



Appeal Decision

Hearing held on 29 and 30 November 2023

Site visit made on 1 December 2023

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 21 March 2024

Appeal Ref: APP/J1860/W/23/3325112

Birchall Green Farm, Sinton Green, Hallow WR2 6NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by Tyler Hill Solar Ltd. against the decision of Malvern Hills District Council ('MHDC').
- The application ref. 21/01846/FUL, dated 15 September 2021, was refused by notice dated 25 January 2023.
- The development proposed is described on the application form as 'development of a solar farm with ancillary infrastructure, security fence, access, landscaping and continued agriculture, to generate power to feed into the local distribution network.'

Decision

1. The appeal is dismissed.

Preliminary matters

2. Only an applicant is entitled to appeal. The appellant is, however, the same corporate entity as made the application. Notwithstanding the plans referenced in the statement of common ground between the main parties, the appellant advanced revised plans at the hearing relating to the proposed southern access.¹ I did not reach a view at the hearing as to whether those revised plans should be accepted.²
3. I will return to those plans as necessary, albeit they are not significant in determining the appeal, to the description of development above, and also to a screening request for a scheme at Fitcher Brook in relation to the Planning (Environmental Impact Assessment) Regulations 2017 as amended (the 'EIA Regulations'). The proposal before me was screened to the effect that an Environmental Statement was not required.

Statutory and policy context

4. Statute requires that planning proposals are determined in accordance with the development plan unless material considerations indicate otherwise.³ Here the development plan includes policies of the South Worcestershire Development Plan (adopted 25 February 2016, the 'SWDP'). The development plan must be read as a whole; different elements pull in different directions.

¹ Hearing documents 7, 8 and 9.

² With reference to *Bernard Wheatcroft Ltd. v Secretary of State for the Environment and Harborough District Council* [1982] JPL 37, and *Holborn Studios Ltd. v The London Borough of Hackney* [2017] EWHC 2823.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

5. Paragraph 225 of the National Planning Policy Framework (20 December 2023, the 'NPPF') sets out how existing policies should not be considered 'out-of-date' simply because they were adopted prior to its publication. Their degree of consistency with the NPPF is, instead, relevant. Whilst an earlier version of the NPPF was extant at the time of the hearing, I have taken account of the main parties' comments in respect of the latest iteration.
6. I have had regard to various other material considerations in addition to the NPPF, including the South Worcestershire Renewable and Low Carbon Energy Supplementary Planning Document (adopted July 2018, the 'SPD'), the Planning Practice Guidance ('PPG'), and the emerging SWDP review (submitted for examination on 27 September 2023, the 'SWDPR'). On account of its stage of preparation the main parties agree that only 'limited weight' may, at most, be accorded to the SWDPR.
7. Two grade II listed buildings, Boatley Cottage and Lovely Cottage, are located nearby (the 'listed buildings').⁴ I have therefore determined the appeal in the context of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the 'LBCA1990'). My attention has also been drawn to a raft of documentation referring to the value of enabling renewable energy generation in the light of climate change.⁵

Relevant policies

8. MHDC's decision notice cites conflict with 5 SWDP policies in the context of a single reason for refusal centred upon landscape effects. As reflected in GLVIA3 and TGN02/21,⁶ there is a close relationship between landscape character and heritage. Whilst I will turn to those development plan policies individually, at this juncture I note that policy SWDP27 'Renewable and Low Carbon Energy Schemes' is broad-brush. It sets out how 'proposals for stand-alone renewable and other low carbon energy schemes are welcomed and will be considered favourably having regard to the provisions of other relevant policies in the Plan.' NPPF paragraph 157 similarly sets out how the planning system should support the transition to a low carbon future.
9. Policy SWDP1 'Overarching Sustainable Development Principles' is similar in that whether development complies with that policy relies on assessing the relationship of a scheme to the development plan as a whole. Following on from policy SWDP1, policy SWDP2 sets a settlement hierarchy to guide the distribution of development. Criterion A.iii. to policy SWDP2 sets out how the development strategy and site allocations are founded upon 'safeguard[ing] and (wherever possible) enhancing the open countryside'. Nonetheless, renewable energy projects are subsequently given as an example of development which may be acceptable in the open countryside.

Main issue

10. The main issue is the effect of the development proposed on landscape character and historic significance.

⁴ List entry nos. 1302063 and 1349351.

⁵ Including at section 7.8 of the appellant's statement of case, under section 7.6 of the Statement of Common ground, and referenced at schedule 2 to this decision.

⁶ The Landscape Institute and Institute of Environmental Management & Assessment's Guidelines for Landscape and Visual Impact Assessment: Third edition, and the Landscape Institute's Technical Guidance note 02/21 'Assessing landscape value outside national designations'.

