APPEAL BY ENVIROMENA PROJECT MANAGEMENT UK LTD
FILLONGLEY SOLAR FARM

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

XIC = Examination in Chief, XX = Cross-Examination, Re-X = Re-Examination

Introduction

1. There is no dispute with North Warwickshire Borough Council ("the Council") or Fillongley Parish Council ("the Rule 6 Party") that there is a climate emergency, and catastrophic human and environmental consequence from failing to tackle it.[1] Recent examples include flash floods in Spain and wildfires in California. 2024 was the world's hottest year and the first to exceed 1.5C of global warming.[2]

2. Low carbon energy needs to be deployed at *"unprecedented"* scale and pace.[3] The Government's ambition is for the UK to be entirely powered by clean energy by 2030 – in just 5 years. Meeting that challenge will require "*bold action*" and a "*once in a generation shift*" in approach.[4] The planning system "*needs to quickly change*", and there is "*particular urgency to accelerate the planning process*" for clean energy schemes.[5]

3. The need for solar comes not only from the threat to life on earth posed by climate change, but also from the risks posed by domestic energy insecurity. Global geopolitical unrest – including wars in Ukraine and the Middle East – is driving up energy prices and having all too real impacts on the cost of living at home.

4. The ability of solar to deploy rapidly means it has a particularly vital role to play. However, the quantum that is needed combined with the barriers to delivery presents a "*colossal challenge*".[6] Where grid connections exist, it is essential to seize the opportunity.

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[1] Agreed Ms Collins in XX. While the questions were not repeated to Mr Weekes he accepts substantial weight to clean energy and significant weight to the climate emergency. As per Energy White Paper CD6.5 at pp.9-10 of the PDF; Net zero strategy CD6.18 p.14. Indeed, in 2019 both the UK Parliament and the Council declared climate emergencies.
[2] See Mr Bainbridge's Proof at §7.49
[3] CD6.18 Net Zero Strategy, pp. 19, 98 and 102
[4] CD6.2 NESO Clean Power at p.3
[5] CD6.3 Government Clean Power 2030 at pp.49-50
[6] National Audit Office CD6.67 at p8/67, agreed Ms Collins in XX

5. To achieve clean power by 2030, 115MW of solar – so three x the Appeal Scheme – need to be delivered every week for the next five years[7]. Current delivery rates are very significantly off track. In that context, the suggestion by the Rule 6 (but notably not the Council) that other potential sites in the Borough or even beyond might represent an "alternative" is wrong. Any other sites (not that any have been identified) is required too.

Matters of agreement

6. There is now a marked degree of agreement between the Main Parties:
    a. All agree the Site comprises "Grey Belt".[8]
    b. It is agreed with the Council that the Appeal Scheme is not "inappropriate" applying §155 NPPF.[9] It is agreed with the Rule 6 Party that the Appeal Scheme passes §155 if the policy is read "strictly" or "literally".[10]
    c. The two landscape architects[11] agree the Site is not a "valued" landscape and that the residual impacts post-mitigation are "moderate".
    d. All agree that heritage impacts do not amount to a standalone "reason for refusal" under the NPPF; applying the balance of §215 the less than substantial harms are outweighed by the public benefits.[12]
    e. All agree there is no requirement to consider alternative sites, and no party has put forward any genuine alternative.[13]
    f. There is no harm to the land quality and a benefit to the soils.[14]
    g. None of the main parties suggest the Scheme should be refused based on any other technical constraint – be that transport; ecology; flooding; drainage; archaeology; noise and trees; ground conditions; air quality and dust; or glint and glare.

7. As a result, the issues between the parties are narrow. That reflects the broad acceptability of the Appeal Scheme in relation to all issues which are no longer in dispute.

Grey Belt

[7] Agreed Ms Collins in XX:
- 45GW 2030 cf. 15GW current capacity (per NESO)
- 5 years, 30 GW = 6 GW / year
- 6 GW/ 52 weeks = 115 MW / week = 3x appeal scheme

[8] Agreed Ms Collins in XX
[9] Agreed Mr Weekes in XX
[10] Agreed Ms Collins in XX
[11] the Rule 6 Party did not put forward a landscape witness
[12] Agreed Ms Collins in XX
[13] Agreed Ms Collins in XX
[14] Agreed Ms Collins in XX

8. When the Committee Members were advised by Officers that the Scheme should be approved, it was on the basis that the Appeal Site was in the Green Belt and that very special circumstances were required and shown. However, the new Grey Belt policy in December represented what all three planning witnesses described as a "*paradigm shift*" in approach.[15]

9. It is now common ground that the proposal meets the Grey Belt definition: the Appeal Site does not contribute strongly to purposes (a), (b), or (d), and the application of the policies relating to the areas or assets in footnote 7 do not provide a strong reason for refusal.[16]

10. While there would be impacts on designated heritage assets, that does not suffice to disapply the Grey Belt definition. As the harm identified is "less than substantial", the relevant heritage policies in the NPPF are §212, §213 and §215. They require "*clear and convincing justification*" (§213) and for the heritage impacts to be weighed against the benefits (§215). If the public benefits do outweigh the heritage harm, then the policies in the NPPF do not give rise to a reason for refusing development.[17]

11. In *Pugh v Secretary of State* (CD7.28),[18] the High Court held that where the decision-maker works through the sequence for dealing with proposals which impact upon heritage assets in the context of §212-215 of the NPPF and finds that any harm to significance is outweighed by public benefits, then the "clear and convincing justification" referred to at §213 of the NPPF is in place and approval is justified:

> "*53. Mr Harwood points out that paragraph 132 uses the phrase "clear and convincing justification." It might be thought difficult to be convincing without being clear, but it seems to me that the author of NPPF is saying no more than that if harm would be caused, then the case must be made for permitting the development in question, and that the sequential test in paragraphs 132-4 [§§212-215] in 2024 NPPF] sets out how that is to be done. So there must be adherence to the approach set out, which is designed to afford importance in the balance to designated heritage assets according to the degree of harm. If that is done with clarity then the test is passed, and approval following paragraph 134 is justified*"

12. Thus, unless the heritage balance comes out against the Scheme, there is no reason for refusal under the NPPF (let alone a "strong" reason for refusal which appears to require more).[19] It is for that reason that once Ms Collins in XX had conceded that even on Ms

[15] Agreed Ms Collins in XX, Mr Weekes in XX, Mr Bainbridge in XIC
[16] This was agreed with the Council prior to the inquiry via the SOCG and Mr Weekes' Proof – it was also agreed in XX with Ms Collins
[17] Agreed Ms Armstrong in XX
[18] As identified in Ms Armstrong's Appendices at p.58
[19] It is also important to note, as put to Ms Collins, that the previous wording of the NPPF in relation to §11(d) referred to "clear" reason for refusal. The December 2024 NPPF changed the wording to "strong" reason for refusal in §11(d). Ms Collins accepted that the word 'strong' has been included intentionally, and that a 'strong' reason for refusal is more compelling than just a clear RfR

Tuck's evidence the heritage balance comes out in favour of a consent that she also conceded the Appeal Site meets the Grey Belt definition.

13. That does not mean that there is no harm given to such impacts in the final balance. However, it means there is not a "reason for refusal" in Grey Belt terms. As such, the Site is agreed to be Grey Belt and §155 NPPF becomes relevant. No party has ever suggested that the Appeal Scheme falls foul of any of §155(b)-(d).[20] The question posed by §155(a) is whether the development would "***fundamentally undermine the purposes (taken together)*** *of the remaining Green Belt* ***across the area of the plan***".

14. Further, clarification has been provided in the PPG. This explains that in assessing §155(a) what should be considered is "*whether, or the extent to which, the release or development of Green Belt Land would affect* ***the ability of all the remaining Green Belt across the area of the plan from serving all five of the Green Belt purposes in a meaningful way***".[21]

15. It is now common ground with the Council that §155(a) is met and the Appeal Scheme is not "inappropriate".[22] It was agreed with Ms Collins at the end of her XX that §155(a) is met on a "strict" or "literal" reading.[23] It is not clear how else the policy could be read.

16. Mr Bainbridge explained that the correct approach is: taking all five purposes together, not one purpose in isolation; and looking outwards from the Site across the whole plan area.
    a. In terms of Green Belt purposes, it is agreed with the Council that 4/5, and with the Rule 6 Party that 3/5, would be unaffected by the Scheme. [24] Even taking the Site on its own, the Scheme would not undermine all five purposes **taken together**.
    b. In terms of the impact on all five purposes taken together **across the area of the plan**, the Site comprises just 0.36% of North Warwickshire's Green Belt area.[25] The Scheme would not affect the ability of the remaining 99.64% of the plan area Green Belt from serving all five purposes taken together in a meaningful way. The cities would not sprawl, the towns would not merge, there would remain large tracts of undeveloped countryside, the setting of historic towns would be protected. The Green Belt in other locations would still be able to prevent the sprawl of Coventry

[20] This was agreed with the Council prior to the inquiry via the SOCG and Mr Weekes' Proof – it was also clarified in XX with Ms Collins
[21] CD6.70 – see §§008-009
[22] Agreed Mr Weekes in XX
[23] Ms Collins in XX
[24] LPA Hearing SOCG CD12.10 at "matters of agreement" point 6, Ms Collins in XX
[25] Mr Bainbridge's Proof at §7.37

and Birmingham, and there would still be extensive open tracks of countryside.[26] Other strongly performing parts of the Green Belt could still perform strongly.

c. There would be some conflict with purpose (c), to assist in safeguarding the countryside from encroachment (albeit a number of factors mitigate the impact – see §24 below). However, the definition of Grey Belt expressly excludes encroachment and invites the purposes to be "taken together". As Mr Weekes accepted, in every case of development in open countryside in Green Belt there will be encroachment. The policy would have no import if encroachment alone prevented §155(a) from being passed. Similar considerations arise with respect to purpose (e).

17. Ms Collins did not articulate what an alternative reading could be. There is no justification in the consultation materials or anywhere else for suggesting the clear meaning should be displaced. Quite the opposite; the Government wants development, including clean energy, to come forward in the Green Belt. The definition of Grey Belt differs to what was originally proposed because it expressly excludes purposes (c) and (e): the intention is not for impacts on (c) and (e) taken alone to prevent schemes coming forwards. [27]

18. The *Kenilworth* appeal was decided before the PPG clarified the position.[28] It was a 1 day hearing covering a wide range of matters, very shortly after the NPPF change. The Inspector did not have the benefit of the more detailed consideration provided via the inquiry process some months on, and it is not clear what arguments were put. The conclusion on §155(a) at §11 is short. §11 does not explain why encroachment on that one site would fundamentally undermine the ability of **all the remaining Green Belt across the plan area** to protect from encroachment. Further, §11 does not explain why **all five purposes taken together** would be fundamentally undermined with only harm to one. The Inspector granted permission, finding very special circumstances. There was no legal challenge.

19. The only relevant solar decision we have post-PPG is *Burcot*, where Inspector Partington accepted that a 57ha solar farm on 100% BMV greenfield land would meet the tests of §155(a).[29] Two other battery energy storage appeals have reached the same result.[30]

[26] Agreed Ms Collins in XX and Mr Weekes in XX
[27] CD6.52 PDF p.27, agreed Ms Collins in XX
[28] CD7.80
[29] (CD7.46 *Burcot*)
[30] (*Walsall* CD7.47 §§19-40, *Carrington* CD7.37).

20. The LUC Study does not offer much assistance.[31] The Site is within Broad Area 10, a large area the conclusions in respect of which cannot be read over.[32] The LUC study conflicts with the approach of national policy to Green Belt, in the sense that it includes "villages" (including Fillongley) under the consideration of purposes (a) and (b). If there was any doubt previously that urban sprawl does not relate to villages and that towns means "towns", the matter has been settled by the recent updates to the PPG.[33]

21. It is fair to say that it is hard at the moment to imagine many individual schemes failing the test of §155(a). However, that is the point – the purpose of the changes to Green Belt are to enable development. It is a "paradigm shift".[34] It does not mean *carte blanche* for any development on the Green Belt. That is because there are also much stricter criteria that have to be met in addition to §155(a). First, there is the Glossary definition (not strongly contributing to purposes a/b/d AND no footnote 7 policies being a strong reason). For other types of development, such as commercial or housing, it may be harder to meet §155(b) (clear need), §155(c) (transport sustainability), and §155(d) (Golden Rules).[35] While few schemes will breach §155(a), for §155(a) to be the only test remaining all those other factors have to first be complied with. It is a final hurdle. It does not need to be a high bar.

