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## Decision Notice & Statement of Reasons

Site visits made on:

Tuesday 20 September 2022 & Monday 27 March 2023

By Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

a person appointed by the Secretary of State

Decision date: 11 May 2023

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Application Reference: s62A/2022/0011

Land East of Pelham Substation, Maggots End, Manuden

(Easting 547257, Northing 228104)

- The application was made under Section 62A of the Town and Country Planning Act 1990 (TCPA) by Low Carbon Solar Park 6 Limited.
  - The site is located within the local planning authority area of Uttlesford District Council.
  - The application was dated 15 September 2022, with a valid date of 10 February 2023.
  - Consultation took place between 10 February and 20 March 2023.
  - An Environmental Statement was submitted, dated December 2022.
  - The development proposed is described as '**Construction and operation of a solar farm comprising ground mounted solar voltaic (PV) arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping.**'
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### Decision

1. Planning permission is refused for '**Construction and operation of a solar farm comprising ground mounted solar voltaic (PV) arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping**' at Land East of Pelham Substation, Maggots End, Manuden, for the reasons set out in this notice.

### Procedural Matters

2. The application was submitted under s62A of the *Town and Country Planning Act 1990*, as amended (TCPA). This allows for applications to be made directly to the Secretary of State (SoS), where a local authority has been designated. Uttlesford District Council (UDC) have been designated for major applications since February 2022. The SoS has appointed a person under section 76D of the TCPA 1990 to determine the application instead of the SoS.
3. The application was screened under *The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017*, (as amended) by UDC and by the SoS<sup>1</sup>. The SoS screening direction found that: '**On the basis of the information provided, the Secretary of State considers that the Proposed Development has the potential to give rise to significant visual effects and significant cumulative effects including those on the local landscape through an increase in the amount of electrical**

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<sup>1</sup> Dated 5 October 2022, viewable in Appendix 2.2 of the *Environmental Statement, Technical Appendices* dated December 2022.

*infrastructure within the locality'* and an Environmental Impact Assessment was required. An Environmental Statement (ES) has been submitted. The Applicant publicised the ES in line with the requirements of Regulation 20 of the EIA Regulations 2017. This, together with comments from statutory consultation bodies and any representations duly made by any particular person or organisation about the ES, has been taken fully into account in determining this application.

4. Following the closure of the representation period, Article 22 of *The Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013* requires the SoS (or appointed person) to consider the application either by hearing or on the basis of representations in writing.
5. Taking into account Section 319A of the TCPA and the *Procedural guidance for Section 62A Authorities in Special Measures*<sup>2</sup> published by the SoS (including Paragraph 5.1.1), the appointed person considered that the issues raised in this case could be clearly understood from the written submissions.
6. In accordance with Article 4 of *The Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013*, on 24 March 2023, the Inspectorate wrote to the applicant to confirm the procedure.
7. Unaccompanied site visits were carried out on Tuesday 20 September 2023 at the validation stage and on Monday 27 March 2023; after the consultation period had ended. The inspection included viewing the site and the surrounding area. I, as the appointed person, have taken account of all written representations in reaching my decision.

#### Background and recent planning history

8. The application seeks permission for a solar farm to generate up to 49.9 MW of **electricity to power approximately 16'500 homes and displace 11'000 tonnes of Carbon Dioxide (CO<sup>2</sup>)** per annum. The application site is located on agricultural land to the south of Berden, northwest of Manuden and around 6km to the north of Bishops Stortford. Further particulars are described and provided in the voluminous documents provided by the Applicant, designated authority and other interested parties, which have been taken into account in determining the application. Accordingly, it has not been re-produced here. However, where appropriate, references are provided to the source text.
9. Planning application UTT/21/3356/FUL sought full planning permission for the '**Construction and operation of a solar farm comprising ground mounted solar photovoltaic (PV) arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping**'. This application was submitted to Uttlesford District Council in November 2021 and subsequently refused on 24 January 2022 under delegated powers with eight reasons for refusal.
10. The Council acknowledged that this revised application has been submitted to the Secretary of State in which further information and revisions have been made in the attempt to address and overcome the reasons for refusal as imposed on the decision notice ref: UTT/21/3356/FUL.

