

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY STATKRAFT UK LIMITED**

**LAND NORTH OF LITTLE CHEVENEY FARM, SHEEPHURST LANE, MARDEN, KENT**

**MAIDSTONE BOROUGH COUNCIL REFERENCE: 22/501335/FULL**

**PLANNING INSPECORATE APPEAL REFERENCE: [TBC]**

**STATEMENT OF CASE ON BEHALF OF THE APPELLANT**

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## 1. EXECUTIVE SUMMARY

- 1.1 The UK Government has identified the attainment of its legally binding net zero target and energy security as two of its greatest priorities which the newly created Department of Energy Security and Net Zero is tasked with delivering. It has committed to accelerating the deployment of renewables, with a goal to quintuple solar power by 2035<sup>1</sup>.
- 1.2 The key benefits arising from solar developments, both in clean energy generation and contribution to security of supply have been afforded substantial positive weight by decision makers in accordance with national objectives and policies (for example see paragraphs 32 and 33 in **Appeal decision APP/J3720/W/22/3292579 dated 1 December 2020 for a solar farm on land near to Bishop's Itchington, Stratford on Avon [APP5.1]**).
- 1.3 This appeal concerns a proposed solar energy farm on land west of Marden, Kent which would generate 52.103 megawatt hours of renewable energy per year, enough to meet the electricity requirements of 15,226 homes. Significantly, a point of connection is available to the grid which would enable the export of renewable energy to commence within approximately two years of the grant of planning permission.
- 1.4 Extensive details of site selection, design, impacts and mitigation relating to the proposed development have been set out in documents submitted with the planning application and appeal.
- 1.5 The proposed development would be formed on agricultural land, the majority of which is not best and most versatile. During the operational period the land could be grazed to enable agricultural use to continue and on decommissioning of the solar energy farm the land would be returned to arable use. No sequentially preferable sites with grid connection are available.
- 1.6 There are no statutory or non-statutory landscape designations within the site or within 1km of the site. The character of the landscape would be preserved and enhanced with supplementary planting of hedgerows and additional woodland planting. Any unacceptable adverse impacts would be mitigated with planting that would improve the character of the local landscape. From a visual amenity perspective, the greatest effects would mostly be within 400m of the site boundary and beyond this the effect would reduce significantly. The significance of effects from PROW and dwellings would reduce with mitigation planting to a maximum of negligible-slight adverse.
- 1.7 A heritage assessment has found that whilst there is a small degree of inter-visibility between the site and a number of nearby Listed Buildings, this would not result in any harm to the significance of these designated assets. In relation to any underlying archaeological remains, considerate design could result in a minimal below ground impact. Further archaeological investigations and mitigation could be secured by way of condition.
- 1.8 A comprehensive assessment of the potential ecological impacts of the proposed development has been carried out and appropriate measures have been identified to avoid, mitigate and/or compensate for these impacts, in particular in relation to skylarks and badger. The proposed development incorporates grassland to be established within the solar panel arrays to provide soil stability and create habitat for wildlife and enable grazing to continue for the life of the solar energy farm. A biodiversity enhancement zone would also be created on the eastern side of the site with additional biodiversity enhancement measures along the western edge of the site comprising woodland planting, species rich wildflower meadow, new ponds and new species rich hedgerow planting. These would have a biodiversity net gain of 51.04%.
- 1.9 A noise assessment was carried out to identify the impact in respect of two noise sensitive receptors within close proximity to the site. For one of those receptors, a night time adverse effect was identified. Accordingly, mitigation in the form of noise attenuation panels to the

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<sup>1</sup> 'Powering Up Britain', HM Government, March 2023, page 7 [APP3.10].

transformer within the HV compound is proposed to enclose the source, in order to reduce impact at night to one of low impact.

- 1.10 Policy DM24 of the adopted Maidstone Local Plan [**APP3.1**] supports and encourages renewable and low carbon schemes, provided that applications demonstrate that the environmental and amenity criteria listed under the policy have been taken into account in the design and development of the proposals. The policy gives preference to existing commercial and industrial premises, previously developed land, or agricultural land that is not classified as the best and most versatile and also provides that provision must be made for the return of the land to its previous use upon cessation of operations. The proposed development meets the requirements of this policy and other relevant Local Plan policies and thereby accords with the development plan as a whole.
- 1.11 The proposed development also draws a high degree of support from the national energy policy framework which encourages appropriate renewable energy development as a key means to meeting the legally binding net zero target and addressing critical energy security issues. The proposed development, with the incorporation of mitigation measures, also satisfies all relevant policy requirements under the national planning policy framework. These are highly relevant material considerations which reinforce the acceptability of the proposed development when assessed against the development plan.
- 1.12 This Statement of Case demonstrates that the proposed development accords in full with the development plan and draws further support from national energy policies and national planning policies. Accordingly, the Inspector is invited to grant planning permission, subject to appropriate conditions.
- 1.13 Certain amendments to the proposed development have been proposed at the appeal submission stage, which are intended to address concerns raised by the Council prior to the determination of the planning application. The principal amendments comprise an increase in the depth of mitigation planting, with an associated reduction in solar panels and associated infrastructure, and the relocation of the HV compound. If the Inspector is minded to accept these amendments, the Inspector is invited to grant planning permission for the proposed development incorporating these amendments.

## 2. INTRODUCTION

- 2.1 On 30 March 2023, the UK Government published its blueprint for the future of energy in the country – ‘Powering Up Britain’ [**APP3.10**]. Central to this is addressing energy security by replacing imported fossil fuels with cheaper, cleaner, domestic sources of energy; and transitioning to net zero by ‘doubling down’ on delivery.
- 2.2 One of the key strands to the Government’s plans is the acceleration of deployment of renewables. Its ambition is to bring about a fivefold increase in solar by 2035, up to 70GW, noting that the deployment of ground and rooftop solar will be needed to achieve the overall target.
- 2.3 This appeal concerns a proposal for a ground based solar energy farm which would generate 49.9MW of renewable energy. This is equivalent to 52.103 megawatt hours per year, enough to meet the electricity requirements of 15,226 homes, and would result in 12,042 tonnes of CO2e savings. It is therefore exactly the type of scheme which is urgently needed to enable the Government to attain its hugely challenging renewable energy and net zero targets.
- 2.4 Planning application reference 22/501335/FUL for the solar energy farm (“**Application**”) was refused by Maidstone Borough Council (“**Council**”) on 28 October 2022. The appeal is made further to the refusal of the Application (“**Appeal**”). This Statement of Case has been prepared by Eversheds Sutherland (International) LLP on behalf of Statkraft UK Limited (“**Applicant**”/“**Appellant**”).
- 2.5 The Appeal relates to land north of Little Cheveney Farm, Sheephurst Lane, Marden, Kent (“**Site**”).
- 2.6 The structure of this Statement of Case is as follows:
- Section 3 provides details of the Site;
  - Section 4 provides details of the Proposed Development;
  - Section 5 identifies amendments to the Proposed Development which are submitted with the Appeal for consideration;
  - Section 6 summarises the procedural background;
  - Section 7 identifies the preferred appeal determination method;
  - Section 8 assesses the Proposed Development against the key development plan policies;
  - Section 9 considers if there are any material considerations, including national policy, energy policy and other matters which indicate that a decision should be made contrary to the development plan or which give further support to the proposal;
  - Section 10 addresses the reasons for refusal;
  - Section 11 considers other objections made to the planning application;
  - Section 12 contains a planning balance; and
  - Section 13 provides overall conclusions.
- 2.7 Documents referred to in this Statement with a reference in the format **APPXXX** are defined within **Appendix 1** to this Statement.

### 3. THE SITE

- 3.1 The Site is situated approximately 0.75km east of Claygate and approximately 1km west of Marden, and extends to 74.5 hectares.
- 3.2 The Site comprises six connected fields bounded by hedgerows and trees, forming part of Little Cheveney Farm and is relatively flat. The northern boundary is formed by the Southeastern Railways main line to Dover and the eastern boundary is demarked by the Lesser Teise, a tributary of the River Beult. The southern and western boundaries are less defined, demarked by field boundaries and in part by Sheephurst Lane.
- 3.3 Access is obtained to the Site from Sheephurst Lane, via existing farm access tracks.
- 3.4 The Site is used for arable farming, with 68.1 hectares currently cropped and 6.4 hectares within existing agri-environmental schemes including grassland margins.
- 3.5 A public right of way ("**PROW**") known as footpath KM248/2 extends along the northern boundary of the Site and in part diagonally through the north east corner of the Site to the eastern boundary, where it extends to the east as footpath KM248/3 to join a wider network of PROWs.
- 3.6 The majority of the Site falls within Flood Zone 3.

### 4. THE PROPOSED DEVELOPMENT

- 4.1 The Application as submitted sought planning permission for:

*"Installation of a renewable energy led generating station comprising of ground-mounted solar PC arrays, associated electricity generation infrastructure and other ancillary equipment comprising of storage containers, access tracks, fencing, gates and CCTV together with the creation of woodland and biodiversity enhancements" ("**Proposed Development**").*

- 4.2 The location and layout of the Proposed Development are shown on the submitted drawings.
- 4.3 The solar generation would consist of a series of south-facing solar arrays arranged across the Site on an east/west axis. The solar arrays comprise a series of short narrow aluminium posts supporting PV modules together with in field sub stations and inverters.
- 4.4 The distance between each row of solar arrays would range from 3.5m – 5.5m with approximately 29% of the total developed site area utilised for the solar array. The panel structures would have a maximum height of 3m above ground. The foundation depth of each array would be approximately 0.95m.
- 4.5 The submitted drawing 27899/050 Rev E [**APP1.26.2**] shows the layout and SKUKX-SHEEP-000-MCS 205 [**APP1.3.20**] shows a typical solar array.
- 4.6 The solar energy farm would connect to the local distribution network operated by UK Power Networks ("**UKPN**"). This would require a high voltage compound ("**HV Compound**"). The substation in the HV Compound would connect to the UKPN overhead line by underground cable. The underground cable would be laid on Site.
- 4.7 The HV Compound would comprise two elements of distribution network electricity infrastructure – essential infrastructure and infrastructure associated with the electricity generation. The HV Compound would be accessible from an access track from the main entrance to the Site on Sheephurst Lane.
- 4.8 The HV Compound layout plan and elevations are contained in drawing SKUKX-SHEEP-001-MCS 465 [**APP1.3.14**].

- 4.9 Other ancillary infrastructure associated with the solar energy farm includes: storage containers, perimeter fencing, CCTV monitoring system, monitoring system, underground cabling.
- 4.10 Security measures would include the installation of perimeter fencing. The fence is designed to allow small animals to pass through the Site. The submitted drawings SKUKX-SHEEP-000-MCS 203 and 204 [APP1.3.18 and APP1.3.19] contain details of the fencing and gate elevations.
- 4.11 A temporary construction compound would accommodate construction staff facilities. This would be decommissioned following completion of construction of the Proposed Development.
- 4.12 Access to the Site for construction and during operation would be taken from Sheephurst Lane. The submitted construction traffic management plan provides details of the proposed construction traffic access route.

## 5. AMENDMENTS TO THE PROPOSED DEVELOPMENT

- 5.1 Prior to the determination of the Application, the Applicant became aware of certain concerns of the Council and consultees relating to the Proposed Development. Some of these concerns only became clear through the publication of the Officer Report and were not raised directly by the Council with the Applicant.
- 5.2 Had the Applicant been afforded an opportunity to consider and respond in relation to these concerns, it is likely that certain amendments could have been made to the Application to address the concerns prior to determination. An amendment made prior to determination of the Application would have been consistent with the approach set out in the national Planning Practice Guidance [Paragraph: 061 Reference ID: 14-061-20140306] [APP3.4].
- 5.3 Following the determination of the Application, the Appellant has given further consideration to these concerns and has identified a number of potential amendments to the Proposed Development which, if incorporated as part of the Proposed Development, could address such concerns.
- 5.4 Accordingly, the Appellant now wishes to make the following amendments to the Proposed Development ("**Appeal Amendments**") and invites the Inspector to formally amend the proposals to incorporate the Appeal Amendments.

### **Appeal Amendments**

- 5.5 A document providing details of the Appeal Amendments and the reasons for the Appeal Amendments is submitted with this Appeal ("**Appeal Amendments Summary**") [APP1.33.1]. However, the Appeal Amendments are also summarised for the purpose of this Statement as follows:
- (i) Relocation of the HV Compound further west closer to the point of connection and associated attenuation and landscape screening.
  - (ii) Correction to the northern fence line to the Proposed Development.
  - (iii) As a result of the relocation of the HV Compound, a reduction in the number of transformer stations (from 15 to 6), a reduction in the length of access tracks (from 3400m to 2700m) and a reduction in the length of fencing (from 4500m to 4037m).
  - (iv) Reduction in solar panels to further mitigate impacts upon 8 Sheephurst Cottages.
  - (v) All landscape mitigation planting to be provided within the Site.

- (vi) Reduction in solar panels and further landscape mitigation planting to further reduce impacts upon 8 Sheephurst Cottages and the Little Cheveney Farm Listed Buildings.
  - (vii) A change to the landscape planting species mix to respond to the Maidstone Landscape Character Guidelines, introducing faster growing species to secure screening more quickly.
  - (viii) Clarification in relation to alignment of the permissive footpath to the eastern boundary of the Site in response to the Environment Agency consultation response. The permissive footpath would run through the 7m space between the security fence and the Lesser Teise.
- 5.6 Should the Appeal Amendments be accepted by the Inspector, this would result in the area of land (within the fence line) to be developed for the solar energy farm reducing from 54.6ha (as set out in the details of the Proposed Development) to 46.3ha (as set out in the details of the Proposed Development with Appeal Amendments).
- 5.7 The leading authority relating to the ability of a decision maker to consider amendments is the case of *Bernard Wheatcroft Limited v Secretary of State for the Environment*<sup>2</sup> [APP5.10]. The test under *Wheatcroft* is to consider whether the effect of the grant of planning permission would be “to allow development which is in substance not that which was applied for”. This is a matter where the decision maker is required to apply planning judgement.
- 5.8 The Court held that “*The main, but not the only, criterion upon which that judgement should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation*”.
- 5.9 The Procedural Guide: Planning appeals – England, updated 21 December 2022 [APP3.11] reiterates that an Inspector will take account of the *Wheatcroft* principles when deciding if the proposals can be formally amended and notes that the Inspector has to consider if the suggested amendment(s) might prejudice anyone involved in the appeal [Annexe M].
- 5.10 From the description of the Appeal Amendments set out above, it is clear that these represent minor changes to the scope of the Proposed Development which was the subject of the determination by the Council. The Appeal Amendments would result in a slight reduction in the number of solar panels, a corresponding increase in mitigation woodland planting and minor adjustments to the locations of associated infrastructure. There would be an overall reduction in the proportion of the Site being developed. Accordingly, the Appeal Amendments are not substantial and, if granted on appeal, the planning permission would allow development which is in substance the same as the development which was applied for.
- 5.11 Notably, the Appeal Amendments are proposed by the Appellant at the Appeal submission stage. Following notification by the Planning Inspectorate to the Council of the validation of the Appeal, there is a requirement of the Council to give notice of the appeal to any person notified or consulted in respect of the Application and to any other person who made representations to the Council about the Application<sup>3</sup>. Compliance with this requirement will ensure that persons interested in the Appeal will be notified of the Appeal Amendments. Accordingly, this will ensure that no prejudice will arise to anyone involved in the Appeal.

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<sup>2</sup> [1981] 1 EGLR 139.

<sup>3</sup> Regulation 11 of the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 [APP6.2].

## 6. PROCEDURAL BACKGROUND

6.1 A screening opinion was issued by the Council on 5 July 2022 confirming that environmental impact assessment for "a solar energy farm with a site area of approximately 78 hectares which would generate and store up to 60 megawatt (MW) of renewable energy to be exported to the Grid" was not required [APP1.24].

6.2 The Applicant submitted the planning application on 20 May 2022. The planning application comprised:

- Completed Application Form [APP1.1];
- Updated Application Form [APP1.2]
- Application Drawings [APP1.3.1 to 1.3.22];
- Planning, Design and Access Statement, Statkraft, March 2022 [APP1.19];
- Agricultural Land Use Statement, Bidwells, March 2022 [APP1.20];
- Biodiversity Net Gain Assessment, Riverdale Ecology, February 2022 [APP1.13];
- Construction Traffic Management Plan, Cotswold Transport Planning, February 2022 [1.15];
- Decommissioning Method Statement, Statkraft, March 2022 [APP1.7];
- Ecological Impact Assessment, Riverdale Ecology, February 2022 [APP1.12];
- Flood Risk Assessment, JBA, March 2022 [APP1.16];
- Grid Connection Assessment, Artios Energy Limited [APP1.6];
- Heritage Desk Based Assessment, Cotswold Archaeology, January 2022 [APP1.4];
- Landscape and Ecological Management Plan with Biodiversity Net Gain Management and Monitoring Plan, awSCAPE, March 2022 [APP1.18];
- Landscape and Visual Impact Assessment, awSCAPE, February 2022 [APP1.10];
- Noise Impact Assessment, dB Consultation Limited, March 2022 [APP1.17];
- Outline Surface Water Drainage Strategy, JBA Consulting, February 2022 [APP1.14];
- Sequential Site Analysis, Pegasus, February 2022 [APP1.9];
- Soil Quality Report, Reading Agricultural Consultants, March 2022 [APP1.21];
- Solar Photovoltaic Glint and Glare Study, PagerPower, January 2022 [APP1.5];
- Statement of Community Involvement, Quattro, February 2022 [APP1.8];
- Technical Note – Public Rights of Way Mitigation Strategy, Cotswold Transport Planning, February 2022 [APP1.11].