22. In short, the development would utilise Grey Belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan. As such, §155 is met, and this development is not "inappropriate".

If still "inappropriate"

23. If despite the common ground reached at the close of the Inquiry the Appeal Scheme were still to be considered inappropriate, the impact would have to be assessed having regard to openness and purposes. Ms Collins affords substantial harm to the Green Belt impacts as a whole – in line with the *Sefton* case.[36] The impact would be at the lower end:

24. Four of five of the purposes would be unaffected. All agree there is no impact on a/b/d:

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[31] CD5.3 Agreed Ms Collins in XX
[32] CD5.3 Agreed Ms Collins in XX
[33] As agreed Ms Collins in XX. See Broad Area 10 at §4.17 which refers to Fillongley in relation to purposes (a) and (b). PPG CD6.70 makes very clear villages are not to be considered for purposes (a) and (b)
[34] Agreed Ms Collins in XX and Mr Weekes in XX
[35] As agreed Mr Weekes in XX
[36] No party suggested that separate weight should attach to the different elements of Green Belt harm (ie encroachment/openness). Mr Bainbridge's Rebuttal refers to the ***Sefton*** High Court at §34 (CD7.93), which notes that the NPPF paragraphs "do not, however, require a particular mathematical exercise nor do they require substantial weight to be allocated to each element of harm as a mathematical exercise with each tranche of substantial weight then to be added to a balance"

a. As to (c), it is agreed encroachment is not a binary matter and involves consideration of the baseline countryside character and the nature of the scheme.[37] Ms Oxley agreed it is relevant to take into account that: the scheme would be relatively low level and broken up through hedgerows and field boundaries; the proposed landscaping would have some beneficial effects in terms of reinforcing rural character; the panels would "*sit lightly*" on the land; and the land beneath and between the panels would revert to pasture.[38] The area of countryside to which the Scheme would be introduced is not "deeply rural" and contains urbanising features, including the M6 motorway, houses, and other roads.[39] Ms Oxley agreed that for all these reasons solar is very different from traditional energy infrastructure like power stations, with a much lower impact.[40] Mr Cook explained that with the solar farm in place the area would still be understood countryside albeit with a solar farm within it.[41] That was also the approach of the Inspector in *Bishop's Itchington*.[42] Together, these factors mean effects on encroachment would be at the lower end.[43]

b. In terms of purpose (e), due to a combination of the scale of the need required ("unprecedented" / "once in a generation shift" / 115MW a week), the size of sites required to deliver on this need, and the locational constraints provided by grid, it has been repeatedly recognised that solar farms will need to be located in rural areas.[44] Ms Collins accepted that delivering the solar required to reach net zero will require not just rooftop solar and PDL sites but also greenfield sites; the Rule 6 Party does not take an in principle objection to the rural area.[45] On that basis, there can be no conflict with purpose (e).

25. As to openness, the PPG identifies three particularly relevant factors: visual and spatial; duration and remediability; and activity generated.[46] It is common ground that openness

[37] Agreed Ms Oxley in XX
[38] Ms Oxley in XX
[39] Agreed Ms Oxley in XX
[40] Agreed Ms Oxley in XX
[41] Mr Cook in XIC/Re-X.
[42] CD7.17 at §11: "*That said, it is inevitable that an array of solar panels covering almost 55Ha of the appeal site would have an impact on the existing character. Rather than being a typical if unremarkable tract of countryside the character would change to an area of countryside with a solar farm within it. ....*"
[43] Ms Collins on behalf of the Rule 6 party accepted in XX that all the factors agreed by Ms Oxley in the above paragraph are indeed relevant when considering the extent of encroachment, expressly accepting that because the field pattern would remain and the land converted to pasture, the area would still be understood as a rural one, containing a solar farm
[44] In the *Halse Road* appeal, Inspector Robins noted that the need for a large area of land coupled with the "*unavoidable and very strong locational driver of being able to connect to the national grid…. invariably drives such schemes into rural areas*" CD7.43, paragraph 77. See similar comments by Inspector Woolcock in Fobbing CD7.4 at §21. EN-3 explains at §2.10.36 that "*potential solar farm sites are largely in rural areas*".
[45] Ms Collins in XX
[46] CD6.70 at §013

relates to the presence or absence of built form.[47] While new planting can result in a landscape becoming more enclosed in terms of character or views, it would not impact Green Belt openness.[48]

a. First, visual and spatial openness. Visual impacts are addressed at §§37-41 below. In terms of spatial openness, while the Site would extend over a 61ha area, the panels are to some degree permeable in the sense that one can see between and underneath them; the legibility of the field structure would remain; and the panels would have a limited physical footprint on the ground, with land managed as pasture between them and wide field margins.[49] Ms Oxley agreed those matters reduce the harm to compared to other built development like commercial warehouses or housing.[50]
b. Second, duration and remediability, taking into account any provisions to return land to its original state. The implication is that a time-limited development which reinstates the land at the end of the period reduces the harm, as held at other appeals.[51] While 40 years may be a long time, it is not permanent, and the PPG expressly refers to land remediability. A condition would secure the removal of all built development after 40 years other than one DNO substation, comprising just 0.003% of the site.[52]
c. Thirdly, the PPG refers to the degree of activity, such as traffic, likely to be generated. This would be limited: post-construction there would be only infrequent, low intensity maintenance visits.[53] This further limits impacts on openness.[54]
d. In light of all these considerations, Mr Cook concludes that the overall harm to openness would be a local moderate adverse effect. That accords with the conclusions of the Committee Report.[55]

Landscape

26. Landscape has been central to the design, with significant green infrastructure proposed to be retained and enhanced to reinforce character and provide additional enclosure – including tree and hedgerow planting, enhancement of boundary margins, and areas underneath panels proposed as species rich grassland.

[47] Mr Cook's Proof at §3.2, Agreed Ms Oxley in XX
[48] Mr Cook's Proof at §3.2, Agreed Ms Oxley in XX; cf. Mr Weekes' §6.63 and Ms Collins' §3.16
[49] Ms Oxley in XX --- this accords with the approach taken by the Inspector in the Harlow Road solar farm Green Belt appeal CD7.2 at §§12-13
[50] Ms Oxley in XX
[51] Agreed Ms Oxley in XX. Honiley Road decision CD 7.29 at DL14; Chelmsford CD7.8 at §§13-14; Rayleigh CD7.1 at §§25-27
[52] Mr Bainbridge's Rebuttal at §2.16
[53] Agreed Ms Oxley in XX
[54] Agreed Ms Oxley in XX
[55] OR ref CD2.2 §4.3

27. The Scheme has been designed iteratively with the Borough Council. The changes made during the application stage to respond to feedback are detailed in the Committee Reports. The March 2024 Report concluded that the design amendments "*address[ed] the key components of the harm*".[56] Further mitigation was put forward in summer 2024.[57]

28. The proposed landscape influences the witnesses assessment of character impacts, as set out in the SOCG. The first step is to consider the elements that make up the character of the Site: here there would be positive effects on trees, hedgerows, the field pattern, and water features.[58] Ms Oxley did not comment on water features. There would be negligible impacts on topography. While there would be an inevitable change to land cover, the land would retain an agricultural function, converted to pasture with solar superimposed above.

29. The Appeal Site is not located within any international, national, or local landscape designation. It is not a "valued" landscape for the purposes of the NPPF. It receives the lowest level of landscape protection under policy as "ordinary countryside".[59] Not to say that being a valued landscape would prohibit solar coming forwards; such schemes have been consented in recent years in light of the urgency of the need.[60]

30. It is common ground between Mr Cook and Ms Oxley that the value of the Site and surrounding area is medium. The location is neither deeply rural, isolated, nor wild.[61] Tranquillity is substantially compromised, with the notable noise of the traffic from the motorway, in combination with views of the passing vehicles.[62]

31. Mr Cook considers the susceptibility to the specific form of development proposed is likewise medium. What is proposed is a relatively passive form of development, with limited height and retention and enhancement of green infrastructure. The fields would still be legible as countryside. The panels would "sit lightly" on the land.[63]

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[56] (see CD2.2 at §1.2 and §4.11 in particular)
[57] As explained in the July 2024 Committee Report – so CD2.3 at §2.11
[58] See the detailed analysis in section 6 of Mr Cook's Proof and also Ms Oxley's summary table 5.1
[59] Ms Oxley agreed in XX the Appeal Site is not "valued" but is "ordinary countryside"
[60] Telford and Wellington decisions CD7.44 (DL15) / CD7.33 (DL17, DL21)
[61] Agreed Ms Oxley in XX
[62] Mr Cook in XX, Mr Cook's Proof at §4.11 – at Appendix 6 he has provided the CPRE's tranquillity map which shows the appeal site as not tranquil
[63] Agreed Ms Oxley in XX, as Inspector Baird found in *Halloughton* CD7.12 para 18 who said "Apart from the proposed permanent electricity substation, the solar panels and associated infrastructure, would, for the wont of a better phrase, sit lightly on the affected fields, with no material change to topography", see also Bramley – CD7.15 at §27 which said the panels "would not sit heavily upon the land".

32. Ms Oxley agrees that the local Landscape Character Area (LCA 7) would have medium susceptibility but has elevated the susceptibility of the Site itself to medium-high on the basis of the topography. However, as Mr Cook explained, the topography is not exceptional but reflective of the wider local vale. Given the Site lies immediately next to the M6, one might expect its susceptibility to reduce compared with the wider area. In other directions there are local B-roads, the settlement of Fillongley, and houses new and old.

33. The magnitude of change is agreed to be moderate.

34. Mr Cook finds a moderate effect on the Site and its environs at y1[64], with the potential for this to lessen as the landscaping establishes. At y1, Ms Oxley finds a moderate/high landscape character effect on the Site and environs in which it can be experienced (this cannot equate to the bare earth ZTV – the development could not be experienced from many areas coloured in on that, such as to the south). Importantly, Ms Oxley acknowledges the **residual effect at y15 post-mitigation would be moderate**. These are the effects that would endure for the majority of the development. In reality, the effect would reduce well before y15. Mr Cook explained that new hedgerows would typically be planted as transplants or whips, going in at 1-1.5m and putting on 0.5m/year in growth, attaining a height of 2.5m in a relatively short period of time.[65] Hedgerows could be planted in triple staggered rows for density – the details are left to work out in the LEMP.[66]

35. Both Ms Oxley and Mr Cook agreed **negligible effects** on the wider local, regional and national landscape character areas. There would be no physical changes to landscape character beyond the Site itself – such as to watercourses or trees. There would be no experience of the Appeal Site beyond the actual visual envelope (it is a quiet development, that does not emit noise or smell, for example).

36. There would also be some landscape benefits arising. The Site historically exhibited a more intricate field pattern but this has been lost with modern farm management (it now comprises "very large irregular post-war fields"), such that the compartmentalisation of the Site and provision of greater enclosure would be beneficial.[67] Likewise, tree and hedgerow

[64] (a smaller area than Ms Oxley's 5-6km which was based on the bare earth ZTV)
[65] Mr Cook XX Borough Council. See Ms Oxley's Proof at §1.32 – Mr Cook explained that, as a rule of thumb, hedges can put on about half a metre of growth a year
[66] Mr Cook XX Borough Council
[67] See the historic map at Appendix 7 to Mr Cook's proof. As agreed by Ms Oxley in XX – see her Table 3.1. See Historic Landscape Characterisation survey by Warwickshire County Council CD5.15 p.250 and p.81.

planting are supported by the published character assessments.[68] As is the conversion from arable to pasture.[69] There would be an agreed positive long-term legacy.

