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## Appeal Decision

Inquiry Held on 3-5 and 10-11 April 2024

Site visit made on 9 April 2024

**by M Shrigley BSc (Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3<sup>rd</sup> May 2024**

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**Appeal Ref: APP/J1535/W/23/3334690**

**Land Adjacent to Harlow Road, Near Roydon, Essex**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Low Carbon Solar Park 18 Limited against the decision of Epping Forest District Council.
  - The application Ref EPF/1974/22, dated 24 August 2022, was refused by notice dated 29 June 2023.
  - The development is for the construction and operation of a solar photovoltaic ('PV') farm and associated infrastructure, including inverters, DNO substation, customer switchgear, security cameras, fencing, access tracks and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction and operation of a solar photovoltaic ('PV') farm and associated infrastructure, including inverters, DNO substation, customer switchgear, security cameras, fencing, access tracks and landscaping on land adjacent to Harlow Road, Near Roydon, Essex in accordance with the terms of the application, reference EPF/1974/22, dated 29 June 2023, subject to the 'Schedule of Conditions' set out at the end of this decision.

### Procedural Matters

2. Additional indicative landscaping and layout plan information to supplement the flexibility principles agreed with Epping Forest District Council (EFDC) at application stage were submitted by the Appellant during the appeal process. The plans provide further information than would otherwise be the case, as an aid to all parties, alongside usual scope for conventional planning condition use and EFDC have not contented their inclusion. Therefore, I have taken them into account in my findings.
3. I have dealt with local policy implications largely within the main issues. But various elements of the dispute require wider consideration of national policy, and strategy. Some concluding aspects of the main issue arguments subject to the appeal also extend to the overall planning balance applied, as indicated in my reasoning.

### Main Issues

4. The main issues are the effects of the development: i) on the Green Belt having regard to its openness and purpose; ii) the loss of farmland for food production; and iii) the overall scheme merits applicable including whether the

harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it, as well as recognition of all harms and benefits in the planning balance.

## Reasons

### *Green Belt openness and purpose effects*

5. The main parties both agree that the appeal scheme should be treated as 'inappropriate development' when applying national and local planning policy terminology linked to protecting the Green Belt. Whilst some Green Belt harm is accepted by the Appellant, the level of resultant harm and the specific reasons such harm arises are matters in dispute.
6. From a local policy perspective Epping Forest District Local Plan 2011-2033 Part One, March 2023 (EFDLP) Policy SP5 seeks that the openness of the Green Belt will be protected from inappropriate development. EFDLP Policy DM4 sets out Green Belt purposes and the very special circumstances test. Additionally, Policy DM20 states that renewable energy development will not be supported where it has any adverse impact on the openness of the Green Belt.
7. As per paragraph 142 of the National Planning Policy Framework (the Framework), the government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
8. The wording of the reason for refusal given in the Decision Notice contested describes the development as being contrary to development plan policies that refer to both 'openness' and 'purpose' aims. As part of their case EFDC allege specific conflict with paragraph 138 (b) of the Framework and repeated in (EFDLP) Policy DM4 which is to 'prevent neighbouring towns merging into one another'.
9. At the Inquiry EFDC also cited harm related to Framework paragraph 138 purpose (a): '*to check the unrestricted sprawl of large built-up areas*'; and (c): '*to assist in safeguarding the countryside from encroachment*'. It otherwise being broad common ground that conflict with purposes (d) and (e) do not arise.
10. The Supreme Court judgement in *R (Samuel Smith Old Brewery) v North Yorkshire County Council 2020* was referred to during proceedings, and I recognise that assessing openness involves spatial concepts. Whilst any visual impact on openness is still important, spatial factors and the presence or otherwise of built or urban development is a notable element of the disagreement for this appeal.
11. In gauging the overall Green Belt openness effects, at my site visit I could see the appeal site comprises a series of open undulating agricultural fields approximately 0.5km east of Roydon and 1.5km west of Harlow. Nearby surrounding features include the river Stort and railway line located roughly to the north of the site. An industrial estate and agricultural fields are located adjacent to the eastern boundary. Further afield are other open fields, trees, and residential properties.

