

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

STATEMENT OF CASE

1.0 Introduction and Background Information

- 1.1 This appeal statement relates to an appeal against Newark and Sherwood Council's ("the Council") decision to refuse planning permission, following an application submitted by Assured Asset Solar 2 Ltd (the "Appellant") under reference 23/01837/FULM (the "Application"), for the following description of development (the "Development"):

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

- 1.2 The Council's planning committee resolved to refuse the Application on 16th January 2025 and a decision notice was issued on 31st January 2025 (the "Decision Notice"). The planning permission was refused by committee 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.”

- 1.3 This Statement of Case (“SoC”) provides for a description of the Site and its surroundings, the proposed development, relevant planning history, national and local planning policy context and relevant guidance, the Council’s case with regard to the reasons for refusal and outlines their statutory duties.
- 1.4 An updated draft of the Appellant’s Statement of Case (“Appellant’s SoC”) was received from the Appellants on 16th June 2025 and further details in relation to these matters are expected to be provided within the Statement of Common Ground (“SoCG”) prepared by the Council and the Appellant.
- 1.5 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.
- 1.6 This SoC is prepared on behalf of the Council and in accordance with the Inquiries Procedure Rules (SI 2000/1625) and having regard to the Inspectorate’s ‘Procedural guide: Planning appeals – England’ (updated 16th April 2025) (“the Procedural Guide”), in particular section 11 Inquiries. It provides a succinct statement of the case that the Council will present at the Public Inquiry.

2.0 Site and Surroundings

2.1 Site Location

The Application relates to approximately 65-hectares of flat agricultural land within the open countryside between the villages of Kelham (to the east) and Averham (to the south) (“the Site”). The Site comprises of three fields and part of a fourth and boundaries are demarcated by a mix of hedgerows, ditches, and broadleaved woodland. The red line boundary incorporates the site as well as the proposed cable route to connect the Development to Staythorpe Power Station to the south-west.

2.2 To the southern edges of the proposal site is the A617 Main Road and to the northeast is Broadgate Lane, where there is a row of dwellings overlooking the Site. To the east is an established plantation beyond which lies Kelham House and a small, gated cul-de-sac of detached dwellings known as ‘The Rutlands’.

2.3 The Site is currently accessed via three separate field gates, with two entrances from the A617 Main Road along the eastern and south-eastern boundary, and a third entrance from Broadgate Lane on the north-eastern boundary. There is a single public right of way that enters the north-eastern boundary of the Site from Broadgate Lane. The public footpath runs in a westerly direction and splits into two public footpaths once it meets the western boundary of the Site, with one footpath heading north-west and another heading south-west.

2.4 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.

2.5 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.

- 2.6 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.
- 2.7 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.
- 2.8 The parties agree¹ that the appeal Site is made up of 55% Grade 2 (very good) Best and Most Versatile agricultural land ("BMV"), 37% Subgrade 3a (good) BMV and 5% Subgrade 3b (moderate) agricultural land; with the remaining 3% being non-agricultural.

¹ Having regard to the Agricultural Land Classification (ALC) survey undertaken by Land Search Associates in September 2023 on behalf of the Appellant's.

3.0 Appeal Proposals

- 3.1 The Appellant's SoC sets out² that planning consent is sought for the construction of a 49.9MW solar farm and 50MV battery energy storage system ("BESS"). The proposed solar farm would supply power to the grid, whilst the proposed BESS would take and store power from the grid to be distributed back to the grid when needed. The proposed point of connection would be at Staythorpe Substation, located approximately 1.4km to the south of the Site. The cable route would run underground within the highway.
- 3.2 The Appellant's set out³ that the proposed Development would comprise the following:
- **Photovoltaic (PV) panels;** each panel would measure approximately 2.4-metres by 1.3-metres.
 - **Mounting frames;** mounted on metal frames to a maximum height of 2.0m above ground level; the lowest part of the panel would be circa 0.6m above ground level; rows of panels set to between 3m and 5m apart.
 - **Battery container units;** the BESS compound would measure approximately 0.36ha and include a gravel surface; includes 20 battery-clusters containing 22 smaller modules. Each battery cluster would measure typically 15.3m in length by 2.5m wide and 3.2m in height. The battery clusters would sit in bays of two surrounded by 3m high concrete firewalls. The BESS compound would also include two switchgear cabins, substations for both the BESS and solar farm, two spare storage cabins and four containers; the compound and substations would be secured by both 2.4m high paladin fencing whilst a 4m high acoustic fence would also surround the BESS compound.
 - **Inverters;** accommodated on the mounting frames; transformers housed in prefabricated containers and associated cabling (largely below ground).
 - **Separate Distribution Network Operator ("DNO");** communication mast(s) and customer substations and meter points for the solar and BESS; indicative positions and specifications have been submitted with the appeal.
 - **Deer fencing and infra-red CCTV;** CCTV cameras would operate using motion sensors and would be positioned inward only to ensure privacy to neighbouring land and property.
 - **Temporary construction compound;** towards the southern part of the site near the proposed access off the A617 to accommodate deliveries of materials and equipment during construction phase and staff parking.

