

APPEAL BY JBM SOLAR PROJECTS 6 LTD
COTMOOR SOLAR FARM, LAND NORTH OF HALLOUGHTON, SOUTHWELL

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. In July 2019, Newark and Sherwood District Council (“NSDC”) declared a climate emergency.¹ Climate change threatens not only the natural and built environment, but also lives, livelihoods, and society itself.² Rapid growth in renewable energy provision is absolutely critical to tackling this crisis. The latest government policy is that the UK will need to be entirely powered by clean energy by 2035 – less than 14 years away.³ As Ms Whitfield told the Inquiry, achieving this goal – and the 2050 net zero target beyond it – will require a “*great shift in promoting renewable energy schemes.*”⁴
2. However, no land is allocated for renewable energy generation in NSDC’s development plan. Step forward this application, an exciting proposal for a solar farm that will provide clean energy to more than 12,000 homes. While it is large scale – necessary to achieve those large benefits – and in open countryside, its visual containment is remarkable. The scheme has been designed sensitively, minimising an inevitable (albeit modest) degree of harm to heritage and landscape. In all, its impact is relatively limited, capable of being mitigated, and reversible. All technical matters have been resolved with the relevant public authority subject to conditions – highways, drainage, and flood risk included.
3. In summary, this is a scheme that will provide meaningful and urgently needed benefits over its lifetime, and that will also leave a beneficial legacy through agreed improvements

¹ CD E4
² Agreed by HW in XX
³ Autumn 2021 Net Zero Strategy, CD D18
⁴ HW in XX

to the landscape. As its impacts can be made acceptable, the scheme accords with the development plan read as a whole and national planning policy.

4. The rest of these submissions follow the structure of the main matters in dispute identified by the Inspector, while also addressing additional issues raised by the Secretary of State through the request for an Environmental Statement, and local residents. The submissions address heritage, landscape, third party concerns, benefits of the scheme, and finally planning policy and the planning balance.

Heritage

5. The Appellant has undertaken a careful analysis of the potential for harm to the significance of heritage assets as a result of the development. That assessment concludes that there will only be a very small amount of harm to one asset (the Halloughton Conservation Area (“CA”)), and that this is less than substantial at the lowermost end of the spectrum. No harm has been found to the other heritage assets identified, namely the designated assets within the CA, the Brackenhurst complex and South Hill House. This is largely because while the appeal site may be visible from those assets, that is not the test. The appeal site does not form the primary significance of any of the assets under discussion, does not allow the heritage **significance** of the assets to be experienced, and does not better reveal the significance of the assets in question.
6. It is important not to lose sight amidst detailed analysis of individual assets of the purpose of the exercise; heritage policy and guidance is not there to prevent all development that may impact on heritage assets – it is there to properly manage change and identify harm that interferes with the ability to understand and appreciate those assets. There are hundreds of thousands of heritage assets in this country. That is no doubt why there is careful and detailed guidance in Historic England’s GPA2 and GPA3 to understand how a development might affect the historic environment, and crucially, whether it will harm our ability to appreciate significance.
7. The Council’s case on heritage has changed a number of times from application through to inquiry. This inconsistent approach, including identification of harm to a number of new

assets not mentioned in the Reason for Refusal, and a late attempt by Mr Partington in XX to assert that some assets might be facing existential risk, has resulted in an ongoing shifting of goalposts. Even more problematically, the Council’s case falls into a number of significant errors. Mr Partington’s evidence conflates description with analysis, makes unrealistic connections and assertions, and fails to identify what the appeal site contributes to the significance of the relevant assets. As Ms Garcia put it, the Council’s case is too often one of “*you can see it, therefore it is harmful*”.⁵

8. Mr Partington quickly conceded that while his evidence finds less than substantial harm at the upper end of scale to a number of assets, this does not mean anything even “*approaching*” substantial harm. Similarly, wherever he ascribes “*high*” weight to any harm that arises, that is not the top of his weighting scale (which he agreed would also include very high, fundamental, complete, and conclusive to account for substantial harm which is not alleged in any of the cases here).⁶
9. One factor contributing to Mr Partington’s difficulties was his use of the Principles of Cultural Heritage Impact Assessment (“CHIA”) guidance, rather than Historic England’s guidance which he accepted to be the “*industry standard*”.⁷ Mr Partington acknowledged that the CHIA guidance: has a very broad approach; is not endorsed by and does not mention Historic England; does not address national planning policy or national planning practice guidance; and has “*not been up to full scrutiny yet*”.⁸ The impression given by Mr Partington is that the guidance is in its infancy and needs some work before it represents a reliable methodology.
10. Crucially, it was accepted that CHIA misses a critical step for the purposes of this Inquiry – the explanation of how setting of an asset contributes to its significance – and therefore that it leads to a danger of overstating (or understating) the importance of setting and the impact of changes within it.⁹ The Appellant says that the Council has overstated the importance of setting by an overreliance on visual interaction, and on the historic intangible

⁵ LG in XiC
⁶ AP in XiC and XX
⁷ AP in XX; CHIA Guidance is at CD G5
⁸ AP in XX
⁹ AP in XX

prebend which has no legible physical manifestation in Halloughton that could be experienced “*on the ground*”. Mr Partington has repeatedly failed to articulate the significance of setting and has overstated the importance of change within it. He has simply described the assets and their settings and asserted a level of harm which is fundamentally based on visual interaction and little else.

11. It is common ground that the only direct impact on any asset here is the very localised take-up of a small section of verge and hedgerow in the CA through the site access, and that otherwise the Council’s case is about harm arising from changes to setting. With regard to the correct approach to assessment of harm to setting, it was agreed that:¹⁰

- i) The setting of a heritage asset is the surroundings in which its significance is “*experienced*”, not the surroundings in which the asset is simply “*viewed*”.¹¹ The use of “*experienced*” in national policy is important, and it is about experiencing the heritage significance of the asset.
- ii) Merely appearing in conjunction with a heritage asset within a view may not necessarily bring about a harmful impact upon its experience.
- iii) If a proposed development is to affect the setting of a listed building, a connection must be established between the two that is more than remote or ephemeral (or that has sufficient “*strength*”) (agreed despite Mr Partington telling the inquiry that he was not overly familiar with the judgment in Steer¹²).
- iv) Some views, such as designed views, contribute more to understanding heritage significance than others (however the distinctions at GPA3 §11 are not addressed in the Council’s evidence, and the “*Views Analysis*” is simply a description of fields that can be partially seen from those viewpoints¹³).
- v) A glimpsed view will not give rise to harm unless it affects our ability to appreciate the significance of the asset.

