benefit as it would contribute to energy security and the diversification of the UK energy supply.⁵⁴⁴ Clean Power 2030 recognises that annual electricity demand is estimated to double by 2050 and that an increase in homegrown, clean energy represents a vital solution to the country's current exposure to geo-political instability.⁵⁴⁵ Mr Burrell attributed this benefit additional substantial weight.⁵⁴⁶
140. Third, although there are no statutory obligations on local authorities to achieve net zero in respect of their own energy usage, the Council declared a climate change emergency in 2019 and has pledged to be carbon neutral by 2030.⁵⁴⁷ The Proposal would contribute to meeting around 12% of the District's current energy need⁵⁴⁸ (on the most recent data⁵⁴⁹) and that need is forecast to grow in the coming decades.⁵⁵⁰ Mr Burrell considered that the Proposal's ability to provide a deliverable action on the Council's own statement of intent is a material consideration which should also be afforded substantial positive weight.⁵⁵¹
141. Fourth, it is well-understood that the lack of available grid connections and grid capacity represents a major barrier to achieving renewable energy targets.⁵⁵² As such, grid reforms have been introduced as an important step forward to unclogging the system.⁵⁵³ However, because the Appellant previously had a grid connection offer for 2028, some time had to be spent discussing the effect of the grid reforms on the status of that offer at the inquiry.⁵⁵⁴ NESO's Queue Formation Q&As⁵⁵⁵ and other relevant documentation was being released

⁵⁴² Paul Burrell's Proof at §11.19.

⁵⁴³ Steven Stroud XX.

⁵⁴⁴ Paul Burrell's Proof at §11.20.

⁵⁴⁵ Steven Stroud XX; CD D20, pp.6, 11 and 23.

⁵⁴⁶ Paul Burrell's Proof at §11.26.

⁵⁴⁷ Steven Stroud XX; CD E4.

⁵⁴⁸ Paul Burrell's Proof at §11.29.

⁵⁴⁹ Steven Stroud XX; Paul Burrell XX.

⁵⁵⁰ Steven Stroud XX.

⁵⁵¹ Paul Burrell's Proof at §11.30.

⁵⁵² Steven Stroud XX.

⁵⁵³ Paul Burrell XIC.

⁵⁵⁴ Paul Burrell XIC.

⁵⁵⁵ CD D37.

for the first time during the inquiry itself.

142. Mr Burrell explained that the consequence of the reforms was that the Proposal no longer benefits from a guaranteed connection date but still has an agreed point of connection and the benefit of protected status under CMP424 Clause 3a.⁵⁵⁶ In practice, this status means that the Appellant would be able to make a Gate 2 grid application in the next round and guarantee their place in the Gate 2 delivery pipeline.⁵⁵⁷ The Appellant is also advanced in comparison to the NESO readiness criteria (which do not include planning permission⁵⁵⁸) and may well advance through the queue as milestones are reached and contributions or commitment fees fall due.⁵⁵⁹ The same would not be true for new schemes.⁵⁶⁰ Mr Burrell therefore considers that the availability of a grid connection still attracts moderate positive weight.⁵⁶¹
143. Mr Burrell's approach gave rise to a point of disagreement with Mr Stroud as to whether NPPF §168(a) and its requirement to “*give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future*” indicated the identified benefits of low carbon energy generation and contribution to net zero are to be considered as one.
144. The first issue with the Council's interpretation of §168(a) is that it relies upon precedent propositions that renewable and low carbon energy generation and the contribution to Net Zero are: (i) identified as benefits, rather than objectives; and (ii) identified as the only benefits that Government intended to be given significant weight, meaning that any other “*associated*” benefits would be left out of the equation.
145. In that connection, it is relevant to consider the decision in *Bewley Homes PLC v SSLUHC* [2024] EWHC 1166⁵⁶² and the High Court's interpretation of the similar instruction in §81 (now in §85) to give “significant weight” to the need to support economic growth and productivity. At [43], Holgate J (as he then was) made clear that the “need to support

⁵⁵⁶ Paul Burrell XIC; Grid Connection SOCG at §4.2.

⁵⁵⁷ Grid Connection SOCG at §§4.4-4.5.

⁵⁵⁸ Steven Stroud XX; Paul Burrell XIC; CD D38.

⁵⁵⁹ Paul Burrell XIC.

⁵⁶⁰ Grid Connection SOCG at §4.8.

⁵⁶¹ Paul Burrell XIC.