Reasons

The site and its surroundings

11. The site is an irregular area of undulating, predominantly pastoral, land of about 36ha. It is bounded and subdivided by hedgerows. There are occasional copses within and next to the site. The site is, largely, part of a wider land holding.⁷ However an element of the site to the south, near where access to the substation is proposed, appears to extend beyond the land holding into a field opposite.⁸
12. The site falls within the open countryside some 1.2km from Sinton Green, the nearest settlement named in the SWDP. Sinton Green is described in policy SWDP2 as a 'lower category' village, reflecting its position in the settlement hierarchy relative to others. The nearest settlement higher in the hierarchy, Hallow, is some 3.2km away.
13. Broadly, the site slopes downwards from the east and north to the south-west towards Monk Wood, a Site of Special Scientific Interest ('SSSI') and also a Local Wildlife Site of ancient semi-natural woodland.⁹ Grimley Brook is to the north-west. The handful of properties at Oakhall Green, arranged around the convergence of historic lanes, are set at about 60m above Ordnance Datum ('AOD'). Birchall Green Farm buildings are set at about 54 to 58m AOD, a comparable level to land near the listed buildings.
14. By the irregular boundary of Monk Wood, the ground level at the appeal site is about 48m AOD, reflecting a significant level change across the site. That boundary is demarcated by a low bund and ditch, potentially remnants of the reclamation of the appeal site from woodland.
15. Reflecting principally the propensity of the land to drain, the appellant's Agricultural quality report ('AQR') identifies that 39% of the site is grade 3a in terms of agricultural land classification ('ALC'), one category of best and most versatile agricultural land ('BMV').
16. There are two public rights of way passing through the site. Footpath 526(C) enters the site from the south-east. Footpath 525(C) tracks instead beside the site from the carriageway to the south, close to the proposed southern access. Those footpaths converge close to a copse beside the site, connecting thereabouts with footpath 524(C).
17. Footpath 524(C) tracks north-westwards through the site towards Grimley Brook, thereafter rounding the northern extent of Monk Wood before connecting with bridleway 503(B) and footpath 520(C). The former heads through the SSSI, the latter returns roughly along the western boundary of Monk Wood. There are also various permissive paths through Monk Wood.
18. The wider landscape here is also criss-crossed by public rights of way. Footpath 519(C), for example, connects footpath 520(C) referenced above to the carriageway running between Monk Wood and Monk Wood Green Site of

⁷ Blue-edged on plan no. P001.300.05.

⁸ As remains shown via hearing document 7.

⁹ Plan no. P001.001.02.

Special Scientific Interest. Reflecting the intimate historic evolution of the landscape, various rights of way stop at roads. That is the case, for example, of footpath 525(C) and 532(C), the latter by Oakhall Green.

19. The consequence of that arrangement of public rights of way and roads is that, in order to walk in a circular route, you would almost invariably need to do so along stretches of narrow rural lanes. I heard from many local residents how Monk Wood and Monk Wood Green are popular locations to visit in their own right. I saw a handful of walkers around those locations during my site visit. They are managed so as to encourage visitors. Many individuals here evidently experience the countryside actively, as opposed to it forming part of the backdrop to life.
20. Although the site is bisected by power infrastructure, that is not a particularly significant influence. There are three pylons only between the lanes to the north and south either side of the site, all of which are located close to hedgerows or trees. The power lines themselves are set high above a changing topography.

Boatley Cottage and Lovely Cottage

21. The listed buildings are either side of the lane to the north of the appeal site running between Oakhall Green and Ockeridge. There is some indication that they originated as part of the same historic holding; list entries indicate that elements of both date from the seventeenth century. There are visual differences between the two, notably in relation to latter alterations (to Boatley Cottage in particular).
22. Nevertheless both are modest properties. Both are something of a loose local vernacular featuring timber-framed walls with brick infill. The list entries indicate a sequence of alterations to them, likely reflecting changes in prosperity and building preferences over centuries. More recent alterations have not notably diluted the historic integrity that they possess (which attests to their evolution in connection with what could be wrought from the land).
23. The former agricultural connection between the listed buildings and the appeal site no longer exists. I acknowledge that there has been change to the character of the landscape over time, notably through some reduction in hedgerows. That reduction likely occurred since the mid twentieth century in order to accommodate modern agricultural machinery, as indicated in the appellant's Cultural Heritage Baseline and Impact Assessment ('CHBIA').
24. Nevertheless there remains a significant historic character to the appeal site and its surroundings. The CHBIA, for example, sets out how there is an easily recognisable landscape structure relative to the 1840 Tithe map. There is little change to the boundaries of Monk Wood evidenced further back still, which is referenced in documents from 1240. There is also some archaeological interest embodied in the site. The history reflected by the site contributes positively to the setting, understanding and appreciation of the listed buildings.¹⁰

¹⁰ More so, from a visual perspective, in relation to Boatley Cottage (elements of which are visible from within the appeal site given that Boatley Cottage is set an elevated level relative to parts of footpath 524(C)).

Landscape policies

25. Part A, criterion ii. to policy SWDP25 'Landscape Character' sets out how development proposals should be 'appropriate to, and integrate with, the character of the landscape setting'. Criterion A.iii. is that development should 'conserve, and where appropriate, enhance the primary characteristics defined in character assessments and important features of the Land Cover Parcel...'.
26. Criterion B to policy SWDP25 requires a Landscape and Visual Impact Assessment, or Landscape and Visual Appraisal for development which is not 'EIA' development (as here). That is a terminological distinction drawn also in GLVIA3, TGN02/21 and in Carly Tinkler's observations on behalf of Grimley Parish Council. However that distinction does not, in my view, qualify the substantive reasoning in the appellant's Landscape and Visual Impact Assessment (undertaken by UBU Design Ltd., the 'LVIA'). Criterion B to policy SWDP25 further sets out how such assessment or appraisal work should 'include proposals to protect and conserve key landscape features and attributes and, where appropriate, enhance landscape quality.'
27. Policy SWDP21 'Design' is broad, and summarily references, amongst other things, the more specific provisions of policies SWDP6, SWDP25 and also SWDP24 'Management of the Historic Environment'. In summary, and amongst other things, policy SWDP21 sets out how all development should integrate effectively with its surroundings, reflect the characteristics of a site, and complement character (including in respect of landscape quality).
28. In a similar manner to the foregoing, NPPF paragraph 180 sets out how planning decisions should contribute to and enhance the natural and local environment by, amongst other things, 'protecting and enhancing valued landscapes', and 'recognising the intrinsic character and beauty of the countryside.' In my view 'recognising' connotes a degree of protection regardless of whether a landscape is designated, or 'valued'. Likewise NPPF paragraph 135 sets out how decisions should ensure, again amongst other things, that development will add to the overall quality of the area and be sympathetic to local character and history, including landscape setting.

