

NEWARK AND SHERWOOD DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

Appeal by Assured Asset Solar 2 Ltd against the refusal of planning permission by

Newark and Sherwood District Council of

“Proposed ground mounted photo voltaic solar farm and battery energy storage system with associated equipment, infrastructure, grid connection and ancillary work.”

at Land To The West Of Main Street, Kelham

Planning Inspectorate Reference: APP/B3030/W/25/3364181

District Council Reference: 23/01837/FULM

**Proof of Evidence of Christopher Whitehouse BSc (Hons) MRICS,
RICS Accredited Expert Witness**

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1.0 Introduction

1.1 I am Christopher Whitehouse, a Member of the Royal Institution of Chartered Surveyors (MRICS) since 2010. I hold a Bachelor of Science degree in Planning and Development Surveying from Northumbria University (2009) and I am an RICS Accredited Expert Witness in Planning (2014). I am also a member of the National Expert Witness Agency (NEWA).

1.2 I am the Managing Director of the planning consultancy NextPhase, an RICS Regulated Practice that I have owned and managed since its formation in 2011; having beforehand worked as a planning consultant in a Planning Consultancy.

1.3 I have over 16 years' experience in a broad range of planning matters, and across that time have worked extensively on planning issues associated with major residential, environmental, commercial and minerals developments.

1.4 I have acted as planning consultant for a variety of housing and commercial developers, investment funds and minerals and waste operators. I have also worked extensively across a broad range of planning appeals, including many Public Inquiries and Hearings, acting as an expert witness for Local Planning Authorities, Minerals and Waste Planning Authorities and appellants.

1.5 I am familiar with the appeal site, the wider area and the relevant national and local planning policy. I undertook a site visit on 10th September 2025.

1.6 Declaration

I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion. I confirm that I understand and have complied with my duty to the Secretary of State as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required. I confirm that I am not instructed under any conditional or other success-based fee arrangement. I confirm that I have no conflicts of interest. I confirm that I am aware of and have

complied with the requirements of the rules, protocols and directions of the Public Inquiry Procedure. I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement “Surveyors Acting as Expert Witnesses, 4th Edition” (RICS, amended 2023). The opinions expressed are my true and professional opinions.

2.0 Background and Scope of Evidence

2.1 I have been instructed to appear as a witness at this Inquiry on behalf of Newark and Sherwood District Council (“NSDC” or “The Council”) in relation to the decision to refuse planning permission for application 23/01837/FULM on 31st January 2025. I was formally instructed by the Council on 9th June 2025 having satisfied myself professionally that I could support the Council’s case.

2.2 The application was refused for the following reasons:

“1. A significant proportion of the site would affect the best and most versatile agricultural land, which would be removed from arable farming production for a period of at least 40 years. The loss of this land is not sufficiently mitigated or outweighed by the other benefits of the scheme. The proposal is therefore considered to be an unsustainable form of development, contrary to Policy DM8 and national advice contained within the National Planning Policy Framework (2024) and Planning Practice Guidance.

2. The proposed development, when taken cumulatively with other renewable energy developments in the locality, will result in unacceptable harm to landscape appearance, contrary to Spatial Policy 3 (Rural Areas) and Core Policy 9 (Climate Change) of the Amended Core Strategy (2019) and Policies DM4 (Renewable and Low Carbon Energy Generation), DM5 (Design) and DM8 (Development in the Open Countryside) of the Allocations and Development Management DPD (July 2013) in addition to the National Planning Policy Framework (2024) and Planning Practice Guidance. There are no other material planning considerations that would outweigh this harm.

3. The proposed development will result in less than substantial harm to designated heritage assets including Kelham Conservation Area and Kelham Hall. Whilst the significant benefits of the proposal in terms of renewable energy are acknowledged the public benefits and any other material planning considerations do not outweigh this harm. The proposal is thereby contrary to Policy CP14 of the Amended Core Strategy (2019) and DM9 of Allocations and Development Management DPD (July 2013) and national guidance contained within the National Planning Policy Framework (2024) and Planning Practice Guidance. The proposed development fails to preserve the setting of Kelham Hall in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.”

- 2.3 The Council screened and scoped the Application in compliance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“EIA”), reference 22/SCR/00012. It confirmed the application was not EIA development.
- 2.4 This proof of evidence will consider the main issues in this appeal, as set out within the Inspector’s Post-Conference Note from the Case Management Conference (CMC)¹, which are as follows:
1. The impact on Best and Most Versatile (BMV) Agricultural land.
 2. The impact on the rural character and appearance of the area having regard to other renewable energy developments nearby.
 3. The impact on heritage assets.
 4. Benefits of the development, planning policy and planning balance.
- 2.5 My evidence is therefore presented under the following sections:
- Section 3 – Planning Policy Context
 - Section 4 – Analysis of Main Issues
 - The impact on Best and Most Versatile Agricultural land
 - The impact on the rural character and appearance of the area having regard to other renewable energy developments nearby
 - The impact on heritage assets.
 - Section 5 – Material considerations supporting the proposal
 - Section 6 – Planning Balance and Conclusions
- 2.6 Additional Proofs of Evidence are being provided on behalf of the Council by two witnesses addressing matters in relation to character and appearance and heritage, respectively. The Proofs are submitted under separate cover, but I rely upon their evidence, to the extent necessary, in my assessment of policy compliance and the planning balance to be applied to the appeal.

¹ Post-CMC Note dated 15th July 2025, paragraph 13

- 2.7 A signed Statement of Common Ground (“SoCG”) (CD 9.10) has been prepared between NSDC and the Appellant, which states matters of agreement and disagreement, and provides factual descriptions of both the site location and of the proposed development. I therefore do not rehearse those descriptions here. The SoCG also sets out agreed heads of terms to inform a S106 agreement intended to be completed and signed by the close of the Inquiry.
- 2.8 The SoCG confirmed the intention of the parties to agree further, topic-specific SoCG’s². At the CMC, the Inspector requested that topic-specific SoCG’s be prepared in relation to agricultural land (CD 9.12), landscape (CD 9.13) and heritage (CD 9.14) and provided guidance on what these should cover. Furthermore, the Inspector requested the overarching SoCG be updated to further narrow issues³ (CD 9.11). These additional SoCG’s have been considered and inform this proof of evidence.
- 2.9 The Council reserves the right to consider and respond to issues raised by the Appellant in the submission of their evidence, through rebuttal proofs if necessary, in accordance with the Inspector’s comments raised within the CMC.

² Overarching SoCG, paragraph 1.2

³ Post-CMC Note dated 15th July 2025, paragraph 26

3.0 Planning Policy Context

3.1 The Development Plan

Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 together require that planning applications must be determined in accordance with the statutory Development Plan unless material considerations indicate otherwise. The National Planning Policy Framework ("NPPF") or ("the Framework") (2024) and Planning Practice Guidance ("PPG") are material considerations.