12. In spatial terms, some 48.4ha of the total approximate 70ha appeal site area would be occupied by the solar farm, for up to 40 years. The introduction of engineered structures associated to it would be a significant spatial change which would markedly reduce Green Belt openness levels of the appeal site.
13. That said, the panels would be low-lying, set on posts, and restricted to about 3 metres in maximum height. Grassland would otherwise remain on the surface of the ground with almost no hardstanding elsewhere covering the land.
14. Aside from spatial openness changes the visual openness implications involved relate to a site with largely contained characteristics. There is a noticeable degree of enclosure created by existing hedgerows and treeline screening the site from Roydon, and the industrial buildings of the business park screening it from residential Harlow. Owing to topography, surrounding vegetation, and existing built form, vantages of the entire site are restricted.
15. In tandem, the Appellant proposes an extensive package of landscape mitigation, comprising of native hedgerow and tree planting, which would further screen and filter views of the development, for walkers using the Public Right of Way (PRoW) networks. Once that mitigation has reached full maturity, only sparse and occasional glimpsed views of the panels would remain.
16. Contrary to the Council's views the impact on openness arising from new tree and hedge plantings would not erode or be harmful to Green Belt openness or permanence, either during operation of the scheme or following any decommissioning work if left in place. Indeed, it would become legacy planting which enhances the character and biodiversity of the area as a welcomed scheme benefit.
17. The design parameters of the proposed solar farm arrays enables the retention of open agricultural land beneath and surrounding them. Although there would be a clear reduction in spatial and visual openness of the Green Belt from the presence of the solar arrays and associated equipment, the level of openness reduction would otherwise be tempered by substantial swathes of undeveloped greenery remaining in situ.
18. Bringing the spatial and visual aspects of the resultant openness reduction together, when having regard to purpose 138 (a) functionally and characteristically, I accept that the solar farm would be different to other forms of development which would be usually characterised as 'urban'.
19. I have also had regard to the reversibility arguments made and decommissioning conditions would ensure that any aspect of openness intrusion is reversible. I agree ease of reversibility plays an important role, and that the groundworks involved are not unduly intrusive.
20. Moreover, whilst Harlow is a town with a population of approximately 90,000, Roydon is a small village with a population of approximately 1,500 and is not a 'town' by definition, as confirmed by the development plan. Therefore, the scheme would not result in two towns merging if applying Framework policy wording in the strictest sense. But even if considering both settlements as towns, the resultant effect would not lead to coalescence because of the clear differences in characteristics between the settlements and that of the solar

farm, the low-lying stature of the arrays, and because of the substantial intervening natural greenery remaining.

21. In making their arguments, EFDC place much emphasis on the 'Stage 2 Green Belt Review' they conducted. But tellingly that document is silent on solar development. Subsequently, it has little bearing in the dispute before me.
22. Having regard to all arguments made toward Framework paragraph 138 purpose (a) and (b), I agree the solar farm would have a completely different character to existing 'built-up' areas either side of it also acknowledging it has substantial landscaping greenery as part of its overall composition.
23. In the absence of any shared characteristics to nearby built-up areas, the solar farm would be read and experienced in the local landscape as being entirely distinct from the urbanised and built-up qualities of Roydon or Harlow.
24. Consequently, although the solar panels and associated development are no doubt engineered built features, recognition of that point does not suggest to me it would result in urban sprawl of an existing built-up area.
25. Thus, I disagree that the scheme would contribute to sprawl from either Harlow or Roydon because distinctions in character would remain reinforced by natural landscaping. This is consistent with the principles contained within the Kemberton appeal decision<sup>1</sup>.
26. Nonetheless, there would be inevitable conflict with Framework paragraph 138 purpose (c). That is because of the significant encroachment into the countryside with engineered structures covering an extensive land area which would otherwise entail prevalent open naturalistic qualities.
27. Aside from material openness reduction and encroachment into countryside forming the Green Belt giving rise to harm, I acknowledge definitional harm associated to inappropriate development set by policy arises by default.
28. All in all, the resultant effect of the development would give rise to a moderate level of overall harm to the Green Belt accounting for: openness impacts; the specific purposes the development would conflict with; and relative to the scheme's magnitude. Aligned with the content of Paragraph 153 of the Framework I give substantial weight to the demonstrable harm arising.
29. Accordingly, I find there would be conflict with the collective aims of SP5, DM4 and DM20 of the EFDLP which combined seek to protect and conserve the openness and purpose of the Green Belt. Apart from definitional harm arising linked to policy, there would be a marked reduction in openness through encroachment into undeveloped countryside. The resultant effect would conflict with paragraph 138 (c) of the Framework, but not parts (a) or (b).

#### *Loss of farmland for food production*

30. EFDC's second reason for refusal focuses on the loss of farmland for food production and is linked to the content of EFDLP Policy DM5 for Green and Blue Infrastructure provision. I note the references to the 2021 Framework it also comprises were superseded by the December 2023 changes.

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<sup>1</sup> Reference APP/L3245/W/23/3329815