37. As to visual impacts, none of the views affected are protected in the local plan or any other document. The Council only ever made one real point, which was to repeatedly refer to the area's topography. Mr Cook explained that the topography actually provides containment. Visual impacts to the south and north are limited due to a combination of the topography and vegetation.[70] To the east and west, while the topography initially rises it then falls – and once it starts to fall away the Appeal Scheme is quickly lost from view. There would be no opportunity to see the full development from any one location.[71]

38. The bare earth ZTV, which Ms Oxley relied on, does not account for screening effects of intervening vegetation or buildings, nor for the proposed mitigation planting, and even where it is shaded yellow it might be that only a very small amount of the Scheme could be glimpsed.[72] Even in winter, the branch structure of trees would mask visibility, with panels in a recessive dark colour behind.[73]

39. Even on Ms Oxley's case which relied on the bare earth ZTV, instances of visibility are effectively contained to a 2x3 km square (with the Site comprising 1x1km within that).[74] Part of the reason the visibility does not extend further, notwithstanding the ridge, is the low-lying nature of the development (2.3m, cf. for example houses at 8m+ or turbines). The other reason is the containment provided by the wider topography and vegetation.

40. Within the Site, footpath users would initially experience high effects. However, these would reduce, as mitigation is proposed in the form of a wide "green lane", extending in some areas to almost 30m wide, with hedgerows either side.[75] There would not be new hardstanding on this lane. It is agreed that mitigation planting would, over time, reduce impacts on users of the Coventry Way to the east.[76] While the planting would have less effect the further one moves away, at a greater distance the Site would be seen in a

[68] As agreed by Ms Oxley in XX – see her Table 3.1 p.41 and her §13.24. See:
NCA CD6.14 Strategic Environmental Opportunities on. p.3
LCA 7 CD5.7 on p.30
[69] Agreed Ms Oxley in XX
[70] Ms Oxley in XX. From Tippers Hill further north the Scheme would be barely discernible due to distance, intervening vegetation, topography, and the small portion of this wide expansive view which the Site could occupy (as agreed Ms Oxley in XX – her Proof explains that views are not likely to be a concern from such that long distance (§3.16))
[71] As Mr Cook explained XX Borough Council
[72] Agreed Ms Oxley in XX – e.g. Tippers Hill is shaded yellow but there is no concern about those views
[73] Mr Cook XX Borough Council
[74] Ms Oxley's proof refers to a 5-6km square
[75] Mr Cook in XIC
[76] See Ms Oxley's Proof at §7.45

panorama, with a wide arc of view not channelled towards the development.[77] The Coventry way is a 40-mile circular long-distance walk which extends around Coventry and passes close to many elements of built infrastructure including energy and the M6.[78] From the west, where there are views from more distant locations, one would similarly see the Scheme in a wider valley context and so the overall magnitude of change would be lower.[79] While Ms Oxley referred to some residential properties, she also acknowledged that there is no "right to a view" and that the amenity threshold is not reached.[80]

41. Notwithstanding the topography, Ms Oxley agrees with Mr Cook that by y15 **no visual impacts would be above "moderate"**.[81] These are the enduring residual effects. In many instances the effects that Ms Oxley identifies reduce from y1 to y15, which means that despite her concerns about the undulating land the mitigation is anticipated to be effective. The word "moderate" is in the middle – not at the upper end. There are no residual major effects. That reflects the suitability of the Site for the type of scheme proposed.

42. There is no requirement in policy to screen solar developments entirely (nor to site them on entirely flat land). That is not the test. Quite the opposite; EN-1 expressly recognises that "*All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites*".[82] The energy we need cannot be delivered without some impacts.[83] To use the words of the Head of Development Control:[84]

> "*… it is not the intention of the landscaping to completely disguise or screen the site, that's not the purpose of mitigation, that will not be achieved and in fact that hasn't been achieved on any of the other sites that we've looked at in the Borough, its to whether or not the landscaping would mitigate it to a degree that the harm would be acceptable and that's what the policy says…* "

43. Finally, while the witnesses have assumed visual impacts to be adverse, people have different reactions to change and some will feel positively about seeing renewable energy in the landscape. See, for example:

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[77] Mr Cook XX Borough Council
[78] Agreed Ms Oxley in XX
[79] Agreed Ms Oxley in XX
[80] There is no "right to a view" – the planning system is interested in the "public interest" -- and the residential amenity threshold is explained within LI TGN on RVAA CD6.10 §1.5 §1.6 §2.1 §2.2 §4.14 §4.19 §4.25
[81] When this was pointed out, Ms Oxley suggested that "moderate" effects would be significant in EIA terms. This is not an EIA scheme. Nonetheless, that was a surprising suggestion and not one justified in her written evidence or methodology. Mr Cook's methodology (supplied back in November - §5.2 in Appendix 12 CD13.4b) clearly explains that only major effects are significant in EIA terms, and Ms Oxley offered no criticism of that methodology nor an alternative approach in her written evidence
[82] CD6.27 EN-1 5.10.13
[83] Ms Oxley in XX --- see Halloughton CD7.12 at §11
[84] CD9.1 Appellant SOC Appendix 1 transcript March 2024 committee meeting p.14/18 words of PO Mr Brown = Jeff Brown, Head of Development Control at the Council

a. Cllr Hobley in the July Committee: "*Just one thing about visual impact, ... as a person in my community, the visual impact is positive as well. You know you can see, if you're driving past, this is Fillongley, this is what we're doing for renewable energy, that's something to be proud of…*"[85]
b. *Bishop's Itchington* appeal: "*The visual impact here would be high and likely to be adverse. But I disagree with the Council's suggestion that the response of users of the lanes and footpaths would inevitably be "what a shame". There are many who would no doubt welcome the presence of measures designed to deliver 'green' energy*."[86]
c. Those surveyed for the Fillongley Neighbourhood Plan indicated that they want "*[p]olicies to encourage sustainable development and renewable energy*."[87]

44. At the end of its 40-year operational lifespan, the Appeal Site would be decommissioned with all built structures removed other than one DNO substation[88]. At that stage, the planting would have matured and would remain, resulting in an **agreed beneficial legacy**.[89]

45. A great deal of time in XX of Mr Cook was spent fixated on the photomontages. These were produced not by Pegasus, not even by FPCR, but by another consultancy back in 2023 for the purpose of a Committee site visit.[90] The viewpoints were suggested by the Council. They are not relied on by Mr Cook and do not reflect the later landscaping. Mr Cook explained that, in his wide experience of solar appeals, it is common for no photomontages to be provided at all: none are necessary.[91] The Rule 6 photomontages do not show the landscape growth properly.[92] The Council produced no photomontages and never requested any additional ones. Neither landscape witness suggested they had insufficient information to make suitably informed judgments.

46. The March 2024 Committee Report found the impacts on landscape character and for footpath users to be "moderate" (with minor impacts for road users).[93] One year on, both Ms Oxley and Mr Cook reach very similar conclusions.

Heritage

[85] CD9.1 Appendix 1 p.11/15 for July Committee Transcript (second of the two)
[86] CD7.17 at §16
[87] CD4.2 FNP at §2.2.9
[88] As explained in Mr Bainbridge's Rebuttal comprising just 0.003% of the Site
[89] Agreed Ms Oxley in XX
[90] As Mr Cook explained in XIC
[91] Mr Cook XX Rule 6
[92] Mr Cook XX Rule 6
[93] CD2.2 at §4.11 and §4.19

47. In XX, Ms Collins conceded that even taking Ms Tuck's evidence at its highest, the public benefits would outweigh the heritage harm. Thus, it is now common ground that the balance in §215 NPPF is met – the Council was correct not to raise a heritage reason for refusal. The remaining differences between the parties in terms of the assessment go to weight.

48. The Council and the Appellant are aligned on the impacts. Per the heritage SOCG, (CD12.9) both find low level less than substantial harm ("LTSH") to four assets: the Scheduled Ancient Monument ("SM"); the Conservation Area ("CA"); Park House Farm; and Fillongley Mount. The Council also finds low level LTSH to White House Farmhouse. Both agree there are no impacts to non-designated heritage assets ("NDHAs").

49. Ms Tuck is an outlier. She considers the harm to the SM and CA would be at the upper end of LTSH – approaching substantial harm, akin to near total destruction. Ms Tuck accepted that substantial harm is set at a high bar, such that a good deal (or all) of the significance of a designated heritage asset would have to be removed for it to be reached.[94] As such, those are not reasonable conclusions to draw.

50. In terms of the correct approach to setting and significance, it is agreed that:[95]
    a. Significance refers to the totality of elements that make up the heritage interest of an asset, and these elements will contribute differently and to different degrees. Setting is just one component part;
    b. Some parts of an asset's setting may not contribute to its significance at all;
    c. Not all parts of the setting will be equally sensitive to change, and a change in the setting does not automatically equate with harm to significance;
    d. To understand if change is harmful, we first need to understand what contributes to the significance as a whole and to what extent ("*what matters and why*")[96] – including the specific contribution made by the development site;
    e. It is wrong to assume that visibility results in harm;[97]
    f. Where the impact is on the setting, it is only the part of the significance derived from setting that is affected. All the significance embodied in the asset itself would remain intact. That totality is relevant to assessing the level of harm (*Summerskill House* appeal)[98];

[94] As per CD7.25 --- §12.49
[95] As agreed in XX with Ms Tuck
[96] GPA 3, CD6.7 page 8 box at the bottom
[97] CD6.7 GPA 3 Para 16;
[98] As per CD7.25 -- §12.50

g. The smaller the contribution made by a development site to the significance of the asset, the smaller any harm arising from a change will be: if the contribution made to significance is small, change to that contribution can only lead to a small harm;
h. It is material when considering impacts to look at what is unaffected, too.

51. For each of the designated assets concerned, Ms Tuck agreed that their significance is principally embodied in the physical fabric, with setting contributing less. [99] In each case, the harm derives from a change in views to or from an area that lies within the assets' wider rural setting. It is agreed this setting is not a historic relic and has been subject to evolution – including via modern development and modern agriculture.[100]

52. In terms of approach, Ms Tuck also agreed that when assessing impacts, it is relevant to take into account the time-limited nature of the development. Both NPS EN-3 and GPA3 make clear reversibility is relevant.[101] The assets have been in place for hundreds of years. They will likely still be there in hundreds more, barring natural disaster or accident. The biggest threat to them is climate change.[102]

53. Ms Armstrong also emphasised that when considering impacts it is important to focus on the specific nature of the development proposed: low-lying structures which sit 'atop' of the agricultural land, with a degree of permeability, with fields and hedgerow boundaries remaining, and hedgerows proposed to be managed at a greater height than the panels.[103]

The SM

Significance

54. Ms Tuck agreed that the significance of the SM is principally derived from the historic, archaeological and architectural interest of its physical fabric, as an example of a former, early medieval fortified site.[104] The setting while it contributes does so to a lesser degree, with the most important aspects of the SM's setting being:[105]

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[99] Ms Tuck in XX
[100] Agreed Ms Tuck in XX
[101] [EN-3] 2.10.160 CD6.28: "Solar farms are generally consented on the basis that they will be time-limited in operation. The Secretary of State should therefore consider the length of time for which consent is sought when considering the impacts of any indirect effect on the historic environment, such as effects on the setting of designated heritage assets"
GPA 3 CD6.7 §33 and p.13 checklist refer to permanence and reversibility as relevant considerations
p.13 check list
[102] National Trust – CD6.45 p.3
[103] Ms Armstrong in XIC
[104] Agreed Ms Tuck in XX, Ms Armstrong in XIC
[105] Ms Tuck in XX, see Ms Armstrong's Proof at §4.14

a. The immediate agricultural hinterland, beyond which it is not possible to gain any clear understanding or experience of the form of the earthworks;
b. The spatial and visual relationships (as they exist) with the settlement to the north, which contributes to the understanding of the siting of the castle;
c. The spatial and visual relationships (as they exist) between the SM and elements of its immediate surrounding landscape which still retain remains associated with its occupation, as these help with historic understanding of the operation of the SM.

55. The wider agricultural landscape to the east, west and south beyond the immediate hinterland (in particular the former deer park) also contributes to significance, albeit to a lesser extent.[106] That wider setting is not a historic relic and has been subject to a range of changes.[107] The SM is not on a high point looking down but within a topographical depression; it has a fairly enclosed setting, with visual focus on the earthworks themselves.[108] The SM is bounded by trees and hedgerows which filter and screen views.