Halloughton Conservation Area

12. Turning then to the individual heritage assets. The Council’s case with regard to the CA and assets within it is built entirely on the premise that the historic prebend should be the

¹⁰ AP in XX

¹¹ GPA 3, CD G2 §20

¹² Catesby Estates Ltd. v Peter Steer [2018] EWCA Civ 1697 at CD H1

¹³ GPA3 at CD G2; Views Analysis AP PoE Appendix 2 at CD C8-C

determining consideration for the Inspector. However, no matter how many times the word “*prebend*” was used, it is a matter of fact that the historic financial arrangement no longer exists. While the prebend will always remain an important part of Halloughton’s past and a matter of historical record, it is not itself a heritage asset, and has no ongoing impact on the development of the settlement or wider landscape today. Each property is in private hands as a freehold. No tangible connection to the prebend can be experienced in the wider landscape (perhaps beyond a knowledgeable expert recognising the Manor House’s former prebendal role): there is no boundary, ditch, or landscape delineation of any kind.

13. Despite the Council’s near total reliance on the prebend at the Inquiry, it is of note that there is a remarkable silence on the prebendal system and any enduring contribution that might have to the significance of the assets in the Committee Report – another instance where the Council’s case has shifted dramatically over time.¹⁴
14. Knowledge and records of the prebend, and the historic associations between village and surrounding rural land, will not experience any change as a result of the development. There is no longer a functional link between the site, Manor Farm and Southwell Minster.¹⁵ Land ownership will not change, nor will the rural character of the wider landscape. In all, since the prebend ended nearly 200 years ago, is wholly untenable to allege – as Mr Partington sought to – that our understanding of it will be fundamentally undermined because 7.5% (approx.) of its former area will be occupied by a solar farm.
15. The disagreement about the prebend means that the Appellant and Council are still some way apart. While the Council continues to assert varying levels of harm to a wide range of assets, the only heritage harm identified by Ms Garcia is very slight harm to the setting and experience of the CA itself. This would be **less than substantial at the lowermost end of scale**, because (a) the key elements of the CA’s significance do not derive from the appeal site, and (b) those key elements will not be affected by the appeal scheme.

¹⁴ Committee Report is at CD A43
¹⁵ Agreed by AP in XX

16. Mr Partington agreed that the special character and appearance of the CA is derived from its architectural and historical interest, not setting.¹⁶ Nowhere in the Designation Statement is the wider agricultural landscape (or the prebend) mentioned as being fundamental or even important. In response to questioning, Mr Partington made the new assertion that if he were re-writing the Statement today, he would make greater play of the wider landscape.¹⁷ That speculative assertion was unhelpful (and also unsurprising in light of his evidence): Historic England’s guidance makes clear that CA designation is not a tool for managing and protecting large swathes of agricultural land; boundaries should not be drawn so widely that special interest becomes diluted¹⁸; and, in any event, the author of the Statement did take important parts of the landscape setting into account, as the CA boundary already includes fields to the south.¹⁹
17. It is unsurprising that the Designation Statement does not focus on wider setting. On the Council’s own case the CA, which lies in a valley, has a remarkable and strong sense of enclosure; strongly intimate characteristics; and a visual disconnect with the wider landscape.²⁰ Views in and out are “*chance*”, “*occasional*”, or “*few*”, directed in large part by high hedges and many trees, and are much more expansive to the south than north towards the site (where they are already curtailed by existing natural screening).²¹
18. The views that contribute most to the significance of the CA are those within it, particularly along Main Street, as these allow appreciation of the architectural and historic interest of the built centre.²² Experience of the appeal site in or close to those areas from which the CA derives its special interest and their immediate context is very limited. In terms of views of the CA from outside its boundaries, it is the views from the south and west that contribute to significance. Partial views from within the site to the CA do exist from Fields 8, 9, 10 and 11, however, ultimately none of those better reveal or enhance the significance of the CA, whether that be the medieval layout, enclosed nature, or listed buildings.²³ In all, the site makes only a very small contribution to significance through setting.

¹⁶ AP in XX; Halloughton Designation Statement CD G6 §4 on p.2

¹⁷ AP in XX

¹⁸ See CD G8 at §73

¹⁹ LG in XiC, who referred to Historic Advice Note 1 section 5 at CD G8

²⁰ AP PoE CD C8 C at 4.2.10; AP in XX

²¹ AP in XX

²² LG in XiC

²³ LG XiC

19. Secondly, the Council accepted that none of the primary features of special interest will be lost, physically changed, or affected in any way by the scheme.²⁴ The linear layout of the village will not be altered, enclosure and important buildings will all remain intact and fully understandable, and the field pattern will remain.²⁵ The main entrance from the east once you begin to experience the gateway buildings of church and manor will be unaffected, with solar arrays not noticeable.²⁶ The pilgrimage route will not be changed, and no views of the Minster would be affected.²⁷
20. Third parties were concerned about the proposed access gate. Ms Garcia was able to clarify in response to Professor Bamforth's questions that the access will have the appearance of a farm track and will not be industrial in nature; that some grass verge will be covered by gravel but that this is entirely reversible; and that CCTV, lighting, and other security features will not be visible, located over 100m from the entrance and outside the CA boundary.²⁸ In all, the gate will not result in harm, and will appear as other entrances do within the CA where accesses and tracks punctuate the grass verges throughout the length of the village.
21. There are very few locations where there would be a) visibility of the proposed scheme from within the CA or b) co-visibility of the CA and the scheme and importantly, all of these are glimpsed, filtered views through vegetation.²⁹ The ability to appreciate the CA in its wider rural setting would be retained, even at Mr Partington's Views 16 and 17 where the viewer will continue to have open countryside behind and to the side. In all, the proposed development would result in a very small change to some views of the wider rural surroundings approaching from the west and to glimpsed views of the scheme from the northern property boundaries, leading to a very minor amount of harm.³⁰ This slight harm is temporary and would be removed entirely following decommissioning.³¹

²⁴ AP in XX; Halloughton Designation Statement CD G6 on p.3

²⁵ AP in XX

²⁶ AP in XX

²⁷ AP in XX

²⁸ LG in XiC

²⁹ LG PoE CD C7C 12.46

³⁰ LG PoE CD C7C 12.49

³¹ LG PoE CD C7C 12.64

22. It was concerning that Mr Partington had not addressed the removal of panels in Field 7 under the *Wheatcroft* scheme. While he conceded that there will be reduction in the degree of harm, and accepted that Field 7 had the most significant impact of all fields in his Views 7, 8, 9, 10, 11, 12, 13, 14, 15, he refused to change his overall conclusions to reflect that.³² In contrast, it was Ms Garcia's evidence that the harm she has identified from the western approach will be substantially reduced if not removed altogether in the absence of panels in Field 7.³³

Listed Buildings within the CA

23. In respect of the listed buildings within the CA, the Appellant's case is that there is **no harm** to any of Manor Farm House (Grade II*), Church of St James (Grade II), Pigeon Cote, Granary and Stable Block (Grade II), Barn at Halloughton Manor Farm (Grade II) and the Barn at Bridle Road Farm (Grade II). It is agreed that the Council's case on the assets within the Manor Farm complex stands and falls together, as Mr Partington's analysis fails to separate them out.³⁴

24. Mr Partington agreed that the primary significance of each of these assets is their built fabric and form rather than their setting, and that this built fabric will be unaffected by the proposed development.³⁵ In terms of impact on setting, Ms Garcia accepts that the panels will be visible from over certain assets, for example at Mr Partington's View 16 the panels will be seen in the background. However, it is important always to centre on what matters and why. Glimpsed views of panels do not in this case fundamentally alter, obscure, or diminish our ability to understand the significance of any of the listed buildings.