3.2 The requirements in determining applications "in accordance with" the plan does not mean that an application must comply with each and every policy, but it is approached on the basis of the plan taken as a whole. This reflects the fact, acknowledged by the courts⁴, that Development Plans are a broad statement of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. The statutory adopted Development Plan of relevance to this appeal comprises of the following:

- Newark and Sherwood Amended Core Strategy DPD (adopted March 2019) ("ACS")
- Newark and Sherwood Allocations & Development Management DPD (2013) ("DPD")

3.3 The Draft Amended Allocations & Development Management DPD was submitted to the Secretary of State on 18th January 2024 and has been subject to an examination in public in November 2024. Whilst the Plan is therefore at an advanced stage of preparation, the Inspector's report is still awaited. There are unresolved objections emerging through that process, and as such, the draft DPD is to be afforded limited weight within the appeal, in accordance with paragraph 49 of the Framework.

3.4 Constraints

There are no statutory ecological designations within 2km of the Site. The nearest non-statutory ecological designation is Kelham Hills Local Wildlife Site (LWS), which is located approximately 160m to the west of the Site. There are a further four LWS within 1km of the Site.

⁴ Regina v Rochdale MBC, Ex Parte Milne [2000] and R(Corbett) v Cornwall Council [2020]

3.5 Kelham Conservation Area covers the built extent of Kelham village to the east including some areas adjacent to the eastern boundary of the Site. Averham Conservation Area covers the built extent of Averham village, which is sited on the opposite side of the A617 Main Road to the south. The Site is located adjacent to, but outside of, both the aforementioned Conservation Areas. There are 13 Listed Buildings within the 1km study area, with the Grade I listed Kelham Hall approximately 330m to the east. The nearest Listed Buildings are the Grade II listed Farm Buildings at Home Farm located within Kelham, approximately 130m to the east of the Site. The nearest Scheduled Monument is 'Averham moat and enclosure' located approximately 420m to the south of the Site.

3.6 There are several non-designated Heritage Assets close to the Site, including the formal grounds and parkland for Kelham Hall (approximately 200m to the east). The Site also includes areas of archaeological interest.

3.7 The Site is predominately Flood Zone 1. However, the Site contains isolated areas of Flood Zone 2, and a small part of the Site access would fall within Flood Zone 3.

3.8 The parties agree⁵ that the appeal Site is made up of 55% Grade 2 (very good) BMV, 37% Subgrade 3a (good) BMV and 5% Subgrade 3b (moderate) agricultural land; with the remaining 3% being non-agricultural.

3.9 Policies

As set out in the SoCG⁶, it is agreed between the parties the following development plan policies are relevant in the determination of this appeal:

ACS

- Spatial Policy 3 Rural Areas
- Spatial Policy 7 Sustainable Transport

⁵ Overarching SoCG, paragraph 9.15, in having regard to the Agricultural Land Classification (ALC) survey undertaken by Land Search Associates in September 2023 on behalf of the Appellant's (CD 1.46).

⁶ Overarching SoCG paragraphs 6.1 and 6.2

- Core Policy 9 Sustainable Design
- Core Policy 10 Climate Change
- Core Policy 12 Biodiversity and Green Infrastructure
- Core Policy 13 Landscape Character
- Core Policy 14 Historic Environment

DPD

- Policy DM4 Renewable and Low Carbon Energy Generation
- Policy DM5 Design
- Policy DM7 Biodiversity and Green Infrastructure
- Policy DM8 Development in the Open Countryside
- Policy DM9 Protecting and Enhancing the Historic Environment
- Policy DM10 Pollution and Hazardous Substances
- Policy DM12 Presumption in Favour of Sustainable Development

3.10 I do not propose to address all of these policies exhaustively here and instead confine myself to those policies which are most important for determining this appeal. I deem these to be Spatial Policy 3 and Core Policies 9 and 14 of the ACS, and Policies DM4, DM5, DM8 and DM9 of the DPD.

3.11 ACS

Spatial Policy 3, Rural Areas, is a policy that supports and promotes local services and facilities in rural communities, protects the countryside and encourages schemes that, inter alia, enhance heritage assets and the landscape. The appeal proposal is located in the countryside, beyond Principal Villages, and as such, the policy is relevant to RfR2 as it states that *“Beyond Principal Villages, proposals for new development will be considered against the following criteria... [bullet four] Character - new development should not have a detrimental impact on the character of the location or its landscape setting.”*

- 3.12 Core Policy 9 expects new development proposals, such as the appeal proposal, *“to demonstrate a high standard of sustainable design that both protects and enhances the natural environment and contributes to and sustains the rich local distinctiveness of the District”*. The policy then sets out a series of requirements as a result of this expectation, including, as relevant to the appeal proposal and RfR2, bullet 1, which states that new development should *“Achieve a high standard of sustainable design and layout... and of an appropriate form and scale to its context complementing the existing built and landscape environments”*.
- 3.13 Core Policy CP14 recognises the historic environment of Newark and Sherwood and sets out an intention of the Council to secure *“the continued conservation and enhancement of the character, appearance and setting of the District’s heritage assets and historic environment, in line with their identified significance as required in national policy”*. The policy provides consistency with the NPPF with regards to impacts to designated heritage assets, stating that *“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. The more important the asset, the greater the weight should be. Where adverse impact is identified there should be a clear and convincing justification, including where appropriate a demonstration of clear public benefits”*.
- 3.14 Furthermore, the policy provides consistency with the NPPF with regards impacts to non-designated heritage assets, stating that *“in weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”* The policy confirms that *“the preservation and enhancement of the special character of Conservation Areas including that character identified through Conservation Area Character Appraisals which will form the basis for their management.”*
- 3.15 The principles of Core Policy 14 as set out above are relevant to the appeal proposal and in particular RfR3.

3.16 DPD

Policy DM4 states that planning permission will be granted for renewable energy development, including both standalone projects and associated infrastructure, *“where its benefits are not outweighed by detrimental impact from the operation and maintenance of the development and through the installation process upon...”*[at Part 1] *“The landscape character...arising from the individual or cumulative impact of proposals”* and [at Part 3] *“Heritage Assets and or their settings...”* Policy DM4 is referred to in RfR2, but clearly in having regard to Part 3 of the policy, is also relevant to the consideration of impacts on heritage assets.

3.17 It is common ground between the parties that the development plan does not specifically allocate for the generation of renewable energy⁷. Furthermore, it is agreed that the wording of policy DM4 supports the principle of renewable energy development at the appeal site, subject to a demonstration that its benefits outweigh its impacts (predominantly in this instance operational) upon criteria that include parts 1 and 3⁸. It is the Council’s case that the proposal is not supported by the policy, due to benefits failing to outweigh the harm arising from parts 1 and 3 of the criteria. The assessment of balance that is applied in relation to the policy differs from the planning balance I undertake in Chapter 6 of this proof of evidence, as the list of potential harms against which the benefits are balanced is a closed one. Nonetheless within this proof, I assess whether the proposal is supported or not by the policy having regard to the conclusions raised in relation to character and appearance matters (which I conclude can be considered to include landscape character issues, as per part 1 of the policy) and heritage matters, as main issues.