31. As part of their argument EFDC alleges failure to demonstrate compelling evidence of a lack of less harmful alternative sites, and the subsequent 'loss' of BMV land as being unacceptable.
32. In that context, the main parties broadly accept that the policy term 'Green Infrastructure' can relate to farmland for food production. And that Policy DM5 seeks to ensure that development proposals are designed and located in a way that retains and enhances such assets taking into a range of criteria.
33. In tandem with local policy provision, the Framework identifies farmland falling into Grades 1, 2 and Subgrade 3a would constitute 'best and most versatile' (BMV) land. Yet notably, none of the detailed criteria listed within Policy DM5 directly refers to BMV or such grading for assessing policy compliance with it.
34. However, the Framework advises me, at paragraph 180 (b), that the economic benefits of BMV land should be recognised. Footnote 62, in the context of plan making in paragraph 181, advises that where significant development of agricultural land is involved, poorer quality land should be used in preference.
35. Footnote 62 includes that the availability of agricultural land used for food production should be considered, alongside other policies in the Framework, when deciding what sites are most appropriate for development. Accordingly, I have borne in mind such advice.
36. The Appellant's submitted Agricultural Land Classification (ALC) assessment (July 2022) confirms to me that the appeal site is primarily Grade 3b (at some 73%) with smaller areas of Grade 3a (some 23%) and Grade 2 (2%) in addition to 'other land' (of 2%). The survey is identified as being in accordance with the guidelines endorsed by Natural England<sup>2</sup>, and therefore carries substantial weight.
37. The ALC evidence taken as a whole, highlights that the site does comprise a mixture of Grades 2, 3a and 3b. But it is shown to mostly comprise of subgrade 3b moderate agricultural quality overall. With only approximately 25% falling as BMV, distributed in a complex uneven pattern.
38. Factoring the Appellant's quantitative assessments, I note that in practical terms the BMV land referred to could notionally produce up to around 25 tonnes of wheat more than poorer quality land. Were the panels to be moved from the appeal site to poorer quality land elsewhere. That notional figure is comparative to the overall UK production of circa 22 million tonnes evidenced.
39. I also recognise that irregular patches of BMV land in the areas south of Harlow Road would not be able to be utilised separately for food production purposes. As this would be impractical for commercial farming management requiring full site availability and access.
40. Moreover, based on the Appellant's assessment, the appeal site represents in the order of 0.3% of the overall farmland within the District. Consequently, I accept it is extremely probable that greater proportions of higher graded agricultural land would be present elsewhere locally.

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<sup>2</sup> Agricultural Land Classification of England and Wales (Ministry of Agriculture, Fisheries and Food), 1998.

41. Notional sheep grazing would be possible with the development in place. But there are no binding landowner guarantees any grazing use would ensue. Furthermore, scope for a planning condition would not meet the test of necessity in this case, owing to it having no strong policy basis behind it.
42. Even if some sheep grazing use did ensue with the development, which I accept notionally it could, it would not be comparable to the more intensive farming practices possible without the development. Therefore, I find potential grazing uses referred to as a continuation of food production to carry little substance.
43. Furthermore, I appreciate that the wording of the reason for refusal given by EFDC is based on food production and Policy DM5 does not require agricultural land nor BMV land to be farmed.
44. As to wider alternative site arguments posed and the presence of the extant March 2015 Written Ministerial Statement (WMS). I realise that adopted local and national policy as well as underlying energy need circumstances have evolved since the WMS was issued. Plus, there is no policy requirement for the Appellant to have assessed alternative sites, nor any other compelling reasons for them to. The ACL evidence is comprehensive and sufficient in meeting what current prevailing policy requires.
45. Likewise, it is credible resting fields from agricultural activity during the scheme's life span would allow soil health to improve, up to decommissioning stage. I have also had regard to the favourable embedded landscaping possible in gauging overall Green Infrastructure impact arguments.
46. That said, there would be some inevitable conflict with Policy DM5 through the solar farm occupying green infrastructure otherwise capable of producing food, for its full lifespan. I have considered the economic arguments of retaining BMV land for food production. Whilst there would be uptake of a modest area of high quality grade land the Appellant otherwise demonstrates lower graded land would in the main be utilised. It would be impractical to cordon out quality variations site wide for commercial food production purposes.
47. Given all those factors, I find when applying the terms of the Framework relating to economic and environmental considerations involved, the degree of conflict with EFDLP Policy DM5 should only carry limited negative weight.

*Other planning merit considerations*

48. Beyond Green Belt considerations, separate landscape and visual harm arguments do not feature in EFDC's reasons for refusal. Nor do they make any case there is any alleged breach of development plan policy directly related to those matters. That position is consistent with the content of the officer report evidenced and the associated landscape advice feeding into it.
49. Nonetheless, national policy does recognise that a degree of landscape and visual harm is inevitable for renewable energy schemes of this nature which necessitate a countryside location. The Appellant acknowledges this in its submissions accepting there would be some landscape and visual harm. There would be moderate landscape and visual harm which would be largely contained within the appeal site boundary, which I attribute significant weight to.

50. Whilst heritage impacts are not in dispute, they do form part of the overall planning balance triggered. The statutory duties contained within the Planning (Listed Buildings and Conservation Areas) Act 1990 require me to have special regard to the desirability of preserving designated heritage assets or their setting, or any features of special architectural or historic interest which they possess.
51. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
52. The Appellant's heritage impact assessment identifies there would be less than substantial harm at the lower end of the spectrum to the setting of Roydon Village Conservation Area (CA) and East End Farmhouse (Grade II Listed).
53. East End Farmhouse which has distinctive 17<sup>th</sup> century architectural features lies about 75 metres away to the north-east. The fields of the northernmost area of the appeal site are evidenced to have an association to it, from historic working of local land. But no panels are proposed in that part. Plus, there would only be glimpsed and filtered views to panels to the north-east of the asset and from the public road close to it.
54. Within the core of Roydon Village CA are a wide range of buildings of special architectural and historic interest dating from the 13<sup>th</sup> to the 19<sup>th</sup> century. Glimpsed views into part of the northern area of the site are possible from the northern edge of the CA and on the wider approach. But there is substantial separation to the historic core, with intervening fields and natural landscape features.
55. As a result, EFDC do not object to any heritage impact referenced nor did they raise any additional impacts during the Inquiry. Accordingly, taking into account all aspects I have no reason to disagree with the heritage impact conclusions forming the case.
56. In relation to the Appellant's overarching need arguments, the Framework supports the increased use and supply of renewable energy. It is estimated that the solar panels would generate approximately 49.9 MW of renewable energy, which is enough to power around 16,581 homes and deliver an anticipated carbon dioxide displacement of around 11,210 tonnes per annum.
57. The energy production evidenced is equivalent of supplying renewable energy to around 30% of homes in EFDC's administrative area. Furthermore, the appeal site area represents only around 0.21% of the total area of Green Belt land encompassing approximately 90% of the entire District.
58. Recognition of those points is important because the Climate Change Act 2008, as amended sets a legally binding target to reduce net greenhouse gas emissions from their 1990 level by 100%, Net Zero, by 2050. Recently, the