⁵⁶² CD H41.

economic growth and productivity” was an *objective* identified by Government and that the local policies and benefits associated with it may vary.

146. Here, it is similarly clear that renewable energy generation and Net Zero are targets that Government has set out in various national policy documents, and that the benefits associated with them will require consideration in the circumstances that prevail when a determination is being made. The reference to the benefits “associated with” those targets is both broad and open-ended. It cannot be right that Government was at once introducing a remarkable new presumption that there is a need for renewable and low carbon energy, and that significant weight must be given to its benefits, whilst also proscribing a very closed list of the benefits to be considered.
147. Inspectors in a number of appeal decisions have taken into account and given weight to the many other benefits of renewable and low carbon energy generation, which include the contribution to energy security,⁵⁶³ the contribution to Councils’ climate action plans⁵⁶⁴ and the use of available grid connections.⁵⁶⁵ The notion that the particular benefits of renewable energy generation and contribution to Net Zero should be singled out as the only benefits to be given significant weight (whether alone or in combination) is not and cannot be right.
148. The second issue with Mr Stroud’s approach is that it assumes that there is an equivalence between renewable energy generation and the contribution to Net Zero, when considered as benefits, bearing in mind that Mr Stroud accepted that the requirement to give “significant weight” to these benefits is not a ceiling.⁵⁶⁶ In *Bewley Homes* at [48]-[53], Holgate J was clear that §81 of the NPPF did not compel a decision-maker to attribute the same level of weight (“significant”) to *any* economic benefit flowing from *any* proposal irrespective of the merits of the economic case and the local or regional circumstances. The same is true of §168(a). “Substantial weight” is often given to the benefits associated with renewable and low carbon schemes as Mr Burrell has done here.

⁵⁶³ CD H12 at §182; CD H25 at §126; CD H26 at §80; CD H29 at §141; CD H30 at §65; CD H31 at §47; CD H28 at §98; CD H38 at §57.

⁵⁶⁴ CD H12 at §87; H28 at §99.

⁵⁶⁵ CD H27 at §64; CD H28 at §101; CD H34 at §121.

⁵⁶⁶ Steven Stroud XX.

149. Moreover, there are differences between the benefits of renewable energy generation and the contribution to Net Zero. Indeed, renewable energy generation has economic benefits as well as climate benefits, with the Government recognising that the transition to clean energy represents an important solution to the devastating cost of living crisis.⁵⁶⁷ Even if the target for Net Zero were dropped, as has been mooted by opposition parties, the distinct economic benefits of renewable energy generation would remain.
150. Whilst it is acknowledged that the Secretary of State in the *Bottesford* decision arrived at a different position,⁵⁶⁸ it must be remembered that *Bottesford* involved a grant of planning permission and was not amenable to a legal challenge by the appellant whose benefits had been reduced in weight as a result. As such, the interpretation of §168(a) in *Bottesford* has not been tested or upheld by the courts, and the Appellant in this case contends that it is wrong. The interpretation notably involved the reading of the word “*collectively*” into a paragraph of the NPPF where it does not exist. It also rested upon an understanding that “significant” was the level of weight that the Secretary of State had to attribute to the benefits in that paragraph, which we know to be wrong following *Bewley Homes*. Neither party agrees with that proposition here. Accordingly, it is not an interpretation that should be followed. The Inspector’s careful reasoning in the same decision, which found harm to a range of assets of the highest significance, is to be preferred and is commended to the Inspector.⁵⁶⁹
151. An ordinary reading of §168(a) is that decision makers should give significant weight (i.e. weight) to the benefits (plural) that are associated with (but not limited to) low carbon energy generation and the contribution to Net Zero. This may include local climate change pledges and energy security. Indeed, energy security can be secured by energy generation that is not from renewable sources⁵⁷⁰ – it is, however, significantly more aligned with this Government’s overall ambitions when it is delivered through solar farm schemes such as the Proposal. The Appellant and Mr Burrell therefore maintain the position that the above benefits are to be given distinct substantial weight.

⁵⁶⁷ CD D20, p.6.

⁵⁶⁸ CD H8 at §12.

⁵⁶⁹ CD H8 at IR §12.67.

⁵⁷⁰ Steven Stroud XX.