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<sup>2</sup> [Procedural guidance for Section 62A Authorities in Special Measures - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103422/procedural-guidance-for-section-62a-authorities-in-special-measures.pdf)

11. The Council has also recognised that the Applicant held pre-application discussions with the officers of both Essex County Council and Uttlesford District Council prior to the submission of this application to the Secretary of State.<sup>3</sup>

## Reasons

### *Need and potential benefits*

12. The proposal would generate electricity to **power around 16'500 homes and displace around 11'000 tonnes of CO<sup>2</sup>** per annum. On the basis of these figures, over the 40-year lifespan of the proposal, it would potentially displace **around 440'000 tonnes of CO<sup>2</sup>**. This would make a moderate contribution to the local and national aspirations and legal requirements to transition to a low carbon future.
13. Indeed, there is a large amount of national legislation, guidance, and policy which supports the transition to a low carbon future<sup>4</sup>. Renewable energy creation; including schemes such as the proposal here, will play an important part in delivering this. Locally, UDC declared a climate change emergency in 2019, and seeks to reduce its own emissions to net zero by 2030.
14. It is clear, therefore, that there is a pressing need for renewable energy sources to provide part of the future energy mix as England moves towards a low carbon future. This is a factor which I afford significant weight in favour of the proposal. That said, it does not automatically follow that any scheme for renewable energy creation has a *carte blanche*: as with most planning matters the need for renewable energy creation needs to be weighed against the potential adverse effects or harm arising and, if this occurs, whether this harm can be mitigated, so allowing a judgment in favour of the proposal.
15. The proposal would result in socio-economic benefits in the form of the creation of 117 direct/indirect jobs and up to £3.6 million of gross value added over the five-month construction period. During the proposed 40-year operational lifespan, the proposed development would create five net additional jobs in the Uttlesford economy, £6 million of gross value added per annum and business rates of around £3.7 million over 40-years<sup>5</sup> (at present values). However, it has not been clearly indicated how this would compare with the existing socio-economic activity on the application site. This being so, these social-economic benefits are afforded modest weight in favour of the proposal.
16. The development proposes biodiversity enhancements including the provision of ten bat boxes, hedgerow improvements, the provision of three hibernaculum for Great Crested Newts, seeding of native grassland and diverse wildflower seeded areas, 20 bird boxes, and installation of 20 dormouse boxes in Battles Wood. Given that many of these enhancements could be instigated regardless of whether permission was forthcoming, and that some of them are mitigation measures intended to ameliorate adverse impacts on protected species arising from the proposal, these benefits are accordingly afforded only modest weight in favour of the proposal.

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<sup>3</sup> Letter from UDC dated 15 March 2023 from Principal Planning Officer following Planning Committee meeting on 8 March 2023

<sup>4</sup> See for example, *Planning Statement, Pelham Spring Solar Farm, P20-1300, Appendix 4*, Dated August 2022

<sup>5</sup> *Environmental Statement, Non-Technical Summary, January 2023* Page 15

### *Character and appearance of the area*

17. The application site is currently used as a mix of nine agricultural fields. These are used as a mixture of mainly arable farmland with two pastoral fields. The proposal would see a large part of the nearly 80-hectare site area covered by solar arrays and associated infrastructure **in six 'development zones'**. The effect would be that the currently open, rural and agrarian character and appearance of the area would be drastically and noticeably altered with the introduction of an overtly utilitarian industrial infrastructure into the open countryside.
18. This would be highly contrasting industrial infrastructure that would be present for an extended period of around 40 years. This extended chronological span, together with the scale and size of the proposal, would be perceived as permanent rather than temporary features within the landscape. Whilst there is the potential to use planting to mitigate some of the impact, this would take time to establish and would not completely screen the site from public vantage points.
19. Accordingly, the proposal would have a significantly harmful effect on the rural character and appearance of the area through adversely eroding the agricultural landscape and the intrinsic beauty of the countryside. As such the proposal is contrary to Policy S7 of the *Uttlesford Local Plan 2005* (LP) which sets out that in the countryside, which will be protected for its own sake, planning permission will only be given for development that needs to take place there, or is appropriate to a rural area and that development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there.
20. The proposal is also contrary to Paragraph 174 of the *National Planning Policy Framework* (the Framework) which sets out that planning policies and decisions should contribute and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