6.3 The Application was formally validated by the Council as of 1 June 2022 and allocated reference 22/501335/FULL.

- 6.4 The Applicant wrote to the Council on 31 August 2022 ("**31.08.22 Letter**") [**APP1.26**] to make the following amendments to the Application:
- Removal of the energy storage facility;
  - Removal of energy storage facility access track and associated increase to biodiversity area;
  - Removal of solar panels around the HV Compound to mitigate the visual impact upon Little Sheephurst Cottages; and
  - Removal of solar panels to the east of Willow Cottage to mitigate the visual impact.
- 6.5 Under cover of the 31.08.22 Letter, the Applicant submitted the following additional/updated documents:
- A revised Construction Traffic Management Plan, Cotswold Transport Planning, February 2022, together with revised supporting plans, in response to comments made by Kent Country Council Highways [**APP1.27**];
  - Responses to comments made on the Application by statutory consultees [**APP1.26.9**];
  - Responses to objections and comments made by public consultees [**APP1.26.7**];
  - A briefing paper on utility scale solar in the UK [**APP1.26.8**]; and
  - The following drawings:
    - Drawing 27899-SK01 Rev A - Proposed Solar Farm Site Areas [**APP1.26.1**];
    - Drawing 27899/050 Rev E - Proposed Solar Farm Site Layout Plan [**APP1.26.2**];
    - Drawing 27899/060 Rev B - Proposed Site Overview Plan Sheet 1 of 5 [**APP1.26.3**];
    - Drawing 27899/064 Rev C - Proposed Site Overview Plan Sheet 5 of 5 [**APP1.26.4**];
    - Drawing 27899/062 Rev B - Proposed Site Overview Plan Sheet 3 of 5 [**APP1.26.5**]; and
    - Drawing AW0143-PL-0002 - Proposed Mitigation, Landscape and Ecology Enhancements [**APP1.26.6**].
- 6.6 The Application was considered by the Council's Planning Committee on 20 October 2022. The officer report to Planning Committee ("**Officer Report**") recommended refusal of the Application and set out five suggested reasons for refusal [**APP1.28**]. An update report set out suggested updated reasons 1, 3 and 4 for refusal [**APP1.29**]. The Planning Committee agreed with the officer recommendation and resolved to refuse the Application. This position was formalised by the Council in its decision notice of 28 October 2022 [**APP1.30**] and confirmed within the Minutes of the Planning Committee meeting [**APP1.31**].
- 6.7 The decision notice cites five reasons for refusal ("**RfR**"). These are set out within Section 10 of this Statement of Case.
- 6.8 The Appeal is made pursuant to Section 78(1) of the Town and Country Planning Act 1990 against the decision of the Council to refuse the Application for planning permission for the Proposed Development.

6.9 In response to concerns with the Proposed Development raised by the Council, the Appellant now submits the following additional documents:

- Grid Review Report, Roadnight Taylor dated March 2023 [**APP1.32.1**];
- Agricultural Appeal Statement, Kernon Countryside Consultants Limited, April 2023 [**APP1.32.2**];
- Ecological Response, Riverdale Ecology, 19 April 2023 [**APP1.32.3**];
- Supplementary Sequential Analysis Study, Pegasus, 24 April 2023 [**APP1.32.4**].
- Landscape Response, awScape, April 2023 [**APP1.32.5**];
- Heritage Appeal Statement, Cotswold Archaeology, April 2023 [**APP1.32.6**];
- Supplementary Noise Impact Assessment, dB Consultation Limited, April 2023 [**APP1.32.7**];

6.10 In relation to the Appeal Amendments, the Appellant also now submits the following additional documents:

- Appeal Amendments Drawings [**APP1.34**];
- Appeal Amendments Summary document [**APP1.33.1**];
- Appeal Amendments Biodiversity Net Gain Assessment, Riverdale Ecology, April 2023 [**APP1.33.2**];
- Appeal Amendments Ecological Impact Assessment, Riverdale Ecology, April 2023 [**APP1.33.3**];
- Appeal Amendments Landscape and Visual Impact Assessment Addendum, awScape, April 2023 [**APP1.33.4**];
- Carbon Emissions Statement, Ecometrica, dated April 2023 [**APP1.33.5**];
- Appeal Amendments Supplementary Noise Impact Assessment, dB Consultation Limited, April 2023 [**APP1.33.6**];
- Appeal Amendments Outline Surface Water Drainage Strategy, JBA Consulting, April 2023 [**APP1.33.7**];

6.11 Drawing number SCUKX-SHEEP-000-100P PV [**APP1.33.1**] is an annotated plan illustrating the location of the Appeal Amendments.

## 7. **DETERMINATION METHOD**

7.1 It is the Appellant's considered view that this Appeal should be determined by way of written representations.

7.2 Whilst the Appellant disagrees with them, the RfR are clear. The planning issues raised in the Appeal can be clearly understood from the Appeal documents and a Site inspection and the policy framework has not substantially changed between the submission of the Application and the Appeal.

7.3 The issues at hand are not overly complex such that it is not considered that the Inspector is likely to need to test the evidence by questioning or to clarify matters.

7.4 Accordingly, these factors are aligned with the circumstances outlined in the Procedural Guide [APP3.11] where written representations are considered to be appropriate [Annexe K].

**8. IS THE PROPOSED DEVELOPMENT IN ACCORDANCE WITH THE DEVELOPMENT PLAN?**

**THE DEVELOPMENT PLAN**

8.1 The statutory development plan for the Site currently comprises the Maidstone Borough Local Plan (adopted October 2017) ("**Local Plan**") [APP3.1].

8.2 The Local Plan is under review ("**Local Plan Review**") [APP3.2], with a draft submitted to the Secretary of State in March 2022 for independent examination. Stage 1 hearing sessions took place from September to November 2022 and Stage 2 hearing sessions are programmed to take place from May to June 2023.

**RELEVANT POLICY PROVISIONS**

**The Local Plan**

8.3 The Local plan provides a framework for development within the Borough until 2031. The policies relevant to the assessment of the Proposed Development are summarised in Table 1 below.

<b>Table 1: Relevant Local Plan Policies</b>	
<b>Policy</b>	<b>Summary of the Policy</b>
Policy SS1 'Spatial Strategy'	This policy sets out the spatial strategy for the Borough and, amongst a range of things, confirms:  '9. ... protection will be given to the rural character of the borough...'  '10. ... landscapes of local value will be conserved and enhanced'.
Policy SP17 'The Countryside'	This states that:  '1. Development proposals in the countryside will not be permitted unless they accord with other policies in this plan and they will not result in harm to the character and appearance of the area.'
Policy SP18 'The Historic Environment'	This policy seeks to ensure the continued contribution of heritage assets to the quality of life in Maidstone including:  'ii. Through the development management process, securing the sensitive management and design of development which impacts on heritage assets and their settings'.
Policy SP21 'Economic Development'	This policy sets out the Council's commitment to supporting and improving the economy of the borough, including through:  'viii. Supporting proposals for the expansion of existing economic development premises in the countryside, including tourism related development, provided the scale and impact of the development is appropriate for its countryside location, in accordance with policy DM37.'
Policy DM1 'Principles of Good Design'	This policy sets out a list of criteria which good development should meet in order to achieve high quality design. Of particular relevance to the Proposed Development are:  'iv. Respect the amenities of occupiers of neighbouring properties and uses and provide adequate residential amenities for future occupiers of

	<p>the development by ensuring that development does not result in, or is exposed to, excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion, and that the built form would not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties’</p> <p>‘v. Respect the topography and respond to the location of the site and sensitivity incorporate natural features such as trees, hedges and ponds worthy of retention within the site. Particular attention should be paid in rural and semi-rural areas where the retention and addition of native vegetation appropriate to local landscape character around the site boundaries should be used as positive tools to help assimilate development in a manner which reflects and respects the local and natural character of the area’</p> <p>‘viii. Protect and enhance any on-site biodiversity and geodiversity features where appropriate, or provide sufficient mitigation measures’</p>
<p>Policy DM3 ‘Natural Environment’</p>	<p>Paragraph 1 provides that new development should protect and enhance the natural environment by incorporating measures where appropriate to:</p> <p>‘i. Protect... important hedgerows... and the existing public rights of way network from inappropriate development...’.</p> <p>‘vi. Positively contribute to the... creation of a wider network of new links between green and blue spaces including links to the Public Rights of Way Network’.</p> <p>Paragraph 2 provides that where appropriate, development proposals will be expected to appraise the value of the Borough’s natural environment through the provision of:</p> <p>‘i. An ecological evaluation of development sites and any additional land put forward for mitigation purposes...’.</p> <p>‘ii. Arboricultural assessments...’.</p> <p>‘iii. A landscape and visual assessment...’.</p>
<p>Policy DM4 ‘Development Affecting Designated and Non Designated Heritage Assets’</p>	<p>This states at that:</p> <p>‘2. Where appropriate, development proposals will be expected to respond to the value of the historic environment by the means of a proportionate Heritage Assessment which assesses and takes full account of:</p> <p>i. Any heritage assets, and their settings, which could reasonably be impacted by the proposals;</p> <p>ii. The significance of the assets; and</p> <p>iii. The scale of the impact of development on the identified significance.’</p>
<p>Policy DM21 ‘Transport Impacts’</p>	<p>This states that:</p> <p>‘1. Development proposals must:</p> <p>i. Demonstrate that the impacts of trips generated to and from the development are accommodated, remedied or mitigated to prevent severe residual impacts, including where necessary an exploration of delivering mitigation measures ahead of the development being occupied’.</p>

<p>Policy DM24 'Renewable and Low Carbon Energy Schemes'</p>	<p>This policy states:</p> <p>'1. Applications for larger scale renewable or low carbon energy projects will be required to demonstrate that the following have been taken into account in the design and development of the proposals:</p> <ul style="list-style-type: none"> <li>i. The cumulative impact of such proposals in the local area;</li> <li>ii. The landscape and visual impact of development;</li> <li>iii. The impact on heritage assets and their setting;</li> <li>iv. The impact of proposals on the amenities of local residents, e.g. noise generated;</li> <li>v. The impact on the local transport network;</li> <li>vi. The impact on ecology and biodiversity including the identification of measures to mitigate impact and provide ecological or biodiversity enhancement.</li> </ul> <p>2. Preference will be given to existing commercial and industrial premises, previously developed land, or agricultural land that is not classified as the best and most versatile.</p> <p>3. Provision for the return of the land to its previous use must be made when the installations have ceased operation.'</p>
<p>Policy DM30 'Design Principles in the Countryside'</p>	<p>This policy provides that development outside of settlement boundaries which would create high quality design and satisfy the requirements of other Local Plan policies will be permitted where it meets a number of criteria, including:</p> <ul style="list-style-type: none"> <li>'i. The type, setting, materials and design, mass and scale of development and the level of activity would maintain, or if possible, enhance local distinctiveness including landscape features'.</li> <li>'ii. Impacts on the appearance and character of the landscape would be appropriately mitigated...'</li> <li>'iii. Proposals would not result in unacceptable traffic levels on nearby roads...'</li> <li>'iv. ... Any new buildings should, where practicable, be located adjacent to existing buildings or be unobtrusively located and well screened by existing or proposed vegetation...'</li> </ul>
<p>Policy DM37 'Expansion of existing businesses in rural areas'</p>	<p>'1. Planning permission will be granted for the sustainable growth and expansion of rural businesses in the rural area where:</p> <ul style="list-style-type: none"> <li>iii. The new development, together with the existing facilities, will not result in an unacceptable loss in the amenity of the area.'</li> </ul>

8.4 Policy DM24 'Renewable and Low Carbon Energy Schemes' addresses "*applications for larger scale renewable or low carbon energy projects*" and is therefore the key Local Plan policy in respect of the Proposed Development.

8.5 As explained in section 9 below in relation to national planning policy, the NPPF makes clear that the planning system should support the transition to a low carbon future and, in order to help increase the use and supply of renewable and low carbon energy, plans should provide a positive strategy for energy from these sources and consider identifying suitable areas for renewable and low carbon energy sources.

- 8.6 Policy DM24 supports and encourages renewable and low carbon schemes, although does not identify areas considered to form suitable locations.
- 8.7 It is also noted that the Local Plan predates the declaration of a national climate emergency in 2019. Accordingly, Policy DM24 does not reflect the scale and urgency of the climate change challenge identified by the UK Parliament.

### **EMERGING LOCAL PLAN REVIEW**

- 8.8 The policies relevant to the assessment of the Proposed Development are summarised in Table 2 below.

<b>Table 2: Relevant LPR Policies</b>	
<b>Policy</b>	<b>Summary of the Policy</b>
Policy LPRINF3 'Renewable and low carbon energy schemes'	This is a restatement of Local Plan Policy DM24, but with the addition of support for combined heat and power and district heating schemes.
Policy LPRSP4(A) 'Heathlands Garden Settlement'	This policy allocates the Heathlands site for a new sustainable garden settlement for approximately 5,000 new homes.
Policy LPRSP4(B) 'Lidsing Garden Community'	This policy allocates the Lidsing site for a new garden community for approximately 2,000 new homes.
Policy LPRSP5(B) 'Invicta Barracks Strategic Development Location'	This policy allocates the Invicta Barracks site for up to 1,300 new dwellings.
Policy LPRSP5(C) 'Lenham Broad Location for Housing Growth'	This policy allocates the Lenham location for up to 1,000 new homes.
Policy LPRSP14(C) 'Climate Change'	This provides that to ensure that development in the Borough mitigates and adapts to climate change, the Council will support the provision of renewable energy infrastructure within new development.

### **POLICY APPRAISAL**

#### **General**

- 8.9 The requirement under section 38(6) of the Planning and Compulsory Purchase Act 2004 is that a planning determination "*must be made in accordance with the plan unless material considerations indicate otherwise*". Under section 70(2) of the Town and Country Planning Act 1990, a decision maker must have regard to "*the provisions of the development plan, so far as material to the application*".
- 8.10 The Courts have held that, in making a determination, the task of the decision maker is to establish whether a proposal is "*in accordance with the development plan as a whole*"<sup>4</sup> and "*in a case in which different parts of the Local Plan point in different directions, it is for the planning authority to decide which policy should be given greater weight in relation to the particular decision*"<sup>5</sup>.

<sup>4</sup> See for example R Corbett v Cornwall Council [2020] EWCA Civ 508 [para 45] [APP5.8].

<sup>5</sup> TW Logistics Limited v Tendering DC [2013] EWCA Civ 9 [para 18] [APP5.9].

- 8.11 The principal planning issues to be considered in the determination of the Appeal in the context of the development plan are set out in this section. Given the status of the Local Plan Review [**APP3.2**] (draft Local Plan Review submitted for examination) reference to emerging policy is also provided in the assessment of the Proposed Development against the development plan. However, it is acknowledged that the Local Plan Review can only be afforded limited weight in the assessment process pending completion of its examination.

### **The Principle of Development - Renewable Energy**

- 8.12 The Site is located within the countryside, defined in Policy SP17 'The Countryside' as all those parts of the plan area outside the settlement boundaries of the Maidstone urban area, rural service centres and larger villages defined on the policies map. Policy SP17 permits development within the countryside where they accord with other Local Plan policies and where they will not result in harm to the character and appearance of the area.
- 8.13 The supporting text to Policy DM24 recognises that parts of the landscape features and resources within Maidstone Borough mean that there is a technical suitability for the construction of renewable schemes such as solar farms (paragraph 6.100). Further, these schemes help to reduce regional and national carbon emissions therefore the Council considers that, in the correct locations, such proposals are of benefit to the Borough as a whole [paragraph 6.101].
- 8.14 Paragraph 1 of Policy DM24 provides that applications will require to demonstrate that the environmental and amenity criteria listed at i-vi have been taken into account in the design and development of the proposals. Paragraph 2 provides that preference will be given to existing commercial and industrial premises, previously developed land, or agricultural land that is not classified as the best and most versatile. Paragraph 3 provides that provision for the return of the land to its previous use must be made when the installations have ceased operation.
- 8.15 Paragraph 1 of Policy DM3 'Natural Environment' requires developers to incorporate measures in new development projects to enable Maidstone Borough to be able to respond to the effects of climate change.
- 8.16 The Proposed Development would have an installed capacity of 49.9MW of solar generation and therefore forms a larger scale renewable project for the purpose of Policy DM24. The Carbon Emissions Statement demonstrates that the Proposed Development would generate 52.103 megawatts of renewable power each year, equivalent to the needs of 15,226 dwellings and resulting in savings of 12,042 tonnes of carbon emissions [see **APP1.33.5**]. It is a form of development which would directly respond to the effects of climate change through the production of renewable energy.
- 8.17 It follows that Policy DM24, Policy SP17 and Policy DM3 are supportive in principle of the Proposed Development on the Site. An assessment of the Proposed Development against criteria i-vi of paragraph 1, paragraph 2 and paragraph 3 of Policy DM24 is set out below.
- 8.18 In terms of LPR policies, LPR Policy LPRINF3 restates Local Plan Policy DM24 and offers the same level of support to larger scale renewable energy projects. LPR Policy LPRSP14(C) provides support for provision of renewable energy infrastructure within new development to ensure that development within the Borough mitigates and adapts to climate change. It follows that these policies are supportive in principle of the Proposed Development on the Site.
- 8.19 LPR policies LPRSP4(A), LPRSP4(B), LPRSP5(B) and LPRSP5(C) allocate sites for up to 9,300 new houses within the plan period. The need for significant increases in power to meet the demand arising from this new development is material.