² Appellant SoC paragraphs 5.6, 5.9 and 5.10

³ Appellant SoC paragraph 5.1

- **Internal service roads;** approximately 4-metres wide, comprised of compacted crushed stone.
- **Site Access for the construction and operational phases;** access is proposed to be obtained through existing field gates off the A617 Main Road.
- **Proposed landscaping scheme and biodiversity enhancement scheme.**

3.3 The proposed Development would have a lifespan of 40 years, after which all equipment is proposed to be removed from the Site and the land returned to its former condition.

3.4 Further details in relation to the proposed Development and its processes are expected to be detailed within the Statement of Common Ground.

4.0 Relevant Planning History

4.1 A summary of the relevant planning history for the appeal Site and the surrounding area is provided below:

4.2 Appeal Site

- 22/SCR/00012 - Request for screening opinion to establish if development of a solar farm and battery energy storage system should be subject to an Environmental Impact Assessment. Environmental Impact Assessment Not Required 12.09.2022.

4.3 Land surrounding Staythorpe Power Station to the south of the A617

- 22/01840/FULM - Construction of Battery Energy Storage System and associated infrastructure, refused on 07.07.2023. An appeal was allowed in a decision letter dated 03.05.2024, following a Public Inquiry (reference APP/B3030/W/23/3334043).
- 23/00810/FULM - Laying of an underground cable run linking Battery Energy Storage System to Grid Connection Point at Staythorpe Substation. Application Permitted 19.06.2024
- 24/01261/FULM - Infrastructure associated with the connection of battery energy storage system to National Grid Staythorpe Electricity Substation and associated works. Approved at planning committee December 2024

4.4 Other proposals in the surrounding area

- 23/00486/CONSUL - A46 Newark Bypass Scheme – Development Consent Order. Undecided.
- Great North Road Solar and Biodiversity Park (NSIP scale solar farm). Currently at Pre-Application Stage (Phase Two Public Consultation). Part of which is near to the application site boundary. The application is expected to be submitted in July 2025⁴.
- 22/00975/FULM and 22/00976/FULM – Construction of solar farm – Land at Knapthorpe Lodge, Caunton. Refused on 17.11.25. An appeal was allowed in a decision letter dated 01.04.2025 – the LPA did not contest the appeal (Reference APP/B3030/W/24/3344502).
- 22/01983/FULM - Land at Foxholes Farm, North Muskham - Construction of Solar farm with associated works, equipment and necessary infrastructure. Pending Consideration
- 20/02501/FULM - Land at Winkburn Lane, Winkburn --Installation and operation of a Solar Farm together with all associated works, equipment and necessary infrastructure. Approved.

⁴ “Project information”, Planning Inspectorate website for NSIPs

5.0 Development Plan Policies and Guidance

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

5.2 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 courts, 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 for the appeal Site comprises of the following:

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

5.3 The Policies of the Development Plan relevant for the determination of this appeal are considered to be the following.

ACS

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| • Spatial Policy 3 | Rural Areas |
| • Spatial Policy 7 | Sustainable Transport |
| • Core Policy 9 | Sustainable Design |
| • Core Policy 10 | Climate Change |
| • Core Policy 12 | Biodiversity and Green Infrastructure |
| • 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 |

5.4 The following material documents are also relevant for the determination of this appeal:

- Newark and Sherwood District Council's Climate Emergency Strategy, 2020
- Newark and Sherwood Landscape Character Assessment SPD, 2013
- Newark and Sherwood Non-Designated Heritage Asset Criteria, 2021

5.5 Emerging Policy

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 Inspectors report is still awaited. There are unresolved objections to amended versions of the above policies 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.

5.6 Relevant Material Considerations

National Planning Policy Framework ("NPPF" or "the Framework") (December 2024, as updated February 2025)

The paragraphs of the NPPF considered relevant to the proposal include:

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| • Paragraphs 7, 8, 10 and 11 | Achieving sustainable development |
| • Paragraphs 39 & 48 | Decision-making |
| • Paragraph 57 & 58 | Planning conditions and obligations |
| • Paragraph 85 & 87 | Building a strong, competitive economy |
| • Paragraphs 109, 115, 116 to 118 | Promoting sustainable transport |
| • Paragraphs 135 | Achieving well-designed places |
| • Paragraphs 161, 164, 166 to 168 | Planning for climate change |
| • Paragraphs 181 & 182 | Planning and flood risk |
| • Paragraph 187 | Conserving and enhancing the natural environment |
| • Paragraph 193 | Habitats and biodiversity |
| • Paragraphs 202, 212, 215 & 216 | Conserving and enhancing the historic environment |

5.6 Additional national planning policy and guidance considered relevant to the appeal proposals include:

- National Planning Practice Guidance (“PPG”)
- Overarching National Policy Statement for Energy (EN-1) (2023)
- National Policy Statement for renewable energy infrastructure (EN-3) (2023)
- Sections 66 & 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990
- Conservation of Habitats and Species Regulations 2017, as amended.
- Natural Environment and Rural Communities (2006) Act