25. Those matters which contribute the most to Manor Farm House's significance, namely the fabric, architecture, historic connections and group association will remain unchanged. Mr Partington agreed that its significance is best appreciated in close proximity, and that immediate setting will remain as is.³⁶ There is no significant intervisibility or co-visibility, and no experience of the development and the Manor Farm House in quick succession in

³² AP in XX

³³ LG XiC

³⁴ AP in XX

³⁵ AP in XX

³⁶ AP in XX

any dynamic views.³⁷ Overall, the appeal site makes no contribution to significance through setting, and no harm will arise.³⁸

26. The Council’s case on alleged harm to the Pigeon Cote, Granary and Stable Block and Barn at Halloughton Manor Farm remains unclear. While harm is still stated as a *fait accompli*, we are not told where that arises from. In contrast, Ms Garcia makes very clear that the appeal site does not form part of setting that better reveals significance of any of these buildings, and their significance will not be harmed by the development at all. In particular, the ability to understand the relationships of the buildings will not change – they will retain a tangible historical connection that any viewer can understand.

27. Similarly, most of the significance of the Church of St James is bound up in the building itself, its immediate setting being the churchyard and Main Street, and its connection with Manor Farm House and the community it serves. Mr Partington acknowledged that none of those elements will be at all affected.³⁹ The site cannot be experienced in conjunction with the church, and it is not considered to contribute to heritage significance through setting.⁴⁰ None of the church’s significance will experience any change from glimpsed views of solar panels with agricultural fields in the foreground. For example, while Mr Partington pointed to his View 2 as allegedly demonstrating the harm, although panels will be visible to the north west in the background, these will be behind a large silo, the view will only contain a very small portion of panels, and agricultural fields remain in foreground. The panels will not be the “*dominant*” or “*prominent*” experience of someone looking from the churchyard out to appeal site, particularly given the extent of tree cover. Winter views demonstrate panels will be visible to the north east in the same context as the pylon when the viewer has their back to the asset. However, additional planting has already taken place in that particular line of sight and so these will be even more filtered in future.

28. Parallel considerations apply to the Bridle Road Farm Barn. In short, the site makes no contribution to its significance: Mr Partington’s analysis of significance has never referred

³⁷ LG PoE CD C7C §8.24

³⁸ LG PoE CD C7C §8.19, §8.22

³⁹ AP in XX

⁴⁰ LG PoE CD C7C §7.20

to setting; physical fabric and the house-farmyard-barn group association are the agreed primary aspects of significance; and those features are best experienced in close range. While the barn has a functional link with the land to the south, as both were and are farmed together, there is no evidence it has ever shared that relationship with land to north.⁴¹ Again, all Mr Partington could point to was a change to the former prebendal wider landscape – but he agreed that the viewer would still know they are in a rural landscape when experiencing the asset.⁴² Any co-visibility of the asset and appeal scheme from the footpath to the south would not cause harm, as this view, which is not a designed view, or of any demonstrable importance, does not contribute to significance.⁴³

29. With respect to all of these assets, it is untenable to suggest that less than substantial harm, particularly at the upper end of the scale, will be caused by glimpsed views of panels.

Brackenhurst and South Hill House

30. Turning finally to the listed buildings within the Brackenhurst complex (Grade II) and South Hill House (Grade II), again the Appellant’s clear case is again that **no harm** will be plausibly caused to their significance. None of the areas identified as contributing to the significance of the assets by either party will be affected by the development. Mr Partington agreed that there is no historic relationship between the appeal site and these assets, and there is no current connection either. Again, all he could point to in terms of a connection were long distance glimpsed views and the wider rural landscape, but he could not say how any of those views or which parts of that landscape contributed meaningfully to significance.⁴⁴ By way of example, the view to the south of Brackenhurst Hall is a particularly impressive panorama from east through the south and to the west. Any visible parts of the site would form a very small part of that wider view. Mr Partington also conceded that we will still see the assets post-development, that views will not be obscured, and that any visual connection is most likely to be at best peripheral and limited.⁴⁵ In any event, the parties agree that the immediate setting of Brackenhurst Hall has been largely eroded by the development associated with the university: it is no longer a country house in splendid isolation on a hill.

⁴¹ AP in XX

⁴² AP in XX

⁴³ LG PoE CD C7C §§11.16-17

⁴⁴ AP in XX

⁴⁵ AP in XX

31. The fundamental issue with the Council's approach to the Brackenhurst assets is that it conflicts with GPA3's insistence on ensuring any change of view of an asset in the wider landscape is really a heritage impact, rather than simply a visual amenity impact.⁴⁶ The logical result of the Council's pointing to all changes in views to and from the assets however far or near as being harmful, would be to sterilise very much of the countryside from development, as it would affect wider rural agricultural setting of the assets.⁴⁷ Furthermore, it is simply incorrect, as Mr Partington tried to assert, that in this case the character and rural qualities of these assets' wider setting will be significantly altered by the development. Even if that did contribute to significance (which is not agreed), given the viewer's limited ability to perceive the development from this distance, and the existing wide panoramic views that include energy infrastructure and built development alongside agricultural land, there can be no harm.

Conclusion on Heritage

32. In short, if the development were permitted, all of the identified heritage assets could still be readily understood and appreciated for their heritage significance. The development would be visible as a matter of fact from some views, but when a detailed and common sense assessment is made, the site contributes little to the significance of the CA and assets within it, and not at all to Brackenhurst and South Hill House. Once the scheme is decommissioned, any slight harm to the CA, and to any other assets to the extent that it is found, would be removed. In the context of the existing landscape being of a sylvan character, Mr Partington's assertion that there will be some residual harm following decommissioning due to planting is not credible (especially when much of that planting has already occurred). It is an argument that was sensibly resiled from by Ms Whitfield⁴⁸. Thus, any harm will only be for a small proportion of these long-standing assets' existence.