### Appeal Amendments

- 8.20 The Appeal Amendments would result in a very small change to the generation capacity of the Proposed Development, which would reduce to 46.97MW or 50.299 megawatt hours of

renewable power per year. This would meet the needs of 15,477 dwellings and result in savings of 10,617 tonnes of carbon emissions per year [see **APP1.33.5**].

### **Landscape and Visual Impact (including Cumulative Impact)**

- 8.21 A landscape and visual impact assessment was prepared by awSCAPE in February 2022 (“**LVIA**”) [**APP1.10**]. A combination of desk study, field work and professional judgement/experience were applied to a study area extending up to 5km from the Site.
- 8.22 A response to comments raised by consultees and members of the public in relation to the determination of the Application was prepared by awAcape in April 2023 (“**Landscape Response**”) [see **APP1.32.11**].

#### Landscape Character

- 8.23 There are no statutory or non-statutory landscape designations associated with the Site or within 1km of the Site. There are a number of listed buildings within 1km of the Site (see below), and beyond. There is an area of Ancient Woodland to the immediate west of the Site boundary.
- 8.24 The Site comprises 7 individual arable fields with mature hedgerows and hedgerow trees lining each field. Some of the trees are gappy and the trees very mature in nature.
- 8.25 Part of the Lesser Teise River forms the eastern boundary of the Site, with mature vegetation along its length. The majority of the northern boundary is formed by the South Eastern Railway line, with power lines visible beyond which traverse into the Site further west. The western boundary is formed from an existing managed hedgerow with a small woodland block. A number of transmission towers and power lines are visible, travelling north to south through the Site. Part of the southern boundary is located off Sheephurst Lane with a managed hedgerow, following the line of the road.
- 8.26 Within the Site there are numerous ponds and ditches. Topography ranges from approximately 18mAOD in the north to 19.75mAOD at its highest point in the south east, with varying topography within the Site.
- 8.27 In assessing the overall sensitivity of the Site to the type of development proposed, the Site has been identified as having a medium susceptibility to change, with trees and hedges being particularly susceptible, and a medium landscape value. This gives rise to a medium sensitivity.
- 8.28 The magnitude of landscape effects at completion are identified as low-medium adverse. These reduce after 10 years to low beneficial, reflecting the proposed mitigation planting to be carried out in accordance with guidance for the landscape character areas within which the Site is located.
- 8.29 The significance of effect on the landscape is identified as **slight-moderate adverse** upon completion and improving to **slight beneficial** after 10 years, after the proposed mitigation planting has matured.
- 8.30 The mitigation planting would be of native origin and has been carefully considered in response to the guidance on improvements and enhancements set out in the national and local landscape character assessments. The mitigation plan would ensure the field pattern remains intact and would improve existing hedgerow. Individual trees would be planted within gapped up hedgerows to ensure continuity of trees within the landscape to replace ageing specimens over time. Biodiversity woodland planted to the west of the Site would help to reconnect Ancient Woodland with its wider landscape.
- 8.31 The Officer Report [at paragraph 6.29] [**APP1.28**] states that “*much of the landscape strategy shows additional ecological woodland planting and heavy standard trees outside the red line which means there is no way of securing them by planning condition*”. This is misleading as to the extent of planting shown outside of the red line. Whilst some additional woodland is proposed outside of the boundary, no mention is made in the Officer Report to

the substantial ecological and mitigation planting proposed to be included within the red line boundary of the Site. Further, it is not agreed that there is no way of securing mitigation planting outside of the red line boundary. A 'Grampian' style condition could be imposed which requires full details of mitigation planting to be submitted to and approved by the Council prior to commencement of development and thereafter implemented as approved. It would then be for the Appellant to secure the delivery of mitigation planting outside the red line in order to satisfy the requirement of the condition.

- 8.32 The Officer Report [at paragraph 6.30] criticises the proposed mitigation in the form of new hedgerows because these would "*restrict public views across the currently open topography*" and that "*these wide-open vistas currently give the local countryside its intrinsic character and qualities*". However, only the eastern section of the Site, located within the Teise Valley LCT, has long views to the north and south but these are very restricted in extent due to perimeter vegetation. The remainder of the Site sits within the Laddingford Low Weald LCT, a completely different LCA from the Valleys to the east. The Laddingford Low Weald LCT does not have open vistas. Any 'longer' views are to adjoining fields through loss of vegetation, from poor hedgerow management and/or loss of mature trees, a requirement for mitigation guidelines within the LCT and included within the landscape mitigation strategy.
- 8.33 The Officer Report [at paragraph 6.31] mentions "*harm to the intrinsic qualities of the countryside*" but does not elaborate on what is considered to cause this harm. It goes on to say [at paragraph 6.34] that as mitigation planting matures "*that creates other harm such as curtailment of open vistas characteristic of the locality*". As indicated above, it is only the eastern section of the Site which has long views and these are very restricted in extent. It is not therefore agreed that open vistas are characteristic of the locality.
- 8.34 The Officer Report [at paragraph 6.35] makes reference to the decision of an Inspector to dismiss an appeal for a solar farm at Pagehurst Farm, also in the Low Weald, for reasons of impact on landscape character [see **APP5.7**]. However, this appeal concerns a solar farm with "*vast and open topography*". It is located within the Low Weald LCA. The Site is located within a LCT which has a more enclosed, restricted visual envelope with a moderate landscape and visual sensitivity. The Officer Report does not consider the Site's individual landscape character and distinguish it from that of the Pagehurst Farm site. The Officer Report appears to assume that the landscape character is the same for each site, which creates an inaccurate impression of the Site.
- 8.35 The Officer Report [within the 'Summary' on the first page] also states that areas of stored topsoil would be at odds with the natural landscape character and [at paragraph 2.10] indicates that the location, size and form of the bunds has not been detailed. As indicated in the Landscape Response, it is considered that this is a matter which may be adequately addressed through the imposition of a suitable condition.
- 8.36 Further comments from officers and from members of the public are set out in the Landscape Response [**APP1.32.5**] which also provides responses to these comments on behalf of the Appellant.

#### Visual Impact

- 8.37 The visual appraisal, carried out using ZTVs and a series of from representative viewpoints, demonstrates that the visual receptors that would potentially be most affected are a small number of public rights of way and dwellings within 500m of the Proposed Development. Beyond 800m, the visual effects would be negligible.
- 8.38 Table 5 to the LVIA provides a summary of the visual impacts. Some of the views close to the Site would experience **substantial adverse** effects on completion of the Proposed Development (ie Viewpoints 1-8 from public rights of way).
- 8.39 In relation to impacts upon dwellings, the property which is located closest to the solar arrays, being the Bungalow at Little Cheveney Farm (55m to the south), would experience **substantial adverse** effects, albeit views would be partially screened by an existing barn and garden vegetation. Turkey Farmhouse (350m to the east) would experience **moderate – substantial adverse effects** although, again, view would be partially screened by

garden vegetation. Other dwellings would experience **moderate adverse – slight adverse** effects.

- 8.40 However, mitigation planting along the northern, southern and eastern boundaries with gapping up of hedgerows within the Site and to the boundaries of the Site would significantly reduce the initial adverse effects. After 10 years the Site would have substantial planting to screen the majority of views of the Proposed Development. At this point, the significance of the effects would be **negligible – nil – moderate beneficial – substantial beneficial**.
- 8.41 The Officer Report [**APP1.28**] [at paragraphs 6.22, 6.24 and 6.26] suggests that the solar energy farm and proposed fencing would be within close proximity of the PROW, using terms such as “*within a few metres of that PROW*” and “*a second line of security fencing alongside it (PROW) for this distance (750m)*” and “*long sections would lie between 2.4m high security fencing and the site boundaries*”. These statements create an inaccurate impression of the proximity of the Site fencing to PROW and suggest that the PROW would become oppressive environments, which is not the case. Mitigation has been proposed in respect of the PROW which considers distance from the users of the PROW once the mitigation matures. These can be seen from the photomontages provided within the LVIA. For the permissive paths, only a short section would be in close proximity to the fence and the Site boundary, the rest would have more of an open character.
- 8.42 The Officer Report also states that areas of stored topsoil would be visually harmful. As stated above, it is considered that this is a matter which may be adequately addressed through the imposition of a suitable condition.

#### Cumulative Effects

- 8.43 The LVIA considers the impacts of the Proposed Development in conjunction with the existing Paddock Wood Solar Farm, located 3km west of the Site, the existing Widehurst Solar Farm, located 2km south east of the Site and a proposed switching station, located 240m south west of the Site.
- 8.44 Due to the distance between the two other solar farms, the combined effect on landscape character would be negligible. In conjunction with the switching station, the combined effect would also be negligible.
- 8.45 There would be the possibility of combined intervisibility of Paddock Wood Solar Farm and the Site from one viewpoint (Viewpoint 11), but these would be limited to small glimpses beyond foreground vegetation therefore the cumulative visual effects would be negligible. The Site and the Widehurst Solar Farm would not be visible within the same view either in combination or succession therefore cumulative visual effects would be nil. The Site and the switching station would not be visible in combination or successional combination due to intervening vegetation therefore cumulative visual effects would be nil.
- 8.46 The Officer Report also makes mention a proposed a solar farm at Bockingfold, approximately 750m to the south west of the Site, which is the subject of a planning application made to Tunbridge Wells Borough Council [paragraph 6.21]. It notes that, due to the distance between the sites and the inability to view the sites together from a fixed vantage point, there would be no cumulative visual impact on the rural locality.
- 8.47 The Appellant’s landscape consultants, awScape have provided the following comments in relation to the proposed Bockingfold solar farm:

*"Distance between the red line boundaries of Sheepwash and Bockingfold sites on a plan is approximately 700m, however, travelling by road the distance would be approximately 1.4km and via PROW with some walking on main roads, approximately 900m.*

*There is no combined visibility between the sites, ie Bockingfold is not visible from Sheepwash and vice versa. Sequential views are over a longer distance, such that nearly 1km would be walked between the two sites, although this PROW would pass an approved Switching Station. The PROW does not connect to any other PROW unless a distance is*

walked on roads. The solar energy farms and the switching station would be seen one after another over a distance of up to 500m and would be occasionally successional. The cumulative occasionally successional effects would have a low magnitude of change on a high sensitivity receptor (PROW), with a Moderate Adverse significance of effect. This does not take into account mitigation planting which would reduce this effect over 10 years to Negligible.

*In terms of landscape character, Sheepwash is considered to have a Slight-Moderate Adverse significance of effect on the landscape improving with additional enhanced planting after a period of 10 years. I cannot forecast the landscape enhancements or mitigation that will be prepared for Bockingfold and as such cannot comment on its value towards the structure of the retained landscape. Should both Sheepwash and Bockingfold be approved, there would be 4 solar energy farms spread over an area of 6km. They provide opportunity to enhance existing green infrastructure within the site boundary. The initial combined effect of the solar energy farms over a distance of 6km would be slight-moderate adverse. Over time as enhancements and vegetation establishes the effects would reduce to slight adverse. The solar energy farms are temporary within the landscape and they will be decommissioned at different times. Upon decommissioning the fields would be restored and the combined effect would reduce. Also the landscape enhancements that have been undertaken during the course of the development would make a substantial improvement in the overall landscape character of these locations."*

#### Conclusions – Landscape and Visual Impact (including Cumulative)

- 8.48 The LVIA has assessed the landscape and visual impact of the Proposed Development and the cumulative impact of the Proposed Development together with other developments within the area. The LVIA has also informed the formulation of the Proposed Development proposals, including the proposed mitigation planting.
- 8.49 Accordingly, this satisfies the requirement under paragraph 1, criteria i and ii of Policy DM24, to demonstrate that the landscape and visual impact of development and cumulative impact of proposals have been taken into account in the design and development of the proposals. It also satisfies the requirement under paragraph 2, criteria iii of Policy DM3 'Natural Environment', to appraise the value of the natural environment through a landscape and visual impact assessment.
- 8.50 In terms of other Local Plan policies, the Proposed Development accords with Policy SS1 'Spatial Strategy', paragraph 10 because the Site is not visible from the Kent Downs or the High Weald AONB or their setting and there are no landscapes of local value within the Site. There would be no landscape or visual effects on the AONBs. The Proposed Development would secure the conservation and enhancement of the landscape infrastructure.
- 8.51 The Proposed Development also accords with Policy SP17 because, whilst there would be some initial harm to the arable landscape and visual amenity of the local area, this would be mitigated and harm significantly reduced with conservation and substantial enhancement of the existing landscape infrastructure.
- 8.52 The Proposed Development accords with Policy DM1 'Principles of good design'. Permissive footpaths would be introduced providing for improved permeability through the Site. The local natural infrastructure of trees, woodland and water corridors would be conserved and enhanced with additional woodland, hedgerows and ponds created. The kV compound would be positioned away from PROW and dwellings to reduce visual impacts and woodland would be planted round these structures to provide additional screening. A LEMP would be used to secure the long term maintenance and management of the landscape and habitats.
- 8.53 The Proposed Development also accords with Policy DM30 'Design principles in the countryside'. The design of the Proposed Development, including the enhancement of woodland and hedgerows within and outside the Site would mitigate all views and enhance the landscape character of the local area.
- 8.54 It is noted that the Site does not form part of a landscape which is afforded specific landscape policy protection under the Local Plan. In this regard the level of harm alleged in

the Officer Report and the degree of protection which is implied does not reflect the prevailing policy.

- 8.55 In **Appeal decision APP/C3240/W/22/3293667 relating to a proposed solar farm in Telford Shropshire [APP5.6]**, the Secretary of State considered the effect of the proposal on the character and appearance of the Wrekin Forest Strategic Landscape in which the appeal site is located, which is one of two Strategic Landscapes within Telford and Wrekin which is afforded specific landscape policy protection. The Secretary of State also considered the impact upon the Shropshire Hills Area of Outstanding Natural Beauty (AONB), because the appeal site is located within or close to a Zone of Influence around the designated AONB boundary.
- 8.56 In allowing the appeal, the Secretary of State afforded great weight to conserving and enhancing landscape and scenic beauty in the AONB but concluded that the proposals are sensitively located and designed to avoid or minimise impacts on the AONB. The Secretary of State also acknowledged that the site forms a valued landscape but found that it is not a highly sensitive site and concluded that there would be no significant adverse effect on the Strategic Landscape or the amenity value of the area.
- 8.57 This appeal decision demonstrates that carefully thought out proposals for utility scale solar developments are capable of being satisfactorily accommodated in landscapes with greater landscape policy protection to those relating to the Site, without significant adverse effects upon the landscape.

#### Appeal Amendments

- 8.58 The Appeal Amendments have been designed in order to improve the visual amenity of 8 Sheephurst Cottage, dwellings along Sheephurst Lane, Willow Cottage, Willow Barn and Listed Buildings within Little Cheveney Farm.
- 8.59 The amendments involve removal of solar arrays to the west and north of these dwellings and relocation of the HV compound further away from dwellings. Further alterations include change of species mix to the mitigation woodland planting in line with the Maidstone Landscape Guidelines and the provision of a deeper woodland buffer between the dwellings and the Site. The original LVIA showed a significance of effect slight benefit after 10 years. With the Appeal Amendments, a slight to moderate benefit significance of effect would be achieved after 5-10 years.
- 8.60 It is considered that the Appeal Amendments address the comments raised by landscape officers, comments raised in the Officer Report and RfR2.
- 8.61 A landscape and visual impact assessment addendum was prepared by awScape in April 2023 ("**LVIA Addendum**") [**APP1.33.4**] which assesses the Appeal Amendments.

#### **Grid Connection, Sequential Analysis and Agricultural Land**

##### Sequential Analysis Study

- 8.62 A sequential analysis study prepared by Pegasus Group in February 2022 [**APP1.9**] describes the approach taken to the selection of the Site and demonstrates that the use of agricultural land has been properly considered. This has been updated in order to respond to RfR1 therefore the updated study, dated 24 April 2023 [**APP1.32.9**] is referred to in this Statement ("**SAS**").
- 8.63 The objective behind the SAS was to find a suitable site that can accommodate a commercial scale ground mounted solar farm with a maximum capacity of 49.9MW.
- 8.64 The most important factor in the site search was the identification of a point of connection to the grid ("**POC**") which has available capacity, is not constrained or result in significant power curtailment and the connection should be available within a reasonable timeframe (ie up to 4 years). The second most important factor was the cost of connection, which is

a function of distance because beyond 500m, the cost can become unviable relative to the power generated.

- 8.65 Inspectors have recognised the importance of the availability of grid connection to the deliverability of low carbon schemes. In the Appeal decision APP/N2739/W/22/3300623 dated 1 December 2022 for land at Fairburn Selby [see **APP5.2**] (albeit relating to an energy storage scheme) the Inspector found as follows [at paragraph 36]:

*"Perhaps one of the most important factors is the ability to connect to the National Grid. The appellant has submitted evidence that demonstrates that future connections to the National Grid will be challenging and applicants face a 10 year wait to connect to the grid due to existing capacity being exhausted. Therefore, projects that have secured connection are fundamental to achieving Net Zero targets given the increased requirement for storage capacity. This proposal has an agreed connection to the grid in 2024 which significantly adds to the overall benefit of the scheme."*

- 8.66 Available capacity was identified in the Northfleet to Harley overhead 132kV line operated by UK Power Networks, as set out in the Grid Review Planning Report, Roadnight Taylor, February 2022 ("**Grid Review Report**") [**APP1.6**]. A site search was carried out by Carter Jonas within a 500m corridor along this line, which extends into the neighbouring Tunbridge Wells Borough Council area to the south and the Tonbridge and Malling Borough Council area to the north.