- Government committed to reduce emissions by 78% compared with 1990 levels by 2035.
59. The National Policy Statements (NPSs) for the delivery of major energy infrastructure are also material considerations in my decision. The NPSs recognise that large scale energy generating projects such as this will inevitably have impacts, particularly if sited in rural areas.
  60. NPSs EN-1 and 3 identify that, as part of the strategy for the low-cost decarbonisation of the energy sector, solar farms provide a clean, low cost and secure source of electricity.
  61. Connected to NPS considerations, I have had regard to Government's Net Zero Strategy: Build Back Greener (2021) which also has relevance. It explains that subject to security of supply, the UK will be powered entirely by clean electricity through, amongst other things, the accelerated deployment of low-cost renewable energy generation such as solar.
  62. I am also aware the Government's British Energy Security Strategy (April 2022) does not set a firm target for solar but expects a five-fold increase in deployment by 2035. This aligns to the strategy's aim that by 2030, 95% of British electricity could be low carbon; and by 2035 that the electricity system will be able to be decarbonised, subject to security of supply.
  63. Locally, I note that EFDC declared a climate emergency in September 2019 and in July 2023 published a Climate Change Action Plan which supports the Council's ambition to "*do everything within its power to become carbon neutral by 2030*". In the context of that commitment there are no other large scale solar farm proposals cited as coming forward within the District.
  64. As referenced in Government's 'Powering Up Britain' (March 2023) Plan, solar is one of the cheapest forms of electricity generation. I recognise that with more locally derived renewable energy the UK would become less reliant on price volatility from imports.
  65. Based on the Climate Change Act, NPSs, wider government strategy, EFDC's own declaration and subsequent Climate Change Action Plan I accept there is an urgent need for renewable energy electricity projects to be brought forward.
  66. Importantly, the site benefits from a grid connection nearby, and the Appellant references a connection offer as being in place. As such, I agree the scheme would make an early and significant contribution to the objective of achieving Net Zero and the commitment to reducing emissions by 78% compared with 1990 levels by 2035. Accordingly, the clean and secure energy benefits on offer attract substantial overarching weight in my decision.
  67. The Biodiversity Net Gain (BNG) anticipated would involve planting new native species hedgerows and new trees enhancing the natural as well as the visual features of the existing landscape. The evidence alongside planning condition use agreement suggests ecological enhancement for a minimum of a 70% increase for 'habitat units' and around 150% uplift for 'hedgerow units' can be achieved. This would be consistent with development plan strategy supporting ecological and landscape enhancements, which carry significant weight.

68. The Flood Risk Assessment information evidenced confirms that the risk of fluvial flooding to the site is low and the development would not increase the risk of flooding off site. Even so, the design of the scheme through condition use would incorporate SuDS drainage features, offering some further increased flood risk resilience and overall natural habitat betterments integrated with other expected landscaping provision.
69. There would be some economic benefit attributed to allowing construction work. There is no clear indication existing agricultural jobs would be lost. But even if that was the case, maintenance of the wider site is likely to require opportunities in landscape and ecological management. Consequently, I give the overall economic betterment from all job opportunities modest weight accepting that the overall betterment is more favourable in relation to construction phases.
70. Additionally, there would be short lived harm to local amenity arising from construction traffic movements and site-work. Such construction period activity is likely to result in unavoidable impacts to residents, drivers, and pedestrians. However, all the evidence suggests that there would be no significant highway safety detriment if the appeal was allowed. That is because construction period impacts would be able to be mitigated by management arrangements achieved through planning condition use.
71. Outside of the main issues I have carefully considered other interested party objections. The local PRow network can be maintained during construction and operation with landscaping along these routes, including infilling of existing and new hedgerows. A condition for a detailed CTMP would enable this for the construction phases with PRow management to be submitted and approved.
72. Beyond aesthetic considerations of some people disliking the appearance of the solar farm, once completed, there is no convincing basis to conclude it would prevent the enjoyment of the countryside for recreation or using the public routes within it.
73. I have considered potential for glint and glare problems to arise but the distances and buffers involved to surrounding roads and property are adequate. At operational stages there is nothing convincing demonstrating that the scheme would result in harm to amenity by virtue of noise or the solar farm's positioning.
74. There are no other public safety issues arising that are incapable of being addressed by planning condition. Furthermore, I am satisfied protected species, other ecological interests coupled with decommissioning requirements could be properly safeguarded, controlled, and enforced through planning condition use.
75. In relation to most aspects of the appeal I have been referred to a long list of appeal decisions and judgements. Considering those, I do not find any conflict with the broad principles of decision making triggered by this case. Collectively, the other cases also involve a combination of different sites and sets of circumstances which do not lead me to alter my findings.