### *Landscape and Visual*

21. Chapter 6 of the *Environmental Statement* (ES) identifies in the summary of Significant effects, that during the five months construction period there would be High magnitude of effect and Major significance of effect which would have major adverse significant residual effects from a number of viewpoints, public footpaths/bridleways, and for receptors (occupiers) at residential properties Brick House End Cottages and Rose Garth.
22. Longer term, during the 40-year operational phase, the magnitude of effect would be High in most cases, with a few reductions to Medium. The magnitude of effects would be High to the sensitivity of receptors, with significance of effects Major, **with the residual effects considered to be 'Moderate'**.<sup>6</sup>
23. In landscape terms, the proposal would introduce long rows of solar panels and associated infrastructure which would have a starkly more utilitarian appearance when compared to the currently unspoilt and open rural qualities of the site. The proposal would detract from the currently pleasant rural scene

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<sup>6</sup> *Environmental Statement, Chapter 6, Table 6.5 Summary of Significant Effects, Mitigation and Residual Effects*

and erode the qualities of the lower rolling farmed and settled undulating slopes.

24. Moreover, with the solar panels potentially up to three metres high, it would not be possible to completely mitigate the effects of the development. The regimented arrays of dark coloured panels would contrast sharply with the harmonious organic pattern of open fields and appear odd amongst the typical patchwork of green- and yellow-coloured fields found in the location generally. This drastic change would become especially acute for users of various Public Rights of Way and Bridleways both in and near to the site, and also users of nearby public highways such as that between East End and Maggots End, who would no longer be able to enjoy the rural landscape through its extended and prolonged use as a large utilitarian development.
25. Accordingly, the proposal conflicts with Paragraph 174 of the Framework which sets out that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.

#### *Heritage assets – setting*

26. The Framework explains in the Glossary that:

*'Setting of a heritage asset: The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.'*

27. In terms of Scheduled Monuments, **the Applicant's Heritage Statement** concludes that there is considered to be no harm to the heritage significance of the Scheduled The Crump with regards to setting<sup>7</sup>. It provides no similar conclusion in respect of the Scheduled Monument of Battles Manor.
28. The Crump is a well-preserved earthwork. Historic England, **the government's** statutory adviser on the historic environment, identify that these are rare nationally with only 200 recorded examples and, as one of a limited number and very restricted range of Anglo-Saxon and Norman fortifications, ringworks are of particular significance to our understanding of the period. Historic England identify that the proposal would result in less than substantial harm to The Crump. **Similarly, the 'Moated site at Battles Manor' are the remains of a** medieval moated enclosure<sup>8</sup>. Historic England suggest that there is the potential for less than substantial harm to this latter Scheduled Monument.
29. These Scheduled Monuments are located within a strongly defined rural context, and this contributes positively to their surroundings and significance. Visitors are currently able to appreciate the agricultural and societal history of this part of Essex and its connection with the wider landscape. The introduction of rows of solar panels and associated infrastructure would drastically alter this relationship and the experience of those seeking to appreciate it. Instead of open agricultural fields the proposal would form an expansive industrial '**techscape**', severing the monuments from the rural context in which they are currently experienced.