- 8.67 In the initial site sift carried out, potential sites wholly or mainly on agricultural land quality Grades 1 and 2 were excluded, in order to focus on 'poorer quality land', as well as non-agricultural and urban land.

- 8.68 Two sites were identified by Carter Jonas through the initial site sift, the Site and a second site situated within Tunbridge Wells. The landowner of the second site advised Carter Jonas that it was not interested in pursuing a solar scheme at that time. Accordingly, the Site was identified as the only available site within 500m of the 132kV overhead line.

- 8.69 The next stage of the SAS was to undertake a detailed appraisal and evaluation to assess compliance with the development plan and other material policy and guidance, using the administrative area of Maidstone Borough Council as the study area.

- 8.70 The SAS indicates that a search was carried out within the study area which identified no previously developed land or rooftops which could deliver a solar farm development with comparable capacity to the Application Site. This demonstrates that it is necessary to use agricultural land in order to deliver solar farm development in association with the available capacity on the 132kV line.

- 8.71 As indicated below, a mix of Grade 2, Subgrade 3a and Subgrade 3b land has been identified within the Site. The majority of the Site (53%/39.4ha) comprises Subgrade 3b, which is not best and most versatile ("**BMV**") agricultural land, as defined in Annex 2 to the NPPF.

- 8.72 A search was carried out to identify the availability of poorer quality agricultural within the study area. This search found that the majority of the land within the study area, as well as the wider area, comprises land with a predictive agricultural land classification of Grade 1-3, which is therefore of similar or higher quality to the Site.

- 8.73 Further, the search found that the majority of the land within the 500m corridor from the 132kV line has predictive grades of Grade 1 and 2, which is therefore higher than the Site.

- 8.74 The SAS therefore demonstrates that the Site comprises relatively poorer quality land than land elsewhere within the study area.

- 8.75 Is indicated in the Grid Review Report [**APP1.6**], at the date of application to UKPN for a connection to the grid the surrounding network was not oversubscribed for generation. It is therefore anticipated that a connection could be secured and that export of renewable energy to the network could commence within approximately two years from the grant of planning permission.

## Agricultural Land

- 8.76 Reading Agricultural Consultants carried out an Agricultural Land Classification (“**ALC**”) survey of the Site and graded the soil resources. The results, extracted from the Agricultural Land Classification and Soil Resources report (“**ALC Report**”) [see **APP1.21**], are shown in Table 3 below.

<b>Grade</b>	<b>Description</b>	<b>Area (ha)</b>	<b>%</b>
Grade 2	Very good quality	6.9	9
Subgrade 3a	Good quality	28.2	38
Subgrade 3b	Moderate quality	39.4	53
Total		74.5	100

- 8.77 Figure RAC/9221/2 contained in the ALC Report shows the location of the relevant Grades of agricultural land within the Site. Notably, the BMV agricultural land within the Site (comprising land within Grades 2 and 3a) does not form a large block within the Site. Rather, it is made up of a number of parcels, mixed in a complex pattern with land of Subgrade 3b.
- 8.78 The Agricultural Land Use Statement prepared by Bidwells (“**ALU Statement**”) [see **APP1.20**] makes clear that the farming regime which can be adopted will largely be determined by the potential of the poorest quality land on the site, which has the effect of limiting the extent to which the capacity of the higher quality land can be exploited [paragraph 3.1].
- 8.79 The agricultural evidence prepared by Kernon Countryside Consultants (“**Kernon Report**”) [see **APP1.32.2**] provides further illustration of this issue. Inserts 12 and 13 provide a comparison of the ALC map with the field boundaries. This comparison demonstrates that within individual fields there is a mix of Subgrades 3a and 3b land. The Kernon Report confirms that in practical terms, the fields within the Site are farmed, and are farmable, only as whole fields, with no separation of cropping between Subgrades 3a and 3b land [paragraph 5.14].
- 8.80 It follows that the only benefit that can be achieved from the BMV land within the Site relates to yield (ie production) rather than a wider range of cropping opportunities. As a result of the BMV land being mixed with land of poorer quality in all of the fields within the Site, the BMV land is not capable of separate exploitation [paragraphs 5.26 and 5.27].
- 8.81 The ALU Statement [**APP1.20**] makes clear that the Proposed Development will only result in a temporary removal of the Site from agricultural production. Farming will be able to resume at the end of the lifetime of the planning permission. The Proposed Development would act as a long term break without intensive arable production, enabling soils to regenerate bringing about improvements in soil health, structure and levels of organic matter. Whilst the Site would cease to be used for arable farming during the lifetime of the planning permission, it would still be compatible with sheep grazing, ensuring that the Site would not be wholly lost to agriculture. [paragraph 8].
- 8.82 The Planning Design and Access Statement [see **APP1.19**] makes clear that at the end of the 37 year lifetime of the planning permission, the equipment associated with the solar energy farm would be removed and the Site would revert to full agricultural use. Decommissioning would be secured by way of condition attached to the planning permission [paragraph 7.8.11].

### Conclusions – Grid Connection, Sequential Analysis and Agricultural Land

- 8.83 The SAS [APP1.32.9] demonstrates that a robust approach has been taken in relation to site selection, starting with the identification of the Northfleet to Harley overhead 132kV line followed by a land search and the identification of the Site, with no other sequentially preferable sites identified.
- 8.84 The approach which has been taken entirely reflects the requirements of Policy DM24, paragraph 2, which gives preference to existing commercial and industrial premises, previously developed land, or agricultural land that is not classified as the best and most versatile.
- 8.85 The Proposed Development would utilise land which is predominantly not BMV agricultural land (53% Grade 3b). The largest proportion of the remaining area (38%) comprises land with an ALC of Subgrade 3a, which is the lowest category of BMV agricultural land. However, Subgrade 3a land is mixed with Subgrade 3b within individual fields and fields are capable only of being farmed as a whole, with the farming regime dictated by the poorest quality of land. In the absence of the Proposed Development, it follows that the arable use of the Site would be restricted to crops suitable for Subgrade 3b land.
- 8.86 The SAS therefore demonstrates that the Proposed Development is consistent with and supported by Policy DM24, paragraph 2.
- 8.87 The Planning Design and Access Statement confirms that at the end of the 37 year lifetime of the planning permission, the equipment associated with the solar energy farm would be removed and the Site would revert to full agricultural use.
- 8.88 The Proposed Development is therefore consistent with and supported by Policy DM24, paragraph 3, which requires provision to be made for the return of the land to its previous use when the installations have ceased operation.

### **Diversification and Economic Development**

- 8.89 The current agricultural occupier of the Site, Eckley Farms, is principally an arable enterprise growing winter wheat, winter barley, spring barley, spring oats and winter beans.
- 8.90 The ALU Statement explains that, as a wholly arable enterprise, the business has a relatively high exposure to the risks associated with commodity price fluctuations, weather and environmental conditions. It is therefore important for arable businesses to diversify their income sources to secure consistent income during times of low commodity prices and adverse events. The Proposed Development would provide the farm with a source of income which is not prone to the volatility it is otherwise exposed to such as climatic events and global commodity markets.
- 8.91 The land area to accommodate the proposed solar energy farm is proportionately small (forming only 7.5% of the arable land across the holding) therefore the impact on the farming business as a whole would be minimal. Furthermore, with a lifetime of 37 years, the impact would be temporary.

### Conclusion – Diversification and Economic Development

- 8.92 The ALU Statement [APP1.20] makes clear that the Proposed Development would make a small, but important, contribution towards diversifying the operations and income stream at Eckley Farms, with only a minimal and temporary impact upon the continuation of the predominant arable enterprise.
- 8.93 The supporting text to Policy SP21 'Economic Development' indicates that within the countryside economic development will be permitted for farm diversification where this can be achieved in a manner consistent with local rural and landscape character [para 4.144]. The Proposed Development draws support from Policy SP21 (which sets out Council support for proposals for the expansion of existing economic development in the countryside) and Policy DM37 'Expansion of existing businesses in rural areas' (which provides that planning

permission will be granted for the sustainable growth and expansion of rural businesses where the new development will not result in an unacceptable loss in the amenity of the area).

### Heritage Impacts

- 8.94 A Heritage Desk Based Assessment was prepared by Cotswold Archaeology in January 2022 (“HDBA”) [see APP1.4]. This considers the potential effects of the Proposed Development on surrounding designated heritage assets, through the alteration of their settings. The HDBA has been supplemented by a heritage appeal statement also prepared by Cotswold Archaeology in April 2023 (“HAS”) [see APP1.32.6] to respond in particular to RfR3.
- 8.95 The HDBA indicates that there are no designated heritage assets within the Site and no Scheduled Monuments, World Heritage Sites or Registered Parks and Gardens within the study area (1km). There are 33 designated heritage assets within the study area, the majority of which form farmsteads within the rural landscape. Six of these assets lie within Marsden Conservation Area, approximately 800m to the east of the Site. The remaining designated assets are Grade II Listed Buildings and include cottages, farm buildings and a public house.
- 8.96 Five groups of designated assets are identified as being potentially sensitive to the Proposed Development, due to proximity to, or potential inter-visibility with the Site.
- 8.97 The Grade II Listed Little Long End, adjacent to the north-western edge of the Site is the closest listed building to the Site. However, solar panels would not be positioned in the area of the Site immediately to the south of the house, which would comprise a biodiversity area, with vegetation retained. The nearest solar panels would be over 215m to the east of the asset, beyond an existing power line. While a key view into and out from the building, from the principal elevation, faces south towards the Site, mature trees obscure any views of the Site. Likewise, the building is not visible from within the Site and cannot be experienced alongside it within the wider landscape. The primary experience of the asset within its immediate setting would not be impacted and there would be **no harm** to the significance of the Listed Building.
- 8.98 The group of Grade II Listed Buildings at Little Cheveney Farm, c 230m from the southern parts of the Site, comprise a farmhouse, barn and two oasthouses. The Proposed Development would introduce solar panels into the wider landscape surroundings to the north, east and west of Little Cheveney Farm. However, no panels would be placed in the fields closest to buildings, with the nearest located over 270m north of the core of the farm (and 150m of the northernmost oasthouse). The Proposed Development is unlikely to feature in any views from Little Cheveney. Where any visibility is possible, this would be limited to glimpsed and heavily filtered views which would in no way affect the ability to appreciate or understand the farm buildings. The key elements that contribute to the significance of the buildings, inherent within their physical form, would remain entirely unaltered, as would the primary experience of the buildings afforded from within their immediate surroundings. The Proposed Development would result in a slight change in character to the wider landscape surroundings of the buildings. However, the Proposed Development would be seen and understood as part of the wider agricultural hinterland of the assets. The historical association between the Site and the assets would not be lost. Accordingly, there would be **no harm** to the significance of the Grade II Listed Buildings.
- 8.99 The Grade II Listed Buildings at Great Sheephurst Farm, c 170m to the south of the Site, comprise a farmhouse and oasthouse. The Proposed Development would introduce a new built form into the wider rural setting of the Listed Buildings. Although the form has visual and functional connections to the Site, it would continue to be surrounded by meadows and fields. No solar panels would be introduced to the fields closest to the farm, with the nearest panels over 345m to the north-east. As such, a buffer would be formed between the assets and the Site. The primary experience of the assets for the public, from the road and footpath, would not be impacted. Accordingly, there would be **no harm** to the significance of the Listed Buildings.
- 8.100 The Grade II Listed Turkey Farmhouse is located c.300m to the east of the Site. However, the limited height of the solar panels would mean that the visual impact would be softened,

and views of the wider landscape maintained. Whilst the rural setting makes some contribution, the primary experience of the asset within its immediate setting would not be impacted. Accordingly, there would be **no harm** to the significance of the Listed Building.

- 8.101 The Grade II Listed Longends Farmhouse, is located c.140m to the north of the Site. Despite proximity, the asset is visually and functionally removed from the Site by the railway. There is no intervisibility and the primary experience of the asset within its immediate setting would not be impacted. Accordingly, there would be **no harm** to the significance of the Listed Building.
- 8.102 The HDBA also addresses the likelihood of the presence of archaeological remains on site. It identifies some potential for previously unrecorded remains of prehistoric and later to occur within the Site, but notes that a lack of archaeological investigation results in the potential for buried remains within the Site being poorly understood.
- 8.103 It is proposed that a post-consent geophysical survey is undertaken to help clarify the presence/absence, nature and significance of the archaeological resource. This approach has been agreed with the Kent County Council archaeologist. The carrying out of the survey could be secured by condition which, depending upon the survey results, could require appropriate additional investigations or mitigation measures.

#### Conclusion – Heritage Impacts

- 8.104 A comprehensive assessment of the potential effects of the Proposed Development on surrounding designated heritage assets has been carried out, as set out in the HDBA and HAS.
- 8.105 Accordingly, this satisfies the requirement under paragraph 1, criteria i and ii of Policy DM24, to demonstrate that impact on heritage assets and their setting has been taken into account in the design and development of the proposals. It also satisfies the requirement under paragraph 2 of Policy DM4 'Development affecting designated and non-designated heritage assets', in terms of the carrying out of a proportionate heritage assessment.
- 8.106 The HDBA [**APP1.4**] and HAS concluded that **no harm** to the significance of heritage assets would arise. Should the Inspector nevertheless find that some harm would arise, this would require to be considered as part of the planning balance.
- 8.107 The HDBA outlines the approach which has been taken in formulating the proposals in order to avoid or minimise impacts of the Proposed Development upon designated heritage assets. This satisfies the requirement under sub-paragraph ii of Policy SP18 'The Historic Environment', which requires sensitive management and design of development which impacts on heritage assets and their settings.
- 8.108 The HDBA has also considered the likelihood of the presence of archaeological remains. It has been agreed with the Kent County Council archaeologist that a post-consent geophysical survey should be carried out to help clarify the presence/absence, nature and significance of the archaeological resource.
- 8.109 Accordingly, this satisfies the requirement under paragraph 3 of Policy DM4, for the submission of an appropriate desk-based assessment and, where necessary, a field evaluation.

#### Appeal Amendments

- 8.110 Where solar arrays would be visible from Listed Buildings, ie to the north of Little Cheveney Farm, it is proposed to move the solar arrays further from the Site boundary. A deeper, faster growing woodland block would provide an effective screen of the solar panels to the north, as well as enhancing the boundary to the east.
- 8.111 Little Long End has no intervisibility with the Site due to high hedges between Burtons Lane and the Site. The landscape character associated with this Listed Building appears to be to the north and west of the dwelling which is unaffected.

- 8.112 The Appeal Amendments would improve the rural setting of the dwellings and the road to the south by moving the solar arrays further north and augmenting the proposed mitigation planting between the dwellings and the solar arrays.
- 8.113 It is considered that the Appeal Amendments address the comments raised by conservation officers, comments raised in the Officer Report and RfR2.

### **Ecology and Biodiversity**

- 8.114 An ecological impact assessment was prepared by Riverdale Ecology in February 2022 ("EIA") [see **APP1.12**] to establish the current biodiversity value of the Site, identify any potential ecological constraints or ecological impacts associated with the Proposed Development, provide recommendations for additional survey work where appropriate and provide recommendations for avoidance, mitigation/compensation and/or enhancement measures.
- 8.115 The Site is not subject to any statutory or non-statutory designations and does not contain equivalent habitat that could be considered as functionally linked to any nature conservation sites.
- 8.116 In relation to hedgerows (a UK BAP Priority Habitat/Habitat of Principal Importance under the Natural Environment and Rural Communities Act 2006), woodlands (with woodland adjacent to the Site on the southern and western boundaries listed on the Priority Habitats database for Broadleaved Deciduous Woodland and the western woodland also identified as an Ancient and Semi Natural Woodland) and ponds within and adjacent to the Site, the EIA notes that these would be retained and, accordingly, finds that no detrimental impacts would arise.
- 8.117 RfR4 alleges that potential harm would arise from the permissive footpath which is proposed to be formed at the western edge of the Site to the adjoining Ancient Woodland. This is strongly disputed for the reasons given in Section 10 below.
- 8.118 The Officer Report [at paragraph 5.24] refers to the need for topsoil stockpile bunds to be sited to avoid root protection areas and areas proposed for mitigation planting. As indicated in the Landscape Response, it is considered that this is a matter which could be adequately addressed through the imposition of a suitable condition.
- 8.119 The Proposed Development would result in the loss of arable land, with the ground beneath the solar panels sown with grass, however, the layout of the solar farm would be distanced from boundary hedgerows and trees to avoid overshadowing. Habitats within the Site are assessed as having value at the local level and the overall impact of the Proposed Development on habitats is considered to be **negligible (neutral)**.
- 8.120 Habitat of value for bats within the Site is limited to the boundary features. The Proposed Development would retain all boundary features therefore the construction and operational of the solar energy farm is likely to have a **negligible impact (neutral)** on the abundance or distribution of bats locally.
- 8.121 It is considered unlikely that the Proposed Development will result in significant impacts to great crested newts. However, a precautionary approach to certain elements of the construction phase would be required.
- 8.122 Hazel dormice are unlikely to be present within or adjacent to the Site, therefore it is concluded that the solar energy farm would have a **negligible impact (neutral)** on hazel dormice.
- 8.123 There is no suitable habitat within the Site for otters. Otters are known to use the adjacent Lesser Teise but the Proposed Development will not result in any loss of habitat and the solar panels would be situated approximately 20m from the riverbank with a new permissive footpath acting as a buffer between the solar energy farm and the river. This gives rise to a **negligible impact (neutral)** on otters. RfR4 alleges that potential harm would arise to the Lesser Teise from the creation of the permissive footpath which is proposed to be

formed at the eastern edge of the Site. This is strongly disputed for the reasons given in Section 10 below.

