APPEAL BY ENVIROMENA PROJECT MANAGEMENT UK LTD

FILLONGLEY SOLAR FARM
NORTH WARWICKSHIRE

OPENING STATEMENT
ON BEHALF OF THE APPELLANT

Introduction

1. It is agreed by all parties at this appeal that there is a climate crisis and an increasingly urgent need to tackle it. That is not surprising given what we have seen in recent months, from wildfires in California to news that 2024 was the world's hottest year (and the first to exceed 1.5C of global warming).[1] The existential risk to human life, nature and the economy posed by climate change has led both the UK Parliament and North Warwickshire Borough Council ("the Council") to declare a climate change emergency.[2]

2. To mitigate that emergency, clean energy needs to be deployed at "*unprecedented*" scale and at pace.[3] The new Government has recently announced that to meet binding net zero targets, it aims for the UK to be entirely powered by clean energy by 2030 – just five years from now.[4] That is a mammoth task.

3. Solar energy also represents an important part of the solution to other concerns facing this country, including providing opportunities for nature restoration, helping to tackle energy insecurity and price rises, and supporting people and businesses by promoting green economic growth.[5]

[1] See Mr Bainbridge's Proof at §7.49
[2] See CD5.9,
[3] CD6.18 Net Zero Strategy, pp. 19, 98 and 102
[4] Clean Power 2030 CD6.3
[5] March 2023, 'Powering Up Britain' CD6.21, April 2022 British Energy Security Strategy CD6.1, Clean Power 2030 CD6.3 p.43-44

4. It is in that context that the development of solar energy has received powerful and consistent support in national policy and guidance in recent years. It is this support that underpins the Appellant's proposal for a new solar farm and associated landscaping and infrastructure ("the Appeal Scheme") at Land South of Meriden Road and North of the M6 Motorway, Fillongley ("the Appeal Site").

5. The Council's Members' single Reason for Refusal ("RfR") raises interrelated points with regard to openness of Green Belt, landscape character and visual appearance. It is clear from other appeal decisions and from policy that some landscape impacts and a Green Belt location are not barriers to solar development per se. The question is whether the impacts can be made acceptable in the case at hand. The Appellant is clear that the residual impacts of this scheme are indeed acceptable. That conclusion accords with the findings of the Council's professional Head of Development Management, who's lengthy and detailed Committee Reports recommended approval, on more than one occasion.[6]

6. This Opening addresses the main issues in following order: Grey Belt; landscape; heritage; best and most versatile ("BMV") land; and finally, the planning balance.

Grey Belt

7. When the Appellant submitted its appeal, it was on the assumption that the Appeal Site was in the Green Belt and that very special circumstances ("VSC") were required. The Appellant's evidence echoes that of the Council's Head of Development Management, that, even in that former policy context, the balance pointed clearly in favour of a consent.

8. However, in December 2024 the new Government published an update to the National Planning Policy Framework ("NPPF") that has changed the policy tests for development in less sensitive areas of the Green Belt, termed "Grey Belt".

9. The definition of Grey Belt is set out within the Glossary to the NPPF. Applying that definition, it is common ground with the Council that the Appeal Site does not contribute strongly to purposes (a), (b), or (d) listed in §143 NPPF.[7] It is also common ground with

[6] CD2.1-2.5
[7] As per Mr Weekes' Proof and the SOCG

the Council that none of the designations (as relevant) identified within footnote 7 would provide a strong reason for refusing development.[8] Accordingly, the Appellant and the Council concur that the Appeal Site falls under the definition of Grey Belt.[9]

10. As such, §155 of the new NPPF is relevant, which states that development in the Grey Belt should not be regarded as "inappropriate" where four criteria are met. Mr Bainbridge's Proof clearly evidences that they are in this case:
    a. the development would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
    b. there is an urgent unmet requirement for new low carbon energy;
    c. the Appeal Scheme is appropriately sited in transport terms, given the limited traffic impacts and the necessity of locating solar farms in rural areas; and
    d. the "Golden Rules" do not apply as this is not a housing scheme.