## **Conditions**

76. Without prejudice, the main parties compiled a list of conditions in the event the appeal were to be allowed, which was also subject to refinement discussion

at the Inquiry itself. In the main, the majority of the conditions detailed are appropriate and meet the statutory tests.

77. Standard conditions would be needed to specify the time limit and plans in line with statutory provision and to provide a formal mechanism for amendment. I agree separating out the 'indicative' plan information tabled, is necessary as there are some inconsistencies influencing the overall layout owing to the internal access track position to be formalised which other agreed conditions are reliant upon. Due flexibility is required on related aspects of the layout dependant on the type of solar array to be eventually agreed on by the site operator.
78. I also note that the existing access provision from the public highway which runs a good way into the site would still be utilised as a fixed entrance and exit point irrespective of allowing such condition flexibility.
79. A range of conditions are necessary and appropriate securing: landscape and ecological enhancement measures, including BNG provision; protection measures for existing trees; mitigation for breeding birds as well as a Skylark Mitigation Strategy. This is to ensure an acceptable level of visual amenity and that biodiversity is respected along with an appropriate level of future ecological management.
80. The approval of precise details for the layout and appearance of the development including the solar panels, inverters, substation, access tracks, CCTV, fencing, and related infrastructure is warranted in the interests of safeguarding visual amenity and owing to indicative elements of the scheme.
81. Decommissioning conditions would ensure site restoration is properly undertaken in the interests of protecting the character and appearance of the area. The removal of permitted development rights is necessary to ensure the visual appearance of the area is respected. It is necessary to limit the export capacity of the scheme to a maximum of 49.9MW given the description of the development is broad.
82. Additionally, further detailed conditions would be required to ensure: suitable drainage and flood risk management; overall construction management and future repair work is respectful to the area; any land contamination is properly dealt with; noise from plant and machinery is controlled; highway safety is maintained during construction and operation; and that any new lighting does not give rise to ecological or other wider amenity harm.
83. There are no clear commitments or specific policy requirements for sheep grazing. To allow such activity would be a prerogative of the landowner. Thus, a grazing plan secured by way of condition would not meet the test of necessity nor would it be enforceable in this case.

### **Planning Balance and Conclusion**

84. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

85. There would be conflict with the Council's development plan arising from the main issues disputed related to Green Belt impacts as well as the uptake of farmland, recognised as green infrastructure provision locally.
86. Having regard to the Framework, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework advises me at paragraph 153 that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
87. I note Framework paragraph 153, is holistic in nature in assessing harm. In this case the level of overall harm to the Green Belt arising from the solar farm would be moderate, also bearing in mind the site would eventually be decommissioned. Albeit a generational time span is involved.
88. The Appellant's overall very special circumstances case is reliant on the level of Green Belt harm that would result as well as the need for solar renewable energy development at a national scale, in tandem with the range of other scheme benefits which would be delivered.
89. I agree the Appellant's justification case is compelling and that the combined scheme benefits on offer, in particular, the clean and secure renewable energy generation which would result constitute very special circumstances. Such justifications clearly outweigh the moderate Green Belt detriment arising.
90. The development would prevent land from being farmed for food production during its lifespan. There is some conflict with EFDLP Policy DM5. But I find only limited negative weight should apply to the loss of farmland given most of the land in question is not BMV, in tandem with the other economic and environmental considerations referred to.
91. In addition, as directed by paragraph 202 of the Framework I am required to assess designated asset harm in relation to any public benefits on offer. I have attributed significant weight to the less than substantial harm arising to two nearby designated assets. However, there would be significant benefits from the appeal scheme encouraged by other elements of the Council's development plan and the content of the Framework.
92. This includes benefits from legacy planting provision for ecological and visual enhancements long term. Overall, the public benefits, in this case, outweigh the 'less than substantial harm' to the settings of designated heritage assets, bearing in mind the overall intervening landscape evident in concluding on such harm.
93. From a wider decision-making perspective, recognising all the harms I have identified and referenced in my above reasoning including that to: the Green Belt (linked to definitional harm, openness reduction, and its purpose); the limited uptake of land of higher grade best and most versatile agricultural land and farmland attributed to green infrastructure locally; the setting and significance of two designated heritage assets; landscape and the visual appearance of the area; and the disruption to local roads and amenity levels probable during construction periods, taken collectively. Combined all those

considerations attract significant negative weight within the planning balance. Nevertheless, the level of overall scheme benefits on offer still exceeds all of those harms combined.

94. Overall, my decision is made on the total level of harms arising against any overall benefits attributed to this appeal scheme. Having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004 I have identified there is some conflict with EFDC's development plan. However, benefits of the proposal are material considerations which outweigh the conflict with the development plan and all harms that I have identified. Subsequently the direct benefits arising from the development give me sufficient reasons to allow the development to proceed.
95. Taking all matters raised in the round I find that the overall benefits of the development would far exceed the harms it would cause. For the reasons set out above the appeal succeeds.