3.18 Policy DM5 assesses all new development against a series of criteria that includes, as it applies to the appeal proposal, a requirement that *“development proposals should have regard to their impact on the amenity or operation of surrounding land uses and where necessary mitigate for any detrimental impact”* [at part 3, Amenity], that *“the rich local distinctiveness of the District’s landscape and character of built form should be reflected in the scale, form, mass, layout, design, materials and detailing of proposals for new development”* that *“all development proposals will be considered against the assessments contained in the Landscape Character Assessment Supplementary Planning Document”* and that *“where local distinctiveness derives from the presence of heritage assets, proposals will also need to satisfy Policy DM9”* [at part 4, Local Distinctiveness and Character].

⁷ Overarching SoCG, paragraph 9.3

⁸ Overarching SoCG, paragraph 9.6

Furthermore, part 5 [Trees, Woodlands, Biodiversity & Green Infrastructure] states that *“in accordance with Core Policy 12, natural features of importance within or adjacent to development sites should, wherever possible, be protected and enhanced. Wherever possible, this should be through integration and connectivity of the Green Infrastructure to deliver multi-functional benefits.”*

- 3.19 The policy is referred to in the Council’s decision notice in relation to RfR2, however, in having regard to part 4, it is also potentially relevant to the consideration of impacts on heritage assets. The parties agree that a benefit arises from the development in the form of the provision of a new Public Right of Way (PRoW) and, as such, there is a requirement to determine whether this benefit provides a degree of accordance with the policy (having regard to part 5).
- 3.20 Policy DM8 states that development in open countryside will be strictly controlled and limited to certain types of development, which does not include solar farms and/or BESS. However, any specific conflict in this sense with the policy should, in my opinion, have regard to Policy DM4, as a specifically applicable policy to the development that could, in principle, support the development of a solar farm and/or BESS in the open countryside. The Overarching SoCG makes reference to an appeal for a BESS proposal elsewhere in the district where an Inspector draws a similar conclusion as to the most directly relevant policy relating to the delivery of renewable energy schemes in the countryside in certain circumstances⁹.
- 3.21 It is agreed that the appeal site consists of 92% BMV, including 55% Grade 2 BMV¹⁰ and that the proposal would result in the Site not being actively farmed for arable purposes for a period of 40 years¹¹. It is a matter of fact that for the period of time in which the appeal scheme is operational, 60.3ha of BMV will not be able to function as BMV, and as such there will be a loss of it across the period. To this extent, Policy DM8 is applicable to the issue, and as such to RfR1, as it states that *“Proposals resulting in the loss of the most versatile areas of agricultural land, will be required to demonstrate a sequential approach to site selection and demonstrate environmental or community benefits that outweigh the land loss.”* Consideration as to the consistency of this part of the policy with the Framework is a matter that I address when considering main issue 1.

⁹ Overarching SoCG paragraphs 9.4 and 9.5, quoting appeal decision 3334043

¹⁰ Overarching SoCG paragraph 9.15

¹¹ Overarching SoCG paragraph 9.17

3.22 Policy DM8 also states that *“all proposals will need to satisfy other relevant Development Management Policies, take account of any potential visual impact they create and in particular address the requirements of Landscape Character, in accordance with Core Policy 13.”* The parties disagree on the applicability of Policy DM8 to the appeal scheme¹² and as I understand it, the Appellant does not consider that the policy is relevant to the cumulative impact matters of RfR2. In my opinion, a plain reading of the policy is that all development proposals in the open countryside, irrespective of whether they accord with the limited list of development types set out in the list 1 to 12, will need to satisfy other relevant development management policies, take account of their visual impact and in particular address the requirements of landscape character. Insofar as RfR2 relates to landscape and visual impact matters, this part of the policy is relevant to the issue and is applicable to, and appropriately referenced, in RfR2.

3.23 Policy DM9 states that, in accordance with the requirements of Core Policy 14, *“all development proposals concerning heritage assets will be expected to secure their continued protection or enhancement, contribute to the wider vitality, viability and regeneration of the areas in which they are located and reinforce a strong sense of place.”* The following subsequent sections of the policy are relevant to the appeal proposal:

“1. Listed Buildings

Proposals for the change of use of listed buildings and development affecting or within the curtilage of listed buildings requiring planning permission will be required to demonstrate that the proposal is compatible with the fabric and setting of the building. Impact on the special architectural or historical interest of the building will require justification in accordance with the aims of Core Policy 14.

2. Conservation Areas

Development proposals should take account of the distinctive character and setting of individual conservation areas including open spaces and natural features and reflect this in their layout, design, form, scale, mass, use of materials and detailing. Impact on the character and appearance of Conservation Areas will require justification in accordance with the aims of Core Policy 14.

5. All Heritage Assets

¹² Overarching SoCG paragraphs 9.3

All development proposals affecting heritage assets and their settings, including new operational development and alterations to existing buildings, where they form or affect heritage assets should utilise appropriate siting, design, detailing, materials and methods of construction. Particular attention should be paid to reflecting locally distinctive styles of development and these should respect traditional methods and natural materials wherever possible. Where development proposals requiring planning permission involve demolition, the resulting impact on heritage assets will be assessed under this policy.”

3.24 National Planning Policy Framework

The NPPF does not change the fundamental premise of Section 38(6) of The Planning and Compulsory Purchase Act 2004. The NPPF must be taken into account when preparing the Development Plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

3.25 At the heart of the NPPF is a presumption in favour of sustainable development, for which three “dimensions” are identified, namely an economic role, a social role and an environmental role. The implication is that to achieve sustainable development, the economic, social and environmental gain should be sought jointly and simultaneously through the planning system.

3.26 The Chapters of the Framework relevant to the determination of this appeal include:

- Chapter 2. Achieving sustainable development
- Chapter 4. Decision-making
- Chapter 6. Building a strong, competitive economy
- Chapter 9. Promoting sustainable transport
- Chapter 12. Achieving well-designed places
- Chapter 14. Meeting the challenge of climate change, flooding and coastal change
- Chapter 15. Conserving and enhancing the natural environment
- Chapter 16. Conserving and enhancing the historic environment.

- 3.27 Chapter 6 of the Framework addresses building a strong, competitive economy. Paragraph 85 states that *“significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”*.
- 3.28 Paragraph 87 states that planning policies and decisions *“should recognise and address the specific locational requirements of different sectors. This includes making provision for ...”* at c), *“the expansion or modernisation of other industries of local, regional or national importance to support economic growth and resilience”*.
- 3.29 Chapter 12 provides further guidance with regard to achieving well-designed places, where at Paragraph 135 it sets out criterion across parts a) - f) to achieve well-designed places; which include for, at b), a requirement for development to be *“visually attractive as a result of good architecture, layout and appropriate and effective landscaping”*, whilst at c) *“sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change”*.
- 3.30 Chapter 14 addresses the planning systems response to the challenge of climate change, noting at paragraph 161 that the planning system should *“support the transition to net zero by 2050 and take full account of all climate impacts including overheating, water scarcity, storm and flood risks and coastal change”*. It states that the planning system should help to *“minimise vulnerability and improve resilience...encourage the reuse of existing resources ... and support renewable and low carbon energy and associated infrastructure”*.
- 3.31 Paragraph 168 in Chapter 14 sets out that when determining planning applications for all forms of renewable and low carbon energy developments and their associated infrastructure, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy and should *“give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal’s contribution to a net zero future”*.