11. The end conclusion is that the Appeal Site is "Grey Belt", the Appeal Scheme is not "inappropriate", and consequently no harm arises to the Green Belt.

12. If, contrary to this analysis, the Appeal Scheme were nonetheless to be considered inappropriate development in the Green Belt, then the actual impact on the Green Belt should be considered by having regard to both its openness and purposes. Mr Cook's detailed Proof of Evidence explains that any harm would be at the low end, with four out of five Green Belt purposes unaffected and only moderate impacts on openness.

Landscape

13. In assessing the landscape impacts of a solar scheme, it is important to keep in mind their particular nature; such developments are, perhaps uniquely, characterised by a low profile, light footprint, and reversibility.

14. Landscape has been central to the design of the Appeal Scheme, with extensive green infrastructure and landscape mitigation and enhancement proposed to reinforce the character of the local farmed landscape and to provide visual enclosure.[10] This includes

[8] ibid
[9] ibid
[10] Mr Cook's Proof at section 5

new native trees and hedgerows and enhancement of boundary margins and areas underneath solar panels with species-rich grassland.[11] Some impacts are inevitable in developing solar farms, which by necessity are located in rural areas. Yet, Mr Cook also finds benefits to a number of the landscape elements that currently characterise the Appeal Site, due to the extensive proposed tree and hedgerow planting.[12]

15. In terms of the effects on landscape character, both landscape architects agree that the Appeal Site is not a "valued" or designated landscape for the purposes of the NPPF.[13] Both experts have noted that the Site has some qualities as undeveloped countryside, but have also noted detracting elements including the very prominent audible and visual presence of the adjacent M6 motorway. Mr Cook considers the Appeal Site to be of medium value, susceptibility and sensitivity. This combined with a moderate magnitude of change (given the retention and enhancement of green infrastructure combined with the limited physical footprint of the built form) would result in an initial moderate effect, reducing as the landscape proposals establish.[14] Beyond the Appeal Site and its immediate environs, the character of the landscape itself would be materially unaffected.[15]

16. As to visual impacts, Mr Cook finds these would be limited by the Appeal Site's containment – a result of extensive proposed and existing surrounding vegetation (including alongside the Motorway), the undulating topography of the local area, and the low profile of the panels. The Council's description of the slightly higher land on the Site as a 'hill' is an exaggeration, and their reliance on the 'bare earth' ZTV has inevitably led them to overestimate the effects. In reality, the visual impacts are limited for a scheme of this size – as is clear from the screened ZTV provided with Mr Cook's Rebuttal. The main visual impacts would be from within and close to the Site. To mitigate these, extensive new hedgerow planting is proposed, including a new "green lane" for the public right of way on the Site itself.[16]

17. Following decommissioning, other than one DNO substantiation comprising just 0.003% of the Site,[17] all built infrastructure would be removed, and the Appeal Site returned to an

[11] As set out in the Landscape Mitigation Strategy, CD13.4b at Appendix 8
[12] Mr Cook's Proof at section 6
[13] Ms Oxley's Proof at §3.25
[14] As set out in the table appended to the landscape Statement of Common Ground
[15] Mr Cook's Proof at §§4.30-4.31
[16] Mr Cook's §7.41
[17] As explained in Mr Bainbridge's Rebuttal

agricultural condition. However, extensive tree and hedgerow planting and the benefit of 40 years of Biodiversity Net Gain would remain, resulting in a positive legacy.

18. Given the temporary localised impacts arising, and the fact that this is neither a designated nor 'valued' landscape, Mr Bainbridge fairly (reflecting the Committee Report) affords the combined landscape and visual impacts moderate weight in the overall planning balance.