Landscape methodology

29. GLVIA3 and TGN02/21 (the 'technical documents') set out a methodological approach for evaluating the effects of schemes in landscape terms, TGN02/21 applying outside of designated landscapes. 'Landscape' itself is a complex concept. The site may be said to be a landscape in itself, but it is also part of a wider landscape, or landscapes, of perhaps indeterminate extent. Both technical documents draw a distinction between landscape as viewed and as a resource, albeit there is inevitably some overlap between the two concepts.
30. The appellant's LVIA and landscape statement of case, Carly Tinkler's observations, and UBU Design Ltd.'s response, all take GLVIA3 as a common methodology.¹¹ Many local residents have also set out their perspective on landscape character. Those representations may not reference the approach

¹¹ Albeit that TGN02/21 is not referenced in the LVIA, UBU Design Ltd. has responded to Carly Tinkler's observations wherein TGN02/21 is referenced extensively.

in the technical documents. However that makes those observations, founded on lived experience, no less valid.

Landscape, the visual dimension

31. Establishing a visual baseline involves defining the area in which the development may be visible, the different groups of people who may experience views of the development, the places where they will be affected and the nature of the views and the visual amenity at those points.¹² 'Visual receptors' are the people who will be affected by changes in views or visual amenity at different places, who will likely have differing responses depending on the context.
32. GLVIA3 further guides that 'landscape professionals should assess the nature of a landscape or visual receptor's sensitivity by combining judgements about its susceptibility to change arising from the specific proposal with judgements about the value attached to the receptor.'¹³ Different receptors may be differentially affected by change.
33. Terminologically 'sensitivity' is arrived at by combining judgements about value and susceptibility. GLVIA3 gives further guidance as to the susceptibility of visual receptors to change and in respect of the value attached to views. The 'magnitude' of effect comprises judgements about the size and scale of the effect, the geographic extent of the area that will be affected, the duration of the effect and its reversibility.¹⁴

Landscape as a resource

34. GLVIA3 references the 'inclusive nature' of the term landscape as in the European Landscape Convention;¹⁵ 'landscape is an area, as perceived by people whose character is the result of the action and interaction of natural and/or human factors'.¹⁶ Landscape character is therefore 'not just about the physical elements and features that make up a landscape, but also embraces the aesthetic, perceptual and experiential aspects of the landscape that make different places distinctive.'¹⁷
35. Components of the landscape that are likely to be affected are often referred to as 'landscape receptors', being the 'constituent elements of the landscape, its specific aesthetic or perceptual qualities and the character of the landscape in different areas'.¹⁸ As above, landscape receptors' sensitivity is arrived at by combining judgements about value and susceptibility. 'Landscape value' is summarised in TGN02/21 as 'the 'inherent' component, which is independent of the development proposal, while the other component, susceptibility is development specific.'¹⁹ Susceptibility to change is the ability of the landscape receptor to accommodate the proposed development.²⁰

¹² GLVIA3, paragraph 3.15.

¹³ GLVIA3, paragraph 3.24.

¹⁴ GLVIA3, paragraphs 3.26 and 6.39.

¹⁵ ETS No. 176.

¹⁶ Council of Europe, 2000.

¹⁷ GLVIA3, paragraph 2.19.

¹⁸ GLVIA3, paragraph 3.21.

¹⁹ TGN02/21, paragraph 2.3.1.

²⁰ GLVIA3, paragraph 5.39.

36. That a landscape is neither designated, nor 'valued' as in NPPF paragraph 180.a), does not equate to an absence of value. MHDC explained at the hearing how, unlike elsewhere, there are no locally designated landscapes established via the SWDP. GLVIA3 and TGN02/21 are, however, 'evidence-based' in approach as opposed to drawing undue inference from the absence of local designations.²¹

Landscape judgements

37. For all the detail and terminology in GLVIA3, and TGN02/21, assessing landscape and visual effects is founded on a sequence of judgements. For that reason, different practitioners may rationally arrive at different outcomes. For that reason also, GLVIA3 cautions how numerical scoring or weighting can suggest a 'spurious level of precision', and therefore recommends word scales to describe effects.²²
38. Word scales, however, vary from practitioner to practitioner and are imprecise. For example here, the appellant advocates that 'substantial' weight be given to the benefits of solar energy generation, MHDC favouring 'significant'. NPPF paragraph 163 uses neither word. More broadly, balancing different factors in planning is not reducible to a mathematical equation. Relevant factors may exist in different equations, let alone in different units.

Heritage policies

39. Section 66(1) of the LBCA1990 requires, in summary, that I have special regard to the desirability of preserving (listed) buildings or their settings, i.e. the surroundings in which heritage assets are experienced. As with landscape methodology there is an experiential dimension to setting beyond visibility.
40. Policy SWDP6 'Historic Environment' sets out how 'development proposals will be supported where they conserve and enhance the significance of heritage assets, including their setting. In particular this applies to:... ii. The historic landscape, including locally distinctive settlement patterns, field systems, woodlands and commons and historic farmsteads and smallholdings.'
41. Neither the NPPF, nor the LBCA1990, require that proposals both conserve (or preserve) and enhance integrity.²³ Nonetheless, part A to policy SWDP24, in any event, sets out how development proposals will, amongst other things, be 'considered in accordance with the Framework [and] relevant legislation...'
42. Recognising that heritage assets are irreplaceable resources, NPPF paragraph 205 sets out '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.' The NPPF uses the terminology 'substantial' and 'less than substantial harm' to distinguish between levels of effects to heritage assets. Often a scale, or spectrum, is applied within the latter category for finer-grain analysis. Nonetheless NPPF paragraph 206 sets out how any harm, not just that which is substantial, should require 'clear and convincing justification'.

²¹ An issue addressed in TGN02/21 including at paragraph A3.5.

²² GLVIA3, paragraphs 3.27 and 8.10.

²³ As addressed in paragraph 6.4 of the appellant's Heritage statement of case referring to appeals ref. APP/X1355/W/21/3275009 and APP/X1355/Y/20/3265941.