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<sup>7</sup> Applicant's *Heritage Statement* dated September 2022, Page 47, paragraph 7.11

<sup>8</sup> Historic England representation dated 23 February 2023

30. The Crump in particular is a rare survival, and the monument draws a considerable amount of significance from how it is experienced in the historic landscape setting. A setting which, whilst changing over the centuries, retains a dominantly rural character. Accordingly, this would result in harm to the significance of the scheduled monument The Crump, and to a lesser degree, that of Battles Manor.
31. With regard to listed buildings, Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended, (PLBCA) requires that the SoS shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.
32. The Crump (buildings rather than the ringworks) and Battles Hall are both Grade II listed buildings. The latter is also associated with the Grade II listed Cart Lodge, and Dovecote. Brick House, Rose Garth and Peyton Hall and Barn are all Listed Grade II buildings and located no more than 500 metres from the site. Similar to the Scheduled Monuments, the settings of these listed buildings would be dramatically altered. Rather than read and experienced within a rural landscape and associated historical connections with it, the listed buildings would instead be experienced in an utilitarian setting defined by solar arrays, fencing, CCTV cameras on poles, a DNO substation and other infrastructure. Accordingly, the proposal would fail to preserve the setting of the listed buildings.
33. **Great weight should be given to the asset's conservation and the more** important the asset, the greater the weight should be. In this case, the harm arising to the settings of the Scheduled Monuments and listed buildings identified would be no greater than less than substantial<sup>9</sup> and therefore Paragraph 202 of the Framework applies.
34. The public benefits of the proposal are set out in the 'Need and potential benefits' section of this decision. Whilst these benefits weigh significantly to moderately in favour of the proposal, they would not outweigh the significant harm to the settings of the Scheduled Monuments the conservation of which is afforded great weight in the Framework. For similar reasons, they would fail to preserve the setting of the listed buildings, in being contrary to the clear expectations of s66(1) of the PLBCA, which anticipates special regard being had to that preservation. The dual conflict of the proposal with national policy and statute, and the cumulative harm that would arise from them, are matters of very significant weight that militate against them succeeding.
35. Accordingly, the proposal conflicts with Policies ENV2 and ENV4 of the LP which require that where nationally important archaeological remains and their settings are affected by proposed development there will be a presumption in favour of their physical preservation in situ and development affecting a listed building should be in keeping with its scale, character and surroundings.
36. It is also at odds with Chapter 16. Conserving and enhancing the historic environment of the Framework, which include in determining applications, local planning authorities should take account of the desirability of sustained and enhancing the significance of heritage assets and that great weight should be

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<sup>9</sup> This is, to varying degrees and applicability, in line with the advice provided by the Applicant's Heritage Consultant, Historic England, and the designated authority's heritage advisers who all identified 'less than substantial' to at least some of the heritage assets in this section.



**given to the asset's conservation.** This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

*Heritage assets – Archaeology*

37. Paragraph 194 of the Framework sets out that where there is potential for archaeological interest on sites, an appropriate desk-based assessment and, where necessary, a field evaluation should be undertaken. Footnote 68 of the Framework sets out that '**Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.**'
38. Significant archaeological remains from Iron Age to Roman dates and a moated enclosure and ditch-like anomalies from geographical survey are identified on the site. These are located in the northern and western parts of the application site. **The applicant's** heritage expert indicates that '*The majority of moated sites served as prestigious aristocratic and noble residences with the provision of a moat was intended as a status symbol. They commonly consist of wide ditches which are often water-filled, which partly or completely enclose an 'island' of dry ground*<sup>10</sup>.'
39. A metal detector survey was undertaken in the mid-2000s, but only on part of the northern end of the site, and there have been finds of coins from the early first millennium. On this basis, the Applicant considers that the potential for significant archaeological remains of Iron Age to Roman date within the site is moderate to high. They go on to **consider that there are around 6'000 moated sites** known within England, and the two potential enclosures identified within the application site, and contained within areas earmarked for development, are not scheduled like others found nearby with the visible remains are barely perceptible above ground. They should, therefore, be considered as non-designated heritage assets rather than as commensurate with Scheduled Monuments.
40. Place Services, Essex County Council -Specialist Archaeological Advice dated 20 February 2022<sup>11</sup> set out that significance of the remains of the moated enclosure have not yet been ascertained. They recommend that trial trenching evaluation is undertaken in advance of a planning decisions. Historic England note the above comments and indicate that it is best practice in terms of the assessment of archaeological remains to identify whether any important remains are present that could preclude or modify the proposed development.
41. With a lack of trial trenching at the application site it is not possible to ascertain the significance of buried archaeological remains. In such circumstances, the decision-maker is unable to undertake the balancing exercise set out at Paragraph 202 of the Framework (or Paragraph 201 if substantial harm).
42. Clearly there is an incomplete picture in the evidence before me. The geophysical survey has found evidence of Romano-British enclosed structures; yet it is unclear whether there is any discernible evidence as to what these are and what other archaeology remains. Whilst there has been some metal