- 3.32 Paragraph 187 requires both planning policy and decisions to contribute to and enhance the natural and local environment by, at b) *“recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland”*.
- 3.33 Section 16 of the Framework relates to the conservation and enhancement of the historic environment within the planning regime. This is informed by the statutory duties as established in Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”), which places a duty on the decision maker when determining applications for development which affects a listed building or its setting, to have special regard for the desirability and preserving the listed building or its setting, or any of the features of special architectural interest it possesses.
- 3.34 Paragraph 208 of the Framework establishes that the starting point for assessing harm to heritage assets is to identify and assess the significance of the assets in question.
- 3.35 Paragraph 212 of the Framework states that *“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). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”*.
- 3.36 Paragraph 215 of the Framework states that *“where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use”*.
- 3.37 Paragraph 216 of the Framework states that *“the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*

3.38 Planning Practice Guidance (PPG)

The PPG is a material consideration. The most relevant of the considerations for this appeal are sections on Biodiversity Net Gain, Climate change, Historic Environment, Natural environment, Renewable and low carbon energy and use of planning conditions.

3.39 Historic Environment

Section 66(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) imposes a duty on local planning authorities to have special regard to the desirability of preserving a listed building or its setting, or any features of special architectural or historic interest which it possesses.

3.40 Other material considerations

Other national policy and guidance documents are agreed in the statement of common ground¹³ to be material considerations in the determination of this appeal and are provided in the Core Documentation list. This includes for the following documents:

- Overarching National Policy Statement for Energy (EN-1) (2023)
- National Policy Statement for renewable energy infrastructure (EN-3) (2023)

3.41 Furthermore, the overarching SoCG sets out policy statements and guidance dealing with both planning policy and energy policy at a national level that the parties agree are relevant to the appeal¹⁴.

3.42 With regard to matters associated with the Council's landscape evidence, material documents to be referred to include:

- Guidelines for Visual Impact Assessment (Third Edition) ("GLVIA3")
- Landscape Institute Technical Guidance Note 02/21 - Assessing landscape value outside of national designations ("TGN 02/21")

¹³ Overarching SoCG Chapter 7

¹⁴ Overarching SoCG para 7.2

- Landscape Institute Technical Guidance Note 06/19 - Visual Representation of Development Proposals (“TGN 06/19”)

3.43 With regard to matters associated with the Council’s heritage evidence, material documents to be referred to include:

- Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (February 2021)
- The Setting of Heritage Assets -Historic Environment Good Practice Advice in Planning: 3 (2nd Edition)

3.44 Where specific reference is made to paragraphs within the policy and guidance documents within this proof it is noted, otherwise I confirm that the policy and guidance has been considered in full.

4.0 Analysis of Main Issues

4.1 The impact on Best and Most Versatile Agricultural land

RfR1 states *“A significant proportion of the site would affect the best and most versatile agricultural land, which would be removed from arable farming production for a period of at least 40 years. The loss of this land is not sufficiently mitigated or outweighed by the other benefits of the scheme. The proposal is therefore considered to be an unsustainable form of development, contrary to Policy DM8 and national advice contained within the National Planning Policy Framework (2024) and Planning Practice Guidance.”*

4.2 An Agricultural Land Classification (ALC) survey was completed by the Appellant and submitted as part of the planning application (CD 1.46). An Agricultural Land SoCG (“AgSoCG”) has been agreed by the parties (CD 9.12). Neither land quality, quantity nor distribution are matters in dispute between the parties and it is agreed that of the total 65.7ha of land making up the appeal site, 92% of it (60.3ha) is BMV agricultural land; with 55% of it (36ha) Grade 2 BMV and 37% (24.3ha) Grade 3a¹⁵.

4.3 Paragraph 187 of the Framework sets out that planning decisions should contribute to and enhance the natural and local environment by, inter alia, recognising the economic and other benefits of BMV agricultural land (at part b). Whilst Footnote 65 is raised in relation to plans, it states that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

4.4 A similar provision is set out in EN-3¹⁶, where it states that *“While land type should not be a predominating factor in determining the suitability of the site location applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of “Best and Most Versatile” agricultural land where possible.”*

¹⁵ AgSoCG para 2.1 (b) and (c).

¹⁶ EN-3 para 2.10.29

- 4.5 The parties agree that the Written Ministerial Statement “*Solar and protecting our Food Security and Best and Most Versatile (BMV) Land*” (May 2024) (CD 5.29) is relevant to the appeal¹⁷ and I conclude that it is reflective of current national policy and guidance.
- 4.6 National policy and guidance for BMV agricultural land does not mandate the consideration of alternatives or require a sequential test. DPD Policy DM8 states that “*proposals resulting in the loss of the most versatile areas of agricultural land, will be required to demonstrate a sequential approach to site selection and demonstrate environmental or community benefits that outweigh the land loss*”. Policy DM8 is relevant to the appeal to the extent that it recognises that where proposals result in a loss of the most versatile areas of agricultural land 'a sequential approach to site selection' and demonstratable environmental or community benefits must outweigh the land use. Whilst there is a degree of disagreement between the parties to the extent and context of ‘loss’ of agricultural land, there is agreement that to the extent that Policy DM8 requires a sequential assessment, it is inconsistent with the Framework¹⁸.
- 4.7 Notwithstanding this position, within their Planning Statement prepared as part of their application (CD 1.42), the Appellant presented an assessment of site selection, which had regard to both the availability of grid connection and the agricultural grade of the local area. I conclude that the assessment undertaken sufficiently demonstrates that there is no unconstrained land within the local area, in proximity to a grid connection, that has a lower BMV. I have set out the weight I ascribe to the benefits of the proposal within the overarching SoCG and in more detail in Chapter 5 of this proof of evidence. In a circumstance where it is considered that the appeal proposal does not conflict with other policies in the Development Plan, or provides sufficient benefits to outweigh that conflict, then given the availability of grid connection and physical requirements for a solar farm, I conclude that it would be necessary to use BMV agricultural land, as land of poorer quality is not available.
- 4.8 The Appellant intends to graze sheep or other small livestock on the site for the 40 years the appeal proposal would be in-situ¹⁹ and the Solar Roadmap (CD 5.30) of June 2025 sets out that solar projects can be designed to enable continued livestock grazing and can, in combination with farming, provide

¹⁷ Overarching SoCG, table page 26

¹⁸ Overarching SoCG para 9.42(h)

¹⁹ AgSoCG para 2.2(c)

food production benefits through shared use of land²⁰. Furthermore, the parties agree that there is no planning control that requires agricultural land to be managed for specific crops or at a minimum intensity for food production²¹. The intention to graze livestock on the proposed development would be a byproduct of a reduction in the potential agricultural productivity from the appeal site for a period of 40 years and the parties agree that the appeal site would not be actively farmed for arable farming production for the duration of the development²². With these factors in mind, I do not conclude that the available evidence demonstrates that the lack of possible arable farming production across the 40 year period would have any significant implications for food security.