56. A small part of the deer park overlaps with the Site. Deer parks alongside 'seats' of high status are well attested across the country.[109] What is meant by 'park' here is an area of ground enclosed for the keeping of animals and serving 'productive' functions.[110] It is functional rather than aesthetic. The majority of the area of the former deer park now comprises arable fields and has been subject to change, including via modification of the interior field pattern, introduction of residential development along the southern edges of B4098 and the construction of the Park House Farm complex.[111] The only surviving elements are hedgerows. There is no definitive or recorded evidence today of features associated with a park pale which would likely have defined the extent.[112] Ms Armstrong and Mr Cook both said legibility of the presumed extent of the former deer park is limited at best.[113] Its presence and presumed extent is best understood via the archival record.[114]

57. There is no ability to appreciate the key elements of the significance of the SM from within the Appeal Site. It is possible at present in some places within the SM to see through the vegetation to the far northern end of Field 5, approximately 300m away at its closest. It is

[106] Ms Armstrong Proof §4.15, agreed Ms Tuck in XX
[107] Agreed Ms Tuck in XX
[108] Ms Tuck in XX
[109] Agreed Ms Tuck in XX
[110] Agreed Ms Tuck in XX
[111] Agreed Ms Tuck in XX
[112] Ms Armstrong's Proof at §4.26 - Ms Tuck had not assessed this
[113] Ms Armstrong's Proof at §4.22, Mr Cook in response to the Inspector
[114] Agreed Ms Tuck in XX, Ms Armstrong in XIC

likely such views would be screened in the summer.[115] Field 5 is not a relic of the historic arrangement; it is one large field but shown as three smaller fields on historic mapping.[116]

58. The Appeal Site has experienced change since the occupation of the SM. It is now bordered by the M6 Motorway, whose presence is visual as well as audible. It currently exhibits a large post-war field pattern.[117] Warwickshire County Council identifies the proposed management for this type being "revert to pasture" (which the Appeal Scheme would do).[118]

Impacts

59. As there would be no direct effect on the fabric, the greater part of the SM's significance would be unaffected.[119] The most important aspects of the setting would likewise not be affected. Furthermore, the SM would still be perceived as within a rural landscape setting, and there would remain an extensive open area between the SM and the Site.[120] The SM would still be fed by local watercourses.[121] Ms Armstrong explained that the watercourses are not defensive but for supply, which would be unaffected.[122] The Appeal Scheme would not change the surrounding topography.[123]

60. The only surviving feature of the deer park as it is presumed to overlap with the Appeal Site is the hedgerows. The Scheme would not remove the hedgerows which define F5.[124] The field boundaries would still be read as field boundaries. There would still be grassland between and around the panels.

61. While views out from the SM are largely screened by vegetation, in winter filtered views of the northern edge of F5 are visible from some areas where there are gaps through the vegetation. If panels were introduced today, a slice of dark recessive colouring would replace the current slice of green field seen.[125] In summer such views would likely be lost.[126] The SM is within the CA and the trees are protected accordingly. Importantly, the

[115] Ms Tuck in XX
[116] Appendix 7 to Mr Cook's Proof has the historic map
[117] Ms Tuck in XX.
[118] Historic Landscape Characterisation survey by Warwickshire County Council CD5.15 --- see p.250, p.81. Identifies the site as "very large irregular post-war fields, formed usually as a result of Post-War agricultural improvements intended to meet the requirements of intensive arable cultivation"
[119] Agreed Ms Tuck in XX
[120] Agreed Ms Tuck in XX
[121] Agreed Ms Tuck in XX
[122] Ms Armstrong in XIC
[123] Ms Armstrong in XIC
[124] Agreed Ms Tuck in XX
[125] See e.g. Mr Cook's Proof at §4.32. Ms Armstrong's Plate 7 provides an indication of how the panels might look at that kind of distance
[126] Ms Armstrong in XIC

hedges on the northern boundary of the Site are currently kept low (at just over 1m).[127] But within just a few growing seasons they would reach 2.5m.[128]

62. All factors point to a low level of LTSH to significance. Further, any harm will be reversed after 40 years. Although that is a long time, it is not in the context of the SM itself.

63. Ms Tuck's conclusion of LTSH at the upper end does not align with her concession that the majority of the significance of the asset is derived from its built form, and from her identification of the Site as less important than the immediate agricultural hinterland.

64. Part of the reason Ms Tuck went wrong was that she erroneously translated the outcomes from her matrix into the NPPF's LTSH spectrum.[129] The product of Ms Tuck's matrix is derived from combining the value of the asset with the magnitude of change.[130] However, under the NPPF, value is a distinct consideration to the LTSH scale: an asset of the highest significance can experience negligible LTSH, or an asset of the lowest significance can experience substantial harm. Ms Tuck's approach prevents those scenarios. The flaws are clear and were recognised in the Bramley The Street appeal, where the Inspector found: "*Taking the value into account in assessing the effect on assets must differ from the approach expected by the Framework as it can only lead to counting the value of the asset twice in calculating the weight to be derived*".[131] If Ms Tuck had not factored the high value of the SM into her conclusion, she would have reached a lower level of LTSH.[132]

65. Ms Armstrong's conclusion, which accords with that of the Borough Council (CD12.9), that there is harm at the low end is plainly the better view and the Appellant commends it to the Inspector. The most important part of the asset's significance (the above and below grounds remains within the Scheduled area) would be unaffected. The setting is less important, but the most important parts of that would likewise be unaffected. It is very difficult to see how the impact can advance beyond low level harm.

The CA

<u>Significance</u>

[127] Mr Cook in response to a question from the Inspector
[128] Mr Cook explained that as a rule of thumb hedges can put on 0.5m/year --- they can start to grow now
[129] The matrix is at Ms Tuck's §5.2/§5.4
[130] Ms Tuck in XX
[131] (CD7.15b) at §§100-101
[132] Ms Tuck accepted in XX that to reach her conclusion of upper end LTSH harm – approaching total destruction – she has factored into the analysis the value of the asset

66. It is now common ground that the heritage significance of the CA is principally derived from the special architectural and historic interest of the buildings and spaces within its bounds.[133] While setting also contributes to significance, it does so less than the buildings and spaces within the historic core and the area which covers the Scheduled Monument.[134] While Ms Tuck said this was only 'marginal', that cannot be correct: she accepted that the character of the village is relatively introspective, a feature of its low-lying centre, and that views out from the CA to the wider agricultural surroundings are limited.[135]

67. As Ms Armstrong agreed, the part of the setting that contributes most must be the immediate agricultural hinterland, from where one can experience the details of the buildings.[136] The Appeal Site is further away in the wider landscape, in an area that has been subjected to the post-war changes explained above. As Ms Tuck acknowledged, extensive swathes of agricultural land spread out from the CA before one reaches the Site.[137] There is a clear separation between the two experienced as one moves through the landscape on the approach to and exit from the settlement.[138]

68. Ms Armstrong explained that because of the lack of specific functional or designed visual relationships, and the manner in which the separation is understood, the Appeal Site does not contribute to the understanding, experience, or appreciation of the historic character and appearance of the village itself.[139] There is limited intervisibility with the Site.[140] While the Church is visible in some isolated locations from the Site, it is not understood in the context of its relationship to the settlement, which cannot be appreciated.[141] Neither the village nor the Church is visible from the footpath on the Appeal Site.[142]

Impacts

69. The Appeal Scheme would not affect the ability to understand the architectural, archaeological or artistic interest of the built form of the historic core of the village.[143] As to impacts on setting, Ms Armstrong is clear that the aspects that contribute meaningfully to the understanding and experience of the historic core of the town – namely the immediate agricultural hinterland – would be unaffected. Ms Armstrong finds, in agreement with the

[133] Agreed Ms Tuck in XX – see HA §4.39
[134] Ms Tuck in XX
[135] Agreed Ms Tuck in XX
[136] Ms Armstrong in XIC
[137] Ms Tuck in XX
[138] Ms Armstrong in XIC
[139] Ms Armstrong in XX
[140] R6 SOC CD9.1
[141] Ms Armstrong in XIC
[142] Ms Armstrong in XX
[143] Agreed Ms Tuck in XX

Borough Council (CD12.9), low level LTSH, which derives from the impact to the SM which falls within the designation and is discussed above.

70. Ms Tuck again found LTSH approaching the upper end of the spectrum; approaching total destruction of the entire CA. That is not a reasonable conclusion. The change would be to an area at some distance from the village, with limited intervisibility, characterised by post-war fields defined by modern roads.[144] The settlement would still be understood as having a rural setting, as there would be significant tracts of undeveloped land continuing to surround it.[145] Ms Tuck's analysis gives the impression that the Appeal Site comprises the immediate fields surrounding the CA, when these would, in reality, remain entirely unaffected. Thus, there would be no 'severing' from its agricultural hinterland.[146] While there is no visibility from the footpath on the Appeal Site, that would be set within a green lane and also continues for half a km after leaving the Site before reaching the CA. Any harm identified would be removed on decommissioning.

71. The matrix was again a key part of the problem; Ms Tuck had ascribed the CA high significance on the basis that it includes the SM, and this had factored into her conclusion of upper level LTSH.[147] Given all that she agreed, that cannot be right. The most important parts of the asset's significance (the built form and spaces within it, and the immediate agricultural hinterland) would be unaffected.

Park House Farm (G2)

Significance

72. It is common ground that the heritage significance of the Farm is principally derived from the architectural, historic aesthetic and archaeological interest of its physical fabric as an example of a 17th-century farmhouse, with later alterations.[148] The setting, while it does contribute, does so less than the physical fabric.[149]
73. Ms Tuck agreed that the parts of the setting that contribute most are its immediate surrounds (the domestic demise and farmstead, from where the architectural detailing can be experienced alongside its relationship with the historic and modern farm buildings in the complex) and the historically associated farmland / landholdings.[150] The wider agricultural

[144] Agreed Ms Tuck in XX
[145] Agreed Ms Tuck in XX
[146] As Ms Armstrong explained in XX
[147] See CD9.10 §8.24
[148] Agreed Ms Tuck in XX
[149] Agreed Ms Tuck in XX
[150] Ms Tuck in XX

setting also provides some contribution to the understanding of the asset as a principal dwelling associated with a wider farmstead, but does so to a lesser degree.[151]

74. There is no clear evidence of any historic, functional or associative connections between the vast majority of the Appeal Site and the Farm[152] (other than a tiny slither of mapped overlapping landholdings, possibly a result of changes to field boundaries). Due to the asset's elevated position, there is naturally some intervisibility. Ms Armstrong accepted that the principal elevation is to the Southeast.[153] The Site forms one part of the expansive wider modern agricultural landscape situated beyond the farmstead and its immediate environs. Even with the principal façade being to the SE, the Site makes a limited contribution to significance.

Impacts

75. It is agreed that the principal aspects that contribute to the asset's significance would be unaffected (i.e. the physical fabric and the most important parts of the setting).[154]

76. In terms of changes in the wider agrarian setting, some incidental views back from the Appeal Site to the farmhouse would change.[155] From those locations the finer architectural detail of the building cannot be appreciated, and even where the context of the view would change the House would still be understood as being a farmstead on higher ground.[156] The Appeal Site would itself retain a rural character, with hedged boundaries and grassland.

77. Any visibility from upper floor windows of Park House would be oblique (the South East façade does not face directly towards the Site) and in the context of a wide-ranging and far-reaching view within a post-war landscape.[157] Views from the ground floor and the immediate surrounds of the asset are anticipated to be restricted due to intervening built form and vegetation.[158] There is nothing to suggest any designed views towards the Appeal Site specifically, which does not form part of the functional landholdings.

[151] Ms Armstrong's Proof at §5.42
[152] Agreed Ms Tuck in XX; see Plate 2.5 at HA Appendix 2 --- historic landholdings
[153] Her proof had said it was to the North
[154] Ms Tuck in XX, see also R6 CD9.10 §9.17
[155] Agreed Ms Tuck in XX
[156] Agreed Ms Tuck in XX
[157] Agreed Ms Tuck in XX; Ms Armstrong's Proof at §4.57
[158] Ms Armstrong's Proof at §4.57

78. A clear separation between the development and farmhouse would still be appreciable.[159] The development would not change the understanding of the form of the asset, nor its relationship with its farmstead.[160] The Farm would still within an agrarian setting.[161]

79. Ms Armstrong's conclusion, in agreement with the Council (CD12.9), that the harm is low level is persuasive. Ms Tuck finds a "minor" impact and a "slight" adverse effect.[162] Again, any harm would be removed on decommissioning.