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<sup>10</sup> Applicant's *Heritage Statement* dated September 2022, Page 18, Paragraph 5.28

<sup>11</sup> I consider this to be a typo of 202, as it is clearly referenced as a response to the application here.

detector surveying these were limited to the northern part of the site and took place some time ago. My role is to consider what is reasonable and proportionate based upon the available evidence before me. Despite evaluation carried out to date, I cannot be assured of the specific nature or significance of the potential buried archaeological remains.

43. An understanding of the significance of any heritage asset is the starting point for determining any mitigation, and therefore I am unable to assess whether the mitigation proposed would be appropriate. Similarly, I cannot be certain of the potential harm that may result to the archaeological interest from the proposal, for example through the siting of solar arrays and the groundworks required.
44. The heritage asset might have archaeological interest which could be unlocked through further field evaluation which would enable a greater understanding of any remains and their wider context. On this basis, and given that the significance of the potential remains could be of local and potentially regional importance (or greater if associated with the nearby Scheduled Monuments), I find that the approach suggested by Place Services and endorsed by Historic England **is proportionate to the potential asset's importance and no more than** is sufficient to understand the potential impact of the proposal. This approach is consistent with Paragraph 194 of the Framework.
45. Furthermore, I do not consider that the imposition of a planning condition would provide adequate mitigation for the safeguarding of what amounts to a non-designated heritage asset, given the affected land is in close proximity to land that has known above ground archaeological remains which are afforded the highest levels of protection as Scheduled Monuments.
46. After careful consideration of the archaeological matters arising in this instance the evidence remains incomplete. I therefore conclude that the application fails to provide sufficient evidence regarding potential archaeological remains or features of interest, such that I cannot be assured that material harm to archaeological remains would not result.
47. Accordingly, the application would fail to accord with Policy ENV4 of the LP, which, amongst other aims, seeks to ensure that in situations where there are grounds for believing that sites, monuments or their settings would be affected developers will be required to arrange for an archaeological field assessment to be carried out before the planning application can be determined thus enabling an informed and reasonable planning decision to be made. In circumstances where preservation is not possible or feasible, then development will not be permitted until satisfactory provision has been made for a programme of archaeological investigation and recording prior to commencement of the development. This policy requires an approach to the conservation of archaeological remains that is consistent with the *Overarching National Policy Statement for Energy (EN-1)* July 2011.
48. The proposal would also conflict with Section 16: Conserving and enhancing the historic environment of the Framework and in particular Paragraphs 194 and 200 (and footnote 68) which, amongst other aims, set out that 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. Substantial harm to assets of the highest significance, notably scheduled monuments should be wholly exceptional.