- 4.9 Having regard to the wording of RfR1, I agree that a significant proportion of the appeal site would affect BMV agricultural land and would not be actively in arable farming production for a period of 40 years. I do not conclude that this is a permanent loss of land, it is temporary, but it is a significant period of time that I would regard as long term. Insofar as RfR1 refers to the loss not being “*sufficiently mitigated or outweighed by other benefits of the scheme*” there is a certain degree of consistency with policy DM8, which requires proposals resulting in loss to “*demonstrate environmental or community benefits that outweigh the land loss*”. Given the long term nature of the appeal proposal and in reading policy DM8 in isolation, the temporary nature of the development does not, in my opinion, relieve the Appellant of a need to demonstrate benefits to outweigh the loss.
- 4.10 Whilst Policy DM8 is concluded to be relevant to the appeal due to the long term but temporary loss of BMV, it is nonetheless inconsistent with the Framework. The appellant has, in my opinion, sufficiently demonstrated an approach to site selection that meets the expectations of “*a sequential approach*” required by Policy DM8 and the benefits of the proposal are sufficiently environmentally and/or community focussed so as to outweigh harm associated with the land loss across the 40 year period.
- 4.11 The inconsistency of Policy DM8 with the Framework and the disagreement between the parties on the relevance of the policy to RfR1 are in any instance moot points; because in my opinion, the proposal does not conflict with Policy DM8 where it is construed to be relevant to RfR1.

²⁰ Solar Roadmap (2025) Page 20, para 4

²¹ AgSoCG para 2.2(b)

²² Overarching SoCG para 9.42(c)

4.12 The Appellant concludes that there are specific benefits associated with the proposed temporary loss of arable farming land²³. In my judgment, the lack of a permanent loss of land is not a benefit and the approach to soil management meeting industry standards should be an expectation, not an incidental benefit. Whilst I accept in principle that there can be benefits to fallowing land to improve soil health, the Appellant does not provide any specifics on how this benefit would be achieved in this instance, relying instead on the fact that this has been accepted as beneficial by Inspectors in other appeal cases²⁴. The Appellant states that the Soil Resources Report (CD 1.47), ALC Report (CD 1.70) and Soil Management Plan (CD 1.46) submitted as part of the application demonstrates this²⁵, but the reports do not refer to such benefits. The Appellant states that there are “*enhancement measures imbedded in the design of the development*”²⁶ however, whilst I recognise the biodiversity and ecological enhancement and improvements to access to the countryside in Chapter 5 of this proof, I do not conclude that such benefits are as a direct benefit offsetting the temporary loss of BMV agricultural land.

4.13 Notwithstanding my opinion on the lack of conflict with Policy DM8 for RfR1; taking the appeal site, including 60.3ha of BMV, out of potential arable production for 40 years would have some effect on potential agricultural productivity in the locality, albeit with a negligible impact on food security, nationally. Overall, in having regard to paragraph 187b) and in finding no policy conflict, I nonetheless consider that the appeal scheme would result in an adverse effect of limited significance insofar as it would impact on agriculture, and that this limited harm needs to be considered within the planning balance.

4.14 **The impact on the rural character and appearance of the area having regard to other renewable energy developments nearby**

A Proof of Evidence has been prepared by Paul Reynolds of Tapestry Urbanism Ltd, on behalf of the Council, to consider the impact on the rural character and appearance of the area when taken cumulatively with other renewable energy developments in the locality.

²³ AgSoCG para 3.1(d)(i-iv)

²⁴ Appellant SoC para 10.21, is one example.

²⁵ Appellant SoC para 9.75

²⁶ AgSoCG para 3.1(d)(iv)

- 4.15 Mr Reynolds' evidence is presented under separate cover, it is referred to as the basis of evidence relied upon in my assessment of the harm to landscape appearance to be considered in planning balance.
- 4.16 The reason for refusal raised within the Decision Notice concluded that the proposed development, when taken cumulatively with other renewable energy developments in the locality, would result in unacceptable harm to landscape appearance and conflict with Spatial Policy 3 and Core Policy 9 of the ACS and Policies DM4, DM5 and DM8 of the DPD in addition to the Framework. The RfR states that there are no material planning considerations that would outweigh this harm.
- 4.17 Mr Reynolds' Proof of Evidence has provided a series of conclusions with regard to the impact of the proposed development on landscape appearance and these are summarised below.
- 4.18 Mr Reynolds concludes that the term landscape appearance relates to both landscape character and visual amenity, and the cumulative visual impacts *"will be a combination of both in combination effects and sequential impacts"*²⁷.
- 4.19 He concludes that landscape character impacts *"will arise from the cumulative impact of multiple similar (Solar Generation and/or BESS) schemes being implemented within the TWPZ11 LCA, which is the LCA in which the Appeal Scheme is located"*. He states that the introduction of this type of development *"will be an incongruous feature, and the development coupled with the tall mitigation planting used to try and screen it, will have an adverse impact on the open views which are a characteristic feature of this flat landscape"*²⁸. He sets out that whilst the LCA may have some limited capacity for this type of development, *"the cumulative impact of the Appeal Scheme with the other schemes in the locality will be beyond this limited capacity and will have significant adverse impacts on the landscape character of the TWPZ11 LCA"*²⁹.

²⁷ PR Proof of Evidence paragraph 5.1.2

²⁸ PR Proof of Evidence paragraph 5.1.3

²⁹ PR Proof of Evidence paragraph 5.1.4

- 4.20 Mr Reynolds sets out, with regards to visual impacts, that there will be in-combination impacts *“from a number of viewpoints that were assessed within the LVIA, and also from a number of other locations, as suggested by the ZTV of the various cumulative schemes”* and therefore concludes that this means that there *“will be a number of locations where the character of the landscape will experience greater visual change than with the Appeal Scheme alone, and the effect of this will be more significant”*³⁰.
- 4.21 He concludes that there are a number of locations where cumulative visual impacts would be experienced sequentially and where the impact of the appeal proposal would be *“significantly increased by the cumulative schemes”* and refers, as an example, to the loss of open views for PRoW users along the footpath running through the site as a result of hedgerow planting, which would continue with planting associated with the GNRSPBP scheme adjacent to the site³¹.
- 4.22 Mr Reynolds concludes that these adverse impacts on both landscape character and visual amenity *“are considered to be unacceptable”*³² and he concludes the proposal conflicts with Framework Paragraphs 135 and 187, Spatial Policy 3 and Core Policy 9 of the ACS. I agree with these conclusions.
- 4.23 Mr Reynolds sets out that the identification of conflict with Policies DM4, DM5 and DM8 of the DPD is a matter for the planning witness, having otherwise concluded that there will be an unacceptable impact on the character area, especially in relation to the local context of the Appeal Site and, when considered cumulatively *“the scale, layout and design of the Appeal Scheme will fail to reflect the local landscape character, and while there may be some capacity for renewable energy development within the LCA, in combination with the other cumulative schemes the landscape and visual effects are amplified to an unacceptable level”*³³
- 4.24 In my judgment and in having regard to Mr Reynold’s conclusions, the landscape appearance harm should be ascribed significant weight. Policy DM4 states that planning permission will be granted for renewable energy development, including both standalone projects and associated infrastructure, *“where its benefits are not outweighed by detrimental impact from the operation and maintenance of the development and through the installation process upon...”*[at Part 1] *“The landscape*

³⁰ PR Proof of Evidence paragraph 5.1.5

³¹ PR Proof of Evidence paragraph 5.1.6

³² PR Proof of Evidence paragraph 5.1.7

³³ PR Proof of Evidence paragraph 5.2.5

character...arising from the individual or cumulative impact of proposals". I have otherwise concluded in this proof of evidence that the proposal is in conflict with Policy DM4 and the impact on landscape character arising from the cumulative impact of proposals contributes to the weight to be ascribed to the detrimental impact of the proposal, having regard to the wording of the policy.