*M Shrigley*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

|                   |         |
|-------------------|---------|
| Thea Osmund-Smith | Counsel |
|-------------------|---------|

### WHO CALLED:

|                    |                           |
|--------------------|---------------------------|
| Charles Mylchreest | Landscape Witness         |
| Tony Kernon        | Agricultural Land Witness |
| Nick Bowen         | Planning Witness          |

### FOR THE LOCAL PLANNING AUTHORITY:

|               |         |
|---------------|---------|
| Olivia Davies | Counsel |
|---------------|---------|

### WHO CALLED:

|                |                   |
|----------------|-------------------|
| Ian Lanchbury  | Landscape Witness |
| Liz Fitzgerald | Planning Witness  |

### INTERESTED PARTIES (WHO SPOKE AT THE INQUIRY):

|                      |                           |
|----------------------|---------------------------|
| Roberto Lagna-Fietta | Cllr Rodon Parish Council |
| Michael Berendt      | Local Resident            |

DOCUMENTS SUBMITTED DURING THE INQUIRY:

INQ1 – Appellant’s Opening

INQ2 – Council’s Opening

INQ3 – Written closings of the Council

INQ5 – Written closings of the Appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY:

None.

**Schedule of Planning Conditions**

1. The development hereby permitted shall begin no later than three years from the date of this decision.
2. The development hereby permitted shall be carried out and retained in accordance with the following approved plans: SP-01 Rev 1 and DZ-01 Rev 3, unless written consent is given to any variation by the Local Planning Authority.
3. The development hereby permitted shall be carried out in accordance with the details shown on the approved Indicative Site Layout Plan ref. PLE-01 Rev 10, except as controlled or modified by conditions of this permission, or otherwise varied by the written agreement of the Planning Authority.
4. Prior to the commencement of the development, full details of the layout and appearance of the development, including the solar arrays, inverters, DNO substation, access tracks, CCTV cameras, fencing, and other associated infrastructure must be submitted to and approved in writing by the local planning authority. The details must not exceed the maximum dimensions shown on plan refs. SD-01 Rev 02, (DNO Substation Elevations and Dimensions Plan), SD-02 Rev 02 (Customer Substation Elevations and Dimensions Plan), SD-03 Rev 01 (Indicative CCTV Post- Standard Detail), SD-04 Rev 02 (Security Fence and CCTV Standard Detail), SD-07 Rev 02 (Indicative Deer Fence- Standard Detail), SD-08 Rev 02 (Inverter Elevations and Dimensions Plan), SD-17 Rev 01 (Panel Arrangement 4 29.5 Degree Tilt). The development must be constructed and operated fully in accordance with the approved details.
5. All ecological mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Appraisal (EDP, August 2022), Winter Bird Survey Report (Dominic Mitchell, April 2022) and the Breeding Bird Survey Report (Dominic Mitchell, August 2022) as submitted and hereby approved.
6. Prior to the commencement of the development, a Skylark Mitigation Strategy must be submitted to and approved in writing by the local planning authority to compensate the loss of any Skylark territories at the site.

The Skylark Mitigation Strategy must include provision of the evidenced number of Skylark nest plots, prior to commencement of the development. The content of the Skylark Mitigation Strategy must include the following details:

- i. the purpose and conservation objectives for the proposed Skylark nest plots;
- ii. a detailed methodology for the Skylark nest plots following Agri-Environment Scheme option: 'AB4 Skylark Plots';
- iii. locations of the Skylark nest plots shown on appropriate maps and/or plans; and
- iv. the persons or body responsible for implementing the Skylark Mitigation Scheme;
- v. the timescale for retention and any long term management.

The development shall thereafter be carried out and retained in accordance with the approved strategy.

7. Prior to the commencement of development a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
  - Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
  - Limiting discharge rates to 1.28l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change subject to agreement with the relevant third party.
  - Final modelling and calculations for all areas of the drainage system.
  - The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
  - Detailed engineering drawings of each component of the drainage scheme.
  - A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
  - A written report summarising the final strategy and highlighting any minor changes to the approved strategy.
  - A maintenance plan detailing the maintenance arrangements, including who is responsible for different elements of the surface water drainage scheme and the maintenance activities/frequencies. Should any part be maintainable by a maintenance company, details of the long-term funding arrangement should be provided.

The scheme shall be implemented in accordance with the approved details and shall be provided on site prior to the First Export Date and shall be retained for the lifetime of the development.