*Best and Most Versatile Agricultural Land*

49. **The Applicant's survey and report on Agricultural Land Classification identifies** that around 54% of the site is evaluated to be within the Grade 2 (very good) category, roughly 28% as 3a (good) and the remaining 19% as 3b (moderate) or other land/non-agricultural<sup>12</sup>. The *Framework* defines the Best and Most Versatile Agricultural Land (BMVAL) as being in Grades 1, 2 and 3a. Accordingly, around 82% of the site is within the BMVAL classification. The Report suggests that the Uttlesford district benefits from a high proportion of agricultural land in Grade 2 (approximately 80%, compared to 14% in England and 29% in the Eastern Region)<sup>13</sup>.
50. Whilst the currently arable land around the solar arrays and associated infrastructure could potentially be used for sheep grazing, it is likely that over the 40-year life of the proposed development there would be a significant reduction in agricultural production over the whole development area. This would not be an effective use of BMVAL, as reflected in the planning practice guidance which encourages the siting of large solar farms on previously developed and non-agricultural land.
51. Whilst the Applicant refers to the temporary nature of the proposal, 40 years is a considerable length of time for the solar arrays, DNO substation, fencing, CCTV towers and other associated structures to be present on site. Given this duration the proposed development would be seen as permanent features rather than as temporary.
52. Whilst an *Alternative Sites Assessment* (dated September 2022) has been submitted, this is limited by the reliance on an unsubstantiated distance of 4km point of connection with the electricity grid. Moreover, the search area was mainly limited to the Uttlesford District (for example the brownfield land search) even though the East Herts District is located immediately to the west of the site. Whilst such assessment cannot be exhaustive *ad infinitum* it is, nonetheless, reasonable to assume that it would detail reasoning as to why 4km is the maximum range for a connection point and take into account the geographical scope of the site – rather than local authority boundaries. It has also not been demonstrated that the significant development of this BMVAL is necessary in this instance – even taking into account net zero aspirations.
53. Accordingly, the proposal would conflict with Policy ENV5 of the LP which sets out that development of BMV land will only be permitted where opportunities have been assessed for accommodating the development on previously developed sites or within existing development limits. It goes on to indicate that where development of agricultural land is required, developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise.
54. It would also conflict with Paragraph 174 of the *Framework*. This sets out that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside – including the economic and other benefits of the best and most versatile agricultural land. Footnote 53 indicates that where significant

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<sup>12</sup> *Agricultural Land Classification: Pelham Spring Solar Farm, Essex* dated September 2021, Page 12, Paragraph 3.6.1

<sup>13</sup> *Ibid*, page 13, Paragraph 4.2.1

development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

#### *Highway safety*

55. Principally, construction traffic (of around 922 vehicles/trips) would access the site to the east of Manuden Road, with the vehicles having lengths of no more than 16.5 metres. These vehicles would use the M11, with access to and from along the B1383 (aka London Road to the south of Newport), turning to the west at Newport along the B1038, to Clavering when turning to leave/enter the site down Manuden Road. It is envisaged that construction traffic will only access the site from this north route and not through Manuden. Nonetheless, these are roads which, when leaving the motorway, tend to become narrower and winding without many places for larger vehicles to easily pass each other the closer to the site one is.
56. The proposed route for construction traffic is included in the submitted *Construction Transport Management Plan Sept 22 Issue (2)* (CTMP). However, since that work was undertaken further planning applications for similar development proposals have been submitted<sup>14</sup>. The CTMP does not take into account the potential cumulative impact arising from the number of proposed developments in this locality. In particular, it requires further investigation on traffic movements on Stortford Road and in specific around Clavering Primary School. The cumulative impact of construction traffic should be assessed in order to inform any plans for mitigation and co-ordination of traffic movements between sites during the construction phases.
57. Moreover, the main site access requires an updated Stage 1 Road Safety Audit and additional information to determine if the existing vehicular access at Maggots End is safe and suitable for operational vehicles. This should include a speed survey with visibility splays provided in accordance with the 85<sup>th</sup> percentile recorded. A road safety audit should accompany the current proposals.
58. In the absence of the above information and assessments, the proposal is contrary to Policy GEN1 of the LP which sets out that certain criteria should be met in order for development to be permitted. This includes that access to the main road network must be capable of carrying traffic generated safely and accommodated within the surrounding road network.
59. For the same reasons, in the absence of the above information, surveys and assessments the proposal would have an unacceptable impact on highway safety. It is therefore contrary to Paragraph 111 of the Framework which sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