Heritage

19. There is no heritage RfR. It is agreed with the Council that there would be a "low level" of less than substantial harm ("LTSH") to the Scheduled Monument, Conservation Area, Park House (GII), and Fillongley Mount (GII). The Site forms part of the setting that contributes to the overall heritage significance of each of these assets. Yet, as Ms Armstrong will explain, setting is not the most important part of each of these assets' significance, and the Site is not the most important part of each of these assets' settings. The limited harm generally arises through changes in some views at a considerable distance, seen in the context of the motorway and the modern post-war agricultural landscape. Any harm identified would be removed on decommissioning. The Council also considers a "low level" of LTSH would arise to White House Farmhouse (GII) – Ms Armstrong's Proof explains there would be no impact.

20. It is agreed between the Appellant and the Council that the low level harm identified to heritage assets would be outweighed by the public benefits of the Appeal Scheme.[18] Indeed, the Council also finds that the final weight to be afforded to heritage impacts in the overall planning balance is limited.[19]

21. The Rule 6 Party disagrees, and finds harm to a range of additional assets, both designated and allegedly non-designated. However, the report provided to support that case exhibits fundamental flaws in terms of methodology and approach. These will be explored.

22. Finally, it is agreed between all parties that impacts on below ground archaeology within the Site can be adequately addressed by way of planning condition.

[18] SOCG CD12.9
[19] As per CD13.12 – Planning Balance Summary table

Agricultural Land

23. There is no policy requirement to avoid use of BMV for renewable energy. The NPPF at §187(b) simply requires that planning decisions recognise the benefits of BMV land. As regards solar farms specifically, National Policy Statement ("NPS") EN-3 explains that "*land type should not be a predominating factor in determining the suitability of the site location*".[20] Indeed, EN-1 explains that applicants for clean energy schemes "*may choose a site based on nearby available grid export capacity*".[21]

24. As to the local plan, policy LP35 is the primary renewables policy. It states that schemes will be supported subject to a number of criteria being met. Use of BMV is not referenced as a relevant criterion. There is no policy in the plan that prevents use of BMV here.

25. Mr Kernon's evidence sets out a number of factors that justify the use of BMV land in this case:
    a. The solar farm would 'sit on' rather than 'in the' land, and would be removed in 40 years – as such, no BMV would be permanently developed or lost;
    b. Conversion of arable to grassland under solar panels can improve soil health, soil organic carbon, and biodiversity;
    c. Land accommodating panels can still be used while a solar farm is operational for agricultural sheep grazing; and
    d. Natural England, the statutory consultee on BMV, assessed the scheme and did not object (CD3.2).

26. The Rule 6 Party appears to be implying that the Appellant should have assessed alternative sites. If that is what is being suggested, it would be wrong in law. Faced with a similar form of objection in respect of the *Bramley* solar farm, one of very many solar farms that have been consented in recent years on BMV land, the High Court made clear that there is no requirement in national policy or guidance to consider alternative sites when solar is sited on BMV.[22] The pursuit of other sites is simply not relevant here.

[20] CD6.28 at §2.10.29
[21] EN-1 2.10.25
[22] CD7.11 (§§179-180)

Benefits and Balance

27. As to the overall balance, Mr Bainbridge finds that, applying s.38(6) of the Planning and Compulsory Purchase Act 2004, the proposal complies with the statutory development plan read, as it must be, read as a whole. The most important policy in the plan has to be LP35 – the specific renewables policy. Members did not find a conflict with it; it is not referenced in the RfR.

28. As to other material considerations, the parties' respective cases on the weights to benefits and harms have been set out in CD13.12 – Planning Balance Summary table.

29. The parties all agree substantial weight must attract to the clean energy provision of this 40MW solar farm, the equivalent annual electrical needs of approximately 17,100 family homes in England.[23] Successive Governments have consistently provided powerful support for the rapid deployment of solar. There is now an overwhelmingly positive policy context, and an established pressing need for renewable energy generation in the UK.