33. When the site and assets are assessed in accordance with Historic England's guidance, there is only a very limited harm to weigh in the balance. It is agreed that decision maker must have special regard to the desirability of preserving listed buildings and their settings (s.66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("LBA")). It is

⁴⁶ GPA 3 CD G2, See in particular the textbox on page 7 and §16 below it

⁴⁷ LG in XiC

⁴⁸ HW in XX

finally now also common ground that s.72 of that Act is not engaged except in respect of the site access, as s.72 does not cover settings of conservation areas.⁴⁹ The desirability of preserving heritage assets and their settings should always be given great weight, but when calibrating the harm and weighing it, there is a spectrum from *de minimis* harm, to substantial harm. The top of the scale, substantial harm, involves “*such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced*”.⁵⁰ The harm identified to these assets is plainly a very very long way off that level. It is common ground that the desirability of avoiding a great harm must be greater than that of avoiding a small one as per Palmer,⁵¹ which is why the spectrum matters. As such, any very slight harm found to the CA is simply one factor to go into the planning balance, to be weighed against the agreed benefits of the scheme and in this instance is clearly outweighed by those benefits.

Landscape Character and Appearance

34. It is accepted that there will be some landscape harm – that is almost inevitable for large developments on greenfield land.⁵² Nonetheless, it is common ground that solar farms can be acceptable in principle in the open countryside. The adverse impacts in this case are very localised, of a temporary nature, and remarkably few in number, especially considering the scale of the solar farm (which will power more than 12,000 homes). There will be substantial landscape improvements through planting of trees and hedgerows and new water features that will improve drainage, and will help mitigate the adverse effects, resulting in a scheme that is acceptable in landscape and visual terms.

35. A degree of landscape harm does not make a proposal unacceptable. Acceptability depends on a number of factors: sensitivity of the site and receiving landscape; the nature and type of receptors that will be affected; the nature and extent of any effects and whether they can be mitigated; the landscape benefits of the scheme; and reversibility. Ultimately

⁴⁹ AP in XiC; in XX AP described the passage at 2.2.2 of his PoE CD C8 C as “*a rogue piece of text*”.

⁵⁰ DCLG and Nuon UK Ltd v Bedford BC [2013] EWHC 2847, CD H2

⁵¹ AP in XX; Palmer v Herefordshire Council [2016] EWCA Civ 1061, CD H5: “*the duty to accord ‘considerable weight’ to the desirability of avoiding harm does not mean that any harm, however slight, must outweigh any benefit, however great, or that all harms must be treated as having equal weight*”

⁵² Agreed by CG in XX

acceptability turns on a planning balance, weighing overall adverse effects against the benefits.⁵³

36. The scheme has undergone rigorous review and assessment by Mr Cook, whose PoE and Rebuttal PoE should be read alongside the substantial analysis in the ES.⁵⁴ The parties' final assessments are summarised in the Landscape and Visual Impacts Summary Comparison Schedules (except for PZ39, for which the Council's position on the site and its environs should read "Minor" not "Major" effects).⁵⁵ In all, the evidence shows that the site and the local landscape, within which it is relatively well contained, are clearly able to accommodate this proposal.

37. In response to questions from the Inspector, Ms Gillespie accepted that the Council has adopted the Appellant's methodology to assess landscape and visual effects.⁵⁶ However, there are significant errors and inconsistencies in the Council's application of this. For example, in the Council's assessment in the Landscape Summary Comparison Schedule, while "Land Use and Land Cover" has **Low** Sensitivity x **High** Magnitude = **Moderate** Adverse Effects, "Trees and Woodlands" has **High** Sensitivity x **Low** Magnitude = **Minor-Moderate** Beneficial Effects. This blending of Minor-Moderate is an incorrect result and an intermediary step change not allowed for in the methodology.⁵⁷

38. The Landscape Partnership ("TLP") was instructed to undertake an independent review of the landscape and visual-related components of the application by local resident Captain Hanmer. TLP did not undertake its own LVIA – it simply reviewed that of the Appellant. The concerns raised by that Review have been thoroughly addressed by the professional landscape experts over the course of their written and oral evidence.

Landscape Elements

39. In XiC, Mr Cook pointed out that pursuant to GLVIA 3, it is best practice to separate out relevant landscape elements and to assess the effects of the proposal on these in a systematic

⁵³ This approach to determining acceptability was agreed by CG in XX

⁵⁴ ES is at CD C15; AC Rebuttal PoE is at C13-B; AC PoE is at C7-B

⁵⁵ Error acknowledged by CG in XX. The Council's real position is at p.12 CG's Addendum PoE, CD C8-B, Part 4

⁵⁶ ES LVIA Methodology Appendix 2.1 at CD C15-B, an approach derived from GLVIA 3 at CD F1

⁵⁷ AC in XiC; ES LVIA Methodology Appendix 2.1 at CD C15-B at p.10

manner to really understand the effects of a scheme on the elements which together give a landscape its character. This analysis is crucial to forming overall conclusions on impact on landscape character; the Council has not undertaken similar exercise in their written evidence.⁵⁸

40. First, land use and land cover. While the approach to sensitivity and magnitude differs, both parties agree a “not significant” moderate overall adverse effect for the lifetime of the scheme. The solar infrastructure will undoubtedly affect land use and the site’s sense of openness. However, Mr Cook’s evidence is that this is “*nuanced*” by panels being superimposed over a retained agricultural use, resulting in a positive change from arable to grazed pasture.⁵⁹ That is something that is encouraged by the LCA SPD, and would have carbon sequestration, biodiversity and soil eco-system benefits, even with the development in place. The management of some 100ha as pasture, with the margins as wildflower meadows, will lead to improvements in the soil and ecosystem over some 40 years.⁶⁰ Ms Gillespie agreed that it is fair to draw a distinction between development which sits on the landscape, and permanent development seated within the landscape (such as housing),⁶¹ the latter of which would have a far greater impact on the landscape.
41. Professor Bamforth raised concerns about the practical feasibility of sheep grazing and shepherding. Mr Cook addressed these concerns by pointing out that: there are significant areas of grassland that will provide opportunities for sheep husbandry; and that it is in the interests of the operator to avoid natural regeneration of scrub and thereby to ensure management of the sheep. Mr Cook also told the Inquiry that sheep grazing around panels is normal for solar farms, due to the reciprocal beneficial relationship (keeping the grass low and enhancing soil ecology, while providing natural shelter for the sheep from wind, snowfall, or summer heat).⁶²
42. Secondly, trees and woodlands. It is agreed that there is a net gain in terms of tree resource and that no significant trees will be removed. Ms Gillespie has assessed magnitude as low because the new area of woodland will be interspersed and will represent only a modest