Relevant landscape character assessments

43. Of 159 National (landscape) Character Areas ('NCAs') defined by Natural England, the site falls within, and to the western fringes of, NCA106 the 'Severn and Avon Vales'. Albeit referring to an extensive landscape, the summary to NCA106 begins by describing that area as a 'low-lying open agricultural vale'. NCA106 is further described as a generally open landscape, with small pasture fields and isolated farmsteads prevalent in the west as opposed to a more regular pattern of enclosure to the east.
44. With reference to the Worcestershire County Landscape Assessment ('WCLA'), the site falls within the 'Wooded Estatelands' and 'Principal Timbered Farmlands' landscape character types ('LCTs'). Amongst other features, the WCLA describes the Wooded Estatelands LCT as an often open, rolling agricultural landscape with blocks of woodland (commonly ancient). The WCLA characterises the Principal Timbered Farmlands LCT as a small to medium scale wooded agricultural landscape with an organic enclosure pattern.
45. At a finer grain level the site falls within Land Cover Parcels ('LCPs') MW54a, MW54b and MW47.1g. MW54a and MW54b fall within the 'Hallow Principal Timbered Farmlands' LDU, which is characterised as a relatively open rolling lowland pastoral landscape with occasional farmsteads and scattered hedgerows. LCP MW47.1g falls within LDU MW47.1 'Ockeridge Wooded Estatelands', which is described similarly as above, albeit with greater emphasis on undulating topography and discrete blocks of ancient woodland.

Landscape and visual baseline

46. There is a strong consistency in landscape character assessments here. The site presently reflects, and contributes clearly to, the characteristics identified above. It is agricultural, predominantly open and undulating. The appellant describes the site as characterised by 'dense hedges'. However hedges within and around the site are instead comparatively sparse, aligned with the foregoing landscape characterisation in NCA106 and the WCLA. The appellant's Preliminary Ecological Appraisal ('PEA') itself describes hedgerows to the south as 'poor quality'.
47. Similarly, I did not observe what the appellant describes as 'belts of woodland'. There are instead copses and discrete blocks of woodland about, including Monk Wood (again consistent with the foregoing). The relative absence of development nearby, and the distance of the site from settlements, contribute to a sense of remoteness and tranquillity. There is also a clear and appreciable historic character to the landscape here.
48. I acknowledge, given the topography and landscape features, visibility of the site in conjunction with its surroundings is not extensive (less than a featureless zone of theoretical visibility would indicate). However, on account of the topography, there are comparatively open views across the site from properties and their plots at Hallow Green and at Boatley Cottage.
49. There are also relatively open views of the site in conjunction with its surroundings along the two public rights of way running through the site. As above, public rights of way here appear well used and the landscape more

broadly is experienced actively by many. Albeit that my site visit was in winter, I also saw partial views across the appeal site from vantage points along carriageways to the north and south. In summary, the site as part of the landscape has a clear value, both as a resource and visually.

50. Moreover, in my view, the site performs relatively strongly in relation to the factors identified in box 5.1 of GLVIA3 with reference to table 1 of TGN02/21 which may assist in defining whether a landscape is 'valued'. Inherent in my reasoning above is that the site embodies some cultural heritage. There is a notable integrity of historic field patterns, and few detracting features in terms of landscape condition. The site possesses clear recreational and scenic qualities. Perceptually it is relatively remote and tranquil.
51. Moving from value to sensitivity, the LVIA explains how the Worcestershire County Council document entitled Landscape Character Assessments, Supplementary Guidance, Technical Handbook (2013); 'charts the sensitivity of the landscape character areas within the County. The majority of the proposed sites (sic.) falls within an area of high sensitivity'. The Technical Handbook explains that sites or landscape units that have been classified with high sensitivity would be most sensitive and least accommodating to change, on the basis of loss of landscape character; here presumption would be against development on landscape character grounds (sic.).'²⁴
52. The appellant's LVIA, however, defines landscape sensitivity here as only 'medium high'. That appears to be on the argument that the Technical Handbook is aimed at 'residential development rather than renewable energy schemes'.²⁵ However that rationale in terms of susceptibility does not appear expressly set out in the Technical Handbook. Instead the Technical Handbook, aligned with landscape characterisation studies, looks at landscape receptors such as hedges and field patterns as components of the 'resilience' of a given landscape component to change.
53. Landscape receptors may be affected by renewable energy development as by other forms of development. Whilst solar panels are lower-lying than many other forms of development, they may nevertheless be of a comparable magnitude, including by virtue of covering an extensive area. Setting aside the Technical Handbook and drawing together my reasoning above, the site possesses a high degree of sensitivity,²⁶ and is visible by sensitive receptors (notably walkers and local residents). It is unclear why the LVIA ascribes only a 'medium high' sensitivity to those making use of public rights of way.²⁷
54. Similarly the LVIA indicates those travelling along rural lanes should be accorded a low sensitivity. However GLVIA3 guides that travellers 'tend to fall into an intermediate category of moderate susceptibility to change'.²⁸ That rating may also be premised on the appellant's characterisation of the site as having dense hedges and bands of woodland (which, as set out above, does

²⁴ Paragraph 2.3.9.4.

²⁵ LVIA, paragraph 5.1.

²⁶ Distinguishing landscape character here from circumstances at an unsuccessful appeal for a 45MW solar park at Woodhall Farm within MHDC's administrative area (ref. APP/J1860/W/16/3142020), where the landscape there was judged by the Inspector to have a 'medium' sensitivity to change.

²⁷ Potentially an extension of the argument regarding susceptibility with reference to the Technical Handbook addressed in paragraph 52 to this decision.

²⁸ GLVIA3, paragraph 6.33.

not accord with my observations). Many travelling along rural lanes by vehicle here will need to proceed slowly on account of their winding and narrow historic nature, and may well be travelling in order to appreciate the countryside rather coincidentally passing through it.