30. The most up-to-date guidance is the new Government's "Clean Power 2030" Action Plan.[24] To meet the new 2030 target of a system run entirely on clean energy, solar will have to increase from the current 15GW to 45-47GW within just 5 years.[25] That requires "*a once in a generation shift in approach and in the pace of delivery*", with "*unprecedented volumes of clean energy infrastructure projects"* needed.[26]

31. Another important aspect of recent policy is the National Policy Statements ("NPS") EN-1 and EN-3 from January 2024. EN-1 states there is now a "critical national priority" for nationally significant scale low carbon infrastructure, explaining that it is unlikely that consent will be refused for such schemes on the basis of impacts to issues such as landscape, heritage and Green Belt.[27] While this scheme is below 50MW, EN-1 is agreed by all parties

[23] Mr Bainbridge's Proof at §11.8
[24] CD6.3
[25] CD6.2 at p.8, CD6.3 at p.10
[26] CD6.3 at p.3 at p.60
[27] CD6.27 at §§4.2.2-4.2.17

to be a material consideration and shows the direction of travel; the NPPF is likewise clear (168.b) on the valuable contribution that schemes like this one provide.

32. There is also a separate energy security crisis facing this country. This is reflected in documents such as the 2022 British Energy Security Strategy, as well as 2023's Energy Security Plan, which notes that delivering energy security is both "urgent" and of "critical importance".[28]

33. Furthermore, it is now well established that grid connections are a scarce resource in the UK and a major barrier in the transition to net zero, as is clear from recent Government strategies such as the Connections Action Plan.[29] Many schemes face delays of 10 years or more. The Appellant has secured a near term grid connection that would allow this scheme to contribute to rapidly approaching 2030 targets.[30]

34. The wider environmental benefits would include soil regeneration, improvements to air quality, and green infrastructure enhancements. There would also be a very significant biodiversity net gain ("BNG") of 63.23% in habitat units and 25.76% in hedgerow units.[31] The BNG would be far in excess of the 10% statutory requirements (which do not even apply here). The reason there is now a statutory requirement is because, linked to the climate crisis, we are also facing, to use the National Trust's words a "*biodiversity crisis*".[32] Up to a million species could be lost globally in coming decades, more than ever before in human history, with the UK now one of the "*most nature-depleted countries on Earth*".[33]

35. As Mr Bainbridge will explain, another environmental benefit is the Appeal Scheme's good design and use of best available technology, deploying bi-facial panels which significantly increase productivity. Linked to this, as agreed with the Council, the dual use of one area of land for agriculture in the form of sheep grazing as well as renewable energy would be a design benefit.

[28] CD6.21 at p.38
[29] CD6.55 p.9, pg 50. See also March 2023 Energy Security Plan CD6.21, pg 50.
[30] Mr Bainbridge's Proof at §11.28
[31] As agreed in the LPA SOCG CD 12.1 v7
[32] CD6.45 National trust; p.32
[33] IPBES CD6.38, p.4; State of Nature Report (CD6.69)

36. There would also be economic benefits arising, including investment into the green economy, new jobs and business rate contributions. The Appeal Scheme would further allow for the diversification of an agricultural business, at a time when farmers are under increased pressure.

37. The extensive benefits must be weighed against the harms. Policy is clear that there are likely to be some adverse effects arising from renewable development, and these do not make a scheme automatically unacceptable. As detailed above, the Appellant's case is that the impacts comprise some moderate landscape harm and less than substantial harm at the low end of the spectrum to heritage assets – harm which in both respects is time-limited and reversible. If contrary to the Appellant's case on Grey Belt the Appeal Scheme is considered inappropriate in the Green Belt, there would also be substantial weight to the Green Belt in the balance.

38. Mr Bainbridge is clear that taking all these considerations in the round, the balance lies very strongly in favour of a grant of permission, with the benefits clearly outweighing the harms. Even if very special circumstances are required, they are clearly found. Mr Bainbridge's conclusions accord with those of the Council's own professional Head of Development Management, who in the carefully drafted Committee Reports twice recommended approval.[34]

39. Accordingly, in due course, the Inspector will be invited to grant permission, subject to appropriate conditions.

8th April 2025

ODETTE CHALABY

[34] CD3.1 at §10.11.