4.25 Having regard to Mr Reynolds conclusions, in my judgment the proposal is in conflict with Policy DM5 as when considered cumulatively with other BESS and Solar development in the area, it fails to reflect the local landscape character in its scale, layout and design and as such fails to meet the criteria of part 4 of the policy. I have concluded that a plain reading of policy DM8 requires all development proposals in the open countryside to satisfy other relevant development management policies, take account of their visual impact and in particular address the requirements of landscape character. On the basis of Mr Reynolds' evidence, the proposal provides conflict with the policy.

4.26 I conclude that significant harm should be attributed to the proposal's failure to accord with Spatial Policy 3 and Core Policy 9 of the ACS and Policies DM4, DM5 and DM8 of the DPD, together with the failure to accord with Paragraphs 135 and 187 of the Framework.

4.27 **The impact on heritage assets**

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Act") places a duty on the decision maker when determining applications for development which affects a listed building or its setting, to have special regard for the desirability and preserving the listed building or its setting, or any of the features of special architectural interest it possesses.

4.28 Section 16 of the Framework relates to the conservation and enhancement of the historic environment within the planning regime. This is informed by the statutory duties as established in the Act.

4.29 Paragraph 207 of the Framework establishes that the starting point for assessing harm to heritage assets is to identify and assess the significance of the assets in question. Heritage significance is defined as *"the value of a heritage asset to this and future generations because of its heritage interest.*

*The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting"*³⁴.

4.30 Paragraph 212 of the Framework states that *"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). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance"*.

4.31 Paragraph 212 echoes the *Palmer*³⁵ case in which the judge endorsed the following approach:
"34...It is also clear as a matter both of law and planning policy that harm (if it exists) is to be measured against both the scale of the harm and the significance of the heritage asset. Although the statutory duty requires special regard to be paid to the desirability of not harming the setting of a listed building, that cannot mean that any harm, however minor, would necessarily require planning permission to be refused. I agree, therefore, with what the judge said at [61]:

"It is still plainly the case that it is for the decision taker to assess the nature and degree of harm caused, and in the case of harm to setting rather than directly to a listed building itself, the degree to which the impact on the setting affects the reasons why it is listed. Further, it is for the decision taker then to balance that against the benefits of the development. 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. The desirability of avoiding harm to a high category heritage asset must be greater than that of avoiding a similar harm to a less important asset."

4.32 The Court of Appeal decision in the case of *Barnwell*³⁶ provides that in enacting Section 66(1) of the Act, Parliament's intention was that decision makers should give *"considerable importance and weight' when the decision-maker carries out the balancing exercise"*. This gives rise to a strong

³⁴ NPPF Annex 2, Glossary

³⁵ *Palmer v Herefordshire Council & Another* [2016] EWCA Civ 101

³⁶ *Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council & Ors* [2014] EWCA Civ 137

statutory presumption against granting planning permission for development which would cause harm to the settings of listed buildings.

- 4.33 Furthermore, the *Bramshill*³⁷ judgment has provided clarity on the meaning of ‘*great weight*’ within paragraph 212 of the Framework. The provisions of paragraph 212 do not predetermine the amount of weight to be given to the conservation of a heritage asset in a particular case; the imperative of giving ‘*considerable weight*’ to harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving it, or its setting, is a uniform one. It will depend on the extent of the assessed harm and the heritage value of the asset in question.
- 4.34 Paragraph 215 of the Framework states that “*where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*”. The Bramshill judgement has confirmed that there is no prescribed or correct approach in the balancing of such harm against any likely benefits, and in terms of public benefits, these do not need to be heritage benefits, and all types of public benefits can be taken together and weighed against the harm.
- 4.35 The PPG states that public benefits are those that “*could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework. Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits...*”³⁸ I consider the agreed benefits of the appeal scheme within Chapter 5 of this proof, and I consider those to which I have ascribed beneficial weight to be public benefits.
- 4.36 The PPG states that the development of large-scale solar farms “*can have a negative impact on the rural environment*” and a decision maker will need to consider a series of factors, including that “*great care should be taken to ensure heritage assets are conserved in a manner appropriate to their*

³⁷ Bramshill Vs SSHCLG [2021] EWCA Civ 320

³⁸ PPG Paragraph: 020 Reference ID: 18a-020-20190723

significance, including the impact of proposals on views important to their setting. As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of large scale solar farms on such assets. Depending on their scale, design and prominence, a large scale solar farm within the setting of a heritage asset may cause substantial harm to the significance of the asset”³⁹.

4.37 Within their Statement of Case, the Council sets out that the proposed Development would result in less than substantial harm to the setting of Kelham Hall, a Grade I Listed Building, the setting of a number of Grade II listed buildings, including the Farm Buildings at Home Farm and Kelham and Averham Conservation Areas, both individually and cumulatively; and would also harm two non-designated heritage assets, the formal grounds and parkland for both Averham Park House and Kelham Hall⁴⁰. The Council set out that the proposal would conflict with ACS Policy CP14, DPD Policy DM9, and the Framework and that the public benefits of the proposals would not outweigh heritage harm⁴¹. I have set out my understanding of these Development Plan Policies within Chapter 3. I conclude that they are consistent with the Framework.

4.38 A Proof of Evidence has been prepared on behalf of the Council by Mark Clifford, of Paul Butler Associates. Mr Clifford’s evidence is provided under separate cover and is informed by the Heritage SoCG prepared by the parties. It is referred to as the basis of evidence relied upon in my assessment of heritage harm.

4.39 Mr Clifford’s Proof of Evidence has provided a series of conclusions with regard to the impact of the proposed development on heritage assets and these are summarised below.