The development proposed

55. In summary, the proposal is for the installation of 43,440 solar panels which would have a peak generating capacity of 25MW. Panels would be arranged in rows aligned with the topography, in four clusters. There would be associated access provision, a substation built, and also 4.8 linear kilometres of 2m high deer fencing installed. The panels' lowest edge would be around 1m from the ground, in order to enable grazing of the land by sheep. No element of the panels would reach higher than 2.8m relative to adjacent ground level.
56. 1.78ha of the 36ha site is to be given over to habitat enhancement. There is some ambiguity in the information before me as to the height new hedgerows around solar panel clusters are proposed to reach, or to be maintained at; there are references both to 1.5m and 3m. In any event, however, hedgerow planting would be substantial, and maintenance thereof could be addressed via condition were the proposal acceptable as a whole.²⁹ As clarified at the hearing, 1.84 linear kilometres of new hedgerows would be planted, contributing towards the appellant's intention to deliver biodiversity net gain ('BNG') of 24.69%.³⁰ The installation is intended to have a generating life of 40 years.

The effects of the development proposed

57. As noted above, there has been some change in landscape structure over time. Solar panels themselves would be comparatively modest in height. Access and pathway provision would be at ground level. I also accept that, on account of the topography and intervening landscape features, visibility of the site is relatively localised, the appellant acknowledging that 'there would be a noticeable change to the character of the site itself'.³¹
58. The LVIA sets out how 'the magnitude of change to the landscape character types and areas will be small due to the relatively small proportion of the character areas being effected (sic.)', and that 'the proposals forming this planning application will not have a significant detrimental impact to the rural character of the landscape within South Worcestershire'. Those findings reflect that extensive hedgerow planting and augmentation is also proposed. I acknowledge that planting would, over time, screen elements of the proposal from view to some extent. I have also noted above that the scheme is designed with a generating life of 40 years, after which it is the appellant's intention to remove the panels.
59. However for 5 principal reasons I disagree with the appellant's position that the effects of the scheme should be ascribed 'limited adverse weight'. Firstly the engineered and uniform nature of solar panel arrays and fencing, along with their extent, would significantly diverge from the presently open and

²⁹ Including to emulate the heights predicted in LVIA visualisations.

³⁰ Of relevant to policy SWDP5 also.

³¹ Statement of case, paragraphs 6.57 and 8.110, Landscape statement of case paragraph 8.5.

organic character of the site. New hedgerows would take some time to become established and therefore to afford screening.

60. Secondly, significantly, the clusters of solar panels and hedgerows proposed would be clearly at odds with historic landscape structure and its remaining legibility. The planting of 1.84km of linear hedgerows would, furthermore, be uncharacteristic of the landscape character here as described above (emphasising that it is generally open with relatively sparse hedges).
61. Whilst I acknowledge that the appellant has presented what they consider to be proportionate evidence,³² thirdly the LVIA quote in paragraph 58 of this decision does not expressly set out what character areas or assessments have been factored into that summation. Similarly with reference to that quote, it is difficult to conceive of a type of development of such magnitude that it could significantly detrimentally affect 'the landscape within South Worcestershire' as a whole.
62. Fourth, I have reasoned that the site and visual receptors have, in my view, a greater degree of sensitivity than they have been ascribed in the LVIA. The SPD and PPG, moreover, encourage solar farms to be located on relatively level ground (or reference the potential implications of their installation in undulating topography).³³
63. As noted above there is a significant level change through the site such that, even if new planting reached considerable height, solar panels would remain partially visible from various vantage points. Whilst I acknowledge that solar farms are becoming an increasingly common feature of rural areas, the site is characteristically remote with little meaningful influence of built development at present. Experientially panels and hedges would enclose the openness of views which is intrinsic to landscape character.
64. Fifth, the appellant's evidence is, on occasion, ambiguous. The landscape statement appears to refer to two different versions of the 'most recent' landscape mitigation and enhancement plan.³⁴ The appellant furthermore states that that 'all [existing] hedges will be retained as part of the development'.³⁵ However that is incorrect. Both the PEA and the Arboricultural Impact Assessment ('AIA') indicate that some existing hedgerow will be lost to facilitate the southern access to the site.³⁶
65. It also emerged at the hearing that not all elements of the scheme are intended to have a lifespan of 40 years. A lifespan of 40 years is, in itself, lengthy. Nonetheless, the substation and access to it, are intended to be permanent features. Hedgerow planting would also in all likelihood remain. The development would not be 'reversed entirely at the end of the operational life of the scheme'.³⁷

³² UBU Design Ltd.'s response to Carly Tinkler's observations.

³³ SPD paragraph 5.9., PPG Reference ID: 5-013-20150327.

³⁴ At paragraphs 2.5 and 4.17.

³⁵ Statement of case, paragraph 2.6.

³⁶ PEA page 17, AIA paragraph 5.3.4.

³⁷ Appellant statement of case, paragraph 8.12.

66. I therefore conclude that the proposal would have major adverse effects to the landscape as a resource and also visually, effects that would not meaningfully reduce over time. The scheme would be clearly detrimental to existing landscape character, seriously adversely affecting the experience and perception of the landscape here compared to present circumstances.
67. The scheme would also result in harm, albeit less than substantial and towards the lower end of a spectrum within that categorisation, to the setting of the listed buildings. The proposal would therefore fail to accord with relevant elements of SWDP policies SWDP6, SWDP21, SWDP24, SWDP25 (and thereby policies SWDP27 and SWDP1), the clear expectations of the LBCA1990, and would also conflict with the approach in NPPF paragraphs 135 and 180.b).