⁵⁸ AC PoE CD C7-B at section 4; HJ PoE is at CD C8-B

⁵⁹ AC in XX

⁶⁰ AC in XiC; AC Rebuttal PoE CD C13-B at §1.3

⁶¹ CG in XX

⁶² AC in Re-X

proportion of the existing wide-ranging planting. Even on this basis, applying the LVIA methodology correctly, the result should be a moderate (rather than minor-moderate) benefit.⁶³ However, as Mr Cook explained to the inquiry, the proposal will still introduce a significant quantum of more than 80 new trees, amounting to a partial gain and as such to a medium magnitude of change and major beneficial effect.⁶⁴

43. Professor Bamforth again expressed concern about how he could be certain that the promised tree planting would be successful. Mr Burrell took the Inquiry to the strongly worded Condition 4: *“If within a period of 7 years from the date of planting any tree, shrub, hedgerow or replacement is removed, uprooted, destroyed or dies then another of the same species and size of the original shall be planted at the same place.”*⁶⁵

44. Thirdly, similar considerations apply to hedgerows. Ms Gillespie sensibly resiled from Ms Jones’ assertion that outgrown hedges are *“incongruous”* in this landscape.⁶⁶ It is agreed that planting will result in some 1.2km of new hedgerow. Even in the context of the existing 8km of hedgerow on site, this is a significant increase in terms of proportion and total quantum, and the Appellant assesses this as a major and significant benefit. Again, looking at the Landscape Summary table, the Council has made the same mistake in calculating effect: even on their case, it should be moderate rather than minor-moderate.

45. Finally, there is a similar disagreement in terms of magnitude and the scale of benefit regarding water features and watercourses. Mr Cook highlighted that the existing water feature, the Westhorpe Dumble, is a significant element that contributes to the defining character of landscape, sitting alongside the gentle undulating topography (itself a reflection of the hydrological system). He also clarified that under surface drainage channels and pipes in fields are common features of local character.⁶⁷ The Council have not disagreed with the Appellant’s assessment of high sensitivity. The introduction of open ditches, swales, and balancing areas, will result in a modest beneficial effect, facilitating better surface water management and attenuation.

⁶³ Following the approach at table 1 on p.10 of ES LVIA Methodology Appendix 2.1 at CD C15-B

⁶⁴ Following the approach at table 5 on p.6 of ES LVIA Methodology Appendix 2.1 at CD C15-B

⁶⁵ Conditions are CD C9; PB in XX

⁶⁶ CG Addendum PoE CD C8-B at §3.2.7

⁶⁷ AC in XX

Character of the Site

46. Despite some initial confusion from the Council’s witness, it was eventually established to be common ground that the site is not a valued landscape and is not designated for its landscape beauty.⁶⁸
47. Both Mr Cook and Ms Gillespie addressed the Newark and Sherwood Landscape Character Assessment Supplementary Planning Document (“LCA”).⁶⁹ The site lies in the Mid Nottinghamshire Farmlands character area, and within that falls across three Policy Zones: PZ 37, PZ 38, and PZ 39.
48. As the character of the wider landscape beyond the site and its immediate environs will not change, it is particularly important here to assess carefully the sensitivity of the site itself before concluding on landscape character effects. Unfortunately, as was conceded, this is not what the Council has done – instead it has simply directly transposed the sensitivity of the character areas in the LCA onto the site itself.⁷⁰ Caution must be applied in that exercise for the reasons set out below.
49. Mr Cook’s site specific analysis results in him ascribing a medium value, susceptibility and sensitivity to the landscape which forms the site.⁷¹ It is of note that it is common ground that energy infrastructure already forms an integral part of the visual perception of the site area, and that pylons are not only apparent across the site but are, in Ms Gillespie’s words “*a very detracting feature.*”⁷²
50. It was agreed by Ms Gillespie that:⁷³

⁶⁸ CG in XX; Para 174 of the NPPF which is at CD D1

⁶⁹ CD F5

⁷⁰ CG in XX

⁷¹ AC PoE CD C7-B

⁷² CG in XX

⁷³ CG in XX

- i) While we look at landscape character studies to help establish the baseline, they can apply to very large areas, so that information must be reviewed critically to understand what parts of the character area are reflected in any particular site;
- ii) A professional landscape expert is still required to come to a view on the particular landscape in question, and its sensitivity;
- iii) Sensitivity, as set out in the GLVIA is a combination of the value of the landscape and susceptibility to the specific change proposed by the development in question;
- iv) In this case the LCA can only take one so far, as it is not offering advice on particular sites or particular developments;
- v) The LCA is designed not to assess sensitivity of an individual site, but to assess policy zone sensitivity (a separate exercise with a separate methodology⁷⁴);
- vi) One cannot simply transpose the sensitivity findings from the LCA onto the site⁷⁵;
- vii) The Council has not carried out an independent assessment of the sensitivity of the appeal site, erroneously directly transposing sensitivity from the LCA to the site.⁷⁶

51. In all, the only rigorous assessment of site sensitivity before the Inquiry is that done by the Appellant, which ascribes medium (rather than high) value, susceptibility and sensitivity to the landscape which forms the site.

Landscape Character Impact

52. Turning then to the effect of the scheme on landscape character. It is agreed that the two main inputs are sensitivity of the receptor and magnitude of change, made up of size and scale of effect, duration, and reversibility (which must always feature in assessment of magnitude.)⁷⁷ It was also agreed that in analysing magnitude, it is critical to consider the extent and proportion of the existing landscape elements that will actually be lost, as well as any gains. Part of what accounts for the differences between the parties on landscape character is the Council's incorrect application of the Appellant's methodology, and the admitted problems with the Council's analysis of site sensitivity, both addressed above.

⁷⁴ GLVIA 3 at CD F1 p.71 Figure 5.1 establishes that value is a key component of site sensitivity

⁷⁵ As per GLVIA 3 at CD F1 p.79 §§5.15-5.16

⁷⁶ See HJ PoE CD C8-B at §§3.1.3-3.1.5 (pp.23-34) "*sensitivity derived from the NSDC LCA*"

⁷⁷ CG in XX; the approach is that set out in GLVIA 3 at CD F1 p.71 and p.90

53. It is common ground that in terms of receptors PZ 37, PZ 38, and PZ 39, it is the character of and impact within the site that the Inspector needs to consider, as there are no significant effects on any policy zone as a whole.⁷⁸ While the Council’s comments on the Landscape Summary Comparison Schedule appeared to make a last minute qualification (referring to the site and its environs, rather than the appeal scheme area), Ms Gillespie accepted that she had not wished to depart from Ms Jones’ evidence that there are no direct landscape character impacts outside the site.⁷⁹
54. Each Policy Zone in the LCA has a number of required actions, determined by combining landscape condition and sensitivity. Ms Gillespie initially tried to place these actions on a scale, with “*conserve*” at the top.⁸⁰ However, in XX she conceded that the LCA’s matrix approach imports no such value judgment.
55. In any event, the proposed scheme clearly complies with those policy actions – other than a single element of non-compliance with PZ 37 of not being around Halam (which would be impossible to achieve alongside PZ 38’s requirement to be around Halloughton). Ms Gillespie accepted that the scheme is consistent with the following relevant actions, many of which are focused on new planting, something regarded positively throughout the LCA:⁸¹
- i) PZ 37: conserving hedgerows, historic field patterns, and ecological diversity; conserving and enhancing tree cover and landscape planting (p.115).
 - ii) PZ 38: conserving and reinforcing hedgerows; conserving and reinforcing the rural character of the landscape by concentrating new developments around Southwell and Halloughton⁸² (p.119).
 - iii) PZ 39 p.123: restoring arable land to pasture; conserving and enhancing hedgerows; conserving and enhancing woodland/plantation blocks; conserving rural character of the landscape by concentrating new developments around existing settlements.

