IN THE MATTER OF LAND SOUTH OF PARK HOUSE FARM, MERIDEN ROAD, FILLONGLEY

OPENING STATEMENT OF THE PARISH COUNCIL

INTRODUCTION

1. At the outset, it is important to note that a feature of this case is the extent to which the appellant has sought to "row back" and repair apparent shortcomings in the evidence base which accompanied the planning application. The original LVA was plainly deficient in important respects. SO is right to draw attention to elementary mistakes including omitting key viewpoints and using an incorrect lens for the photomontages: something which AC appears to accept [Rebuttal para 3.1 and 3.2]. The LVA underplays the impact of the 61H solar farm on the character and appearance of the area. The same is true of the heritage assessment which the appellant has abandoned and replaced with the evidence of HA.

2. The appellant has become preoccupied with a microscopic and pedantic dissection of the Council's RFR. Dozens of pages of proofs and appendices are solely concerned with this forensic task. It is unhelpful and is unlikely to assist the Inspector in determining the planning merits of the appeal (or indeed whether the Council has a sufficiently respectable and arguable case to defeat a costs application). Moreover, the appellant seeks to "go behind" the RFR by alleging that the RFR does not aptly capture or represent the views of Members. This is hopeless and gets the appellant nowhere. The RFR is the RFR. It has been formally adopted by the Council. Imagine the opposite scenario. Suppose the Council tried to "go behind" the RFR by saying that comments made by Members during the discussion of the application were infused with concern about *x* and, although this did not find its way into the RFR, the Council should nonetheless be permitted to run *x* as part of its case. Of course, it would be given short shrift. Any time spent by the appellant arguing over the providence of the RFR will be time wasted.

3. There is a certain irony with the hyper-critical approach adopted by the appellant because it does not have entirely clean hands. Why was there no photomontage to show the impact of the proposal on the PROW (M294), an important sensitive receptor, which runs through the appeal site north/south [GC, 3.47]? This is a remarkable omission which has only been

remedied through the actions of the Parish Council. The appellant's rebuttal proofs are a masterclass in erecting strawmen. It does not help the Inspector for the parties to seek to mischaracterise or caricature the position of the other. The most egregious example is SB's "concern" that my client was accusing Pegasus of having not undertaken a site visit before preparing the landscape evidence [Rebuttal para 3.23]. No fair-minded person could read the GC's observation as an accusation that Pegasus had not visited the site (!) But, it is emblematic of the hyper-critical and aggressive approach of the appellant during the course of this appeal.

4. The appellant's landscape rebuttal introduces a new zone of theoretical visibility (appendix 2). It is not understood why this was not appended to the proof. More troubling still is that the rebuttal, for the first time, criticises the R6's visualisations [paras 3.3-3.6]. This is very late in the day to challenge the methodology of visualisations which were provided to the appellant within its Appeal Statement in November 2024. It is all the more surprising given that AC refers to those visualisations in his proof [para 7.8] but makes no criticism whatsoever. If there was merit in these criticisms, why were they not made in the proof? Why did the appellant hold them back until the rebuttal? It is plainly tactical for the appellant to keep its criticisms of the visualisations up its sleeve and deploy them for the first time 2 weeks before the inquiry opens (6 months after they were served) giving the Parish Council very little time to respond or revert to the consultants who produced them.

ALTERNATIVE SITES AS A MATERIAL CONSIDERATION

5. The appeal site is an entirely unsustainable location for a solar farm. The appellant has not provided any evidence to show that it has considered alternative sites or explained in any meaningful way which it selected this site.

6. It is common ground that a third of the borough lies outside of the GB. There is plenty of room in the borough to have solar farms without encroaching on to the GB. This is not a case where the borough is highly constrained such that it is inevitable or at least likely that GB land will have to be used. Further, it is common ground that over 96% of the appeal site is BMV. Whilst there is no requirement for a sequential test, that does not mean that the absence of alternative sites is not a material consideration. It is trite to observe that where there are clear planning objections to development upon a particular site then "it may well be relevant and indeed necessary" to consider whether there is a more appropriate site elsewhere: Trusthouse Forte Hotels Ltd v Secretary of State for the Environment (1986) 53 P & CR 293,299–300. The need to consider alternative sites will particularly arise where the proposed development, though desirable in itself, involves on the site proposed such conspicuous adverse effects that the possibility of an alternative site lacking such drawbacks necessarily itself becomes, in the mind of a reasonable local authority, a relevant

planning consideration upon the application in question: R (Jones) v North Warwickshire Borough Council [2001] 2 P LR 59, paras 22–30. This is a planning judgment for the Inspector (the Parish Council does not say that the Inspector is obliged to consider alternative sites but it can: Bramley Solar Farm Residents' Group v SSLUCH [2023] EWHC 2842).

7. Where it is agreed that there is harm to the GB, it is common for an Alternative Site Assessment (ASA) to be undertaken as illustrated by recent appeals [CD7.34 para 31; CD7.36 para 31 and CD7.37 para 78]. The appellant clouds the issue by saying that there is no requirement in the caselaw for a ASA. We have never said that there was. But given the particular sensitivities of the site (HA herself agrees overall that moderate harm is caused to 4 designated heritage assets), this is a case where a ASA ought to have been undertaken. The reason why it was not is obvious. The appellant knew or suspected that it would identify alternative sites which would harm its case at this inquiry. If it was confident that the ASA would not throw up any alternative sites which brought about the same benefits but with less harm, why did it not produce a ASA as is routinely done for appeals for development of this scale?

8. The Parish Council remains convinced that the sheer size of the appeal scheme, being many times larger than the village of Fillongley itself, would represent an incongruent and harmful addition to this rural environment.

HERITAGE IMPACT

9. Everyone now recognises that the original heritage assessment, which accompanied the planning application, was flawed as it underestimated the extent of the impact of the proposal on designated heritage assets. This is unfortunate because the Parish Council suspects that this under-appreciation of the heritage impact, at the very start of the process, led the Council to under-estimate the heritage impact. Had HA's assessment been before the Council which concludes that moderate harm is caused to the Scheduled Ringwork Castle, Fillongley CA, Park House Farm and Fillongley Mount it may have been that the Council would have given more weight to these impacts when it came to assess the overall acceptability of the proposal. We will never know. What we do know, for sure, is that had the Council accepted what the applicant said in its heritage assessment it would have fallen into error. Thankfully, the Council did not.

10. Having realised that its heritage assessment could not be convincingly relied upon, the appellant went to a different expert. In fact, putting to one's side some of the disagreements

about detail, the headline is that HA's overall assessment is closer to CT's than the appellant's own heritage assessment. It is common ground:

a) The appeal will cause material harm (in the less than substantial category) to the significance of the Scheduled Ringwood Castle, Fillongley CA, Park House Farm and Fillongley Mount.
b) The harm is not minor (on the appellant's own assessment it is 'moderate'; we say 'significant').

11. The key difference between the parties is what *weight* one gives the harm and whether this is outweighed by the benefits. There are then other heritage assets (such as St Marys and All Saints Church and non-designated assets) where the appellant says that the appeal has a neutral effect and we say it causes some harm. All of that will explored in the evidence tomorrow.

CONCLUSION

12. In due course, the Inspector will be invited to dismiss the appeal.

JACK SMYTH

No5 CHAMBERS

8 April 2025