152. Fifth, the Proposal would bring about extensive benefits for nature and biodiversity, with the delivery of biodiversity net gain (“BNG”) in the order of 101.25% in habitat units and 102.65% in hedgerow units.⁵⁷¹ Mr Burrell explained that such an increase is not common among his clients,⁵⁷² and that other inspectors have attributed substantial weight to BNG of a magnitude lower than what is proposed here.⁵⁷³ He also highlighted that Clean Power 2030 makes it very clear that the country is facing both a climate crisis and an ecological crisis and that there is a clear drive to meet both.⁵⁷⁴ Mr Stroud appeared to be unaware that the UK is one of the most nature depleted countries in the world.⁵⁷⁵ In that context, Mr Burrell properly ascribed these benefits at least significant weight.⁵⁷⁶
153. Sixth, the Proposal would bring about economic benefits. Mr Burrell explained that the Proposal represents a significant financial investment, with benefits to the local economy including construction jobs and annual business rate contributions.⁵⁷⁷ He did not consider that there would be a material effect on tourism given that visual and noise impacts would be limited and localised to the Appeal Site, away from the caravan site at Garden House.⁵⁷⁸ Mr Stroud agreed with him that such benefits attract moderate positive weight.⁵⁷⁹
154. Seventh, as Mr Fearn explained,⁵⁸⁰ the conversion of fields on the Appeal Site from their current use for arable crops to uncultivated grassland will increase soil organic matter and in turn protect and improve the soil structure and resource.⁵⁸¹ Various decision makers have attributed weight to the longer term benefits to soil improvement, and limited weight is agreed by Mr Burrell and Mr Stroud in this case.⁵⁸²
155. Eighth, the Proposal would also allow for the diversification of an agricultural business. NPPF §88(b) states that the diversification of agricultural businesses should be enabled. Mr Burrell referred in this connection to the letter provided by Mr Baker at his Appendix

⁵⁷¹ Paul Burrell’s Proof at §11.39.

⁵⁷² Inspector’s question to Paul Burrell.

⁵⁷³ Paul Burrell XIC; See e.g. CD H12 at §182.

⁵⁷⁴ Paul Burrell XX; CD D20, p.41.

⁵⁷⁵ Steven Stroud XX; CD D20, p.41.

⁵⁷⁶ Paul Burrell XIC and XX.

⁵⁷⁷ Paul Burrell’s Proof at §§11.42-11.44.

⁵⁷⁸ Paul Burrell XIC.

⁵⁷⁹ Overarching SOCG at §8.77.

⁵⁸⁰ Howard Fearn XIC.

⁵⁸¹ Paul Burrell’s Proof at §11.47.

⁵⁸² Overarching SOCG at §8.77.

4 which explained that income from the solar farm would add a significant, guaranteed figure to the farm's yearly income.⁵⁸³ Mr Burrell and Mr Stroud agree that this attracts limited positive weight.⁵⁸⁴

156. Finally, there would also be a positive legacy in landscape character terms, which does not seek to address the ecological crisis but instead to contribute to the landscape actions in the published character studies and the restoration of historic landscape fabric. As such, Mr Burrell afforded additional limited weight to the planting of new hedgerows and tree belts to create a smaller-scale field pattern guided by reference to historic mapping.⁵⁸⁵
157. As to adverse impacts, national and local policy recognises there are likely to be some such impacts arising from renewable energy infrastructure, but that these do not make a scheme automatically unacceptable. It is the Appellant's case that the harms arising here are both limited and acceptable.
158. There are two harms alleged by the Council, being harms to heritage and landscape. The R6 further alleges harm in respect of BMVAL, biodiversity and living conditions.
159. In relation to the heritage harm, there would be less than substantial harm at the low end of the spectrum to one designated heritage asset and five non-designated heritage assets, and at the lower end to one designated heritage asset. Whilst this Proposal might be among the first located within a conservation area, it must be remembered that this conservation area is also one of the largest in England (in the top 0.0031%), and that the question of whether there is harm (and the weight to be given to that harm) depends upon the special qualities for which it has been designated.⁵⁸⁶
160. The weight to be given to the harm is plainly relevant to the question of whether the public benefits outweigh that harm or whether the harm is not unacceptable. The significance of the heritage asset and whether the harm is less than substantial is also highly relevant. The judgment of the Court of Appeal in *Palmer v Herefordshire Council* [2016] EWCA Civ

⁵⁸³ Paul Burrell XX; Paul Burrell's Proof, App. 4.

⁵⁸⁴ Overarching SOCG at §8.77.