#### *Biodiversity*

60. **The Applicant's** *Ecological Impact Assessment* (September 2021) identifies that the application site contains breeding territories, sites, or foraging areas for farmland bird species including Skylarks, Yellow Wagtails, and Yellowhammers. These are all 'Red Species of Conservation Concern' and **as** 'Species of Principal

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<sup>14</sup> See consultation response from Essex County Council Highways and Transportation Services, dated 20 March 2023

Importance' under Section 41 of the *Natural Environment and Rural Communities Act 2006*, as amended (NERC). In particular, Skylarks were found **to show 'a persistent association with the site'**.<sup>15</sup>

61. The *Ecological Impact Assessment* identifies that at the time of the surveying, around seventeen breeding territories for Skylarks were identified across the site<sup>16</sup> and in particular on the areas identified as development zones. The main loss of habitat is almost entirely attributed to loss of arable vegetation; habitat which is used by at least three Species of Principal Importance. Ground-nesting species such as Skylark will be especially affected by the loss of the arable farmland and its conversion to pastoral land for sheep-grazing and solar farming.
62. Consequently, it is necessary to adopt a precautionary principle and so it is reasonable to assume that the application site will support a considerably reduced number of birds than it currently supports. As such, a negative impact on breeding birds of open ground (particularly skylarks) is anticipated as a result of loss of nesting habitat as well as unmitigated direct impacts of construction associated with the proposal.
63. Mitigation for the loss of the Skylark territory has been suggested in arable fields in the local area through the provision of two **'bird foraging plots' per territory lost** and that there is an abundance of open, arable farmland within the surrounding 5km of the site. However, it is unclear as to how such mitigation would be provided given that, as the *Ecological Impact Assessment* identifies: **'any off-site mitigation would need to be secured via a Section 106 agreement' but no such legal agreement is before me**. Nor is there any indication where within the application site itself such areas could be provided. Lastly, it is unclear as to how such provision would also be made for other Species of Principal Importance identified such as Yellowhammer and Yellow Wagtail.
64. The potential biodiversity improvements arising from the proposal are noted. These include improvements in foraging areas, in soil qualities, and in hedgerows. However, the proposal would result in significant harm to Species of Principal Importance and their habitats. This is harm that cannot be avoided, adequately mitigated, and there is no mechanism to secure compensation for. Paragraph 180 of the Framework indicates that planning permission should be refused in such circumstances.
65. The proposal in this case would fail to conserve and enhance biodiversity, the Duty of which falls on public bodies in England under Section 40 of NERC. It is contrary to Policy GEN7 of the LP which sets out that development that would have a harmful effect on wildlife will not be permitted unless the need for the development outweighs the importance of the feature to nature conservation and where the site includes protected species or habitats for protected species measures to mitigate and/or compensate for the potential impacts of the development, secured by planning condition or condition, will be required.
66. The proposal is also contrary to Paragraph 180 of the Framework which sets out that when determining planning applications, local planning authorities should apply the following principles: (a) if significant harm to biodiversity

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<sup>15</sup> Applicant's Ecological Impact Assessment Sept 2021, Paragraph 2.6.127

<sup>16</sup> Applicant's Ecological Impact Assessment Sept 2021, Paragraph 2.6.105

resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

67. The information concerning European Protected Species on or near to the site, including Bats and Great Crested Newts (GCN), has been fully considered. The information concerning badgers, which are protected under the *Countryside and Wildlife Act 1981*, as amended, and also the *Badger Protection Act 1992*, as amended, has been taken into account.
68. The impact of the proposal on these species could potentially be adequately mitigated through the biodiversity improvements suggested and secured through the use of appropriately worded planning conditions. Nonetheless, this does not overcome the significant harm identified to bird species on or visiting the application site arising from the proposal.