⁷⁸ CG in XX.

⁷⁹ CG in XX; the Schedule should thus be understood as not intending to depart from HJ PoE CD C8-B at §§3.1.3-3.1.5 (pp.23-34)

⁸⁰ CG in XiC

⁸¹ CG in XX

⁸² While CG initially sought to say that this “Built Features” action at p.119 bullet 2 only applied to housing, she eventually agreed that was unjustifiably reading new words into the text

56. It is agreed that for the part of the site within PZ 39, the revised scheme will not result in significant landscape character effects.⁸³ With regard to PZ 37 and PZ 38, the Appellant and Council agree that there is a major adverse impact on landscape character within the site at Construction and Year 1 – the result of the introduction of solar panels in a few field parcels. The character of the remaining parcels within the red line would remain materially unchanged, as would the physical character of the landscape beyond the site’s immediate environs. The Council accepts that perception of any landscape character impact diminishes rapidly beyond the red line boundary – the visual envelope is relatively constrained.⁸⁴ Ms Gillespie also agreed that the topography will not change and that most of the existing landscape elements, vegetation, trees, hedges, and field patterns would remain and be reinforced.⁸⁵

57. It was agreed that the introduction of new planting will increasingly mitigate the impact of the solar panels on landscape character over the lifetime of the scheme. However, while Mr Cook consequently finds a reduction to moderate adverse impact by year 10, Ms Gillespie identifies constant major significant effects through to year 10, i.e. the highest level of effect allegedly entirely incapable of being mitigated. It became clear during the Inquiry that, in Ms Gillespie’s view, the ongoing major effect identified by the Council at Year 10 is not from the solar panels themselves – rather it is from an alleged interruption/curtailing of medium distanced views to frequently wooded skylines arising from the mitigation planting.⁸⁶ This argument amounted to a significant shift in emphasis on the Council’s behalf, and it is entirely misplaced for a number of reasons.

58. First, the Council has not identified any important or protected views it says will be curtailed by trees or hedgerows (for example, none of the Southwell protected views will be affected).⁸⁷ While accepting that it had not been identified as important, Ms Gillespie sought to rely on Viewpoint 10 to make her point, but on reflection agreed that, with the appeal scheme in place, at years 1 and 10 there will still be medium-distance views to

⁸³ CG in XX; CG Addendum PoE CD C8-B p.12

⁸⁴ CG in XX

⁸⁵ CG in XX

⁸⁶ CG in XX

⁸⁷ The totality of the Council’s case on medium distance views can be found at HJ PoE CD C8-B §7.5.12 and §7.5.14; see also AC PoE CD C7-B at §7.25

wooded skylines.⁸⁸ Ms Gillespie then sought to rely on Viewpoint 10 as showing harm to the interconnectedness between Halloughton and its rural setting, but agreed that the planting has already taken place, so with or without the scheme the effect will arise.⁸⁹

59. Secondly, the LCA recognises already that medium-distanced views for PZ 37 and PZ 38 are already (a) interrupted by power lines and pylons, and (b) often enclosed by hedgerows and other vegetation.⁹⁰ It was also agreed by Ms Gillespie that planting and woodland blocks are already a characteristic feature of the appeal site and its immediate environs.⁹¹

60. Thirdly, planting is a recommended policy action across all three zones in the LCA, which does not suggest that planting beyond a certain point can become harmful. It is, in any event, something the landowner can do (and has been doing) in the absence of planning permission as a matter of environmental stewardship. Ms Gillespie agreed that we do not read in any of the policy actions that planting should be avoided where it might enclose or truncate views.⁹²

61. In all, while it is acknowledged that there would be some adverse landscape effect on land cover and on the relevant policy zone receptors, these are contained within the site boundary, and there would be no change to the physical environment beyond the red line. The effects on landscape character also reduce over the lifetime of the scheme. On the other hand, there are a number of significant benefits in landscape character terms that mitigate these impacts and will result in an overall beneficial legacy of the scheme. The Appellant assesses the beneficial impact on trees and woodlands and hedgerows to be major, and the effects on watercourses to be moderate. In all, the proposal is acceptable in landscape character terms.

Visual Impact

62. The Appellant recognises that there will be some adverse visual effects arising from the scheme. However, even on the Council's case, of 16 representative viewpoints there is only significant impact at year 10 (Viewpoint 15), and this is over a limited area.⁹³ Ms Gillespie

⁸⁸ CG in XX. Viewpoint 10 is at Figure 2.1 of CD C15-B-ES LVIA

⁸⁹ CG in XX

⁹⁰ LCA at CD F5 pp. 112-118

⁹¹ CG in XX

⁹² CG in XX

⁹³ CG in XX

agreed that year 10 is the most important consideration for the Inspector, as those are the enduring visual effects that will last for most of the scheme.⁹⁴ In addition, GLVIA 3 requires a focus on the significant remaining effects after mitigation, while acknowledging short-lived effects pre-mitigation.⁹⁵ It is common ground that there will be no significant visual effects after decommissioning.⁹⁶

63. What this one, localised significant 10 year impact shows is not that the solar farm is unacceptable in visual terms. Rather, it shows that the site is wholly suitable for a scheme of this size and scale due to its “*remarkable*” visual containment, a result of the enclosed and undulating topography and wide-ranging tree and hedgerow cover.⁹⁷ The visual envelope and degree to which the scheme would be seen from the surrounding area would be very localised: apart from one section of a road to a farm, there would be no visibility from public highways, and only visibility from a few short sections of public rights of way.⁹⁸ Only small elements of the scheme would be evident where it is visible, with no opportunities to experience the full scale of the proposal in one view.⁹⁹
64. In addition, where the solar arrays would be observed, it would always be in the context of the pylons and overhead lines associated with the 132kV transmission line. Ms Gillespie herself reminded the Inquiry that the site is crossed by a high voltage power line and that there are already distant views of a power station.¹⁰⁰
65. The one significant year 10 impact alleged is for walkers on PRow Southwell 43 at Viewpoint 15.¹⁰¹ The visual effect on this footpath is limited to one side of one field. Along the rest of the route, the footpath would be barely affected due to vegetation screening. Even if this effect is found to be significant at year 10, Ms Gillespie agreed that it is limited in extent geographically (to the corner of Field 1); is of relatively short duration; forms part of a longer distance footpath; and by Viewpoint 16 reduces to negligible.¹⁰² It was also