⁵⁸⁵ Paul Burrell's Proof at §11.56.

⁵⁸⁶ Paul Burrell XX.

1061 recorded at [34] that:

“[the] duty to accord “considerable weight” to the desirability of avoiding harm does not mean that any harm, however slight, must outweigh any benefit, however great, or that all harms must be treated as having equal weight. The desirability of avoiding a great harm must be greater than that of avoiding a small one.”

161. NPPF §213 sets out a hierarchy among heritage assets and a rebuttal presumption against their harm unless there is a clear and convincing justification.⁵⁸⁷ Part of the justification in this case is that there is a climate crisis, and the Proposal would bring forward the type of development necessary to combat that crisis. There is also an available grid connection near to the heritage assets in question, as a matter of fact. Importantly, the Proposal is only temporary and would have no lasting impact on the assets once it is decommissioned.⁵⁸⁸
162. Mr Burrell has had regard to NPPF §212 on the weight to be given to the conservation of Bentley Conservation Area, acknowledging also that considerable importance and weight should be given to any harm to the significance of it.⁵⁸⁹ Given the significance of each of the affected heritage assets, combined with the low and lower levels of harm identified by Ms Garcia, Mr Burrell afforded the heritage harm moderate adverse weight overall in the planning balance.⁵⁹⁰ Moreover, applying NPPF §215, Mr Burrell concluded that the harm to designated heritage assets is outweighed by the public benefits.⁵⁹¹ He also considered that the test in NPPF §216 was satisfied in relation to non-designated assets.⁵⁹²
163. As to landscape harm, Mr Burrell relied on the evidence of Mr Mason that the Appeal Site does not form part of a valued landscape and that, on either case, the landscape and visual effects would be limited and localised and reduce over time as planting matures.⁵⁹³ He also acknowledged that the Proposal itself is well considered and carefully designed with embedded mitigation.⁵⁹⁴ Accordingly, Mr Burrell properly affords landscape and visual impacts only limited adverse weight.⁵⁹⁵

⁵⁸⁷ In accordance with statute: Paul Burrell XX.

⁵⁸⁸ Laura Garcia XIC.

⁵⁸⁹ Paul Burrell XIC.

⁵⁹⁰ Paul Burrell's Proof at §11.63.

⁵⁹¹ Paul Burrell's Proof at §11.64.

⁵⁹² Paul Burrell's Proof at §11.65.

⁵⁹³ Paul Burrell's Proof at §11.61.

⁵⁹⁴ Paul Burrell's Proof at §11.61.

⁵⁹⁵ Paul Burrell's Proof at §11.61.

164. Finally, with regard to BMVAL, biodiversity and residential amenity, Mr Burrell adopted the evidence of Mr Kernon, Mr Fearn and other expert consultants.⁵⁹⁶ There was nothing in any of their evidence, or the reviews of that evidence by the Council, to suggest that there would be any unmitigated impacts to attract adverse weight in the planning balance.
165. Importantly, the Proposal and any harms that do arise about would be temporary and time-limited to 40 years.⁵⁹⁷ That is an essential, positive material consideration in this appeal. It is less harmful to consent a development which gives rise to temporary harms than one which gives rise to permanent harms. The temporary harms, such as there are, will be reversed upon decommissioning.⁵⁹⁸ Whilst NPPF §168(c) contemplates the re-powering of existing renewable sites, which the Appeal Site is not, Mr Burrell noted that much could change over the next 40 years in relation to renewable and low carbon energy production (both in terms of available technologies and in terms of policy support) which may impact on the potential to repower at that time.⁵⁹⁹ And while the Council and the R6 characterised the temporary harms as lengthy in human terms, it is a blink of an eye in heritage and landscape terms.
166. Ultimately, weighing the Proposal's numerous substantial and significant benefits against its limited adverse impacts, the balance lies in favour of granting planning permission.⁶⁰⁰ The harms are limited in contrast to the wide-ranging and urgently needed benefits, not least in terms of addressing the climate, energy and biodiversity crises.
167. Accordingly, the Inspector is asked to grant permission, subject to appropriate conditions.

19th February 2026

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⁵⁹⁶ Paul Burrell XX.

⁵⁹⁷ Paul Burrell's Proof at §11.59.

⁵⁹⁸ Paul Burrell's Proof at §11.60.

⁵⁹⁹ Inspector's question to Paul Burrell.

⁶⁰⁰ Paul Burrell's Proof at §15.18.