### Noise

69. The submitted *Acoustics Report A1784 R01b* dated September 2021 identifies that the noise climate during set up of monitoring equipment was relatively tranquil. Besides some noise from larger passenger aircraft, most sources of noise included birdsong, grasshoppers, other natural sounds and low-level wind noise in trees at monitoring station M01 and M02. The application would result in operational noise from the facility and associated infrastructure. The report does not consider impact arising from noise to users of the nearby Public Rights of Way/ Public Bridleway.
70. The UDC Environmental Health comments of 17 March 2023 identify a number of concerns with the submitted report, including what British Standards have been applied. It concludes that it is not possible to apply a robust post construction condition to ensure that noise from the site will not be detrimental to residential amenity or increase background and ambient noise levels in the area. It also raises concerns that the low frequency noise levels at noise sensitive receptors will increase because of the proposed development and may result in significant adverse impact when considered individually and cumulatively with the existing facilities.
71. **Whilst there are some 'modern' noise intrusions** – such as that from the overhead power lines and commercial aircraft – in the main the application site currently benefits from a relatively tranquil noise environment. This includes users of Public Rights of Way close to and near to the site. As evidenced in the comments from interested parties, this is an area that is prized for its recreational and amenity value because of its tranquillity.
72. Accordingly, the proposal would be at odds with Paragraph 185 of the Framework which sets out that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or wider area to impacts that could arise from the development. In doing so they should (a) mitigate and reduce to a minimum potential adverse impact resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life and (b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

73. Accordingly, the proposal conflicts with Policies GEN2, GEN4, and ENV11 of the LP which, amongst other aims seek to not permit developments where noise generated would cause material disturbance or nuisance to occupiers of surrounding properties.

#### Other Matters

##### *Planning obligation*

74. The designated planning authority indicate that they expect the submission of a s106 agreement (or planning obligation) to address a decommissioning plan and secure a bond or deposit to cover decommissioning works if required. No such obligation was submitted by the applicant. Nonetheless, as the proposal is refused, I have not considered this matter further.

##### *Conditions*

75. I note that conditions have been suggested by the designated planning authority and other parties. Whilst my considerations of the planning merits indicate that permission should be refused, I am satisfied that the use of planning conditions would not mitigate or address the harms arising in this case in order to make the proposal otherwise acceptable.

#### Planning balance and Conclusions

76. The proposal would clearly result in wider benefits including the moderate contribution to the local and national aspirations to transition to a low carbon future, the significant benefit arising from the renewable energy creation and future energy mix, the modest weight to socio-economic benefits and the modest benefits to ecology and biodiversity.

77. However, these fail to negate the harms identified to character and appearance, landscape and visual matters, the settings of designated heritage assets, archaeological remains, loss of BMVAL, highway safety, biodiversity and noise. The benefits in this case are clearly outweighed by the harms identified.

78. Accordingly, the proposed development would not accord with the adopted development plan when considered as a whole and there are no material considerations which indicate a decision otherwise than in accordance with it. It would also conflict with significant parts of national planning policy identified, including those principally contained within the Framework.

79. Accordingly, planning permission is refused for the aforesaid reasons.

*C Parker*

INSPECTOR (appointed person for the purposes of s62A and 76D TCPA)

## **Informatives**

- (i) *In determining this application, the Planning Inspectorate, on behalf of the Secretary of State, has worked with the applicant in a positive and proactive manner. In doing so, the Planning Inspectorate worked with the applicant to seek solutions to ensure an efficient and effective determination of the application.*
- (ii) *The Planning Inspectorate, on behalf of the Secretary of State, has taken the environmental information provided - comprising the Environmental Statement and technical appendices - into account during the determination of this application by the appointed person.*
- (iii) *The decision of the appointed person (acting on behalf of the Secretary of State) on an application under section 62A of the Town and Country Planning Act 1990 is final. This means there is no right to appeal. An application to the High Court under s288(1) of the Town and Country Planning Act 1990 is the only way in which the decision made on an application under Section 62A can be challenged. An application must be made within 6 weeks of the date of the decision.*
- (iv) *These notes are provided for guidance only. A person who thinks they may have grounds for challenging this decision is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655) or follow this link: <https://www.gov.uk/courts-tribunals/planning-court>*