8. Prior to the commencement of development a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.
9. Prior to the commencement of the development, a Construction Traffic Management Plan (CTMP) must be submitted to and approved in writing by the local planning authority. The plan must include details of the following:
  - i. construction traffic access routing to the site to ensure all construction traffic accesses and exits the site to the East to ensure that no construction traffic shall travel through Roydon village;
  - ii. site access arrangements;
  - iii. swept paths and visibility splays at the site accesses;
  - iv. the types of construction vehicles accessing the site and vehicle frequency;
  - v. investigations of the feasibility to utilise existing hedgerow gaps within the site to accommodate temporary construction access routes;
  - vi. temporary construction access routes within the site;
  - vii. arrangements for site operative and visitor parking;
  - viii. traffic management measures;
  - ix. temporary highway signage;
  - x. Loading and unloading of plant and materials;
  - xi. Storage of plant and materials used in constructing the development;
  - xii. The erection and maintenance of site hoarding;
  - xiii. Measures to control the emission of dust and dirt during construction, including wheel washing; and
  - xiv. measures for protection and management of the public rights of way (PRoW) network during construction, including a plan showing the position and widths of PRoW, proposed crossing points, use of banksmen, signage, fencing, gates and how surfaces will be protected and maintained at crossing points to ensure the safety and convenience of users of the PRoW network.

With regards to dust control measures and wheel washing, reference shall be made to the Institute of Air Quality Management (IAQM) best practice Guidance on air quality monitoring in the vicinity of demolition and construction sites and Guidance on the assessment of dust from demolition and construction.

The approved CTMP shall be adhered to throughout the construction phase of the development hereby approved.

10. Prior to the commencement of development, a construction environmental management plan (CEMP: Biodiversity) is submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
- a) Risk assessment of potentially damaging construction activities;
  - b) Identification of "biodiversity protection zones";
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
  - d) The location and timing of sensitive works to avoid harm to biodiversity features;
  - e) The times during construction when specialist ecologists need to be present on site to oversee works;
  - f) Responsible persons and lines of communication;
  - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
  - h) Use of protective fences, exclusion barriers and warning signs;
  - i) Containment, control and removal of any Invasive non-native species present on site.

The approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

11. A Landscape, Ecology and Arboricultural Management Plan (LEAMP) shall be prepared in accordance with the principles set out in the approved Landscape, Ecology and Arboricultural Management Framework (LEAMF). The LEAMP shall be submitted to, and be approved in writing by, the Local Planning Authority prior to commencement of the development. The content of the LEMP shall include the following:
- a) Description and evaluation of features to be managed;
  - b) Ecological trends and constraints on site that might influence management;
  - c) Aims and objectives of management;
  - d) Appropriate management options for achieving aims and objectives;
  - e) Prescriptions for management actions;
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
  - g) Details of the body or organisation responsible for implementation of the plan;

h) Ongoing monitoring and remedial measures.

The LEAMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEAMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved LEAMP will be implemented in accordance with the approved details.

12. No development or preliminary groundworks of any kind shall take place until:-

- i. A programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant and subsequently approved in writing by the Local Planning Authority.
- ii. The completion of the programme of archaeological evaluation identified in the WSI defined in Part 1 and confirmed by the Local Planning Authority.
- iii. A mitigation strategy detailing the excavation / preservation strategy shall then be submitted to the Local Planning Authority following the completion of the archaeological evaluation. No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the Local Planning Authority.
- iv. The applicant will submit to the Local Planning Authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Local Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

13. No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan, Arboricultural Method Statement and site monitoring schedule in accordance with BS:5837:2012 (Trees in relation to design, demolition and construction - Recommendations) has been submitted to the Local Planning Authority and approved in writing. The development shall be carried out only in accordance with the approved documents.

14. Prior to any above ground works, full details of both hard and soft landscape works (including tree planting) shown on the Indicative Landscape Strategy ref. edp7471\_d011 rev J and implementation programme (linked to the development schedule) except as controlled or modified by conditions of this permission shall be submitted to and approved in writing by the Local Planning

Authority. All hard and soft landscaping shall be carried out in accordance with the implementation programme approved.

The hard landscaping details shall include: means of enclosure; lighting, signs, services above and below ground and access roads. For the avoidance of doubt no unbound material shall be used in the surface treatment of the vehicular access hereby permitted within 6 metres of the highway boundary.

The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities where appropriate. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted, or destroyed or dies or becomes seriously damaged or defective another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place.

15. No external lighting, including lighting required for construction and decommissioning, shall be installed at the site until such time as a lighting strategy for biodiversity has been submitted to and approved in writing by the Local Planning Authority. All external lighting shall be installed in accordance with the details agreed in the strategy and shall be maintained thereafter in accordance with the agreed details, subject to any such variation that may be agreed with the Local Planning Authority. No additional external lighting shall be installed without prior written consent from the local planning authority.
16. Prior to any above ground works, details of the precise location and external finishes to all solar panels and all other on site infrastructure shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. Any replacement of obsolete or damaged structures shall be replaced on a like for like basis, unless otherwise agreed by the Local Planning Authority through an appropriate application.
17. Prior to commencement of development a scheme for the safe removal and disposal of waste material detailed in Section 8 of the Phase 1 Contaminated Land Report and an associated remediation strategy shall be submitted to and approved in writing by the Local Planning Authority.