5.7 Other material documents to be referred to by the Council include:

- Guidelines for Visual Impact Assessment (Third Edition) (“GLVIA3”)
- Landscape Institute Technical Guidance Note 02/21 - Assessing landscape value outside of national designations (“TGN”)
- Landscape Institute Technical Guidance Note 06/19 - Visual Representation of Development Proposals
- 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)
- Health and Safety Guidance for Grid Scale Electrical Energy Storage Systems, Department for Energy Security and Net Zero, March 2024

5.8 The Council also note the documents listed within paragraph 7.2 of the Appellant’s SoC.

6.0 The Case for The Council

6.1 Reason for Refusal 1 (“RfR1”) states the following:

“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.”

6.2 In respect of RfR1, the Development will result in a loss of approximately 60.3ha of BMV. The Council will set out in evidence that planning policies and decisions are required to take account of the economic and other benefits of the best and most versatile agricultural land; and that the loss of BMV provides conflict with DPD Policy DM8 and paragraph 187 of the Framework.

6.3 The Council accept that the loss of BMV will be temporary for a period of 40 years as a result of the Development proposal. Nevertheless, this is considered to be a significant period of time for the loss of BMV and must carry weight.

6.4 Reason for Refusal 2 (“RfR2”) states the following:

“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.”

6.5 In respect of RfR2, the Council will explain that Spatial Policy 3 requires development proposals in the countryside to avoid a detrimental impact on its landscape setting and Core Policy 9 requires development to both protect and enhance its natural environment, achieving a high standard of design that is of an appropriate form and scale to its context, complementing landscape environments. The Council will set out that Policy DM4 states

that the Council will grant permission for renewable and low carbon energy generation development *“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 or urban form of the district or the purposes of including land within the Green Belt arising from the individual or cumulative impact of proposals”*.

- 6.6 The Council will explain that Policy DM5 requires all new development to reflect the Districts landscape in the design approach taken to address scale, form, mass, layout, design, materials and detailing; and whilst the proposal could be considered to be rural diversification (Part 6) with regard the exemption list in Policy DM8, such development is should address the requirements of the areas landscape character.
- 6.7 The Council will call a landscape witness, who will give evidence that defines the rural landscape character of the Site and the surrounding area and that will demonstrate that the proposed incursion of the proposed Development into the open countryside, when considered in conjunction with other renewable energy developments in the locality, will have an unacceptable adverse impact upon landscape appearance.
- 6.8 The Council conclude that this provides conflict with ACS Spatial Policy 3 and Core Policy 9, together with DPD Policies DM4, DM5 and DM8 BAS E7 and paragraph 135 of the Framework.
- 6.9 **Reason for Refusal 3 (“RfR3”)** states the following:

“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.”

- 6.10 In respect of RfR3, the Council will call a heritage witness who will demonstrate in evidence 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. Furthermore, the Council will demonstrate that the proposed Development would also harm two non-designated heritage assets, the formal grounds and parkland for both Averham Park House and Kelham Hall.

6.11 The Council will refer to the Development Plan and relevant Government and relevant bodies' advice and guidance, to demonstrate the impact of the Development on the setting and thereby on the significance of adjacent designated and non-designated heritage assets.

6.12 The Council will demonstrate conflict with ACS Policy CP14, DPD Policy DM9, the expectations of the Framework and the PPG and will conclude that the public benefits of the proposals do not, in the Council's view, outweigh heritage harm.

6.13 Benefits

The Council agree that the following are benefits of the scheme in planning terms:

- The benefits associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future.
- The availability of an existing grid connection.
- Economic benefits of the proposed development.
- The delivery of proposed biodiversity net gain.
- The provision of a new Public Right of Way.

6.14 In its evidence the Council will attribute weight to these benefits.

6.15 Planning Balance

The Council's evidence will demonstrate that the proposed Development is in conflict with the Development Plan overall. That conflict is not outweighed by other material considerations.

7.0 Witnesses

7.1 At this stage, the Council expect to present evidence and witnesses to address the following issues:

- Landscape witness, with regard to RfR2
- Heritage witness, with regard to RfR3
- Planning witness, with regard to both RfR1 and the planning balance.

8.0 Statutory Duties

8.1 The appeal Site is not located within a conservation area and as such Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not arise. With respect to Section 66 of the aforementioned Act, the position of the Council is set out in Chapter 6.

9.0 Draft Conditions and Obligations

9.1 If the Inspector were minded to allow the appeal, a series of conditions would be required. The Council will prepare a schedule of conditions in advance of the Inquiry but will broadly echo those already outlined in the committee report. The Council will seek to work with the Appellant to find common ground on a schedule of drafted conditions and will submit these to the Inspector.

9.2 Likewise, if the Inspector were minded to allow the appeal, a s106 Agreement would be required to secure the planning obligations for the Site. The Council will seek to work with the Appellant to agree a draft s106 Agreement and will submit this to the Inspector.