Ancillary listed structures

80. These are agreed to be inward-looking structures.[163] There would be no change to the understanding or experience of their form or relationship with each other or the wider farmstead.[164] The Appeal Site does not comprise an area of land that formed part of their functional use, and views would not have formed part of the design intent of the buildings – which in any event have limited intervisibility with the Site.[165] Ms Armstrong is clear in agreement with the Council that no harm would arise to the Barn and Cartshed/Granary.[166] Ms Tuck finds a very minimal / negligible level of harm.[167]

Fillongley Mount (G2)

Significance

81. Again, the heritage significance of Fillongley Mount is principally derived from the architectural, historic aesthetic and archaeological interest of its physical fabric as an example of a dwelling with 16th-century origins, subject to later change in the 17th and 19th centuries.[168]

82. The setting while it does contribute to significance does so less.[169] The aspects of setting that contribute most comprise: the spatial and visual relationships as they exist, between the principal dwelling and the group of the ancillary buildings to the west; the position of the asset within its defined domestic demise (as it is from here that the building can best be appreciated); and outward views to the southeast, insofar as these are appreciable.[170]

[159] Agreed Ms Tuck in XX
[160] Ms Armstrong in XIC
[161] Ms Tuck in XX agreed it would not be "severed" from its immediate agrarian setting
[162] R6 SOC CD9.10 §9.19
[163] Agreed Ms Tuck in XX, §6.23
[164] Ms Armstrong in XIC
[165] Ms Armstrong in XIC
[166] See Ms Armstrong's Proof of evidence at §§4.64-4.74, See CD12.9
[167] Ms Tuck in XX
[168] Agreed Ms Tuck in XX
[169] Agreed Ms Tuck in XX
[170] Ms Armstrong's Proof at §4.78

83. This asset is the furthest away of the three houses from the Site. The intervening land comprises domestic gardens within the demise of the property, open agricultural land, mature tree planting and the route of Meriden Road.[171] Outward views to the designed parkland and pleasure grounds to the southeast formed part of the design intent (the Appeal Site is not part of this parkland). Any views beyond the parkland in the wider landscape would, by virtue of the topography, naturally be wide-reaching.[172] There is no evidence of any functional or associative connections between Site and the asset, nor any indication that the viewshed was specifically focused on the Site or a feature within it.[173]

84. There are some incidental glimpsed views back from the Appeal Site to Fillongley Mount. However, given the distance those views do not contribute to the understanding, experience or appreciation of the form, architectural detailing or development of the asset.[174]

85. In all, the Appeal Site makes a limited contribution to the overall significance.

Impacts

86. There would be no impact on the physical fabric, from which the majority of the asset's significance is derived.

87. In terms of changes in its wider agrarian setting, any views from upper floors would result in a change to the character of one part of the composition of the anticipated wide reaching, southeasterly views,[175] in a context of a landscape that now includes clear modern change including the M6 motorway.[176] In considering this change, it is important to take into account that the Appeal Site fell beyond the designed parkland associated with the asset.[177]

88. When the majority of the significance is derived from the fabric, and the most important aspects of setting are unaffected, Ms Armstrong and the Council are right to conclude (CD12.9), that the harm is low level. Any harm identified would be time-limited.

White House Farmhouse (G2)

Significance

[171] Ms Armstrong's Proof at §4.75
[172] Ms Armstrong's Proof at §4.79, Ms Armstrong in XIC
[173] Ms Armstrong's Proof at §4.79, §4.83
[174] Ms Armstrong's Proof at §4.84
[175] Agreed Ms Tuck in XX
[176] Ms Armstrong in XIC
[177] Ms Armstrong's Proof at §4.87

89. The heritage significance of White House Farmhouse is principally derived from the architectural, historic aesthetic and archaeological interest of its physical fabric as an example of an early 19th-century farmhouse.[178]

90. It is also agreed that whilst the setting contributes to significance, it does so less than the physical fabric. [179] Ms Tuck agreed that the parts of the setting that contribute most to significance are its immediate surrounds (the domestic demise and farmstead, from where the architectural detailing can be experienced alongside its relationship with associated buildings –some now converted to industrial use) and the historically associated farmland / landholdings.[180]

91. The Farmhouse is situated amongst a group of historic and modern outbuildings, and the current character of its surrounds has been subject to significant 20th century change – with a sprawl of modern features.[181] The intervening area between the Site and the Farmhouse comprises a large gravel expanse surrounded by white walls, an area of domestic lawn, agricultural land, a realigned Meriden Road, a change in the approach to the asset, and also an area of woodland curtailing views to the east. [182]

92. The wider agricultural setting also provides some contribution to the understanding of the asset as a principal dwelling associated with a wider farmstead but to a lesser degree.[183] There is no evidence of any historic or functional connections between the Farmhouse and the Site.[184] By virtue of the asset's position on higher ground, there is some intervisibility. Views would be wide-ranging, with the M6 motorway as part of the context.[185] As vegetation comes into leaf, views would become increasingly filtered and glimpsed.[186]

93. Ms Armstrong concludes that the Site does not contribute positively to the understanding and experience of the asset itself. The difference with Park House Farm is that due to the intervening topography and vegetation there is less intervisibility, and from the surrounding agricultural setting Whitehouse Farmhouse is less readily understood as part a farmstead (cf. just a house).

Impacts

[178] Agreed Ms Tuck in XX
[179] Agreed Ms Tuck in XX
[180] Ms Tuck in XX
[181] Ms Armstrong's Appendices Plate 2.18 shows this , Ms Armstrong in XIC
[182] Ms Armstrong's Appendices Plate 2.18 shows this , Ms Armstrong in XIC
[183] Agreed Ms Tuck in XX
[184] Agreed Ms Tuck in XX
[185] Ms Armstrong in XIC
[186] Ms Armstrong in XIC

94. Ms Armstrong's professional view is that no harm would arise. The proposed development would not alter the understanding and experience of White House Farmhouse as an early 19th-century farmhouse.[187] Ms Tuck finds a low level of LTSH (as does the Council).[188]

St Mary's Church (G2*)

Significance

95. Finally, Ms Tuck accepted that the heritage significance of the Church is also principally derived from the architectural, historic aesthetic and archaeological interest of its physical fabric as example of medieval parish church.[189]

96. The setting while it does contribute to significance does so less.[190] The most important parts of the setting are the churchyard (from which the architectural detailing can be best experienced, as can the relationship with the various memorials) and the immediate surrounds of the village.[191]

97. Where visible from the wider landscape, the Church is nestled into the low topography, and the relatively short tower is often viewed with a rural 'backdrop' behind and not frequently as 'breaking' the skyline.[192] There is a clear difference with waymarker type church spires.[193]

98. The Church is almost a kilometre away from the closest point on the Appeal Site. The two are separated by the built form of Fillongley and the agricultural hinterland to the south of the settlement.[194] The Appeal Site is not visible from the Church itself other than from the tower, which has not been designed specifically to facilitate outward views (these do not form part of the design intent).[195]

99. The short stature coupled with the topography means the tower is likewise not prominent from within the Site.[196] Views back to the Church are limited and incidental, with the Church not visible from the footpath on the Site.[197] The current field pattern associated with

[187] Ms Armstrong's Proof at §4.99
[188] CD12.4 SOCG §3.1
[189] Agreed Ms Tuck in XX
[190] Agreed Ms Tuck in XX
[191] Ms Armstrong's Proof at §4.105
[192] Ms Armstrong's Proof at §4.108
[193] Ms Tuck in XX
[194] Ms Armstrong's Proof at §4.103
[195] Ms Armstrong's Proof at §4.110
[196] Ms Armstrong in XIC
[197] Ms Armstrong's Proof at §4.111

the Site is not reflective of the medieval landscape contemporary with the construction of the Church, and does not form part of the immediate agricultural hinterland.[198]

Impacts

100. Ms Armstrong agrees with the Council that no harm would arise. GPA3 is clear that simply seeing a church tower in the wider landscape – as is often possible – may not impact on significance, particularly where such views do not allow significance to be appreciated and where there are no designed/associative views.[199] There is no evidence of any designed/associative views here. Ms Tuck agreed a wider view of a church tower need not automatically contribute to significance.[200] Ms Tuck also accepted that, even with the solar in place, the Church would still be understood as set in a rural context, given the c. 1km of undeveloped land that would remain to the south.[201]

101. Ms Armstrong's conclusion is to be preferred: while there would be a change in the very much wider agricultural surroundings, that is not going to impact the significance of the Church itself. Ms Tuck accepted any impact would be "negligible".[202]

"Non-designated" assets

102. The Rule 6 Party in their Statement of Case and again in Ms Tuck's Proof identified a wide range of features said to be non-designated heritage assets ("NDHAs"). Those appear to have been initially identified solely on the fact of their recording on the Historic Environment Record ("HER"). The guidance is clear that does not mean it is a NDHA.[203]

103. In oral evidence, Ms Tuck confirmed that most of the NDHAs she had previously identified are not actually NDHAs. She maintained that the footpath through the Site and the deer park should be considered NDHAs. Neither has been identified in any published local list or within the development plan. The Council has confirmed it agrees with Ms Armstrong that neither asset qualifies as a NDHA in the terms of the NPPF (CD12.9).

104. There is clear guidance on the identification of NDHAs from national Government and Historic England.[204] The Council have also published a guidance document which sets out a range of interests for consideration comprising: age; rarity; identity; group impact;

[198] Ms Armstrong's Proof at §4.110
[199] CD6.7, GPA 3, p.7, Ms Armstrong in XX
[200] Ms Tuck in XX
[201] Ms Tuck in XX
[202] Ms Tuck in XX accepted this
[203] Ms Armstrong's Proof at §5.9
[204] set out within the PPG (PPG CD6.34 at §§039-040) and HEAN 7 (CD6.50, p.7 and p.18)

landmark quality; and non-physical attributes.[205] When considering whether to identify a feature as a NDHA one also needs to understand its current condition – namely whether the asset is still extant and in what shape or form.[206] Ms Tuck has provided no analysis against the criteria set out within the Council's guidance (or any other guidance) to justify her assertion that any feature comprises a NDHA.

105. In any event, impacts as they relate to the deer park have been set out above. The deer park is essentially a former deer park – it now comprises modern arable fields and modern development, and is not readily perceptible on the ground. What remains extant – some hedgerows – do not have the significance required to comprise a NDHA.[207] These hedgerows would be unaffected.

106. Ms Tuck said in oral evidence that the footpath was a NDHA because it had been recorded on historic maps and leads to the village. Vast numbers of footpaths around the country will be recorded on historic maps and lead to villages.[208] That does not suffice to turn a PROW into a NDHA – if that were the case NDHAs would be at issue in practically every inquiry. As the footpath extends through the Site, it is passing through a post-War agricultural landscape not reflective of the historic field morphology or character, with the M6 motorway visible and audible. The PROW would be retained on its current alignment and set in a hedged green lane. The enclosure provided by the hedges would be more reflective of the more enclosed historic field pattern than bare open arable fields.[209]

107. In all, it is clear, as agreed with the Council, that there would be no harm to NDHAs.

Alternative Sites

108. It is common ground between all parties there is no requirement anywhere in law, policy or guidance for the Appellant to have assessed alternative sites at all, whether as regards BMV or any other impact of the Appeal Scheme.[210]

109. As regards the siting of solar on BMV specifically, in *Bramley* the High Court made clear there is no requirement in national policy or guidance (a) to consider alternative sites or (b) to adopt a sequential approach by siting on non-BMV sites first.[211] The legal position

[205] CD5.12, p.15
[206] Ms Armstrong's Proof at §5.10
[207] Ms Armstrong's Proof at §5.22
[208] As Ms Armstrong explained in XX
[209] As Mr Cook explained – see his Appendix 7
[210] Agreed Ms Collins in XX and Mr Weekes in XX
[211] CD7.30 (§§179-180) (the wider reasoning is at §§162-185)

is crystal clear. It has been confirmed in a number of appeals since (including since the 2024 WMS).[212]

110. Mr Bainbridge explained the project development process in XIC. First, the Applicant received intelligence of capacity in the grid in the wider Coventry area. Secondly, they letter dropped a number of locations. Thirdly, only one landowner came back. He offered the Appeal Site, the largest of his three parcels. He does have two other parcels in the area, one which is 45 acres (Dawmill) and one which is 100 acres (Maxstoke). Both were too small. The 45 acre parcel is indicated as ALC Grade 2 & 3 with inappropriate north-east facing topography. The 100 acre parcel is indicated as entirely ALC Grade 2. They are also to the west – so also further from the grid connection (and neither would be able to make use of the 40MW offered – which would waste valuable grid resource). Fourth, the Appellant entered an agreement with the landowner and applied to Western Power for a grid connection for the Appeal Site. Fifth, an offer was received for the Site, specifying the point of connection at Nuneaton. It was concluded the offer was viable, a decision was made to move forward, a deposit was paid, and the planning process began. From that point on the connection is tied to the Site.