4.40 Mr Clifford concludes that the proposal would provide less than substantial harm to five designated heritage assets and further harm to three non-designated heritage assets:

- Averham Conservation Area, High Significance, Low level of less than substantial harm
- Kelham Conservation Area, High Significance, Low level of less than substantial harm

³⁹ PPG 013 Reference ID: 5-013-20150327

⁴⁰ Council SoC paragraph 6.10

⁴¹ Council SoC paragraph 6.12

- Kelham Hall (Grade I Listed Building), Very High Significance, Low level of less than substantial harm
- Church of St Michael (Grade I Listed Building), Very High Significance, Low level of less than substantial harm
- Averham Park House (Grade II* Listed Building), Very High Significance, Negligible less than substantial harm
- Kelham Hall unregistered Park and Garden (NDHA), Medium significance of regional interest, Low Harm
- Averham Park unregistered Park and Garden (NDHA), Low significance of local interest, Negligible harm
- Kelham Country Manor House (NDHA), Medium significance of regional interest, Low Harm

4.41 He recognises that the majority of the proposed impacts would be temporary albeit that the structural landscape will be retained and therefore have some permanent impact on the Kelham Conservation Area. He states however that whilst temporary, the harm to heritage assets would occur for a relatively long time and makes reference to a similar position raised by the Inspector in appeal 3352427 (CD 13.15)⁴². He concludes that whilst the proposed tree screening forming part of the approach to mitigation is appropriate, much of the proposed planting *“may only reach adequate coverage near the end of the development’s 40-year lifespan”*⁴³.

4.42 I agree with this position; whilst the impacts would not be permanent, they would persist for 40 years and in my opinion exceed what is regarded as long term⁴⁴.

4.43 Mr Clifford sets out that three of the designated assets that will experience harm *“are of the highest significance as defined by the NPPF: two of which are Grade I Listed and of ‘exceptional special interest’ with the other Grade II* a ‘particularly important building of more than special interest’”*⁴⁵. Furthermore, he concludes that the Appellant has undervalued the significance of these three assets,

⁴² MC proof of evidence paragraph 3.60

⁴³ MC proof of evidence paragraph 3.61

⁴⁴ GLVIA3 paragraph 5.51, for example, refers to long term as ten to twenty-five years.

⁴⁵ MC Proof of evidence paragraph 4.3

and that if this approach to assessing significance was accepted, it would have implications on the weight ascribed to the harm to each of those designated heritage assets in planning balance⁴⁶.

4.44 Mr Clifford has identified that the proposal would harm the setting of the two Conservation Areas, and refers to the fact that the parties agree that both Conservation Areas are of high significance.

4.45 I agree with Mr Clifford's conclusions that the proposal would provide less than substantial harm to five designated heritage assets. I also agree that three of the designated assets that will experience harm (The Grade I Kelham Hall and Church of St Michael, and the Grade II* Averham Park House) are assets of the highest significance as defined by the NPPF.

4.46 Insofar as the proposal is concluded to result in less than substantial harm, albeit to a lower level, to two Grade I listed heritage assets, to a Grade II* listed asset, and to two Conservation Areas, I conclude that, in having regard to their significance, this does not amount to a less than substantial planning objection to each asset. Great weight should be given to an asset's conservation and the more important the asset the greater the weight should be. The harm is required to be weighed against the public benefits of the proposal having regard to Paragraph 215 of the Framework.

4.47 The presumption is a statutory one, as set out in S66(1) of the Act. Based upon the conclusions of Mr Clifford, in my view, the degree of harm, having regard to the significance value of the heritage assets affected and the extent and range of degree of harm provided by the proposal, would adversely impact upon the significance of the setting of the identified assets. Furthermore, the proposal fails to justify its harmful impacts to the settings of the Averham and Kelham Conservation Areas, respectively.

4.48 Therefore, I consider that the harm conflicts with ACS Policy CP14 and DPD Policy DM9.

⁴⁶ MC Proof of evidence paragraph 4.7

- 4.49 In accordance with paragraph 215 of the Framework I have to therefore consider whether public benefits outweigh the heritage harm. I give consideration to the weight I have ascribed to the public benefits set out within Chapter 5 of this proof. I ascribe substantial weight to the associated renewable energy benefits of the development; significant weight to the separate BESS benefits of the development and to BNG; moderate weight to the formation of a permissive footway and limited weight to job creation. I find that the weight afforded to these benefits is insufficient to outweigh the great weight that must be afforded to the harm identified to each of the designated heritage assets.
- 4.50 I conclude that against the tests provided in paragraph 215 of the Framework, the proposal fails to bring forward sufficient public benefits to outweigh the less than substantial harm identified to the significance of the affected heritage assets. The proposal is contrary to ACS Policy CP14 and DPD Policy DM9 and in failing the test at paragraph 215, is also in conflict with Policy DM4, in failing to provide sufficient benefits to outweigh the proposals impact on "*Heritage Assets or their settings*" (at Part 3). I conclude that conflict with these policies results in conflict with the development plan as a whole.
- 4.51 The parties agree that paragraphs 4.2.15 – 4.2.17 of NPS EN-1 and paragraphs 2.10.151 and 2.10.160 of NPS EN-3 are relevant material considerations to the decision⁴⁷. However, I do not consider that there are any material considerations that would justify a decision contrary to the development plan and as such this provides a basis on which I invite the Inspector to dismiss the appeal.
- 4.52 If the Inspector were to come to the alternative conclusion, that the proposal passes the test in paragraph 215 of the Framework, the heritage harm, as I have set out in paragraph 4.49, must still be weighed in the overall balance. This must also have regard to Mr Clifford's conclusions on the impact of the proposal on the non-designated heritage assets, in accordance with paragraph 216 of the Framework. I agree with his conclusions, and consider that additional, limited harm should be taken into consideration in the planning balance. I consider overall planning balance in Chapter 6.

⁴⁷ Overarching SoCG paragraph 9.44(f)

5.0 Material considerations supporting the proposal

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) and Section 70(2) of the Town and Country Planning Act 1990 require that planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

5.2 Further, for the purpose of this section, I adopt a scale of relevant harm/benefit as referred to in Chapter 4, namely: substantial, significant, moderate, limited, or no weight. This scale has been agreed and defined with the Appellant⁴⁸

5.3 Benefits

A list of benefits is agreed between the parties⁴⁹, which is reflective of those set out in the Council's Statement of Case⁵⁰, namely:

- 1) The benefits of the solar farm associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future.
- 2) The standalone associated benefits of the proposed BESS in meeting the need for energy storage, provide balancing of power on the Grid and maximising the usable output from renewable energy.
- 3) An increase in local biodiversity and associated ecological enhancement measures.
- 4) The creation of jobs
- 5) The formalisation and extension of a permissive footpath/bridleway.

5.4 The parties have presented the specific weight that each ascribes to these benefits within the Overarching SoCG⁵¹. The justification for the weight that I have ascribed to each benefit is set out below.

5.5 Renewable Energy

The solar farm element of the development would have an export capacity of 49.9MW, which is understood to be enough to power over 12,600 homes per year and offset approximately 13,400

⁴⁸ Overarching SoCG, paragraph 8.2

⁴⁹ Overarching SoCG, table at 8.2

⁵⁰ NSDC SoC, paragraph 6.13

⁵¹ Overarching SoCG, table at 8.2

tonnes of CO₂ per year⁵². The development would be able to contribute swiftly to zero carbon electricity generation due to the availability of a grid connection at Staythorpe Substation, following the decommissioning of coal/gas power stations⁵³.