94 CG in XX

95 Agreed by CG in XX; GLVIA 3 at CD F1 p.118 final bullet

96 Landscape Viewpoint Comparison Schedule; CG in XX

97 AC in XiC

98 AC PoE CD C7-B at §8.10

99 AC in XiC

100 CG in XiC

101 ES LVIA at C15-B Figure 2.10

102 CG in XX

agreed that mitigation proposed in this location as part of the *Wheatcroft* revision will, as it matures, mean that the solar panels will disappear behind hedgerow planting reducing the harm.¹⁰³ Mr Cook explained that native hedgerow will screen both the security fence along the northern area and the panels themselves. In summer months, the experience will be of walking through a green corridor, with mature hedgerow on the north side and young hedgerow on south side.

66. It became clear at the Inquiry that the Council's major effect at year 10 on Viewpoint 15 is now not due to the panels, but to the proposed mitigation itself foreshortening the view.¹⁰⁴ Indeed, throughout the scheme Ms Gillespie critiques planted screening for reducing open views – while acknowledging that enclosure is already characteristic of the site.¹⁰⁵ For the reasons set out at paragraphs 58 to 60 above, this is an unfortunate argument. Mr Cook pointed out that some foreshortening will happen in any event due to ongoing rewilding.¹⁰⁶

67. Other than Viewpoint 15, it is common ground that the impacts are either not significant or are capable of being mitigated by year 10.¹⁰⁷ Furthermore, the Council's final position following Ms Gillespie's evidence is that the only **short-term** significant effects are to Viewpoint 2 (significant for construction, but not by year 1), Viewpoint 4 (significant at construction and year 1), and Viewpoint 14 (significant at construction and year 1).¹⁰⁸

68. Viewing opportunities from PRow Southwell 74 are limited to just a few glimpsed views of panels through mature hedges, which would be gapped up and reinforced with further native planting. In all, visual amenity would not be materially affected on this route – a conclusion reinforced by the removal from Field 7 of solar arrays in Revision M (through which this route passes).¹⁰⁹ The screening effect of gap filling through upgrowth of hedges and infill planting is acknowledged to amount to effective mitigation by the Council.¹¹⁰

¹⁰³ CG in XX

¹⁰⁴ CG in XX

¹⁰⁵ CG in XiC

¹⁰⁶ AC in XiC

¹⁰⁷ CG in XX; The positions are summarised in the Landscape Viewpoint Summary Comparison Schedule

¹⁰⁸ HW clarified this to the Inspector in XX

¹⁰⁹ AC PoE CD C7-B at §6.21

¹¹⁰ Reduction in harm to views over time acknowledged in the Viewpoint Comparison Schedule

69. Another brand new part of the Council’s evidence at the Inquiry was Ms Gillespie’s new focus on alleged sequential effects as one moves around the site on the PRow network.¹¹¹ Ms Gillespie stated that interspersed glimpses of panels would combine to give the impression of walking in an energy producing landscape rather than a rural agricultural landscape.¹¹² However, in XX, Ms Gillespie downgraded these alleged sequential effects from being important to merely “*pertinent*”. She also admitted that they are not identified in the Council’s written evidence, and that this was an “*error*”, as both experts walked the footpaths and expressly considered visual impact.¹¹³
70. Mr Cook was, in any event, able to address this new concern in his oral evidence. Due to its sylvan character and proliferation of hedgerows, this is not an area of long-distance wide panoramic views: views are at best medium to short range, punctuated by vegetation and treecover. As such, the sequential viewing experience is extremely limited.¹¹⁴ Given that panels will only be glimpsed from short sections of a small number of paths, it is untenable to suggest that the entire landscape will no longer be perceived of as a rural one. And sequential views **are** dealt with in Mr Cook’s PoE, which looks at the PRow in their totality and describes the overall viewing experience.¹¹⁵

Conclusion on Landscape

71. In all, on landscape and visual grounds, there are no substantive reasons for refusing planning permission. While some adverse effects are acknowledged, the Appellant’s rigorous assessments conclude that the proposal is acceptable. The very localised but significant effect on landscape character within the site identified by Mr Cook results from the introduction of solar panels and is an inevitable consequence of delivering renewable energy infrastructure. The nuance is that whilst the solar arrays are operational, the fields would retain a pastoral agricultural function. Over time, the major adverse effect on land cover would decrease to moderate as the trees and hedgerows mature, which would reinforce the sense of rurality. Most of the existing landscape elements, vegetation, trees, and hedges would continue to remain and be reinforced. The *Wheatcroft* amendments have

¹¹¹ CG in XiC

¹¹² CG in XiCs

¹¹³ CG in XX

¹¹⁴ AC in XiC

¹¹⁵ AC in XX; Section 6 of AC PoE CD C7-B

been made to respond sensitively to the visual perception of the scheme, and given its large size the lack of significant visual effects is remarkable.

72. While Ms Gillespie continues to assert that the proposal is unacceptable in landscape terms, critically she agreed that all energy projects of this scale will have some adverse landscape effects and acknowledged that her conclusion was reached without considering that context.¹¹⁶ The logical result of Ms Gillespie’s reasoning is that she would never find a large solar farm, with its inevitable accompanying impacts, acceptable in the countryside. Yet it is common ground that this type of proposal could in principle be acceptable on a greenfield site.¹¹⁷

73. The adverse effects are counterweighted by a number of positive landscape character elements: the introduction of pasture and wildflower and grass meadows; growing out and planting of hedgerows; tree planting; improvement to water features; and other ongoing farm stewardship. Pursuant to the approach of GLVIA, these benefits mitigate and militate against the finding of an adverse effect. While Ms Whitfield agreed that there will be no unacceptable residual landscape harms at decommissioning, these positive changes will have an enduring beneficial legacy, collectively enhancing landscape character after 40 years.¹¹⁸

Additional Matters Raised by Third Parties

74. The Environmental Statement (“ES”) addresses two further matters raised by the Secretary of State in his screening direction – agricultural resource and safety.¹¹⁹ It is agreed that the development would not result in either permanent loss of agricultural resource (the fields can return to full agricultural use on decommissioning) or loss of best and most versatile agricultural land.¹²⁰ The ES concludes that there are no significant effects in terms of loss agricultural land, as agricultural practices (sheep grazing) can continue once the panels are operational. The ES also thoroughly addresses the safety questions identified and concludes that there are no significant risks regarding major accidents and disasters.