111. Sometimes applicants do provide alternative site assessments. This can be required where they are EIA. As Mr Weekes and Ms Collins both accepted, another reason is an alternatives assessment can attract extra positive weight.[213] But that does not generate a requirement to do so. The law is summarised in *Bramley* (CD7.30) at §§162-163, which quotes *Stonehenge* (CD7.88) at §270[214]:

> "*In those "exceptional circumstances" where alternatives might be relevant, alternatives that are vague or inchoate, or which have no real possibility of coming about, are either irrelevant or, where relevant, should be given little or no weight*".

112. The policy as set out within EN-1 explains that alternatives may need to be considered where either a scheme is EIA development or where policy requires consideration of alternatives; all agree that no policy does so require here.[215] Even when either of these triggers does make alternatives relevant, EN-1 explains that:

a. The Secretary of State should be guided in considering alternative proposals by <u>whether there is a realistic prospect of the alternative delivering the same</u>

[212] See eg Penhale Moor §20, §§31-32 CD7.32
- Penhale CD7.32 Moor – Inspector Baird --- 2024 WMS §20 doesn't change position / §§31-32 --- no sequential test despite WMS
- Berden Hall Farm decision (S62A/22/0006) [CD 7.41] paragraph 58
- Scruton (CD7.16 §27)

[213] Mr Weekes in XX

[214] As referenced in Mr Bainbridge's Rebuttal at §3.30

[215] (CD6.27) (§§4.3.15-4.3.16)

infrastructure capacity (including energy security, climate change, and other environmental benefits) in the same timescale as the proposed development – 4.3.23

b. The Secretary of State should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, and should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals - 4.3.24

c. Alternative proposals which are vague or immature can be excluded …. – 4.3.28

d. Where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it - 4.3.29

113. As Mr Kernon and Mr Bainbridge explain in their evidence, EN-3 also provides relevant policy, explaining: [216]

a. At §2.3.9, as most renewable energy can only be developed where the resource exists and where economically feasible, and because there are no limits on the need, the Secretary of State "*should not use a consecutive approach in the consideration of renewable energy projects (for example, by giving priority to the re-use of previously developed land*)".

b. At §2.10.25 "*To maximise existing grid infrastructure, minimise disruption to existing local community infrastructure or biodiversity and reduce overall costs, applicants may choose a site based on nearby available grid export capacity*."

114. In the present case, as a matter of law and policy, no weight can be attached to the Appellant not providing an alternative sites assessment. First, there is no requirement to look at alternative sites or to adopt a sequential approach having regard to the effects arising[217]. Secondly, no party has actually proposed any genuine (i.e. not vague, immature, inchoate) alternative capable of delivering the same capacity in the same timescales, with a connection (per EN-1 §4.3.23). Neither the Council nor the Parish Council have allocated any sites, nor suggested an alternative.

115. Accordingly, the point about alternatives goes nowhere. There is no alternative scheme to consider. Even were there another site able to deliver the same capacity and with a secured grid connection, three solar farms of this size every week need to be deployed to

[216] Mr Kernon's Proof at §4.11, Mr Bainbridge's Proof at §11.46

[217] (cf. e.g. Habitats Regulations, town centre development where there is a requirement)

reach 2030 targets. The other site would be needed too (per EN-1 §4.3.24). It would be an additional rather than alternative site.

BMV

116. As Inspector Partington opined recently, to achieve the Clean Power 2030 targets "*it is clear that considerable growth in large scale solar farms will be necessary and this cannot be achieved solely by the use of brownfield land or roof top installations*".[218]

117. There is no evidence before the inquiry to suggest that the c. 115MW solar we need each week to 2030 can be sited without using agricultural land; such an approach would run counter to policy which expressly anticipated the siting of solar in rural areas. Ms Collins accepted that delivering the solar required to reach net zero will require greenfield sites.[219] Mr Bainbridge has provided the Council's brownfield land register which provides no sites alone or in combination even remotely close to the size required here.[220]

118. 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 "*wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land*". The NPPF does not: prevent the use of BMV land; prescribe a weight or harm that should be given to the use of BMV for purposes other than food production; or set out a policy test for acceptability.[221] The policy is about recognising the benefits. The Appeal Scheme would bring about a number of "*benefits from natural capital and ecosystem services*", including biodiversity net gain, contributing to tackling climate change and flood risk betterment.[222]

119. The new Government's latest statement on the issue, the July 2024 Statement of the Secretary of State titled "Clean Energy Superpower Mission" explains that:[223]

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[218] CD7.46 at §60
[219] Ms Collins in XX
[220] See Mr Bainbridge's Appendix
[221] National Policy Statement ("NPS") EN-3 (CD8.4) has an entire section on solar and use of agricultural land at §2.10.29 – 2.10.34 – anticipating some solar will come forward on BMV. While it notes a "preference" for use of poorer quality land and asks applicants to site on non-BMV "where possible", it also states that "land type should not be a predominating factor in determining the suitability of the site", that "the development of ground mounted solar arrays is not prohibited" on BMV, and that consideration may be given as to whether the proposal allows for continued agricultural use and/or can be co-located with other functions (for example, storage) to maximise efficiency. The May 2024 WMS issued towards the end of the previous administration does not purport to change the policy but largely repeats aspects of EN-3.
[222] Agreed Ms Collins in XX
[223] CD6.56 p.2. On the 2015 WMS, see Inspector in Penhale Moor [CD7.32 at §18].

"*credible external estimates suggest that ground-mounted solar used just 0.1% of our land in 2022. The biggest threat to nature and food security and to our rural communities is not solar panels or onshore wind: it is the climate crisis, which threatens our best farmland, food production and the livelihoods of farmers*".

120. 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 BMV policy in the plan either.

121. The Council agree that agricultural land matters get positive weight in the decision-making process, by virtue of the efficient dual use of land with grazing, the benefits to soil, and the farm diversification. The following factors are relevant:

a. **First,** it is agreed the proposal would not result in harm to or permanent loss of the BMV resource because the Scheme is reversible.[224] Mr Kernon has provided detailed evidence explaining no harm to land quality.[225] He confirmed the Site could be returned to arable upon decommissioning, notwithstanding new hedgerows. [226]

b. **Second,** it is proposed that the land would be used for both energy production and sheep grazing.[227] Sheep grazing is entirely usual on solar farms – approximately half of all solar farms in the country are grazed.[228] Mr Kernon explained the Site is suitable for sheep (sheep are found in much steeper areas, and there are sheep in the local area).[229] The dual use would have a positive economic impact including an opportunity for agricultural labour.[230] The NPPF at §88 states planning decisions should enable diversification of agricultural businesses. Mr Bainbridge referred to a triple use – including the biodiversity enhancements.

c. **Third,** there is no current food security problem.[231] Overall, for the foods that we can produce in the UK, we produce around 75% of what we consume (this has been broadly stable for the past 20 years).[232]

d. **Fourth,** the Borough has a higher prevalence of predicted Grade 1 and 2 than the national average, and the Appeal Scheme would take up only a very small proportion of the authority's BMV.[233] Mr Kernon explained having regard to the

[224] Agreed Ms Collins in XX
[225] Mr Kernon's Appendices 5 & 6 --- see also R6 SOCG CD12.8. The soil resource would be protected during the lifetime of the scheme by way of a conditioned Soils Management Plan.
[226] As Mr Kernon explained in XIC, the fields would not be too small to farm for arable even with the hedgerows in place – field 6 is small and is currently farmed for arable
[227] Agreed Ms Collins in XX. R6 SOCG CD 12.8 --- agreed sheep grazing could take place
[228] Defra Land use statistics cited in Mr Kernon's CD13.8a §8.25 PDF p.130 -- 3,600 ha were used for solar panels and also used for grazing production in 2024
[229] Mr Kernon in XIC
[230] Mr Kernon's Proof at §8.26, Mr Kernon in XX
[231] Agreed Ms Collins in XX – Mr Kernon in XIC referring to his Appendix 7
[232] Agreed Ms Collins in XX - CD6.15 p.5 /// CD6.63 p.9 Theme 2. Mr Kernon in XIC explained the trend is going up, not down, ref Food Security Report Exec Summary [CD 6.63 Part 1 PDF page 9].
[233] CD2.2 §4.62 referring back to CD1.6 at §§5.7-5.10

provisional land classification maps in the area there is no obvious non-BMV alternative.[234] (Mr Bainbridge explained it would not be possible go 'east' from the grid connection because Nuneaton is in the way)

e. **Fifth,** there are no national or local policies that require agricultural land to be farmed, and there is nothing that prevents the landowner from using the Site for grazing or leaving it fallow.[235] Indeed, the Government runs a number of schemes that encourage arable land – including BMV land – to be converted pasture.[236] Mr Kernon explained that as of last June, 305,000 hectares of arable land was in biodiversity uses being funded by government.[237]

f. **Sixth**, the impact on crop production (whether incremental – 66 tonnes, or outright – 516 tonnes) would be negligible on a national scale (of circa 20 million tonnes production).[238] Produce from the Site currently mainly goes to animal feed rather than being consumed directly by humans.[239]

g. **Seventh,** conversion to pasture from arable has a number of beneficial impacts in terms of soil organic matter, soil organic carbon and soil moisture.[240] There is a clear line of decisions that find an improvement to soil health as a result of the conversion from arable to grazing based on expert evidence.[241]

122. There are very many appeals where solar has been allowed on BMV – both with and without alternative sites assessments.[242] Having accepted there is no requirement to consider alternatives, and having accepted no harm would arise to the BMV resource itself, it is not clear from where the "moderate" harm Ms Collins finds arises.

<u>The Planning Balance</u>

[234] Mr Kernon's §§9.7-9.22
[235] Agreed Ms Collins in XX
[236] Mr Kernon's §§8.5-8.13, agreed with Ms Collins in XX
[237] Mr Kernon in XX, referring to his §8.25
[238] Mr Kernon in XIC, referring to his §§8.21-8.23
[239] Mr Kernon's §8.4
[240] Agreed Ms Collins in XX, see also R6 SOCG §12.8, with the evidence set out within Mr Kernon's section 7 and Appendix 5
[241] (see, for example, CD7.15a, §§59-60 Bramley, Inspector McCoy, 13 February 2023 (Mr Askew gave evidence in that case); CD7.16, §21 the Leeming Substation DL, Inspector Partington, 27 June 2023 (Mr Kernon gave evidence in that case); and [CD7.39, §51] Little Cheveney Farm DL, Inspector Major, 5 February 2024 (Mr Kernon gave evidence in that case)
[242] See, for example:

- Penhale Moor CD7.32
- Bramley CD7.15a – challenged in the High Court – with the High Court CD7.30 upholding the Inspector's decision there is no requirement to consider alternative sites
- Burcot solar farm (a 100% BMV site) CD7.46
- Graveley Lane a Green Belt decision of the Secretary of State on a 88ha 100% BMV site = CD7.9
- All the very many appeal decisions cited by both Mr Bainbridge and Mr Kernon in their Proofs

123. The development plan comprises the 2021 Local Plan and the Fillongley Neighbourhood Plan.[243] Neither the Local Plan nor the Neighbourhood Plan take up the invitation at §165(b) NPPF to identify suitable areas for renewable development. Thus, any proposal for solar development in the Council's area will be speculative.

124. In terms of approach, the Courts have made clear that a breach of one policy (or one part of a policy) will not inevitably mean conflict with the plan read, as it must be, as a whole.[244]

125. Mr Weekes agreed that LP35 is the most important policy, and that it is supportive, encouraging schemes of this kind.[245] Both Mr Bainbridge and the Committee Report have carefully considered LP35 and concluded the Scheme complies, with both then ultimately concluding that the Scheme complies with the development plan as a whole.[246] LP35 is not part of the Council's Reason for Refusal.[247] Mr Weekes agreed that to be sound the policy must be looking at whether, objectively, proposals respect the capacity and sensitivity of the landscape / area (rather than requiring actual community support).[248] This is not a designated or valued landscape and post-mitigation no residual major impacts have been identified. That suggests the proposal does respect the capacity and sensitivity of the landscape. The policy also refers to landscape quality. Here that is 'medium'. The Council only finds a partial conflict.[249] The policy does not suggest there can be 'no harm'.