5.6 Paragraph 168a) of the Framework requires that significant weight is given to the benefits associated with renewable energy generation and a proposals contribution to supporting the transition to a net zero future by 2050; a target otherwise set out in the Climate Change Act 2008. Paragraph 168a) does not set an upper limit to the weight to be ascribed to those associated benefits. EN-3 provides that the Government is committed to sustained growth in solar capacity as a key part of its strategy for low-cost decarbonisation of the energy sector and that it has an important role in delivering the Government's goals for greater energy independence⁵⁴; it refers to The Powering Up Britain: Energy Security Plan (CD 5.23), which states that the Government "*seeks large scale ground-mount solar deployment across the UK*", albeit "*mainly on brownfield, industrial and low and medium grade agricultural land*"⁵⁵. The principle of the development is also supported by the UK Government Solar Strategy (2014)(CD 5.3), the Net Zero Strategy (2021) (CD 5.16) and the British Energy Security Strategy (2022)(CD 5.19). The Solar Road Map of June 2025 (CD 5.30) "*calls for the rapid acceleration of solar deployment, from over 18GW2 at present to 45-47GW by 2030*"⁵⁶.

5.7 The wording of policy DM4 establishes that the Council are supportive of the principle of renewable energy development at the appeal site, subject to a demonstration that its benefits outweigh its impacts. The associated benefits of the proposed renewable energy generation at this scale, where it could contribute quickly to targets due to the availability of the grid connection, should in my opinion be ascribed substantial weight in the planning balance.

5.8 BESS

The proposed BESS would have the capacity to charge, store and export up to 50MV of electricity from and to the distribution network; which would assist in providing balancing services to the National Grid and would contribute to energy security. The BESS is proposed to be co-located with the solar farm,

⁵² Appellant Statement of Case, paragraph 5.6

⁵³ OR paragraphs 7.20 to 7.22

⁵⁴ EN-3, paragraphs 2.10.9 and 2.10.10

⁵⁵ The Powering Up Britain: Energy Security Plan pages 37 and 38

⁵⁶ Solar Road Map executive summary, paragraph 2, page 6

but there is no connection between the two elements; both would separately make use of the grid connection at Staythorpe Substation⁵⁷.

5.9 The Energy White Paper (2020) (CD 5.9) sets out the need for battery storage to support the growth in renewable energy⁵⁸. EN-1 sets out that storage is needed to increase the reliability and security of the energy system by providing the ability to store surplus electricity in times of low demand and/or high production and releasing it when demand is higher⁵⁹ and EN-3 sets out that the government “*is supportive of solar that is “co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use”*”⁶⁰. The Clean Power 2030 Action Plan (CD 5.32) recognises the role that battery storage has and sets a target of achieving 23-27GW of battery capacity by 2030⁶¹.

5.10 In being co-located with the solar farm the proposed BESS would provide flexibility for the grid and maximises the efficiency of land use. It is a separate element of the proposal and I ascribe separate, significant weight to its benefit.

5.11 Biodiversity and Ecology

The application was submitted prior to the mandated need for the development to provide at least 10% Biodiversity Net Gain (“BNG”) under the Environment Act 2021, however a BNG Assessment has been undertaken and concludes that a net gain of around 61.5% in habitat units and 16.14% in hedgerow units can be secured, together with wider ecological habitat enhancement through landscape planting, by obligation within the proposed legal agreement to implement the provisions of the Landscape and Biodiversity Enhancement, Management and Monitoring Plan (“LBEMMP”). I ascribe significant weight to the potential biodiversity enhancements that would be delivered.

5.12 Job Creation

⁵⁷ OR, paragraph 3.1

⁵⁸ Energy White Paper, page 44, paragraph 1

⁵⁹ EN-1, paragraph 3.3.26

⁶⁰ EN-3, paragraph 2.10.10

⁶¹ The Clean Power Action Plan, page 10, final paragraph.

The proposed development would give rise to short term construction jobs during the construction and decommissioning phases of the development, but that economic benefit would reduce significantly during the operational period. I ascribe limited weight to this benefit.

5.13 The formalisation and extension of a permissive footpath/bridleway

The development would include the provision of a new 3.5km long permissive bridleway along the perimeter of the development and would be maintained by the Appellant for the duration of the project. Paragraph 125a) of the Framework states that planning decisions should “*encourage multiple benefits from both urban and rural land... such as developments that would enable new habitat creation or improve public access to the countryside*”. The OR concluded that the new bridleway provision would be a public benefit “*which represents a modest positive weighting*”⁶². I agree with this conclusion.

- 5.14 As set out within the Overarching SoCG, the parties agree on the weight to be ascribed to the benefits of the proposal, save for in relation to avoiding “*the need for new generation capacity, reducing the requirement for curtailment of renewable energy generation and deferring adhoc investment in grid infrastructure to allow strategic planning by NESO*”, which the Appellant concludes is a separate benefit to be ascribed significant weight, referring to Framework paragraphs 161 and 168 in doing so⁶³. I have assumed, without having any further substance from the Appellant available on the matter, that this refers to a collective set of benefits concluded to be provided as a result of the availability of a grid connection to the appeal site. Neither paragraph 161 nor 168 provide specific reference to grid connections, and I have attributed substantial and significant weight to renewable energy and BESS benefits respectively, which have taken into consideration the ability for both to contribute to 2030 targets due to the availability of the grid connection. As such, I ascribe no weight to this purported benefit, as to do so would be to double-count.

⁶² OR, paragraph 9.5

⁶³ Overarching SoCG Table, page 30

6.0 Planning balance and conclusions

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that *“where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise”*.
- 6.2 I have concluded that against the tests provided in paragraph 215 of the Framework, the proposal fails to bring forward sufficient public benefits to outweigh the less than substantial harm identified to the significance of the affected heritage assets. The proposal is contrary to ACS Policy CP14 and DPD Policies DM4 and DM9. I conclude that conflict with these policies results in conflict with the development plan as a whole. I do not consider that there are any material considerations that would justify a decision contrary to the development plan and as such this provides a basis on which I invite the Inspector to dismiss the appeal.
- 6.3 If the Inspector disagrees and concludes that the proposal passes the test in paragraph 215 of the Framework, the heritage harm must still be weighed in the overall planning balance. In that circumstance I ascribe great weight to the harm identified to each of the designated heritage assets. Furthermore, I ascribe limited weight to the harm identified to the three, non-designated heritage assets, as a result of the development.
- 6.4 I have also concluded that significant weight should be ascribed to the harm to landscape appearance that would be caused by the development and limited weight to its negative impact on agriculture. For the reasons set out within this proof of evidence, I have concluded that this provides additional conflict with ACS Spatial Policy 3 and Core Policy CP9, together with DPD Policies DM4, DM5 and DM8.
- 6.5 In my opinion the material benefits of the proposal do not outweigh the conflict with the Development Plan.
- 6.6 Conclusion
Accordingly, I invite the Inspector to dismiss the appeal.