The removal and disposal of waste shall thereafter be removed from the site and the land remediated in accordance with the approved details. A verification report of the removal by a suitably qualified contaminated land practitioner shall then be submitted to and approved in writing by the Local Planning Authority prior to operation of the development.
18. During construction, no deliveries, external running of plant and equipment or demolition and construction works, other than internal works not audible outside the site boundary, shall take place on the site other than between the hours of 08:00 to 18:00 on Monday to Friday and 08:00 to 13:00 on Saturday and not at all on Sundays, Public or Bank Holidays.
19. Should any previously unidentified discoloured or odorous soils be encountered during development works or should any hazardous materials or significant quantities of non-soil forming materials be found, then all development works

- should be stopped and an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced) shall be undertaken. If any contamination is found then the site shall be remediated. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
20. Prior to their construction, details of the construction of the site accesses, visibility sight splays, dropped kerb vehicular crossings of the footway and details of measures to prevent surface water discharge onto the highway, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the access points shall be constructed ready for use prior to the First Export Date in accordance with the approved details. The accesses shall be permanently retained in accordance with the agreed form at all times.
  21. All plant and machinery shall be operated and maintained to ensure that noise does not exceed the background noise level of 40dB LA90 (as identified within the LF Acoustics Noise Assessment dated September 2022) when measured 1m from the closest noise sensitive premises.
  22. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any amending Order, the erection, construction, improvement or alteration of a gate, fence, wall or other means of enclosure, as described in Schedule 2 Part 2, Class A of the Order shall not be undertaken without the prior written permission, obtained through the submission of an application, of the Local Planning Authority.
  23. Other than in an emergency, all planned repairs, planned maintenance and servicing shall take place between 8am and 7pm Mondays to Saturdays and at no times on Sundays, Bank or Public Holidays.
  24. Not less than one month prior to the first export of energy to the National Grid, the developer/operator shall notify the Local Planning Authority in writing of their intent to commence the export and state the date of anticipated first export.
  25. The planning permission hereby granted shall be limited to a period of 40 years commencing from the date electricity generated by the solar panels is first exported to the electricity grid, excluding testing and commissioning. This date is referred to hereinafter as 'the First Export Date'. Written notification of the First Export Date shall be given to the local planning authority within 10 working days of the event.
  26. No later than six months prior to the expiry of the planning permission, or within six months of the cessation of electricity generation at the site, whichever is the sooner, a detailed scheme of works for the removal of the development (excluding the approved landscaping and biodiversity works) shall be submitted to and approved in writing by the Local Planning Authority. The scheme of works shall include the following:
    - a) a programme of works;

- b) a method statement for the decommissioning and dismantling of all equipment and surfacing on site;
- c) details of any items to be retained on site;
- d) a method statement for restoring the land to agriculture;
- e) timescale for the decommissioning, removal and reinstatement of the land;
- f) a method statement for the disposal/recycling of redundant equipment/structures.

The scheme of works shall be undertaken in accordance with the approved details and timescales. The operator shall notify the Local Planning Authority in writing within three months following the cessation of electricity generation.

27. If the solar farm ceases to export electricity to the grid for a continuous period of more than twelve months, a scheme shall be submitted to the Local Planning Authority for its written approval within three months from the end of the twelve-month period for the removal of the solar farm and associated equipment and the restoration of (that part of) the site to agricultural use. The approved scheme of restoration shall then be fully implemented within nine months of the written approval being given.
28. Prior to any site clearance, or the commencement of the development, a Soil Management Plan (SMP) must be submitted to and approved in writing by the local planning authority. The SMP shall be prepared by a suitably qualified soils and agriculture expert. All development and site clearance shall be carried out in accordance with the approved SMP. Before decommissioning commences, the expert should review the SMP and make recommendations as to measures necessary to ensure the land is restored to its original condition at decommissioning, taking into account any updates in statutory or policy requirements. The following details must be included in the SMP:
- soil resource survey;
  - site preparation;
  - details of the handling and storage of soils during the construction, operational and decommissioning phases;
  - import of construction materials, plant and equipment to Site;
  - establishment of Site construction compounds and welfare facilities;
  - cable installation;
  - temporary construction compounds;
  - trenching in sections;
  - upgrading existing tracks and construction of new access tracks and roads within the Site;
  - the upgrade or construction of crossing points (bridges /culverts) at drainage ditches within the Site;
  - appropriate storage, capping and management of soil;

- appropriate construction drainage;
- sectionalised approach of duct installation;
- excavation and installation of jointing pits;
- cable pulling;
- testing and commissioning;

The SMP must be implemented as approved.

29. Prior to the implementation of the soft landscape scheme and biodiversity mitigation and enhancement measures, commencement of any above ground works, a Biodiversity Enhancement Strategy shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) an updated Biodiversity Metric (version 4.0), based upon the detailed soft landscape proposals, demonstrating a net gain of at least 70% in habitat units, and at least 150% in hedgerow units;
- b) locations of proposed enhancement measures by appropriate maps and plans;
- c) persons responsible for implementing the enhancement measures;
- d) details of initial aftercare and long-term maintenance (where relevant) for a minimum of 30 years;

The works shall be implemented in accordance with the approved details prior to first use of the development and shall be retained in that manner thereafter.

30. Prior to the First Export Date an Educational Strategy shall be submitted for the written approval of the Local Planning Authority. The Strategy shall detail the measures which the developer will take to ensure that appropriate access is given to the site for educational purposes in accordance with the approved benefits statement.

31. Once operational, the development hereby permitted shall have an export capacity of not more than 49.9MW (AC).

## **End of Schedule**