126. In terms of other policies, Mr Bainbridge's detailed analysis is found at Appendix 1 to his Proof and is not repeated here. Mr Weekes agreed that renewables schemes have different impacts from traditional built development such as housing.[250] EN-1 recognises the design constraints on such schemes.[251] Mr Bainbridge explained it is not appropriate to simply transpose design requirements intended for built development such as housing directly onto energy schemes (which cannot, for example 'use the scale, shapes, forms of traditional Arden Valley buildings (FNP01).[252] Mr Weekes finds only a partial conflict with LP1, LP30, FNP01 and FNP02 and agreed the Scheme complies with LP14.[253] Mr Weekes

[243] Ms Collins agreed given its early stage the emerging revised Fillongley Local Plan only attracts limited weight. Mr Bainbridge Proof suggests 'no weight'
[244] Corbett v Cornwall CD7.18 at §§27-28, §§41-42
[245] As agreed with Mr Weekes in XX
[246] CD2.2 §§4.59-4.68, Mr Bainbridge's Appendix 1 CD13.1c at §5.4 et seq
[247] The Council also agreed in Main SoCG CD 12.1 page 9, section 8 "i) Local Plan policy LP35 is not cited in the Decision Notice. There is no reason for refusal against policy LP35"
[248] Mr Weekes in XX. While the NPPF used to contain a requirement for community support for onshore wind that has now been taken out. On a similar issue see Washdyke CD7.13 §§38-40.
[249] Agreed Mr Weekes in XX
[250] Mr Weekes in XX
[251] CD6.27 at §4.7.2
[252] Mr Bainbridge XX Rule 6
[253] Mr Weekes in XX

fairly accepted that none of these policies can be reasonably read as requiring "no harm" to landscape matters, telling the Inquiry that "*flexibility needs to be built into the policies for them to be sound*".[254] There are no heritage policies listed in the Reason for Refusal. As with the landscape-related policies, for these to be sound they cannot require no harm; where there is LTSH the approach of the NPPF is to require a balancing exercise.

Clean Power

127. The starting point then is that the development plan is complied with, and consent should be granted, unless material considerations indicate otherwise. In this case, material considerations only point very strongly in favour. Solar is a technology upon which the government places significant emphasis as the foundation of a net zero system:[255]
    a. In 2019, the UK established a world-leading legislative commitment to achieve net zero by 2050.[256]
    b. In 2020, with the Energy White Paper, solar was identified as a "*key building block*" of the future energy mix, with the Government noting that a low-cost, net zero consistent system "*is likely to be composed predominantly of wind and solar*". [257]
    c. In 2021, with the publication of the Net Zero Strategy, the Government established the ambition that the UK should be entirely powered by clean energy by 2035 subject to security of supply, whilst meeting a 40-60% increase in demand.[258] Low carbon energy needed to be deployed at an "*unprecedented*" scale and pace.[259]
    d. The British Energy Security Strategy in 2022 established the ambition of 70GW of solar by 2035 – in just 10 years, a fivefold increase.[260]
    e. NPS EN-1 (2024) explains that wind and solar are the lowest cost ways of generating electricity, and that a secure, reliable, affordable, net zero consistent system in 2050 is likely to be composed predominantly of wind and solar.[261]

128. It is agreed EN-1 is a material consideration in this case.[262] A further point needs to be emphasised with respect to it, which is the remarkable new policy it contains in relation to nationally significant low carbon energy infrastructure, termed "*critical national priority*" ("CNP") development. For CNP schemes (the Appeal Scheme would be CNP if just 10MW

[254] Mr Weekes in XX
[255] Agreed Mr Weekes in XX
[256] CD6.24
[257] December 2020's Energy White Paper CD6.5, pp. 15, 45 and 47.
[258] CD6.18 at p.19
[259] CD6.18 Net Zero Strategy, pp. 98 and 102
[260] CD6.1 p.34/38 and p.19
[261] §3.3.20 (EN-1 CD6.27)
[262] CD12.1 LPA SoCG lists as a 'key document' pp8-9; CD12.2 R6 SOCG accepts NPS are relevant considerations, see Mr Weekes' §4.7

bigger), it is now unlikely consent will be refused on the basis of non-HRA or MCZ[263] residual impacts (§4.2.15). The Secretary of State will take "*as the starting point for decision-making*" that CNP infrastructure has met the tests of, for example, substantial harm to heritage assets of the highest significance; very special circumstances required for Green Belt; or the exceptional circumstances required for siting in a National Landscape (§§4.2.16-4.2.17). This tells us the Government recognises the fundamental importance of solar and other CNP development to the delivery of net zero; and that it is inevitable CNP will need to come forward in areas currently constrained by planning policy.[264] Indeed, it expects such schemes will get a consent in most cases.

129. Following on from EN-1 and EN-3, the new Government has placed delivering Clean Power by 2030 at the heart of one of the Prime Minister's five missions.[265] The policy and guidance has changed significantly in recent months alone:

a. The December 2024 'Clean Power 2030 Action Plan' brought forward the target for the energy system to be run on clean power from 2035 to 2030. [266] Some 45-47GW of solar is needed in just five years, up from only 15GW of current capacity.[267] That requires an average of 115MW each week to stay on track.[268] Progress is falling far short, with delivery nowhere near keeping pace with required levels (only 22% of what's needed was delivered in 2023).[269]

b. The December 2024 NPPF states at §161 that the planning system should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions, supporting renewable energy infrastructure. The NPPF at §160 provides expressly that very special circumstances may include the wider environmental benefits associated with renewable energy production. By expressly singling out renewables, the NPPF reveals an expectation that, at least in some cases, the need will be sufficient to outweigh Green Belt impacts.[270] Grey Belt is addressed above.

130. The parties all agree substantial weight must attract here.[271]

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[263] Habitats Regulations / Marine Conservation Zones
[264] Agreed Mr Weekes in XX
[265] agreed Ms Collins in XX
[266] CD6.3
[267] CD6.2 on p.8 gives the 15GW figure, CD6.3 on p.10 sets the target of 45-47GW
[268] Agreed Ms Collins in XX: 45GW 2030 cf. 15GW current capacity (per NESO)
- 5 years, 30 GW = 6 GW / year
- 6 GW/ 52 weeks = 115 MW / week = 3x appeal scheme
[269] 6GW/ year is the need. CD6.49 PDF p.37 explains 1.3 GW delivered in 2023. Mr Weekes accepted that
[270] Agreed Ms Collins in XX
[271] While Ms Collins noted that the policy in the new NPPF requires significant weight to all forms of renewables, she accepted that includes even a 1MW scheme and that the greater the contribution the greater the weight that must attach. Since the new NPPF was issued Inspectors have continued to afford substantial weight for schemes of this scale – see e.g. Kenilworth (CD7.80), Burcot (CD7.46). All agree substantial weight here (CD13.12).

Energy Security

131. Climate change is not the only imperative behind boosting renewable generation. As the Government has made clear in documents such as the British Energy Security Strategy (2022) and Energy Security Plan (2023), delivering energy security is both "*urgent*" and of "*critical importance*" to the country. [272] Ms Collins accepted that the energy and climate crises are separate, with energy security about energy independence sheltering from geopolitical conflict and global market fluctuations (such as the war in Ukraine and the fallout from Covid).[273] As the problems are distinct, the Scheme meets two different needs. A new gas power station could provide security but would not assist with the climate crisis.

132. The UK returned to being a net electricity importer in 2023, and total energy generation capacity has fallen in recent years reflecting the closure of coal-fired plants.[274] At the same time demand for electricity could more than double by 2050 as large parts of transport, heating and industry decarbonise.[275] The consequence of energy insecurity is price rises for consumers at home.[276] In his foreword to the Clean Power 2030 Action Plan (CD6.3) the Secretary of State explained:

> "*Since Russia's invasion of Ukraine, Britain has experienced a devastating cost of living crisis caused by our exposure to volatile fossil fuel markets. Every family and business in the country has paid the price and we remain exposed to future energy shocks. In an increasingly unstable world, our dependence on fossil fuels leaves us deeply vulnerable as a country …. But there is a solution: by sprinting to clean, homegrown energy, we can take back control from the dictators and the petrostates. …*"

133. The long-term solution is to address our underlying vulnerability to international oil and gas prices by reducing dependence on imported fuels – this Scheme would contribute to that ambition.[277] Following XX, it is now common ground with all parties this is a distinct benefit and should attract separate substantial positive weight – a conclusion that accords with other appeal decisions, such as that at *Southlands*[278].

Local Climate Emergency Declaration

[272] CD6.1 p.5 British Energy Security Strategy; Energy Security Plan CD6.21 at p.38
[273] See British Energy Security Strategy CD6.1 p.9, Agreed Ms Collins in XX. CD6.28 NPS EN-3 (pg 88) §2.10.9 and §2.10.10 as uses the word 'also' when discussing need
[274] Mr Bainbridge's Proof at §9.44 – referring to the Digest at CD6.49
[275] EN1 CD6.27 at §3.3.3
[276] Agreed Ms Collins in XX
[277] CD6.1 p.5 British Energy Security Strategy para 6 – agreed with Ms Collins in XX
[278] CD7.34, §98

134. Secondly, the Borough Council declared a climate emergency in 2019, an agreed material consideration that weighs in favour of the Appeal Scheme.[279] Associated with its declaration, the Council has also published a local Climate Action Plan.[280] Delivering against the local climate emergency would have tangible benefits.

a. First, while impact to heritage is accepted by all parties, there would also be benefits to the local (and indeed national) historic environment arising. The biggest risk to heritage assets over the next hundreds of years is climate change.[281] The climate hazards identified by the National Trust in the vicinity of the Appeal Site include overheating, storm damage, land slides and soil heave.[282]

b. It is also right to keep in mind the threat to landscape posed by the climate emergency, be that extreme heat, drought, flash flooding or habitat loss.[283] The Landscape Institute has declared a climate and biological emergency, and produced an action plan for how landscape professionals can contribute to it.[284] That refers to their role in supporting renewable energy development, including by finding ways to enable renewable energy within rural landscapes.[285]

135. Following XX, all parties now agree that the Council's local climate change emergency declaration is a material consideration which should be afforded further significant weight, a conclusion that accords with Inspector Heywood in *Southlands*.[286]

Biodiversity

136. The Appeal Scheme would bring about powerful benefits, with a biodiversity net gain ("BNG") of 63.23% in habitat units and 25.76% in hedgerow units.[287] This is a high number well in excess of the new 10% target (which does not 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*", and it is a Government priority to address that decline.[288] Mr Weekes did not accept there is a biodiversity crisis – which explains why

[279] See CD5.9, agreed Ms Collins in XX. Mr Weekes gives it significant weight, independently of the clean energy and security benefits, in the Planning Balance Table CD13.12
[280] CD6.61. at p.29 Some of the foci of the plan are "Encourage landowners and occupiers to use their land in sustainable and biodiverse ways" and "Identify areas of Council land which can be used for renewable energy schemes"
[281] National Trust – CD6.45 p.3
[282] Appellant SOC CD9.1 p.60 extracts from National Trust Climate Change Hazard Map I location of appeal site
[283] Agreed Ms Collins in XX: See e.g. CD6.45 --- p.24 'extreme heat' and p.44 water issues
[284] CD6.38, agreed with Ms Collins in XX
[285] See CD6.38, p.9
[286] As per Inspector Heywood in the recent *Southlands* appeal, who gave significant in favour of the appeal to the issue of climate emergency CD7.34, §99
[287] As agreed in the LPA SOCG CD 12.1 v7
[288] CD6.45 National trust; p.32, agreed Ms Collins in XX

he has given the matter reduced weight.[289] The evidence is clear: up to a million species could be lost globally in coming decades, more than ever before in human history, with the UK itself now one of the "*most nature-depleted countries on Earth*".[290] Modern agriculture and climate change are identified as the key drivers.[291] There are substantial negative consequences of living in a nature-depleted country, which include impacts on human health, and costs associated with adaptation to lost and damaged ecosystem services.[292]

137. Both Mr Weekes and Ms Collins at first reduced the weight to the BNG on the basis of the new 10% statutory requirement. That is not the approach taken by other Inspectors or the Secretary of State.[293] In *Vistry Homes,* the High Court explained that whether a measure should be treated as a benefit depends, inter alia, on its nature and purpose, including whether it would help to meet a need, and not on whether there is a requirement.[294]

138. Fundamentally, it is agreed by all parties that the greater the need, the greater the weight to a benefit – and the need here is very great indeed.[295] In the context of the clear evidence of a nature and biodiversity crisis, Mr Bainbridge fairly concludes substantial weight. His conclusion accords with the Committee Report.[296]

Green infrastructure and landscape enhancements

139. The new green infrastructure planting (including c.750m of new hedgerow) would deliver long-term environmental benefits, including to landscape character and structure.[297] EN-1 recognises that mitigation for renewable energy can also bring benefits in character terms.[298] Ms Oxley and Mr Cook agreed the Scheme would have benefits in terms of reflecting the more intricate historic field pattern by providing a more enclosed structure to the currently open post-war arable fields – as well as benefits to trees and hedgerows[299].