Other matters

Renewable energy generation

68. The appellant argues that the scheme would have various benefits, and I agree that the need for renewable energy generation nationally may fairly be ascribed substantial weight. I acknowledge that the scheme would also be economically beneficial, in terms of associated employment during construction and operation and associated supply chain implications. NPPF paragraph 163.a) sets out how applicants are not required to demonstrate the 'overall need' for renewable energy. That is, fairly, characterised in the appellant's 'Site Selection' paper ('SSP'),³⁸ as an 'unconstrained need for new renewable energy capacity'.
69. The function of the SSP is, however, to explain the rationale for this scheme relative to other potential locations. The appellant invites me to give 'moderate positive weight' to the scheme on account of its location relative to elsewhere.³⁹ In essence that is an argument relevant to NPPF paragraph 163.b) in terms of reaching a judgement as to whether or not the impacts of a specific scheme 'are (or can be made) acceptable.'
70. Notwithstanding the judgment in *Bramley*,⁴⁰ which also refers to other case law on consideration of alternatives, it has been expressly put to me that the SSP is material and should carry weight. I will return to the implications of the scheme in respect of agricultural land, but now turn to the two other principal arguments made via the SSP, the technical feasibility of grid connectivity and scheme viability.
71. Reflecting that the grid was designed for centralised generation, rather than more numerous smaller sites, the SSP explains initially how 'project locations are determined in relation to available grid connection capacity', thereafter explaining how the Bishop's Wood to Hereford circuit was 'identified as having some capacity to connect a generation project'. Part of the 132kV overhead line is mapped at SSP figure 2.

³⁸ August 2021, updated via hearing document 10.

³⁹ Appellant statement of case, paragraphs 8.100 to 8.102.

⁴⁰ *Bramley Solar Farm Residents Group v Secretary of State for Levelling Up, Housing And Communities & Ors* [2023] EWHC 2842 (Admin) (15 November 2023).

72. The SSP then sets out that 'connections to the 132kV network are expensive and the identified overhead circuit needs to pass through or close to the site or landholding to ensure a viable connection can be made. Therefore, the line and area up to 1km on each side in Figure 2 forms the study area for potential sites.' Within that study area, only sites of a minimum of 21ha have been reviewed as anything significantly smaller than this is discounted on the basis that would make 'the project unviable on a cost per megawatt basis'.
73. Setting aside that it is impossible to interrogate why alternative sites became unavailable,⁴¹ there is no evidence before me as to the extent of the Bishop's Wood to Hereford circuit. It is certainly more extensive than the element shown at SSP figure 2, its name indicating that it may run for tens of miles. As above the SSP refers to the capacity of the circuit to accommodate 'a generation project.' That may be an offhand phrase. However if there is only capacity for a single project, that would suggest the need for a more expansive and thorough search to justify the specific location of a scheme.
74. Even given the extent of the 132kV overhead line shown at SSP figure 2, it is unclear how that justifies the need for a connection 'to pass through or close to the site or landholding'. Local residents drew my attention to an EIA screening request to the Council for a solar farm at Fitcher Brook relatively nearby.⁴² I was told at the hearing on behalf of the appellant that each scheme could operate in isolation, and there is no substantive countervailing evidence to that.
75. That said a plan submitted with the screening request for Fitcher Brook shows a cable connection between that site and the proposed substation here. The applicant in that instance is not the same as here, albeit a representative of the appellant clarified at the hearing that there is some corporate connection between the two. It therefore appears that, in theory, the two schemes could operate in conjunction.
76. It is outwith my remit to address whether any EIA screening opinion should, or would, take into account the cumulative implications of the two schemes (and any future scheme would be judged on its merits). However there is no indication that the Fitcher Brook site would be within the 1km area identified in the SSP if it were brought forward separately.
77. I note that while in the case to which *Bramley* relates there was consideration of a 5km search radius around existing substations, the SSP does not deal with existing substations in any detail. There is furthermore no evidential basis for 1km as opposed to any other distance. I acknowledge that applying a 'sequential' test in respect of other planning matters such as in respect of flooding or town centre development, involves some degree of comparability between a scheme and potential alternative locations. However, again there is no evidential basis for the SSP statement that projects smaller than 21ha would be 'unviable'.
78. For the above reasons the SSP is an inadequate evidential basis to robustly justify the particular location of the scheme before me, or thereby to give

⁴¹ SSP Table 1 simply refers to their being 'initially available but later became unavailable'

⁴² Ref. M/23/00707/SCR.

particular weight to meeting national needs or realising economic benefits here specifically.

Best and Most Versatile agricultural land ('BMV')

79. NPPF paragraph 180 sets out how planning should contribute to and enhance the natural and local environment, including by recognising 'the economic and other benefits' of BMV. NPPF footnote 62 further sets out that 'where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality...'. Paragraph 5.11 of the SPD expresses a preference for previously developed land or non-BMV land.
80. Supporting paragraph 16 to SWDP policy SWDP13 sets out how a locally-set threshold of two hectares reflects a 'significant loss of BMV agricultural land', to which criterion H of policy SDWP13 relates. That paragraph also sets out how 17.1% of land in Worcestershire is not BMV, 26.9% is ALC grades 1 and 2 and the remaining 56% simply ALC grade 3 (undifferentiated between grade 3a and 3b). As above, the AQR indicates that 39% of the site should be considered ALC category 3a, therefore BMV. That is not incomparable with land in Worcestershire taken as a whole on account of the majority of agricultural land being undifferentiated ALC grade 3.
81. As noted above, the appellant contends that the scheme would enable continued grazing and therefore no loss of BMV. That is a principle accepted at other appeals.⁴³ Drawing upon those decisions, the appellant invites me to ascribe moderate positive weight to the benefits 'arising in respect of agriculture, land quality and soil resource (with continued pastoral farming, and soils resting and recovering from intensive arable use)'.⁴⁴ For 4 principal reasons, however I disagree with that position.
82. Some local residents suggested that much of the land on site is better quality than it has been assessed in the AQR. Heather Rendall, Chair of the Wichenford Local Heritage Group, referred me to historic evidence of crop yields associated with Boatley Cottage and Lovely Cottage. Ted Lewis, a neighbouring landowner and farmer, explained that the appeal site was used for growing wheat in the 1960s. He also explained how farming and farm machinery in particular has evolved since ALC was introduced.⁴⁵
83. However, and setting historic uses of the site aside, the evidence before Inspectors in other cases is not before me. As alluded to above, agricultural practices have inevitably moved on since even 1988, and not all place a toll on the land requiring the necessity of 'recovering'. Moreover, on the appellant's own evidence, unlike circumstances potentially occurring elsewhere, there is no indication of intensive arable use here in recent times.
84. Secondly the BMV figure of 39% does not relate to what proportion of BMV land would be covered by solar panels. Although I accept the SSR indicates

⁴³ Statement of case paragraphs 6.27 to 6.32. Notably appeal refs. APP/H1705/W/22/3304561, APP/G2712/W/23/3315877 and APP/C3240/W/22/3308481.

