# REPLY BY APPELLANT

## Approach of both parties

- The total lack of any substantive consideration whatsoever for the agreed urgent, compelling needs for solar development is striking in both Closings.
- There is no mention of the climate crisis, of the energy security crisis, or of the nature crisis.
- Both parties identify harm but conveniently do not weigh them properly against the benefits. There is no requirement to have no harm. The reason there is no proper balancing exercise is that the balance comes out clearly in favour.
- The Appellant's closings fairly consider the harms and set out the benefits. The benefits have been ignored by both the Rule 6 and the Council. Half of the whole inquiry discussion has been left out of consideration.
- It is unusual to approach Closings in this way and indicative of the overall approach the other parties have taken.

## Rule 6 Closings

| Para | Comment |
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| §7 (a) | • In *Bramley* **the Court** confirmed a "preference" for alternative sites does not require consideration of alternative sites. Preference simply means preference.<br><br>• Mr Cook did not say he had analysed any specific other sites but had given thought to the likely availability of urban/PDL sites in the area<br><br>As per Marden CD7.30 at §43<br>"On behalf of the Council it was suggested that the expressed preference for the use of lower quality land should be interpreted as giving precedence to the use of that land. In turn it was argued that this would require an assessment akin to a sequential assessment to enable the best choice to be made. That is not an interpretation accepted by the Appellant, and I also do not agree that preference can be equated with precedence in this context." |
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| §9 | The Parish Council accepts there is no requirement to consider alternatives, then says one 'ought' to have been provided. That does not make sense. If there is no requirement, as agreed here, then there is no basis for saying one ought to have been provided. |

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| | The reason an ASA was not provided is none was ever requested by the Council, this is not an EIA case, and the Appellant considered it had adequate VSC without it. It is telling that the Council is very clear there is no alternative and gives no weight to this at all. |
| §10 | It would be an error of law to afford negative weight to lack of alternatives, in the context when all parties **agree** there is no requirement to consider alternatives.<br><br>The only impact of an alternative sites assessment would have been to add additional further positive weight – as Mr Weekes agree. |
| §11 | The Rule 6 Party invites the Inspector to ignore the wording of the PPG. The Court of Appeal in *Mead Realisations* confirmed the PPG can amend the PPG and that the PPG and NPPF are essentially of equal legal status.<br>Mr Smyth confirmed he accepted that point at the end of GC's examination |
| §14 | Where Mr Smyth goes wrong is by looking at what purpose is important with relation to the Site itself only. What the NPPF asks us to do is look at the purposes taken together across the plan area.<br><br>The reason that encroachment is more important on the Site is because the Site performs weakly in Green Belt terms, not conflicting with 4/5 purposes.<br><br>That does not give the impacts on encroachment any particular importance when the Green Belt is considered as a whole. |
| §14 | The point about the Site being in one of the narrower gaps between Birmingham and Coventry goes nowhere when the parties agree the Appeal Site would not impact purpose (a) urban sprawl or (b) merging of towns. |
| §15 | Ms Collins agreed that solar will need to come forward in greenfield land and said the Rule 6 Party does not take an in-principle objection to the countryside objection.<br><br>The Council sensibly confirm there is no conflict with that proposal. |
| §17 | At the CMC impacts on heritage and landscape in general were identified as main issues.<br>The Rule 6 Party did not request any additional photomontages.<br>No witness said they were unable to assess the impacts properly without them. |
| §23 | The problem is not with the use of a matrix per se – it was that the results of the matrix were translated into the LTSH spectrum in the NPPF. That factored value into the harm spectrum, conflating the two. |