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[289] Per XX of Mr Weekes
[290] IPBES CD6.38, p.4; State of Nature Report (CD6.69) at p.2, agreed with Ms Collins in XX
[291] CD6.69 State of Nature Report p.3
[292] CD6.69 State of Nature report at p. 8
[293] See eg
- CD7.7 Crays Hall §25, 94% = substantial
- CD7.31 Butterfly Lane §54, 89.9% /24.9% = substantial
- Halse Road 71% / 33% in 'significant weight' CD7.43, §123;
- CD7.29 Honiley Road §25, 135% = substantial
- Halloughton a net gain of 73% was given 'significant weight'. (CD7.12, §59)

[294] CD7.90 §§154-155
[295] agreed Ms Collins in XX
[296] CD2.2 at §4.41
[297] Mr Cook in XIC, see Mr Bainbridge's Appendices PDF p.60
[298] EN-1 CD6.27 at §5.10.5
[299] Ms Oxley in XX – see her Table 3.1 and also her §3.24 which explains that the wider landscaping proposals would be beneficial

This would help to provide a resilient and adaptive framework in face of climate change.[300] Mr Bainbridge affords this moderate weight.

Flood Risk Betterment

140. The Parish Council, Borough Council, and the Appellant all agree there is no reason for refusing the Scheme on drainage grounds and all instead find limited positive weight to the flood risk betterment that would be achieved via the proposed drainage scheme. [301] The LLFA have confirmed the suitability of proposals on multiple occasions. The Fillongley Flood Group continues to object. However, they had not read the latest evidence responding to their last round of objections.[302] They were applying the wrong policy in the NPPF. They accepted they had raised their concerns about the Cook & McCuen paper to the LLFA, who again in their FOI response reiterated the scheme is acceptable. The final design is to be secured by condition.

Air quality

141. Emissions from burning fossil fuel power are harmful to human health because they have a detrimental effect on air quality.[303] Clean energy is recognised as having a positive effect, as it reduces the requirement for polluting fossil fuels. The IPCC has identified that limiting global warming can provide "*large public health benefits through improved air quality, preventing millions of premature deaths*".[304] Given the importance of the issue – public health – Mr Bainbridge ascribes moderate weight. Mr Weekes accepted it would be a benefit, giving it very limited weight.[305]

Grid connection

142. It is well established that grid connections are a constrained resource and major barrier in the transition to net zero.[306] The Appellant has a secured grid connection offer with the capacity required for this scheme.[307] In light of the urgency of net zero and the challenges

[300] Mr Cook's Proof at §§5.24-5.25, Mr Cook in XIC
[301] SB PoE Appendix 4 – Drainage technical note §2.7 Through the implementation of the interception / buffer swales, the proposed drainage strategy will result in a betterment. Mr Weekes' §11.9 "*The additional swales and ponds would increase the storage capacity and reduce run off rates. The scheme as agreed to be considered as part of the appeal therefore represents betterment, and thus is considered to be recognised as a limited benefit*"
[302] the Drainage Technical Note appended to Mr Bainbridge's Proof
[303] Agreed Mr Weekes in XX
[304] CD6.8 IPCC special report p.35
[305] Mr Weekes in XX
[306] See eg March 2023 Energy Security Plan CD6.21, pg 50.
[307] Agreed Mr Weekes in XX

facing the grid, it is important for capacity to be taken up where it is available.[308] Grid connection agreements are tied to a specific site and cannot simply be transferred elsewhere.[309] Mr Bainbridge finds the grid connection here attracts significant weight, in line with other recent appeals.[310]

Land Use and Efficiency

143. All parties accept that improvements to soil health occur when arable land is converted to pasture, with increases in soil organic matter, soil carbon and soil moisture.[311] Soil is part of society's natural capital and improvements to it are a clear benefit.[312]

144. The NPPF at §129 supports development that makes efficient use of land. It is common ground with the Council that 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 here. By virtue of this dual use, the Scheme would also allow for the diversification of an agricultural business, as supported by the NPPF at §88. Mr Bainbridge also referred to a third use for BNG.

145. Another positive aspect of the design would be the use of bi-facials panels which can increase continuous electrical productivity by allowing for greater efficiency and optimum light absorption.[313] By increasing the yield, this technology represents the best use of land. Use of best available technology is a matter that has been afforded weight in other appeal decisions, including by the Secretary of State.[314]

Economic Benefits

146. This Government places a new emphasis on economic growth driven by the planning system, telling us that one of the key benefits of the scale up of clean energy is the creation of new job opportunities. The NPPF at §85 states that planning decisions should help create the conditions in which businesses can invest, expand and adapt, and that significant weight should be placed on the need to support economic growth and productivity.

[308] Agreed Mr Weekes in XX
[309] Agreed Mr Weekes in XX
[310] e.g. Kenilworth CD7.80 DL57, Southlands:CD7.34 §101
[311] see R6 SOCG §12.8, with the evidence set out within Mr Kernon's section 7 and Appendix 5, and LPA SOCG CD12.7
[312] See Mr Bainbridge's Proof at
[313] Mr Bainbridge's Proof at §11.41
[314] Honiley Road CD7.29 DL para 30 and IR para 184-186 (moderate) /// Burcot CD7.46 §67 (limited)

147. The 2024 Modern Industrial Strategy explains that "*Growth is the number one mission of this government*"[315]. Clean power is one of the identified growth driving sectors, with the document explaining that £50-60bn will be required each year to reach net zero, that the UK is well placed to capture these opportunities, and that by 2030 up to 725,000 jobs could be created in the low carbon sector.[316]

148. Economic benefits associated with renewable energy go far beyond the site-specific construction activities and include jobs in the wider professional, design and engineering fields.[317] It is anticipated that business rates would accrue in the range of £101,184 per annum or £4 million over 40 years.[318] A rough estimate from the BRE suggests the Appeal Scheme could support approximately 347 FTE jobs across the supply chain.[319]

149. Mr Bainbridge affords this matter significant weight, given the utmost priority afforded to the issue by the new Government. At *Bramley,* the Inspector afforded 'significant' weight to economic benefits of a similar sized solar farm.[320] At *Halse Road* and *Burcot* the Inspectors gave 'moderate' weight to the temporary construction jobs and longer-term business rate benefits accruing from similar sized solar farms.[321]

Adverse impacts

150. National and local policy recognise there are likely to be some adverse effects arising from renewable energy development and these do not make a scheme automatically unacceptable. Policy is also clear that the time limited nature of the permission is likely to be an "*important consideration*" for the decision-maker.[322]

151. The landscape and visual impacts here are moderate and reversible. This is neither a designated nor 'valued' landscape. Mr Bainbridge fairly ~~(reflecting the Committee Report)~~ affords the impacts moderate weight in the overall planning balance. The other parties give significant weight to the combined landscape and visual impacts. Mr Bainbridge's approach better accords with the landscape evidence heard.

[315] CD6.59 Foreword:
[316] PDF p.21 CD6.59
[317] Mr Bainbridge in XIC, see his proof at §§11.69-11.80
[318] Mr Bainbridge's Rebuttal at §3.30
[319] Mr Bainbridge's Rebuttal at §3.30
[320] CD7.15a, paragraph 79
[321] CD 7.43, §124, CD7.46 at §71
[322] CD6.28 EN-3 at §§2.10.149-2.10.150

152. As to heritage, it is now common ground between all three main parties that public benefits outweigh the harm, such that the §215 balance is passed and the "clear and convincing" justification is found.[323] The Appellant is not required to show no harm; a balance is required. The Council gives the combined impacts limited weight; the Rule 6 Party gives the combined impacts significant weight.[324] Mr Bainbridge is in the middle and affords the harm moderate weight.[325] The Court of Appeal in *Palmer* explained that the duty to accord "considerable weight" to the desirability of avoiding harm does not mean that all harms must be treated as having equal weight: *"The duty to accord "considerable weight" to the desirability of avoiding harm does not mean that any harm, however slight, must outweigh any benefit, however great, or that all harms must be treated as having equal weight. The desirability of avoiding a great harm must be greater than that of avoiding a small one"*.[326] This can be seen in practice in other appeals where inspectors have slight or limited weight to harms to designated assets where the harm itself was low level.[327]

153. Mr Weekes' ultimate position that even without Green Belt the planning balance falls in favour of a refusal was not reasonable. First, the Committee did not raise a standalone landscape reason for refusal. Secondly, Mr Weekes' own planning balance table comes out squarely in favour of a consent in these circumstances (it even does if this is Green Belt):

Mr Weekes final table: On a five part scale: 0) No/negligible → 1) Limited → 2) Moderate → 3) Significant → 4) Very significant → 5) Substantial

Benefits	**Harms**
Clean Power – Substantial (5)	Landscape – Significant (3)
Energy Security – Substantial (5)	Heritage – Limited (1)
Local Climate Emergency Declaration – Significant (3)	Permanence/Remediability – None/limited (1)
Biodiversity – Moderate (2)	
Economic Development – Limited (1)	
BMV together – Limited (1)	
Flood Risk Betterment – Limited (1)	
Permanence /Remediability – Limited (1)	
Air quality – Very Limited (0.5)	
Total = 19.5	Total = 4 or 5

[323] Ms Collins in XX
[324] As explained by Ms Collins in response to the Inspector - taking the harm to all five assets together)
[325] See planning balance table CD13.12
[326] CD7.22, at §34.
[327] See Inspector Woolcock in Fobbing CD.7.3, p.16, §75; see Inspector Partington in Burcot CD7.46 (low level harm to CA and Grade 1 listed RPG) – 'great weight' given to assets conservation, heritage balance comes out in favour, and then finally at §96 'limited weight' to heritage impacts in the final planning balance

Ms Collins final table: On a four part scale: 0) No/negligible → 1) Limited → 2) Moderate →3) Significant → 4) Substantial

Benefits	**Harms**
Clean Power – Substantial (4)	Landscape – Significant (3)
Energy Security – Substantial (4)	Heritage – Significant and public benefits outweighed (3)
Local Climate Emergency Declaration – Significant (3)	Permanence/Remediability – Moderate (2)
Biodiversity – Moderate (2)	BMV – Moderate (2)
Permanence /Remediability – Limited (1)	+ Green Belt substantial if §155 not read 'literally'
Economic Development – Limited (1)	
Farm Diversification – Limited (1)	
Flood Risk – Limited (1)	
Grid connectivity – Limited (1)[328]	
Total = 17 or 18	Total = 10 (or 14 if Green Belt)

154. The benefits are more numerous and weigh more heavily, even taking Mr Weekes' or Ms Collins' own case at its highest. There is no point in carrying out a planning balance if the conclusion of that balance, a weighing up of the harms and the benefits, is ignored.

Conclusion

155. Mr Bainbridge concluded by drawing attention to the words of the RTPI/TCPA, who state that "*climate change is the greatest challenge facing our society. Every decision we take must count towards securing our long-term survival*".[329]

156. For all these reasons and those outlined at the Inquiry, the Inspector is invited to agree with the final balance drawn by the Council's Head of Development Control and to grant permission, subject to appropriate conditions.

17th April 2025

ODETTE CHALABY
No5 Chambers

[328] On case of appellant's evidence
[329] CD6.43 at pp.3-4 – he also referred to p.59