⁴⁴ Appellant statement of case, paragraph 8.95.

⁴⁵ ALC being introduced via the Ministry for Agriculture Food and Fisheries' Technical report 11 of 1966, the AQR drawing from the Ministry for Agriculture Food and Fisheries' criteria for grading the quality of agricultural land of 1988.

that there is potentially a greater prevalence of BMV towards the north of the study area, it appears that the scheme is not arranged so as to avoid transgressing BMV.

85. In direct numerical terms the quantity of available BMV land on site would be reduced (whether by posts supporting solar panels, infrastructure provision or hedgerow planting). It appears that the appellant accepts that there would be some loss of agricultural land, albeit only around 5% of the site as a whole.⁴⁶ Moreover, cross-referencing my reasoning in paragraph 65 of this decision, some land would be permanently lost.
86. Thirdly solar panels will shade the ground beneath them. I heard at the hearing how the appellant's BNG assessment had taken account of the potential in that respect, by ascribing a reduction in species richness to areas shaded by panels. Moreover in this instance clusters of solar panels would also be surrounded by 1.84 linear kilometres of hedges, which will cast further shade. At a basic level light is one of the three inputs to photosynthesis (upon which many forms of agriculture, including grazing, are intrinsically reliant).
87. Fourth the scheme would reduce the agricultural uses to which the land could be put. Continued sheep grazing may be achievable, but the land could realistically only be put to that purpose. Albeit that ALC is established without reference to field boundaries, the extensive subdivision of the site by hedgerows would likely render any future cropping impractical.
88. The implications of the scheme in terms of BMV cannot therefore reasonably be said to be either a positive or neutral implication of the scheme. Whilst policy SWDP13 and the NPPF do not prevent development of BMV land, I cannot rationally find other than the effects of the proposal in this respect carry limited adverse weight against the scheme.

Biodiversity

89. As noted above, the appellant's position is that the scheme aims to deliver significant BNG of 24.69%. Whilst that does not appear unachievable relative to the current nature of the site, there are also various ambiguities in the evidence before me in respect of ecology, particularly as regards Monks Wood SSSI (ancient semi-natural woodland protected on account of its fauna and associated flora, particularly invertebrates). Statute places duties on me in respect of conserving and enhancing biodiversity generally, and in respect of SSSIs specifically.⁴⁷
90. The PEA states 'through this assessment it is determined that some of the impacted habitats on the proposed site, including the hedgerows and trees could provide supporting habitat for Monks Wood SSSI. The impacts have been assessed within the report and determined that they would be low but also managed to limit their impact.'⁴⁸ That cannot logically be read other than as indicating that there may be some adverse effect to the ecological integrity

⁴⁶ Statement of case, paragraph 8.94.

⁴⁷ Section 40 of the Natural Environment and Rural Communities Act 2006 as amended and section 28(G) of the Wildlife and Countryside Act 1981 as amended.

⁴⁸ Paragraph 4.12.

of the SSSI. It appears that there has been no specific survey of invertebrates or lower plants.⁴⁹

91. Moreover the PEA does not recommend provision of bird boxes on site 'in an effort to discourage generalist species becoming established near Monks Wood SSSI'.⁵⁰ It is unclear how bird boxes would afford a different function in that respect relative to 1.84 linear kilometres of new hedgerow.
92. Moreover the non-technical summary to the appellant's Bat Survey Report ('BSR') states, rather than the relevant study area, that 'the site area extends of approximately 65 hectares in total'. It is unclear how that marries up with the site before me. The BSR further sets out, in the context of the PEA and preliminary roost assessment, that 'bat roosting features were seen in the trees on the boundaries of the fields in a number of locations'.⁵¹
93. It is unclear if that refers to Monk Wood, nevertheless given that is ancient semi-natural woodland supporting populations of invertebrates, that may. Whilst the BSR identified a 'low' activity of bat species across the sites based on a single survey of around three hours on 26 May 2021, that would not have accounted for certain bat activity by virtue of the time of year.⁵² That is an evidential shortcoming,⁵³ particularly set against recent scientific research brought to my attention.⁵⁴
94. Opposite the existing pedestrian field access in the south-western corner of the appeal site by Monk Wood is a post with a sign reading 'Worcestershire County Council Highways, Roadside Verge Nature Reserve' (the 'RVNR'). That post is shown in PEA photo 12. There is a similar post and sign a short distance away to the east.
95. Those signs further explain that 'the verge between the posts is designated for its rare plants or animals. It has specialised management to benefit them. Please do not cut or damage this area'. I understand that stretch of verge is protected on account of its species rarity or variety, or both.
96. It appears that the visibility splay proposed at the southern access point comes close to the RVNR.⁵⁵ There is reference to a survey of 'roadside verges' in the PEA, all of which were determined to be neutral grassland.⁵⁶ There is also therein reference to 'poor quality hedgerows'.⁵⁷

⁴⁹ Paragraph 2.6 of the Chartered Institute of Ecology and Environmental Management's Guidelines for Preliminary Ecological Appraisal, second edition, setting out that 'the availability of records of protect or priority species will vary in any particular location, as it may be dependent on the presence of local experts (particularly the case for invertebrates and lower plants)', albeit the PEA identifies a low potential for invertebrate associations with Monk Wood.