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| | It is exactly the same mistake as was made in the *Bramley The Street* appeal. |
| §25 | The CMC note identified impacts on six heritage assets and all the alleged NHDAs – it did not single out the SM<br><br>It is wholly inappropriate and unjustified for the Rule 6 to allege the Appellant has deployed a tactical device. Ms Tuck did not suggest she could not assess the impact. There is no requirement for photomontages; as Mr Cook explained they are unusual for this type of development. The Rule 6 produced photomontages and themselves chose not to produce one from the SM. |
| §30 | The guidance Ms Armstrong quoted refers to wind turbines and towers competing with church towers. In that context 2.3m panels are small scale. |
| §31 | The more enclosed views are more akin to the historic context than the wide open views across large post-war fields agreed today.<br><br>The church cannot be seen from footpath. |
| §35 | That is a mischaracterisation of §4.80 of Ms Armstrong's Proof. That says<br>*There is no evidence of designed views back towards Fillongley Mount from specific locations in the wider landscape, and where views are obtainable the extent to which the architectural detailing, form and siting of the asset can be understood varies*<br><br>Ms Armstrong maintained the same view under XX. |
| §40 | The alleged policy conflict was not put to any of the Appellant's witnesses.<br>The heritage policies import a balance, and to be sound they must be read as accepting, in compliance with the NPPF, there can be policy compliance if there is some harm so long as this is outweighed by the benefits. |
| §42 | A sheep grazing condition has been offered. That undermines this entire argument |
| §43 | Mr Kernon confirmed that even on Mr Antrobus' figures the impact is negligible |
| §45 | The benefits are long term – the planting would stay, which would have landscape character and biodiversity benefits.<br>The benefits of tackling climate change, by reducing GHG emissions, would not be 'time-limited' – every additional amount of GHG in the atmosphere pushes us further to catastrophe and away from manageable increases in temperatures. |

**Council Closings**

| Para | Comment |
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| §1 | All agree there is no requirement in policy to 'hide' the solar farm |
| §3 | The Council appears confused again that there will be a number of 'tracks/roads'. There are no proposed new tracks/roads. |
| §13 | Ms Oxley's Proof provided none of those caveats – it was only once Mr Cook pointed out the non-compliant nature of her own photographs that we were told they were taken on a phone |
| §14 | Following the CMC the Council did not get in touch with Mr Cook and ask for any additional photomontages. Nor did they provide any.<br><br>There is no requirement to provide them. Mr Cook said it is unusual to do so. |
| §17 | The Bare earth ZTV does not just not take into account trees. It does not take into account:<br>- Trees<br>- Hedges<br>- Buildings<br>- the Proposed Landscaping<br><br>It literally shows the potential visibility having regard to terrain only. |
| §19 | The reason so much time was spent discussing photomontages is not because they make any difference to the overall decision but because the Council had no other real points to make.<br>Ms Oxley did not suggest she has been unable to assess the scheme. |
| §27 | Mr Cook always said there would be effects on the site and its immediate environs. see e.g. AC §6.31 |
| §34 | The Council does not suggest any change in view from Far Parks would result in an adverse impact from a private view reaching the residential amenity threshold. There is no right to a private view. The guidance is clear. |
| §38 | Mr Cook explained in great detail his understanding of how quickly the hedges and trees would grow. It is inappropriate to suggest he has left something out of consideration.<br>His impacts are greater for construction of y1/y15. |
| §§43-46 | This is a new point raised by the Council for the first time and not one Mr Weekes took.<br>It is entirely inappropriate for the Council to raise this in closings.<br>There is as the Council says no requirement to look at alternatives. |
| §52 | This is incorrect.<br>Section 66 does not refer to 'great weight'.<br>It is §212 NPPF that refers to great weight. |

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| | It says<br>When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). |
| §88 | Mr Weekes said the most important policy is LP35.<br>The Committee and Members considered there is compliance – it is not part of the RfR. |
| §90 | That was not the opinion of the Council's Head of Development Control who is the person that might be expected to be most familiar with the policies |
| §92 | Mr Bainbridge has carefully explained that in his Proof he used a 3-part scale with significant at the top. For the Summary Table he has sought to assist the inquiry by using a 4-part scale to align with Ms Collins and Mr Weekes.<br><br>In Honiley CD7.29 the Secretary of State said **substantial** not significant. That is at §25 of the SoS's decision. That supports Mr Bainbridge's view. |
| §92(d) | Job creation over a 40 year period is by necessity an exercise in approximate estimation. Mr Bainbridge set out his source for the figure. No party suggested what was wrong with that source nor suggested a different way of carrying out the calculation. |
| §95 | There is no point in a planning balance if the benefits are not weighed against the harms.<br>Weighing material considerations against each other is not weighing apples and pears.<br>The Council is hiding from the obvious conclusion of the planning balance. |
| | Oddly, nowhere in the entire Closing does the Council refers to its major concession on Grey Belt and the impact on the case. |