- 8.124 The Proposed Development would result in the loss of arable farmland which is likely to be used by breeding and wintering farmland birds. However, many of the species are not specifically reliant on the arable crops and are more affiliated with hedgerows and woodland, as such the loss of arable fields would have no discernible impact. The exception to this is skylark, which could be affected from the loss of typical nesting habitat within the arable field. It is concluded that the Proposed Development would have a **negligible impact (neutral)** on breeding birds, with the exception of skylark where a **significant site level impact (minor)** is expected. It is concluded that the Proposed Development would have a **negligible impact (neutral)** on the winter bird assemblage within the Site. RfR4 alleges harm to ecology and physical habitats including skylarks, but this is strongly disputed for the reasons given in Section 10 below.
- 8.125 Suitable reptile habitat within the Site is restricted to the field margins and hedgerows. These would be retained therefore the Proposed Development would have a **negligible impact (neutral)** on reptiles which may be within the Site.
- 8.126 Three badger setts have been identified on the western boundary of the Site. The solar panels would be positioned over 80m from any of the setts and at this distance no impacts to the setts are anticipated. However, the installation of the security fence to the solar energy farm is likely to create a barrier to dispersal and exclude badgers from accessing a large proportion of their foraging range. In the absence of any mitigation to maintain permeability across the Site the Proposed Development could result in a significant impact to badgers but as connectivity would not be completely severed the impacts are not considered to have significance above the geographic context of the Site. Accordingly, the Proposed Development would have a **site level impact (minor)** on badgers. RfR4 alleges harm to ecology and physical habitats including badgers, but this is strongly disputed for the reasons given in Section 10 below.
- 8.127 Water voles are not considered to be present within the Site therefore the Proposed Development would have a **negligible impact (neutral)** on water voles.
- 8.128 The Site is considered to have value for hedgehogs, which are likely to be present. The construction and operation of the solar energy farm is considered to have a **negligible impact (neutral)** on hedgehogs which could continue to utilise the Site.
- 8.129 The EIA sets out a number of measures to be adopted in order to avoid, mitigate and/or compensate for the above identified impacts.
- 8.130 The EIA also sets out a number of proposed ecological enhancement measures. The comprise, broadly, the establishment of grassland within the solar panel arrays to provide soil stability and create habitat for wildlife, the establishment of wildflower grassland across approximately 16 hectares of the Site, the planting of deciduous woodland (in blocks of approximately 2.2 hectares across the northern boundary of the Site and in strips of approximately 1.3 hectares within the Site), the planting of new species rich hedgerow, the creation of at least two new ponds and the planting of a small orchard.
- 8.131 Some of these enhancement measures would be formed within a biodiversity enhancement zone within the Site. The Biodiversity Net Gain Report prepared by Riverdale Ecology, dated February 2022 ("**BNG Report**") [see **APP1.13**] demonstrates that a 50.52% biodiversity net gain would be achieved on-Site (or 51.04% including off-Site measures) [paragraph 3.7].

#### Conclusion – Ecology and Biodiversity

- 8.132 A comprehensive assessment of the potential ecological impacts of the Proposed Development has been carried out, as set out in the EIA. The EIA has identified appropriate measures to avoid, mitigate and/or compensate for these impacts. The EIA also sets out proposed measures to deliver ecological enhancements. The BNG Report indicates that a 51.04% net gain would be secured, which significantly exceeds the 10% net gain requirement to be introduced under the Environment Act 2021.

- 8.133 Accordingly, this satisfies the requirement under paragraph 1, criterion vi of Policy DM24, to demonstrate that impact on ecology and biodiversity has been taken into account in the design and development of the proposals. It also satisfies the requirement under criterion viii of Policy DM1, to protect and enhance any on-site biodiversity and geodiversity features where appropriate, or provide sufficient mitigation measures. It also satisfies the requirement of criterion i of paragraph 1 of Policy DM3, to protect... trees with significant amenity value, important hedgerows, features of biological or geological interest, and the existing public rights of way from inappropriate development.

#### Appeal Amendments

- 8.134 The adoption of the Appeal Amendments would secure a greater level of ecological enhancements measures. Additional woodland areas totalling approximately 5ha would be planted as part of the screening measures (compared with 1.3ha under the Proposed Development without Appeal Amendments. Wildflower grassland would be established across approximately 17.5ha of the Site (compared with 16ha of the Site under the Proposed Development without Appeal Amendments) [see page 30 of **APP1.12**].
- 8.135 The BNG Update indicates that this would result in a net gain of 57.08% habitat units on Site, compared with a net gain of 50.52% habitat units (or 51.04% including off-Site measures) for the Proposed Development without Appeal Amendments [see paragraph 3.7 **APP1.33.2**].

#### **Transport Impacts**

- 8.136 A Construction Traffic Management Plan was prepared by Cotswold Transport Planning in February 2022 ("**CTMP**") [see **APP1.15**] to consider the construction and operational site access arrangements and effects on the local highway network.
- 8.137 The CTMP found the proposed site access arrangements to be suitable to accommodate the quantum and type of vehicles associated with the construction and ongoing operation and maintenance of the proposed solar energy farm. The CTMP concluded that the level of traffic during the temporary construction phase would not result in a material impact on the safety or operation of the local highway network.

#### Conclusion – Transport Impacts

- 8.138 The CTMP considers traffic impacts and concludes that the Proposed Development would not result in a material impact on the safety or operation of the local highway network.
- 8.139 Accordingly, this satisfies the requirement under paragraph 1, criterion i of Policy DM21, that development proposals must demonstrate that the impacts of trips generated to and from the development are accommodated, remedied or mitigated to prevent severe residual impacts. It also satisfies the requirement under paragraph 1, criterion v of Policy DM24 for applications to demonstrate that the impact on the local transport network has been taken into account in the design and development of the proposals.

#### **Impacts on Public Rights of Way ("PROW")**

- 8.140 A technical note was prepared by Cotswold Transport Planning in February 2022 to outline the arrangements to keep Footpath KM248/2 safely open during the construction of the solar farm, to provide further detail of the proposed permanent diversion of Footpath KM248/2 and to provide details of the introduction of two permissive footpaths within the Site ("**PROW Note**") [see **APP1.11**].
- 8.141 The PROW Note indicates that discussions were held with the Kent County Council PROW officer, who indicated that the temporary and permanent diversion of Footpath KM248/2 and the introduction of two permissive footpaths within the Site are acceptable in principle.

#### Conclusion – Impacts on Public Rights of Way (“PROW”)

- 8.142 The PROW Note demonstrates that the requirement under paragraph 1, criterion i of Policy DM3 (protecting the existing public rights of way network from inappropriate development) and under paragraph 1, criterion vi of Policy DM3 (positively contribute to the creation of new links between green and blue spaces including links to the Public Rights of Way network) are met.

#### **Noise Impact**

- 8.143 A Noise Impact Assessment was prepared by dB Consultation Limited in March 2022 (“**NIA**”) [see **APP1.17**], which sets out the results of an assessment carried out to determine the impact of the operation of the solar energy farm at two noise sensitive receptors, 8 Little Sheephurst Cottages (“**NSR1**”) and Willow Cottage off Sheephurst Lane (“**NSR2**”).
- 8.144 The Officer Report [**APP1.28**] noted that the Council’s Environmental Protection team objected to the Application on the basis of inadequacies in the noise assessment [paragraph 5.18]. RfR5 indicates that the noise assessment does not include BS4142 assessments for all locations.
- 8.145 A revised Noise Impact Assessment was prepared by dB Consultation Limited in April 2023 (“**NIA2**”) [**APP1.32.7**]. The assessment set out in NIA2 reflects the removal of the energy storage facility and also responds to the objection from the Council’s Environmental Protection team.
- 8.146 At NSR1, the assessment indicates that the rating level of noise emission from installed equipment would marginally exceed (+2dB) the background noise level during the daytime, which indicates a low impact. During the night time, the rating level would exceed the background noise level by +5dB, which indicates an adverse impact.
- 8.147 At NSR2, the assessment indicates that the rating level would marginally exceed (+2dB) the background noise level during the daytime and would fall below the background noise level during night time, due to the smart transformer stations and string inverters not being operational during the night time period.
- 8.148 NIA2 recommends that mitigation be deployed in order to reduce the impact at night in respect of NSR1. The form of proposed mitigation comprises the use of acoustic panelling to the transformer within the HV Compound to enclose the source [see paragraphs 7.9 and 7.10 of **APP1.32.7**]. The approval of the local planning authority of the final details of this form of mitigation and the deployment of the approved mitigation is a matter which could be adequately addressed through an appropriate condition.

#### Conclusion – Noise Impact

- 8.149 The NIA2 makes clear that the requirement under paragraph 1, criterion iv of Policy DM24 (demonstrating that the impact of proposals on the amenities of local residents, eg noise generated has been taken into account in the design and development of the proposals) and under criterion iv of Policy DM1 (proposals require to respect the amenities of occupiers of neighbouring properties and uses) are met.
- 8.150 NIA2 demonstrates that, with mitigation, there would be a low noise impact both day and night at both NSR1 and NSR2.

#### Appeal Amendments

- 8.151 A Noise Impact Assessment was prepared by dB Consultation Limited in April 2023 in respect of the Appeal Amendments (“**NIA3**”) [**APP1.33.6**].
- 8.152 NIA3 demonstrates that during both the day time and night time periods, there would be a low noise impact at both NSR1 and NSR2. Accordingly, no mitigation measures are considered necessary.

## **Other Issues**

### Construction Impacts

- 8.153 There would be some noise associated with the construction period, some air emissions associated with construction vehicles, plant and machinery and external security lighting used at the temporary construction compound. The duration would be limited to a maximum of 20 weeks. It is considered that residential amenity would not be adversely affected, consistent with Policy DM1 and DM24.

### Glint and Glare

- 8.154 An assessment of possible glint and glare effects from the Proposed Development was carried out by Pager Power in January 2022 ("**GG Study**") [see **APP1.5**]. This identified a moderate impact upon pilots approaching Old Hay Aerodrome. However, taking into consideration the visibility of the solar panels, glare duration glare location relative to key operational areas and existing reflective surfaces, the GG Study found that mitigation would not be required. For two residential receptors, who would be expected to experience glare for more than three months per year (but less than 1 hour per day), a moderate impact was identified. However, the GG Study noted that the proposed mitigation planting is expected to fully remove all views of the reflective areas. After mitigation, the level of impact upon the identified dwellings is expected to be low.

### Flood Risk and Drainage

- 8.155 A Flood Risk Assessment was prepared by JBA Consulting in March 2022 ("**FRA**") [see **APP1.16**]. This demonstrated that a large proportion of the Site is within flood zone 3, defined as land with a greater than 1 in 100-year probability of fluvial flooding, with a parcel within the south west within flood zone 2, defined as land with between a 1 in 100 and 1 in 1000-year probability of fluvial flooding. The FLA recommends that a sequential approach to site layout is adopted whereby the most vulnerable elements of the Proposed Development (such as the compound and the substations) are located within the lower flood risk areas, upon land in the south west of the Site. Alternatively, should the compound area remain in its current proposed location (to the north west of the Site), the finished slab level of the proposed compound should be set at a minimum of 17.50m AOD, 300mm above the 100-year plus 35% climate change fluvial flood level at this location.
- 8.156 An Outline Drainage Strategy was prepared by JBA Consulting in February 2022 [see **APP1.14**]. This contains details of attenuation relating to the HV Compound, which includes filter drains which would convey water to a vegetated swale which would then be gradually discharged to an ordinary watercourse at a controlled rate.
- 8.157 In relation to the Appeal Amendments, a revised Outline Drainage Strategy was prepared by JBA Consulting in April 2023 [see **APP1.33.7**]. This contains revised details of attenuation relating to the HV Compound. This includes the use of swale and level spreaders, the main purpose of which is to dissipate the surface water runoff and turn it into a sheet flow to reduce the risks of erosion and eliminate point discharges to the watercourses and land drainage. The use of above ground sustainable urban drainage systems would also provide ecological and amenity benefits.

### Decommissioning

- 8.158 It is proposed that the life of the solar energy farm would be limited to 37 years. A condition could be attached to the grant of planning permission requiring the infrastructure associated with the solar energy farm to be removed. A Decommissioning Method Statement was submitted with the Application [see **APP1.7**]. This satisfies the requirement under paragraph 3 of Policy DM24 for provision to be made for the return of the land to its previous use when the installations have ceased operation.

## **DEVELOPMENT PLAN CONCLUSION**

- 8.159 The above policy appraisal demonstrates that the Proposed Development accords in full with the requirements of Policy DM24, which is the key Local Plan policy relating to larger scale renewable energy projects.
- 8.160 The environmental, economic and social impacts of the Proposed Development have been assessed in relation to the requirements of Local Plan policies SS1, SP17, SP18, SP21, DM1, DM3, DM4, DM30 and DM37 and no significant effects are identified that could not be satisfactorily mitigated to appropriate levels. Accordingly, the Proposed Development draws support from these policies.
- 8.161 The Proposed Development also accords in full with the requirements of LPR Policy LPRINF3 and draws support from LPR Policy LPRSP14(C).
- 8.162 It is considered that the Proposed Development is acceptable and accords with the adopted and emerging development plan documents when they are read as a whole.

### Appeal Amendments

- 8.163 The Appeal Amendments, the principal elements of which would comprise an increase in mitigation planting, a reduction in solar panels and associated infrastructure and relocation of the HV Compound, would represent minor changes to the scope of the Proposed Development. Accordingly, it is also considered that the Proposed Development with Appeal Amendments is acceptable and accords with the adopted and emerging development plan documents when they are read as a whole.

## **9. DO MATERIAL CONSIDERATIONS INDICATE OTHERWISE?**

- 9.1 It is necessary to go on to consider whether there are any material considerations that indicate that a decision should be made contrary to the development plan. Or, alternatively, whether material matters further support the position that the Proposed Development should be approved. It is again noted that the Local Plan predates and therefore does not respond to the declaration of a national climate emergency in 2019. The matters which are material to the determination are discussed in the sections below.

## **NATIONAL PLANNING POLICY AND GUIDANCE**

### **Overarching National Policy Statements (“NPSs”) for Energy (EN-1 and EN-3)**

- 9.2 EN-1 [see **APP3.12**] sets out the Government’s policy for the delivery of major energy infrastructure. Whilst primarily of relevance to NSIPs (ie projects over 50MW), paragraph 1.2.1 confirms that National Policy Statements are material considerations to applications under the Town and Country Planning Act 1990.
- 9.3 EN-1 paragraph 1.7.2 provides that energy NPSs should speed up the transition to a low carbon economy and help to realise UK climate change commitments sooner than under the current planning system. The statement also acknowledges that the development of new energy infrastructure, at the scale and speed required to meet targets which set the current and future need, is likely to have negative effects on biodiversity, landscape / visual amenity and cultural heritage. EN-1 states that in general, it should be possible to mitigate satisfactorily the most significant negative effects.
- 9.4 EN-1 paragraph 2.1.1 states that there are three goals enshrined in Government policy on energy infrastructure, ie reducing carbon emissions, energy security and affordability.
- 9.5 EN-1 paragraph 2.1.2 indicates that large scale infrastructure plays a “vital role” in security of supply.
- 9.6 EN-1 paragraphs 2.2.5 to 2.2.11 make clear that the UK needs to move away from a high carbon energy mix, to reduce greenhouse gas emissions and to improve the security, availability and affordability of energy through diversification.

- 9.7 EN-1 paragraph 2.2.23 states that *"The UK must therefore reduce over time its dependence on fossil fuels, particularly unabated combustion. The Government plans to do this by improving energy efficiency and pursuing its objectives for renewables, nuclear power and carbon capture and storage"*.
- 9.8 EN-1 paragraph 3.3.10 states that as part of the UK's need to diversify and decarbonise electricity generation, the Government is committed to dramatically increasing the amount of renewable energy capacity.
- 9.9 EN-1 section 3.4 identifies that large-scale deployment of renewables will help the UK to tackle climate change, reducing the UK's emissions by over 750 million tonnes by 2030. Paragraph 3.4.5 states that *"The need for renewable electricity generation projects is therefore urgent"*.

#### **EN-1 – Consultation Draft (2021 and 2023)**

- 9.10 Further to the publication of the Government's Ten Point Plan [APP3.6] and Energy White Paper in 2020 [APP3.7] (see below), the Government consulted on proposed changes to its suite of energy NPSs in 2021. Consultation on further proposed changes was launched in March 2023 [APP3.14], responding to the publication of the Government's Net Zero Strategy: Build Back Greener' and 'British Energy Security Strategy' (see below).
- 9.11 The key changes proposed of relevance to the Appeal are:
- Update on targets to reflect net zero by 2050 and 78% by 2035;
  - Broadening of the generation mix sources and stating the required reduction in residual use of fossil fuels, transportation and industry;
  - Reflecting the rise in global energy costs, due to soaring demand following the reopening of the economy post-COVID and the Russian invasion of Ukraine, and the need for greater focus on domestic energy production;
  - Stating the importance of new large-scale energy infrastructure to meet government objectives – including solar;
  - Updating the need for alternatives to new electricity infrastructure including energy efficiency, hydrogen, demand side response, decentralised and small-scale electricity infrastructure based on up to date analysis and understanding of known infrastructure and technologies; and
  - Strengthening the need case as well as the importance of good design and requiring more details regarding environmental principles and strengthening the text on biodiversity net gain.