⁵⁰ Paragraph 5.13.

⁵¹ BSR, paragraph 1.4.

⁵² With reference to table 2.2. of the Bat Conservation Trusts' Good Practice Guidelines in respect of Bat Surveys for Professional Ecologists, 3rd Edition.

⁵³ ODPM 6/2005, paragraph 99 setting out how 'It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.'

⁵⁴ 'Renewable energies and biodiversity: Impact of ground-mounted solar photovoltaic sites on bat activity', Journal of Applied Ecology, Volume 60, Issue 9.

⁵⁵ Notwithstanding that hearing documents 7, 8 and 9 indicate there may be no need, in terms of vehicular tracking, to extend the appeal site into the field on the opposite side of the lane.

⁵⁶ Paragraph 3.22.

⁵⁷ PEA, paragraph 5.54.

97. However neither of those references appear to take account of the RVNR, and there is moreover no reference to that designation in the PEA. Consequently, notwithstanding the intention to deliver significant BNG, for the above reasons I cannot reach the view that the scheme would be acceptable in respect of biodiversity in the context of the statutory duties upon me.

Planning balance

98. Nationally there is a pressing and urgent need for renewable energy generation. Some representations express support for the scheme with that in mind. The proposal would also have economic benefits. However, as reasoned above, there is no compelling justification for the scheme here specifically. Whilst significant BNG may be achievable, the evidence before me is insufficient as regards potential adverse ecological effects elsewhere.
99. The scheme would result in major adverse effects to the landscape as a resource and also visually, seriously detracting from the intrinsic character and beauty of the countryside and the experience of it. I have also identified that harm, albeit limited, would result in terms of the effect of the proposal on BMV.
100. NPPF paragraph 163.b) guides that applications for renewable and low carbon development should be approved if its impacts are (or can be made) acceptable. The PPG sets out that the benefits of delivering green energy does not automatically override 'environmental protections and the planning concerns of local communities'.⁵⁸
101. Inherent in my reasoning above is that even if the scheme were acceptable in all other respects, and even were the public benefits of the proposal to outweigh the harm to the setting of the listed buildings set one against the other, no other material considerations would justify allowing the appeal.

Conclusion

102. For the above reasons, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Tom Bristow

INSPECTOR

⁵⁸ PPG reference ID: 5-003-20140306.

SCHEDULE 1, APPEARANCES

FOR THE APPELLANT:

Nigel Cussen	Pegasus Group
Emma Ridley	Pegasus Group
Laura Garcia	Pegasus Group
Chris Schofield	Enzygo
Derek Allan	Enzygo
Frances Horne	Pegasus Group

FOR MHDC:

Simon Jones	Development manager
Chris Lewis-Farley	Tree and landscape officer
Jane Sedgeley-Strachan	Natural Heritage and Biodiversity officer

INTERESTED PARTIES:

Adam Collett	Chairman, Grimley Parish Council ('GPC')
Dr Chris Betts	Local resident and on behalf of GPC
Carly Tinkler	On behalf of GPC
Lisa Stevens	Clerk, GPC
Francesca Beamish	On behalf of GPC
Heather Rendall	Chair, Winchenford Local Heritage Group
Steven Bloomfield	Worcestershire Wildlife Trust
Dominique Cragg	Worcestershire Wildlife Trust
Dean Clarke	Councillor, Hallow Ward
Kathy Parkes	Local resident
Richard Rees	Local resident
Annette Collett	Local resident
Jill Moffat	Local resident
Ted Lewis	Local resident
Gill Williams	Local resident
Andy Sinclair	Local resident
Ali Wilby	Local resident
Georgie Moore	Local resident
Keith Parker	Local resident
Maureen Guest	Local resident
Joanna Parker	Local resident
Roger Tym	Local resident
Bryn Parry-Jones	Local resident
Christopher Betts	Local resident
Jed Marston	Local resident

SCHEDULE 2, HEARING DOCUMENTS

1	Inspector's draft agenda for the hearing, 21 November 2023
2	Participation list compiled during the hearing
3	Grimley Parish Council annotated site visit map (v1)
4	Grimley Parish Council annotated road map related to proposed vehicle routing
5	Plan no. P001.301.20 with viewpoints
6	Solar Panel Recycling sheet/ method statement
7	Revised southern site access, plan no. C20063-ATP-DR-TP-0015
8	Revised site location plan, plan no. THJ002.300.06
9	Revised proposed site layout plan, plan no. TH002.301.21
10	Map entitled 'Birchall site selection alternative sites' along with detailed mapping in respect of areas A through E
11	MHDC report to committee for application ref. M/22/01073/FUL
12	Appeal ref. APP/J1860/W/16/3142020
13	Worcestershire County Council Landscape Character Assessment, Supplementary Guidance: Technical Handbook, August 2013.
14	Worcestershire Wildlife Consultancy report to Worcestershire Wildlife Trust, ref. 2022/035 A-E v1, June 2022
15	Map of site and surroundings illustrating ancient, veteran and mature trees and Worcestershire Wildlife Trust Reserves
16	Draft condition related to appeal ref. APP/A1910/W/23/3317818 regarding fencing

NB. Documents above are ordered logically by whom they were advanced. In addition, reference was made at the hearing to a High Court judgement of 17 November 2023,⁵⁹ to rights of way mapping, to the Government's Powering up Britain,⁶⁰ and to the positions of the United Nations and Intergovernmental Panel on Climate Change on renewable energy. Those are matters of public record, as is correspondence on behalf of the Friends of the Gwent Levels and the Gwent Wildlife Trust regarding renewable energy. Neither the foregoing, nor other references to matters of public record, are listed specifically as hearing documents.

⁵⁹ Peak District and South Yorkshire Branch of the Campaign to Protect Rural England, R (On the Application Of) v Secretary of State for Transport [2023] EWHC 2917 (Admin) (17 November 2023).

⁶⁰ Published 30 March 2023.