#### **EN-3 Renewable Energy Infrastructure 2011 and Consultation Draft (2021 and 2023)**

- 9.12 A new section has been added to EN-3 within the consultation draft [see APP3.15] to provide guidance on solar PV. The new section sets out details on how the technology works and considers site selection factors, specific technical considerations, environment and biodiversity impacts, landscape and visual impacts, land use and heritage considerations.
- 9.13 Paragraph 3.10.1 of the consultation draft EN-3 provides that *"The government has committed to sustained growth in solar capacity to ensure that we are on a pathway that allows use to meet net zero emissions. As such solar is a key part of the government's strategy for low-cost decarbonisation of the energy sector"*.
- 9.14 Paragraph 3.10.2 notes that *"solar also has an important role in delivering the government's goals for greater energy independence"* and reiterates that the British Energy Security Strategy (see below) states that the Government expects a five-fold increase in solar deployment by 2035.

- 9.15 It is acknowledged that solar farms are one of the most established and cost effective renewable energy technologies in the UK and can be developed quickly [paragraphs 3.10.4 and 3.10.5].
- 9.16 EN-3 recognises that the key factors to site selection and design include irradiance and topography, proximity to dwellings, agricultural land classification and land type, accessibility, public rights of way, security and lighting and network connection.
- 9.17 With regard to agricultural land, consultation draft EN-3 provides that "*land type should not be a predominating factor in determining the suitability of the site location*". It recognises that for utility-scale solar farms, "*it is likely that applicants' developments may use some agricultural 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*". "*Applicants should explain their choice of site, noting the preference for development to be on brownfield and non-agricultural land*" [paragraphs 3.10.12 – 3.10.17].
- 9.18 In relation to grid connection, paragraph 3.10.35 notes that "*larger developments may seek connection to the transmission network if there is available network capacity*". Paragraph 3.10.37 states that "*connection voltage, availability of network capacity, and the distance from the solar farm to the existing network can have a significant effect on the commercial feasibility of a development proposal*". Paragraph 3.10.38 states that "*to maximise existing grid infrastructure, minimise disruption to existing local community infrastructure or biodiversity and reduce overall costs applicants may choose a site based on nearby available grid export capacity*".
- 9.19 Paragraph 3.10.64 of consultation draft EN-3 indicates that applicants should provide information on relevant impacts, which may include biodiversity, ecology, landscape visual and residential amenity, glint and glare, cultural heritage and construction impacts.
- 9.20 Consultation draft EN-3 also contains provisions relation to the form of potential mitigation which may be appropriate to address these impacts [paragraphs 3.10.116 – 3.10.133].

### **National Planning Policy Framework (2021)**

- 9.21 The National Planning Policy Framework ("**NPPF**") [see **APP3.3**] sets out the Government's planning policies for England and how these should be applied. At its core, is the need for the planning system to contribute to the achievement of sustainable development – meeting the needs of the present without compromising the ability of future generations to meet their own needs.
- 9.22 NPPF paragraph 8 explains that achieving sustainable development means the planning system has three overarching objectives:
- "(a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
- (b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*
- (c) **an environmental objective** – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy"*
- 9.23 The environmental objective is of particular relevance to renewable energy developments.

- 9.24 NPPF paragraph 11 provides that when determining planning applications, a presumption in favour of sustainable development should be applied, which means:
- "(c) approving development proposals that accord with an up-to-date development plan without delay; or*
- (d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".*
- 9.25 NPPF paragraph 12 makes clear that the presumption in favour of sustainable development does not change the status of the development plan as the starting point for decision making.
- 9.26 NPPF section 6 deals with economic considerations and paragraph 84 provides that decisions should enable the development and diversification of agricultural and other land-based rural businesses.
- 9.27 NPPF paragraph 11 provides that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 9.28 NPPF 120 provides that planning decisions should *"encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside"*.
- 9.29 NPPF paragraph 152 sets out that the planning system should support the transition to a low carbon future in a changing climate and it should help minimise vulnerability and improve resilience. It indicates that the planning system should help shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience and support renewable and low carbon energy and associated infrastructure.
- 9.30 NPPF paragraph 157 provides that local planning authorities should expect new development to take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.
- 9.31 NPPF paragraph 158 provides that when determining applications for renewable and low carbon development, applicants are not required to demonstrate the overall need for renewable or low carbon energy.
- 9.32 NPPF paragraph 159 provides that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.
- 9.33 NPPF paragraph 167 provides that when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere and that applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where it can be demonstrated that:
- "(a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- (b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;*

*(c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*

*(d) any residual risk can be safely managed; and*

*(e) safe access and escape routes are included where appropriate, as part of and agreed emergency plan"*

- 9.34 NPPF paragraph 174 provides that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing soils, recognising the economic and other benefits of the best and most versatile agricultural land, minimising impacts on and providing net gains for biodiversity and preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution.
- 9.35 Footnote 58 adds 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.
- 9.36 NPPF paragraph 180 sets out the principles that local planning authorities should apply with regard to habitats and biodiversity when determining planning applications including refusing applications where significant harm to biodiversity cannot be adequately mitigated or compensated for; refusing applications for development resulting in the loss or deterioration of irreplaceable habitats unless there are wholly exceptional reasons; and encouraging opportunities to improve biodiversity especially where this can secure measurable net gains for biodiversity.
- 9.37 NPPF paragraph 185 provides that decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. Decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.
- 9.38 NPPF paragraph 194 provides that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based and, where necessary, a field evaluation.

### **Planning Practice Guidance (2015)**

- 9.39 The NPPF is supplemented by guidance on Renewable and Low Carbon Energy [APP3.4]. This supports and reiterates the policy contained in the NPPF, stating at paragraph 001 the *"Planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable"*. It indicates, at paragraph 005, that local planning authorities should take into account the requirements of the technology as well as the potential impacts on the local environment.
- 9.40 Paragraph 013 recognises that the deployment of large-scale solar farms can have a negative impact on the rural environment, but notes that the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively. It identifies the following particular factors a local planning authority will need to consider:

- *"encouraging the effective use of land by focussing large scale solar farms on previously developed and non agricultural land, provided that it is not of high environmental value;*
- *where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays;*
- *that solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use;*
- *the proposal's visual impact, the effect on landscape of glint and glare and on neighbouring uses and aircraft safety;*
- *the extent to which there may be additional impacts if solar arrays follow the daily movement of the sun;*
- *the need for, and impact of, security measures such as lights and fencing;*
- *great care should be taken to ensure heritage assets are conserved in a manner appropriate to their 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;*
- *the potential to mitigate landscape and visual impacts through, for example, screening with native hedges;*
- *the energy generating potential, which can vary for a number of reasons including, latitude and aspect"*

9.41 Paragraph 013 also provides that *"The approach to assessing cumulative landscape and visual impact of large scale solar farms is likely to be the same as assessing the impact of wind turbines. However, in the case of ground-mounted solar panels it should be noted that with effective screening and appropriate land topography the area of a zone of visual influence could be zero"*.

9.42 Based upon the environmental appraisal information for the Proposed Development summarised in this Statement, it is considered that the effects that would arise from the Proposed Development are acceptable when considered against the prevailing national planning policy.

### **NATIONAL ENERGY POLICY**

9.43 In May 2019 a **national climate emergency** was declared by the UK Parliament. MPs called on Government to make changes including setting a new target of reaching net zero emissions before 2050.

9.44 In June 2019 the Climate Change Act 2008 (2050 Target Amendment) Order 2019 [**APP6.1**] was made, increasing the target under the Climate Change Act 2008 to reduce greenhouse gas emissions by 100%. This now forms a legally binding **net zero target**.

9.45 In November 2020, a '**Ten Point Plan for a Green Industrial Revolution**' was published [see **APP3.6**], setting out the Government's foundations to invest in making the UK a global leader in green technologies and taking forward the legal obligation to achieve net zero carbon emissions by 2050 as a national priority.

- 9.46 The **UK Energy White Paper: 'Powering our Net Zero Future'** [see **APP3.7**] was published in December 2020, setting out a vision of how the transition to clean energy by 2050 could be achieved. This sets out a commitment to "*accelerate the deployment of clean electricity generation through the 2020s*" [page 38] and recognises that "*onshore wind and solar will be key building blocks of the future generation mix*" [page 45].
- 9.47 In October 2021 the Government published its '**Net Zero Strategy: Build Back Greener**' [see **APP3.8**], setting out a delivery pathway to achieving the net zero target under the Climate Act 2008. A key policy is "*By 2035 the UK will be powered entirely by clean electricity, subject to security of supply*" [page 19].
- 9.48 In April 2022, the Government published its '**British Energy Security Strategy**' [see **APP3.9**]. In recognising the difficulties faced by domestic and commercial energy users in this country arising from soaring global energy prices, it identifies that "*the long term solution is to address our underlying vulnerability to international oil and gas prices by reducing our dependence on imported oil and gas*" and that "*accelerating the transition away from oil and gas then depends critically on how quickly we can roll out new renewables*" [page 5]. In relation to solar technology, it recognises the falling costs and relative ease of deployment and indicates that "*a five-fold increase in deployment by 2035*" is expected [page 19].
- 9.49 In March 2023 the Government published a blueprint for the future of energy in the country – '**Powering Up Britain**' [see **APP3.10**], which brings together its **Energy Security Plan** and **Net Zero Growth Plan**. One of the key strands to the Government's plans is the acceleration of deployment of renewables. Its ambition is to bring about a fivefold increase in solar by 2035, up to 70GW, noting that the deployment of ground and rooftop solar will be needed to achieve the overall target.
- 9.50 The national energy policy framework gives very strong support to the delivery of renewable energy development as a key means to meeting the legally binding net zero target and addressing critical energy security issues.

#### **MAIDSTONE BIODIVERSITY AND CLIMATE EMERGENCY**

- 9.51 The Council declared a Biodiversity and Climate Emergency in April 2019. In October 2020, it published a Biodiversity Climate Change Strategy [see **APP3.5**], to support its aim to achieve carbon neutrality by 2030. The action plan provides that the Council will aim "*to take every opportunity to generate renewable energy across the borough*".

#### **CONCLUSION ON MATERIAL CONSIDERATIONS**

- 9.52 The national energy policy framework is a highly important consideration which should be afforded substantial positive weight in the planning balance exercise to be carried out. The declaration of a climate emergency by the Council adds further positive weight to the planning balance. The Proposed Development draws substantial support from these material considerations.
- 9.53 The local impacts of the Proposed Development, with the incorporation of mitigation measures as set out in this Statement, are considered to be acceptable when assessed against national planning policy and guidance. The Proposed Development is considered to be acceptable when these material matters are considered.

#### **10. REASONS FOR REFUSAL**

- 10.1 The Decision Notice [**APP1.30**] sets out five RfR which are repeated below. Each of the RfR are disputed, as explained as follows.
- 10.2 It is also noted that in some instances, issues identified in the RfR could potentially have been addressed if the Council had given the Applicant an opportunity to respond to the issues prior to the determination of the Application.

**RFR1: The site includes a significant proportion of the best and most versatile agricultural land which has economic and other benefits that NPPF requires to be recognised. The proposal is also contrary to National Energy policies and Planning Practice Guidance and policy DM24 of the Maidstone Borough Local Plan 2017 which direct solar farms towards lower grade agricultural land. The proposed use of the best and most versatile agricultural land has not be adequately demonstrated to be necessary.**

- 10.3 Less than half only of the Site comprises BMV agricultural land. Most of the BMV land is Subgrade 3a and is interspersed with Subgrade 3b, such that it is not capable of being cropped and farmed differently. The ALU Statement [APP1.20] makes clear that the farming regime that can be adopted will largely be determined by the potential of the poorest quality land on the site. Accordingly, in the absence of the Proposed Development the likely farming regime for the Site would be one which is appropriate for non-BMV agricultural land.
- 10.4 It is considered that RfR1 mischaracterises national energy policies, the Planning Practice Guidance and Local Plan policy. Consultation draft EN-3, the Planning Practice Guidance and Local Plan Policy DM24 incorporate a preference for the use of poorer quality agricultural land over BMV land, but do not “direct” solar farms towards poorer quality agricultural land.
- 10.5 In this case the Appellant has explained the rationale for the selection of the Site, which meets the requirement under Local Plan Policy DM24, consultation draft EN-3 and national planning policy. The Appellant has also demonstrated that the Proposed Development would allow for continued agricultural use around the arrays, which is consistent with the Planning Practice Guidance [APP3.4].
- 10.6 The SAS demonstrates that a robust approach has been taken to identifying a site where there is potential for connection of a solar farm to the national grid. The results of the SAS make clear that no such sites are available which either do not comprise any BMV land or which comprise a smaller proportion of BMV land to that contained in the Site.

**RfR2: By virtue of its scale and character, the proposed development would cause significant harm to the character and appearance of the countryside and does not adequately mitigate these impacts, contrary to the aims and objectives of the National Planning Policy Framework and policies SP17, DM1, DM24 and DM30 of the Maidstone Borough Local Plan 2017.**

- 10.7 The assessment carried out and set out in the LVIA [APP1.10] concludes that there would be a slight-moderate adverse effect upon landscape character upon completion of construction. Through the introduction of mitigation planting, this would after 10 years improve to a slight beneficial effect. It is considered that the design of the Proposed Development and the mitigation planting proposed satisfy the requirements under relevant Local Plan policies.
- 10.8 A number of specific concerns of the Council and third parties in relation to landscape character and visual impacts were set out in consultation response, the Officer Report and objections to the Application. The Appellant’s responses to these concerns are contained in paragraphs 8.30-8.34 and 8.39 of this Statement respectively and in the Landscape Response [see APP1.32.5].
- 10.9 In particular, it is stated in the Officer Report [APP1.28] [paragraph 6.30] that:  
*“The landscape scheme proposes the introduction of new planting of hedgerows to ‘hide’ the substantial array of solar panels, but which would also restrict public views across the currently open topography. These wide-open vistas currently give the local countryside its intrinsic character and qualities. The locality is being artificially altered over a period in the attempt to hide the solar panels.”*
- 10.10 A response to this comment is provided within the Landscape Response as follows:

*"The landscape character areas have seen significant degradation over time with removal of vegetation, field boundaries etc, which has resulted in the false impression that this landscape should be with open vistas. Screening, shelter belts, orchards and hedgerows are an accepted form of practice within the character of the landscape. The landscape mitigation will not only provide screening, but provide important landscape enhancements to a degraded landscape character."*

10.11 One of the objector comments is as follows:

*"The settings and views of 9 heritage assets (Grade 2 listed houses and oasthouses) would be significantly harmed by the solar farm and associated infrastructure as is confirmed by the Maidstone Heritage and Design Consultation. Views from public footpaths across to the oasthouses would no longer be across open countryside. Their rural setting would be destroyed."*

10.12 A response to this comment is provided within the Landscape Response as follows:

*"As previously mentioned the rural character has changed significantly in its historical context. Reference to the Heritage Statement, paragraphs 3.40 to 3.46 shows that the Oast Houses would have been hidden within the landscape due to the numerous field boundaries, and orchards prevalent within the landscape. It is only more recently, since arable intensification of farming practices leading to the loss of significant numbers of hedgerows and orchards, across the site and surrounding area, as well as the straightening of the river that has created the false impression that these Oast houses were intentionally visible within the landscape. Current vistas are therefore as a result of landscape degradation and cannot be suggested that this was the original setting of these buildings. Views from all dwellings have been considered within the LVIA and fully assessed."*

#### Appeal Amendments

10.13 Notwithstanding the above position, it is considered that the Appeal Amendments, involving removal of solar arrays to the north of 8 Sheephurst Cottages, dwellings along Sheephurst Lane, Willow Cottage, Willow Barn and Listed Buildings within Little Cheveney Farm and provision of a deeper woodland buffer between these dwellings and the Site further address the landscape comments received, the landscape comments within the Officer Report and RfR2.

10.14 The LVIA Addendum indicates [APP1.33.4] [paragraph 4.3.1] that the landscape effects of the Proposed Development with Appeal Amendments would be noticeable within 5-10 years as opposed to 10 years of the Proposed Development, due to the faster growing species mix, in accordance with the Maidstone Landscape Guidelines.

10.15 The solar arrays would have less effect on the southern aspect of the landscape character, thus respecting the landscape character of the settings of the Listed Buildings of Little Cheveney Farm [paragraph 4.3.2].

10.16 The woodland blocks would be deeper in size, reflecting the size and character of woodland blocks within the local landscape and providing high quality woodland connections [paragraph 4.3.3].

***RfR3: The proposed development, by virtue of its scale, proximity and character results in less than substantial harm to the settings of Heritage Assets being Grade II listed buildings close to the site of Little Long End and Little Cheveney Farm as views from and to listed buildings close to the site would be possible. The application is therefore contrary to policies DM4 and DM24 of the Maidstone Borough Local Plan 2017 and the NPPF.***

10.17 The effects upon the Grade II Listed Little Long End and the group of Grade II Listed Buildings at Little Cheveney Farm are set out in the HDBA [APP1.4] and HAS [APP1.32.6].

10.18 In the case of the Little Long End, the assessment demonstrates that the Proposed Development would not be discernable within any experience of the Listed Building. The

Site has no known functional or historical associations with the building and has no bearing on the ability to appreciate or understand its heritage significance. The solar arrays would be sited within the periphery of the wider surroundings, with the existing lack of intervisibility maintained and enhanced by preservation of the existing vegetation and the additional tree planting within the biodiversity area in the north west of the Site. The conclusion reached in the HAS is that there would be no harm to the significance of Little Long End.

- 10.19 In the case of the Little Cheveney Farm buildings, the Proposed Development would involve the introduction of solar arrays into the wider landscape surroundings, but no panels would be placed in the fields closest to the buildings, with the nearest located over 270m north of the core of the farm (and 150m of the northernmost oasthouse). The landscape mitigation measures include the enhancement of the existing vegetation woodland belt and new hedgerow to provide visual screening. The Proposed Development is unlikely to feature within any views from Little Cheveney Farm. Where any visibility would be possible, this would be limited to glimpsed and heavily filtered views which would in no way affect the ability to understand the farm buildings. The Proposed Development would result in a slight change to the wider landscape character surroundings of the Listed Buildings, however, the Proposed Development would be seen and understood as part of the wider agricultural hinterland of the assets. The historical association between the Site and the assets would not be lost as a result of this change in character. The conclusion reached in the HAS is that there would be no harm to the significance of the Little Cheveney Farm Listed Buildings.
- 10.20 Should the Inspector disagree with the findings of the Appellant's heritage assessment then harm to the significance of the Listed Building(s) would require to be weighed against the benefits of the Proposed Development. It is noted that the Council's conservation officer considers that:

*"Little Long End and Little Cheveney Farm would have erosion of and diminished rural setting, at least initially. The harm would be minor and at the lower end of less than substantial"* [paragraph 5.30 of the Officer Report].

#### Appeal Amendments

- 10.21 Notwithstanding the above position, it is considered that the Appeal Amendments, involving removal of solar arrays to the north of Little Cheveney Farm and the provision of a deeper woodland buffer between Little Cheveney Farm and the Site further address the conservation comments received, the Officer Report and RfR3 insofar as they relate to Little Cheveney Farm. Due to the lack of intervisibility between Little Long End and the Site resulting from high hedges between Burtons Lane and the Site, it is not considered that any harm would be occasioned to the significance of Little Long End.
- 10.22 As indicated above, the LVIA Addendum [see **APP1.33.4**] concludes that the solar arrays would have less effect on the southern aspect of the landscape character, thus respecting the landscape character of the settings of the Listed Buildings at Little Cheveney Farm [paragraph 4.3.2].

***RfR4: The proposal would cause harm to biodiversity by detrimentally impacting on ecology and physical habitats including badger and skylark habitat and potential harm from new permissive footpaths to Ancient Woodland and the Lesser Teise and is thereby contrary to the NPPF and policies DM3 and DM24 of the Maidstone Borough Local Plan 2017.***

- 10.23 The content of RfR4 is entirely disputed by the Appellant.

#### Impact on Badgers

- 10.24 The KCC Biodiversity team raised no objections to the Application, subject to suitable ecological mitigation being secured [**APP2.1.9**]. One of the forms of ecological mitigation referred to was fencing to enable movement of species (including badgers) through the Site.

- 10.25 The EIA [see **APP1.12**] proposes mitigation to avoid impacts to badgers. This comprises the installation of badger gates or tunnels at key locations within the security fencing to allow badgers to move freely across the Site between foraging grounds or between the main and outer setts [paragraph 5.6].
- 10.26 Given that the ecological mitigation proposed is consistent with the requirements of KCC Biodiversity who also raised no objections, it is unreasonable for the Council to cite harm to badgers and/or their habitats within the RfR.

Impact on Skylarks

- 10.27 The KCC Biodiversity team identified the need for skylark plots within the surrounding area as an appropriate form of mitigation.
- 10.28 The EIA notes that the solar array design should be able to retain skylark within the panel array. It also proposes that 3.6ha of meadow grassland would be created within the south east corner of the Site which would be managed appropriately to support skylark. In addition, skylark plots could be created within the field to the south of the Site which will continue to be farmed [paragraph 5.5]. It would be appropriate to include a Grampian style condition requiring the final measures to mitigate impacts on skylarks with the Council in consultation with KCC.
- 10.29 Given that KCC Biodiversity have no objection subject to a suitable form of mitigation being secured, it is unreasonable for the Council to cite harm to skylarks and/or their habitats within the RfR.

Impact on Ancient Woodland

- 10.30 The supplementary ecological impact assessment [see **APP1.33.3**] makes clear that the solar energy farm would be positioned away from the Ancient Woodland such that no direct impacts would occur. The proposed security fencing would be positioned some 25m from the edge of the woodland, which is an additional 10m from the maximum root protection zone ("**RPZ**") under *British Standard BS 5837 (2012) – Trees in relation to Design, Demolition and Construction* [**APP4.1**].
- 10.31 The proposed permissive footpath (to the western edge of the Site) would be formed within a buffer zone between the Ancient Woodland and the solar energy farm, to be planted with wildflower grassland and maintained as a wildlife corridor. The form of path would be a marked or mown route, rather than an engineered surface. There would be a negligible risk of impact to the Ancient Woodland resulting from trampling because the anticipated usage is anticipated to be low.
- 10.32 The route of the proposed permissive path follows an existing farm track. Any compaction of roots within the RPZ of the Ancient Woodland will already occur and has not affected the integrity of the Ancient Woodland. Its use as a permissive footpath would not result in any worsening of this position.
- 10.33 It is also noted that the Council actively encourages visits to and recreational use of Ancient Woodland which is owned and managed by the Council and Kent Wildlife Trust, which contain extensive permissive and public footpaths.
- 10.34 In the appeal decision **APP/J0405/W/22/3302716 dated 2 December 2022 relating to a proposed solar farm at Little Horwood, Buckinghamshire** [see **APP5.3**], the Inspector, allowing the appeal, considered similar impacts arising from the development of a solar farm upon the adjoining landscape which includes an Ancient Woodland. He concluded as follows:

*"Whilst the Council expressed concern that the development would have a major adverse effect on the landscape immediately adjoining the historic feature and ancient woodland of Norbury Coppice, given the standoff, reinforcement of hedgerows and new proposed woodland and hedge planting and the retention of existing field patterns, I do not consider the impacts to be harmful to this landscape feature"* [paragraph 18].

### Impact on Lesser Teise

- 10.35 The alleged harm arising to the Lesser Teise draws upon the consultation response from the Environment Agency. This is summarised at paragraph 5.03 of the Officer Report [APP1.28] as follows:

*"Objection: Significant risk to Lesser Teise by increasing disturbance, risk of plastic waste entering the watercourse and the modification of naturally occurring riparian habitats and species".*

- 10.36 The Environment Agency response [APP2.1.3 and APP2.1.4] does not recognise that the proposed permissive footpath (to the eastern edge of the Site) would effectively form an extension of two existing public footpaths which both cross the Lesser Teise already at Ordnance Survey Grid Reference TQ 73174 44687 and TQ 72916 44013. The location of the proposed permissive footpath is shown by a dashed blue line on Figure 6 and the location of the existing public footpaths are shown by dashed green lines on Figure 5 to the EIA. It is considered very unlikely that the connection of the two existing public footpaths between these two existing crossing points would result in any potential increase in visitor numbers or any increase of plastic waste entering the river.
- 10.37 The Riverdale Ecology response document [see APP1.32.3] concludes that the positioning of the proposed permissive footpath, set back from the edge of the river, would be very unlikely to result in significant disturbance to the wildlife of the Lesser Teise. The profile of this section has very steep banks, making it quite inaccessible. The presence of a permissive footpath is unlikely to encourage people to climb down the banks to the water level and dogwalkers are unlikely to allow their dogs to do the same.
- 10.38 The route of the proposed permissive footpath follows the route of an existing field access in the margin between the cultivated land and the river bank, which is already used on an unofficial basis by walkers. The creation of a permissive footpath is unlikely to lead to an increase in use which might result in significant impacts to the river.
- 10.39 The creation of the permissive footpath is not likely to affect the physical habitat and would not result in significant "modification of naturally occurring riparian habitats" and is highly unlikely to increase the volume of recreational use to a level where it may present a risk of significant increases in disturbance to the local wildlife.

### Appeal Amendments

- 10.40 The adoption of the Appeal Amendments would secure additional mitigation planting. The BNG Update indicates that this would result in a net gain of 57.08% [see APP1.33.2].

***RfR5: The noise assessment does not include BS4142 assessments for all locations and therefore the applicant has failed to demonstrate that there will be no harm to residential amenity, contrary to policies DM1 and DM24 of the Maidstone Borough Local Plan 2017.***

- 10.41 In response to RfR5, NIA2 was prepared by dB Consultation Limited in April 2023 [see APP1.32.7]. NIA2 assesses noise impacts at two noise sensitive receptors, NSR1 and NSR2.
- 10.42 For NSR1, NIA2 identifies a low impact during the day time period and an adverse impact during the night time period. Accordingly, mitigation is proposed in the form of source reduction to the transformer within the HV Compound in order to reduce the night time noise effect to a low impact. This mitigation, involving the use of acoustic panels to enclose the source, could be achieved through the imposition of a suitable form of condition. For NSR2, NIA2 identifies a low impact during both the day time and night time period, such that no mitigation is necessary.
- 10.43 The carrying out of NIA2 demonstrates that the impact of the Proposed Development on the amenities of local residents has been taken into account in the design and development of the proposals, in accordance with Local Plan Policy DM24. It also demonstrates that the

Proposed Development respects the amenity of occupiers of neighbouring properties, in accordance with Local Plan Policy DM1.

- 10.44 In addition, the Proposed Development accords with NPPF paragraph 185, which provides that decisions should avoid noise giving rise to significant adverse impacts on health and the quality of life and mitigate and reduce to a minimum potential adverse impact from noise from new development.

#### Appeal Amendments

- 10.45 NIA3 was also carried out by dB Consultation Limited in April 2023 in respect of the Appeal Amendments [see **APP1.33.6**]. NIA3 demonstrates that the Appeal Amendments would result in a low impact at both NSR1 and NSR2 during both the day time and night time periods, such that no mitigation is necessary.

### 11. **OTHER OBJECTIONS**

- 11.1 The points made by parties objecting to the Application include the following points. The Appellant's response is provided against each of these.

#### Agricultural Land

- Development on Grade 2 and Grade 3a land goes against local guidance and NPPF.

This matter is addressed in detail at paragraphs 8.59-8.79. The SAS demonstrates that a robust approach was taken to site selection in accordance with Local Plan Policy DM24. The Site comprises land which is predominantly non-best and most versatile land and is relatively poorer quality than land elsewhere within the study area.

#### Landscape Impacts

- Reference has been made to woodland to the centre of the Site being Historic Parkland.

The woodland is shown on old maps but there is no reference to it being Historic Parkland, Registered Parkland or Ancient Woodland in Magic Maps, Natural England or Historic England sites. In any event, it falls outside of the Site itself and no development is proposed within this woodland or within the root protection areas of the woodland.

- Reference has been made to the provision of an insignificant buffer to the Ancient Woodland to the west of the Site.

Arable farming has been undertaken up to the edge of this Ancient Woodland. A minimum 30m buffer is proposed between the edge of the Ancient Woodland and the Site, which would not be farmed and is considered to be an appropriate buffer to an Ancient Woodland.

- The cumulative effects on the Low Weald rural landscape require to be considered.

Cumulative effects are addressed at paragraphs 8.41-8.45. Due to the distance between (proposed) developments, the combined effects on landscape character would be negligible. Due to lack of combined visibility, the cumulative visual effects would be nil.

- Views from the High Weald AONB have not been properly assessed.

The High Weald AONB was assessed and Viewpoint 11 was the only potential publicly available viewpoint from where the solar energy farm would be visible.

However, substantial existing vegetation screens the Proposed Development from this viewpoint. It is also noted from the Officer Report [paragraph 5.16] that the High Weald AONB Unit provided a consultation response to the Application with "No comment".

### Visual Impacts

- A number of comments state that the HV compound would be located next to cottages.

This is inaccurate, the HV compound would be located approximately 115m from No 8 Little Sheephurst Cottage and approximately 123m from No 7 Little Sheephurst Cottage. The proposed location is in an area where it is believed to have the least visual effect from numerous receptors, where it is mostly screened from view and can be mitigated with additional vegetation.

- A comment states that security fencing would be constructed 15m from Willow Cottage.

This is inaccurate, the proposed fence (of deer fence construction) would be 35m from Willow Cottage and solar panels would be approximately 55m from Willow Cottage. There would be a significant woodland buffer along the boundary which would screen the fence and the solar panels.

- A comment states that there would be a clear view in the winter from Little Cheveney Farm.

Trees and woodland provide visual screening and when they drop their leaves during winter they do not allow for a clear, uninterrupted view. The layering of woodland provides a filtered view. Little Cheveney Farm may have a filtered view of the solar farm from the dwellings during winter months, however, the visual effect would not be significant considering the distance and the layering of vegetation between the receptor and the solar panels.

### Rights of Way

- A comment states that public footpaths would be disrupted.

Detailed comments are provided at paragraphs 8.135-8.137. Arrangements would be made to keep Footpath KM248/2 safely open during the construction of the solar farm and an order would be sought for its proposed permanent diversion. The Kent County Council PROW officer has indicated that the temporary and permanent diversion of Footpath KM248/2 and the introduction of two permissive footpaths within the Site are acceptable in principle.

### Flood Risk

- A comment states that the Proposed Development would result in increased surface water and increased flood risk for neighbours.

The FRA notes that modifications and increases of impermeable areas can lead to increased surface water runoff rates and volumes which can exacerbate or create new surface water flood risks downstream of a site.

The only increases in impermeable surfacing associated with the Proposed Development relate to the construction of the compound area, the access road and the substations. The total area of newly introduced impermeable surfacing would amount to only 3% of the total site area. All newly introduced impermeable surfacing would be managed using sustainable urban drainage systems (SuDS) to protect and alleviate potential risk from surface water flooding.

## 12. **PLANNING BALANCE**

- 12.1 The appraisal set out at section 6 above demonstrates that the Proposed Development accords with the adopted and emerging development plan documents when read as a whole.
- 12.2 Noting that the Local Plan [**APP3.1**] predates and therefore does not respond to the declaration of a national climate emergency in 2019, it is also necessary to consider other material considerations. These are identified at section 7 above.
- 12.3 Should the Inspector conclude that there is any degree of conflict with the development plan then the adverse effects arising from the Proposed Development would require to be weighed against the benefits of the Proposed Development.
- 12.4 One of the adverse effects is the inevitable harm to landscape character and visual amenity. Noting that this harm would be localised and capable of mitigation and ultimately reversible, this ought to be afforded limited weight only.
- 12.5 The Appellant's assessment has concluded that no harm would arise to the significance of Listed Buildings within the vicinity of the Site, noting that the Council's conservation officer found the harm arising to be "*minor and at the lower end of less than substantial*".
- 12.6 Another adverse effect relates to ecology and, in particular, potential effects on badgers and skylarks. Noting that this is also capable of satisfactory mitigation, this effect ought to be afforded limited weight only.
- 12.7 A further adverse effect relates to use of BMV agricultural land. Noting that the mix of BMV and non-BMV land within the Site would only allow arable farming appropriate for non-BMV land to be pursued absent the Proposed Development, and noting that the Proposed Development would enable agricultural use to continue through the life of the solar energy farm through grazing and noting the temporary nature of the Proposed Development, this ought to be afforded neutral rather than negative weight.
- 12.8 The final adverse effect relates to the noise impact at NSR1 during the night time period. On the basis that this is capable of satisfactory mitigation, this effect ought to be afforded limited weight only.
- 12.9 Turning to the benefits of the Proposed Development, these are very weighty and cover the environmental, social and economic dimensions of sustainability under the NPPF.
- 12.10 There is an overwhelmingly positive policy context for renewable energy development. Of particular importance are the following:
- The Climate Change Act 2008 places a legally binding obligation on the Government in relation to the reduction of carbon emissions. Following the declaration by the UK Parliament of a climate change emergency in May 2019, the target was increased, requiring net zero to be achieved by 2050.
  - The UK Energy White Paper 'Powering our Net Zero Future', published in December 2020 makes clear that achieving net zero requires a "*decisive shift*" away from fossil fuels to clean energy. It identifies solar as a "*key building block*" of the future energy generation mix.
  - The NPPF provides that applicants are not required to demonstrate the overall need for renewable energy [paragraph 158], which therefore forms a presumption in favour of renewable energy.
  - The NPPF provides that the planning system should support the transition to a low carbon future and support renewable and low carbon energy and associated infrastructure to achieve this [paragraph 152].
  - Draft NPS EN-1 makes clear that "*wind and solar are the lowest cost ways of generating electricity*" and that "*a secure, reliable, affordable, net zero*

*consistent system in 2050 is likely to be composed predominantly of wind and solar” [paragraph 3.3.21].*

- Draft NPS EN-3 identifies that “*solar is a key part of the government’s strategy for low-cost decarbonisation of the energy sector*” and “*electricity generation from renewable sources of energy as an essential element of the transition to net zero*”.
- The Net Zero Strategy indicates that the UK will be powered directly by clean energy by 2035 and to achieve this low carbon energy infrastructure requires to be deployed at an “*unprecedented scale*” [paragraph 32].
- The ‘Powering up Britain – Energy Security Plan’ makes clear that “the Government seeks large scale ground-mount solar deployment across the UK” and to achieve 70 gigawatts of capacity, is “*aiming at a fivefold increase on current installed capacity*” [page 37].
- The Council declared a Biodiversity and Climate Emergency in April 2019. In October 2020, it published a Biodiversity Climate Change Strategy, to support its aim to achieve carbon neutrality by 2030. The action plan provides that the Council will aim “*to take every opportunity to generate renewable energy across the borough*”.

12.11 Data prepared for the Appellant by Ecometrica, a leading environmental accounting company, demonstrates that the Proposed Development would generate 52.103 megawatt hours of electricity per year. This is equivalent to the requirement of 15,226 homes per year<sup>6</sup>. This level of electricity generation from solar sources would avoid 12,042 tonnes of CO<sub>2</sub>e per year<sup>7</sup> [see **APP1.33.5**].

12.12 It is acknowledged that not all sites are appropriate for solar energy generation due to a potential range of environmental constraints. However, in this case there are very few adverse impacts and, as explained above, those impacts are capable of being adequately mitigated. Accordingly, substantial positive weight should be ascribed in this case to the generation of renewable energy and contribution to a low carbon economy and significant positive weight should be given to the provision of low cost and secure energy.

12.13 Affording substantial positive weight to the generation of renewable energy and contribution to a low carbon economy is consistent with the approach taken by Inspectors in determining appeals for similar proposals to the Proposed Development. For example, in **Appeal decision APP/W1525/W/22/3300222 dated 6 February 2023 for a solar farm and battery storage system at East Hanningfield, Chelmsford, Essex** [see **APP5.4**], the Inspector found as follows [at paragraph 91]:

*“The benefits of renewable energy raise substantial benefits in favour of the proposal. These benefits are recognised in the Council’s local policies and guidance and national policy in accordance with the Climate Change Act of 2008. It is also clearly identified, in Section 14 of the Framework, where it seeks to increase the use and supply of renewable and low-cost energy and to maximise the potential for suitable such development. The delivery of suitable renewable energy projects is fundamental to facilitate the country’s transition to a low carbon future in a changing climate.”*

12.14 A further key benefit of the Proposed Development is the delivery of a biodiversity net gain of 51.04% for the Site, which goes beyond the level of mitigation required and represents a fivefold increase to the forthcoming statutory requirement. The biodiversity net gain benefits should be given significant positive weight.

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<sup>6</sup> Calculated using the Government’s figure for average UK household electricity consumption of 3,422 kWh per annum. Source: BEIS Energy Trends 2020.

<sup>7</sup> CO<sub>2</sub>e includes carbon dioxide, methane and nitrous oxide emissions.

- 12.15 The introduction of two permissive footpaths within the Site is also considered to be a benefit which should be afforded limited positive weight.
- 12.16 The economic benefits through diversification of the current arable farming regime at Eckley Farm is also considered to be a benefit which should be afforded limited positive weight.
- 12.17 Finally, the contribution towards the local economy which would be secured through the construction of and subsequent operation of and maintenance of the Proposed Development is considered to be a benefit which should be afforded limited positive weight.
- 12.18 Within the context of climate change emergency and energy security crisis, the Proposed Development, which would deliver substantial benefits and would result in impacts which could be satisfactorily mitigated, should be approved without delay. The result of the planning balance adds further positive weight to the development plan appraisal which concludes that the Proposed Development is in accordance with the plan.
- 12.19 There are now numerous examples of solar farm developments being granted planning permission where renewable energy and carbon reduction benefits have been found to outweigh limited environmental impacts. For example in **Appeal decision APP/H1705/W/22/3304561 dated 13 February 2023 for a solar farm development at Bramley, Hampshire** [see APP5.5], the Inspector concluded as follows [at paragraph 84]:

*"In my judgement, the public benefits of this proposal which would contribute towards achieving net zero as part of a decisive shift away from fossil fuels, assist with increasing solar capacity in the UK from 14GW to 70GW by 2035, assist with achieving the Council's Climate Emergency Action Plan (2021), reduce carbon dioxide emissions by around 9,381 tonnes annually and provide a biodiversity net gain of 100%, are very significant and outweigh the less than substantial harm to the affected designated heritage assets, giving great weight to the conservation of each of them."*

#### **Appeal Amendments**

- 12.20 As indicated in the LVIA Addendum, the incorporation of the Appeal Amendments would result in a reduction in harm to landscape character and visual amenity.
- 12.21 In terms of benefits, the incorporation of the Appeal Amendments would result in no material change in terms of renewable energy generation. However, it would result in a slight increase to the biodiversity net gain to be achieved (i.e. from 50.52%/51.04% to 57.08%).

### **13. CONCLUSIONS**

- 13.1 The Proposed Development is a scheme which is urgently required in order to assist with meeting the Government's energy security and net zero objectives, which require an acceleration in the deployment of renewables and a fivefold increase in solar by 2035, up to 70GW.
- 13.2 The Proposed Development accords with the adopted and emerging development plan and is supported by further material considerations. The benefits of the Proposed Development far outweigh the limited and temporary adverse effects identified.
- 13.3 Accordingly, the Inspector is invited to grant planning permission, subject to appropriate conditions.

#### **Appeal Amendments**

- 13.4 The Appeal Amendments would represent minor changes to the scope of the Proposed Development. There would be no material changes to the benefits arising other than a slight increase to the level of biodiversity net gain.

- 13.5 Should the Inspector be minded to accept the Appeal Amendments, the Inspector is invited to grant planning permission for the Proposed Development with Appeal Amendments, subject to appropriate conditions.

# APPENDIX 1

## LIST OF SUPPORTING DOCUMENTS

<b>1 Application and Related Documents</b>	
APP1.1	Completed Application Form dated 20 May 2022
APP1.2	Amended Completed Application Form dated 20 May 2022
APP1.3	Drawings submitted with the application, comprising:
APP1.3.1	27899/053 Rev A - Proposed Solar Farm Footpath and Boundary Layout
APP1.3.2	27899/061 Rev A - Proposed Site Overview Plan Sheet 2 of 5
APP1.3.3	27899/063 Rev B - Proposed Site Overview Plan Sheet 4 of 5
APP1.3.4	27899/105 Rev A - PV Structure Framework
APP1.3.5	27899/150 Rev C - Site Location Plan
APP1.3.6	27899/051 Rev A - Aerial Site Location Plan
APP1.3.7	27899/011 Rev A - Timber Fence Elevations
APP1.3.8	21-0354 SP02-A - CTMP Plan Swept Path Analysis
APP1.3.9	21-0354 SP01-B - CTMP Plan Swept Path Analysis Primary Site Access
APP1.3.10	21-0354 SK03-A - CTMP Plan Construction Traffic Routing
APP1.3.11	21-0354 SK04 - CTMP Plan Proposed Site Compound
APP1.3.12	GGO-JBAU-XX-XX-DR-D-0001 Rev P02 - Surface Water Drainage Strategy DNO/Customer HV Compound
APP1.3.13	SKUKX-SHEEP-000-MCS 206 - CCTV Elevation
APP1.3.14	SKUKX-SHEEP-001-HVG 465 - Main Building Plant (HV Compound)
APP1.3.15	SKUKX-SHEEP-001-HVG 466 - Main Building Elevation (HV Compound)
APP1.3.16	SKUKX-SHEEP-000-HVG 104 - Monitoring Cabin
APP1.3.17	SKUKX-SHEEP-000-MCS 201 - Internal Tracks
APP1.3.18	SKUKX-SHEEP-000-MCS 203 - Perimeter Fence Detail
APP1.3.19	SKUKX-SHEEP-000-MCS 204 - Gate Elevation
APP1.3.20	SKUKX-SHEEP-000-MCS 205 - Solar Framework Elevation
APP1.3.21	SKUKX-SHEEP-000-MCS 252 - Transformation Station

APP1.3.22	SKUKX-SHEEP-000-MCS 253 - Edge of Park Switchgear Station
APP1.4	Heritage Desk Based Assessment dated January 2022
APP1.5	Solar Photovoltaic Glint and Glare dated January 2022
APP1.6	Grid Connection Assessment dated February 2022
APP1.7	Construction Method and Decommissioning Statement dated March 2022
APP1.8	Statement of Community Involvement dated March 2022
APP1.9	Sequential Analysis Study dated February 2022
APP1.10	Landscape and Visual Impact Assessment dated February 2022
APP1.11	Technical Note - Public Rights of Way Mitigation Strategy dated February 2022
APP1.12	Ecological Impact Assessment dated February 2022
APP1.13	Biodiversity Net Gain Report dated February 2022
APP1.14	Outline Surface Water Drainage Strategy dated February 2022
APP1.15	Construction Traffic Management Plan dated February 2022
APP1.16	Flood Risk Assessment dated March 2022
APP1.17	Noise Impact Assessment dated March 2022
APP1.18	Landscape and Ecological Management Plan with Biodiversity Net Gain Management and Monitoring Plan dated March 2022
APP1.19	Planning, Design and Access Statement dated March 2022
APP1.20	Agricultural Land Use Statement dated March 2022
APP1.21	Agricultural Land Classification and Soil Resources dated March 2022
APP1.22	Request for a Screening Opinion
APP1.23	Screening Request (reference 21/503277/ENVSCR) Screening Matrix
APP1.24	Screening Opinion Decision (reference 21/503277/ENVSCR) issued 5 July 2022
APP1.25	Letter from JBA Consulting to the Appellant dated 23 August 2022 attaching drawing no. IRA-JBAU-XX-XX-SK-C-0001 in response to the Environment Agency's consultation response
APP1.26	Letter from the Appellant to the Council dated 31 August 2022 [incorrectly dated 31 August 2021] amending the appeal and attaching new documents:
APP1.26.1	Drawing 27899-SK01 Rev A - Proposed Solar Farm Site Areas
APP1.26.2	Drawing 27899/050 Rev E - Proposed Solar Farm Site Layout Plan
APP1.26.3	Drawing 27899/060 Rev B - Proposed Site Overview Plan Sheet 1 of 5

APP1.26.4	Drawing 27899/064 Rev C - Proposed Site Overview Plan Sheet 5 of 5
APP1.26.5	Drawing 27899/062 Rev B - Proposed Site Overview Plan Sheet 3 of 5
APP1.26.6	Drawing AW0143-PL-0002 - Proposed Mitigation, Landscape and Ecology Enhancements
APP1.26.7	Response to Comments and Objections dated August 2022
APP1.26.8	Utility Scale Solar Background Briefing dated August 2022
APP1.26.9	Detailed Response on Key Issues: Landscape, Noise, Glint and Glare, Construction Traffic Management, Heritage and Site Security dated August 2022
APP1.27	Letter to the Council dated 1 September 2022 attaching the revised Construction Traffic Management Plan dated August 2022
APP1.28	Planning Committee Report dated 20 October 2022
APP1.29	Update to the Planning Committee Report dated 20 October 2022
APP1.30	Decision Notice dated 28 October 2022 for planning application 22/501335/FULL
APP1.31	Minutes of the Planning Committee dated 20 October 2022
APP1.32	Documents submitted regarding the Proposed Development:
APP1.32.1	Grid Review Planning Report dated March 2023
APP1.32.2	Agricultural Appeal Statement dated April 2023
APP1.32.3	Ecological Response dated 19 April 2023
APP1.32.4	Updated Sequential Analysis Study dated 24 April 2023
APP1.32.5	Landscape Response to Appeal Scheme dated April 2023
APP1.32.6	Heritage Appeal Statement dated April 2023
APP1.32.7	Supplementary Noise Impact Assessment dated April 2023
APP1.33	Documents submitted regarding Appeal Amendments:
APP1.33.1	Appeal Amendments Summary dated April 2023, together with Drawing SCUXX-SHEEP-000-100P PV Layout Amendments
APP1.33.2	Biodiversity Net Gain Assessment dated April 2023
APP1.33.3	Ecological Impact Assessment dated April 2023
APP1.33.4	Landscape and Visual Impact Addendum dated April 2023
APP1.33.5	Carbon Emissions Statement dated April 2023
APP1.33.6	Supplementary Noise Impact Assessment dated April 2023
APP1.33.7	Outline Surface Water Drainage Strategy dated April 2023
APP1.34	Drawings submitted with the Appeal, comprising:

APP1.34.1	Drawing SCUXX-SHEEP-000-100P PV Layout Overview Plan
APP1.34.2	Drawing AW0143-PL-0002 Rev A Proposed Mitigation, Landscape and Ecology Enhancements – Appeal Site
<b>2 Consultation Responses</b>	
APP2.1	Consultation Responses to Application Documentation, comprising APP2.1.1 to APP2.1.33:
APP2.1.1	Collier Street Parish Council
APP2.1.2	CPRE (28 June 2022)
APP2.1.3	Environment Agency (28 June 2022)
APP2.1.4	Environment Agency (22 September 2022)
APP2.1.5	High Weald AONB Unit (21 September 2022)
APP2.1.6	Historic England (17 June 2022)
APP2.1.7	Historic England (8 September 2022)
APP2.1.8	Kent County Council – Archaeology (10 August 2022)
APP2.1.9	Kent County Council – Ecological Advice (6 September 2022)
APP2.1.10	Kent County Council – Flood and Water Management (1 July 2022)
APP2.1.11	Kent County Council – Flood and Water Management (23 September 2022)
APP2.1.12	Kent County Council – Highways (11 July 2022)
APP2.1.13	Kent County Council – Highways (30 September 2022)
APP2.1.14	Kent County Council – Minerals and Waste (13 June 2022)
APP2.1.15	Kent County Council – Public Rights of Way and Access (14 June 2022)
APP2.1.16	Kent County Council – Public Rights of Way and Access (8 September 2022)
APP2.1.17	Kent Police (23 June 2022)
APP2.1.18	Kent Police (20 September 2022)
APP2.1.19	Maidstone Borough Council – Heritage and Design (10 August 2022)
APP2.1.20	Maidstone Borough Council – Heritage and Design (11 October 2022)
APP2.1.21	Marden Parish Council
APP2.1.22	Marden Parish Council (8 August 2022)
APP2.1.23	Maidstone Borough Council – Environmental Protection (1 July 2022)
APP2.1.24	Maidstone Borough Council – Environmental Protection (5 October 2022)

APP2.1.25	Natural England (20 July 2022)
APP2.1.26	Natural England (22 September 2022)
APP2.1.27	Network Rail (7 September 2022)
APP2.1.28	Network Rail (10 October 2022)
APP2.1.29	Southern Water (1 July 2022)
APP2.1.30	Southern Water (26 September 2022)
APP2.1.31	Upper Medway Internal Drainage Board (5 July 2022)
APP2.1.32	Upper Medway Internal Drainage Board (21 September 2022)
APP2.1.33	Weald of Kent Protection Society (4 July 2022)
APP2.2	Third Party Representations (81 objections)
<b>3 The Development Plan, National Policy and Other Material Considerations</b>	
APP3.1	Maidstone Borough Local Plan (adopted October 2017)
APP3.2	Maidstone Borough Council Local Plan Review (October 2021)
APP3.3	National Planning Policy Framework (updated 20 July 2021)
APP3.4	National Planning Practice Guidance (online resource) <a href="http://planningguidance.planningportal.gov.uk/">http://planningguidance.planningportal.gov.uk/</a>
APP3.5	Maidstone Borough Council Biodiversity Climate Change Strategy (October 2020)
APP3.6	Ten Point Plan for a Green Industrial Revolution (November 2020)
APP3.7	UK Energy White Paper: Powering our Net Zero Future (December 2020)
APP3.8	Net Zero Strategy: Build Back Greener (October 2021)
APP3.9	British Energy Security Strategy (April 2022)
APP3.10	Powering Up Britain (March 2023)
APP3.11	Procedural Guide: Planning appeals – England, updated 21 December 2022 (online resource) <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114122/procedural-guide-planning-appeals-england-2022.pdf">Procedural Guide: Planning appeals – England - GOV.UK (www.gov.uk)</a>
APP3.12	Overarching National Policy Statement for Energy (EN-1) 2021
APP3.13	National Policy Statement for Renewable Energy Infrastructure (EN-3) 2021
APP3.14	Draft Overarching National Policy Statement for Energy (EN-1) 2023
APP3.15	Draft National Policy Statement for Renewable Energy Infrastructure (EN-3) 2023
<b>4 Ecology</b>	
APP4.1	British Standard BS 5837 (2012) – Trees in relation to Design, Demolition and Construction

<b>5 Planning Appeal Decisions and Court Judgments</b>	
APP5.1	Appeal decision for land near to Bishop's Itchington, Stratford on Avon, Warwickshire dated 1 December 2022 (APP/J3720/W/22/3292579)
APP5.2	Appeal decision for land at Rawfield Lane, Fairburn, Selby dated 1 December 2022 (APP/N2739/W/22/3300623)
APP5.3	Appeal decision for land east of Mursley Road, Little Horwood, Buckinghamshire dated 2 December 2022 (APP/J0405/W/22/3302716)
APP5.4	Appeal decision for land east and west of A130 and north & south of Canon Barns Road, East Hanningfield, Chelmsford, Essex dated 6 February 2023 (APP/W1525/W/22/3300222)
APP5.5	Appeal decision for Michens Lane, Bramley, Hampshire dated 13 February 2023 (APP/H1705/W/22/3304561)
APP5.6	Appeal decision for land west of New Works Lane, Telford, Shropshire dated 27 March 2023 (APP/C3240/W/22/3293667)
APP5.7	Appeal decision for Great Pagehurst Farm, Staplehurst dated 10 April 2017 (APP/U2235/W/16/314969)
APP5.8	R Corbett v Cornwall Council [2020] EWCA Civ 508 [para 45]
APP5.9	TW Logistics Limited v Tendering DC [2013] EWCA Civ 9 [para 18]
APP5.10	Bernard Wheatcroft Limited v Secretary of State for the Environment [1981] 1 EGLR 139
<b>6 Legislation</b>	
APP6.1	Climate Change Act 2008 (2050 Target Amendment) Order 2019
APP6.2	Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009