¹¹⁶ CG in XX

¹¹⁷ HW in XX

¹¹⁸ HW in XX

¹¹⁹ ES at CD C15

¹²⁰ SoCG CD C4 §8.17; HW PoE CD C8-A at §3.64

75. Third Party representations are addressed in detail in Mr Burrell's PoE.¹²¹ The Archaeology Officer raises no objection subject to conditions, and it is agreed that the proposal is not considered to result in any adverse impact upon archaeological remains.¹²² The Environmental Health Officer raised no objections regarding noise, and it is common ground that the development will not have a significant adverse amenity impact on neighbouring land uses.¹²³ At the Inquiry, Professor Bamforth raised a concern about the safety of the proposed site access (the risk of large vehicles hitting the opposite wall). Mr Burrell confirmed that a Swept Path Analysis has been conducted which demonstrates there will be no interference with the wall from HGV vehicles.¹²⁴ Mr Burrell also told the Inquiry that the Appellant had considered alternative site access arrangements in the context of comments received from third parties, an exercise which concluded the appropriateness of the current location.¹²⁵ The Highways Authority raised no objection (subject to conditions), and it is agreed that the scheme will not lead to a detrimental impact on highway safety.¹²⁶

Benefits of the Scheme

76. The Council candidly accepts that there are clear benefits of the scheme, notably in terms of renewable energy generation but also more generally in terms of ecological, economic, and landscape benefits. These are also addressed in depth in Mr Burrell's PoE.¹²⁷

77. While the substance of the benefits is agreed, Ms Whitfield's approach to weighting is fundamentally flawed: she has reduced the weight to all benefits (other than renewable energy – meaning her approach is inconsistent as well as wrong) because they could also arise from other hypothetical schemes; are policy compliant; and/or are connected to mitigation. In XX, Ms Whitfield agreed that weight should not necessarily be reduced because a benefit might be achievable on another hypothetical development – indeed the

¹²¹ PB PoE CD C7-A section 10

¹²² SoCG CD C4 §8.36; archaeology concerns are also addressed in some detail at LG PoE CD C7-C section 6

¹²³ SoCG CD C4 §8.48

¹²⁴ PB in XiC; Swept Path Analysis at CD A34

¹²⁵ PB in XiC; Note on Site Access Arrangements at CD A17

¹²⁶ SoCG CD C4 §§8.27-8.28; §8.23

¹²⁷ PB PoE CD C7-A section 11

Inquiry is only assessing this development, and a benefit doesn't have to be unique to achieve significant weight. Ms Whitfield conceded that just because something is required by policy that does not mean it is not a benefit. She accepted that something can mitigate harm and still be a benefit, and she also appeared to concede that her approach mixes up benefits and harms - reducing the weight to the former because of the presence of the latter despite the two matters being conceptually different. Despite these sensible concessions, Ms Whitfield insisted on upholding the incorrect analysis in her PoE.

78. Mr Burrell explains that the scheme needs to be treated on its merits: if it yields positive benefits that would not be achieved otherwise, those should be given full weight in the balance – no matter whether that is in accordance with policy, is commonly provided in similar schemes, or is connected with mitigation.¹²⁸

Renewable Energy

79. A climate emergency has been declared locally and nationally, and tackling this crisis requires urgent provision of new renewable energy infrastructure on an unprecedented scale. In Ms Whitfield's own words, a "*great shift*" is needed in promoting renewable energy schemes to meet national targets, including the transition to a low carbon economy and the immensely challenging net zero by 5050 commitment enshrined in the Climate Change Act 2008.¹²⁹ The Council does not deny the need for it to deliver appropriate renewable energy projects per the NPPF and legally binding energy targets, and considers that it has an important role to play in that through planning system delivery.¹³⁰

80. It is common ground that the proposed solar farm would result in significant savings of carbon dioxide emissions during its anticipated lifetime (approx. 20,690t of CO2 per annum, enough to power 12,000 homes annually) – and that **significant positive weight** must attach to this **tangible** contribution to energy generation from renewable sources.¹³¹ The Council accepts that the scheme benefits from the presumption at paragraph 158 of the NPPF, and it also describes renewable energy provision as sustainable development by

¹²⁸ PB in XiC

¹²⁹ Section 1 of the Climate Change Act 2008 at CD D8

¹³⁰ HW in XiC

¹³¹ SoCG CD C4 8.10; HW PoE CD C8-A at §3.9, §3.44 and §3.46; carbon savings set out at CD A42, A43A, page 46. The annual savings of carbon dioxide would represent a 10-fold saving over that the Council alone could achieve through the successful application of its own Strategy to 2035. Mr Burrell's "significant" is agreed to be equivalent to Ms Whitfield's "substantial"

definition.¹³² Mr Burrell confirmed that Appellant has a grid connection offer, and is ready to move forward and deliver the clean energy benefits rapidly.¹³³

81. The Council agrees that the potential benefits of solar energy are at the heart of sustainable development objectives and nationally binding targets; there is an urgent need for new renewable energy generation; domestic renewable energy has the benefit of not only reducing reliance on fossil fuels, but also providing security of supply; and that it is fundamental to addressing the climate emergency.¹³⁴

82. A wide range of energy policy considerations in support of renewable energy schemes are before the Inspector, summarised in Mr Burrell's PoE.¹³⁵ Mr Burrell highlighted the following considerations to the Inquiry:

- i) The National Audit Office this time last year cast doubt on our progress and ability to meet the statutory 2050 net zero target, described as a "*colossal challenge*";¹³⁶
- ii) The Government's latest policy, set out in the autumn Net Zero Strategy, is that the UK will be powered entirely by clean energy by 2035;¹³⁷
- iii) A key commitment in the Net Zero Strategy is to accelerate deployment of low cost renewable energy generation, such as wind and solar, including this decade;¹³⁸
- iv) To decarbonise the power sector significantly by 2030, EN-1 states that it is necessary to bring forward new renewable electricity generating projects as soon as possible with the need for new renewable electricity generation being urgent;¹³⁹
- v) Even as we need to decarbonise our entire power system in the next 14 years, the Government is forecasting a 40-60% increase in demand over same period.¹⁴⁰

83. The proposal additionally draws significant support from Core Strategy Policy 10 which promotes renewable energy generation development where the adverse impacts of the

¹³² HW in XX; Council SoC CD C3 §4.30; NPPF is CD D1

¹³³ PB in XiC

¹³⁴ HW in XX

¹³⁵ CD C7 Mr Burrell PoE at §§9.2-9.48

¹³⁶ Achieving Net Zero CD D16 at p6 and p21

¹³⁷ Net Zero Strategy CD D18 at p23

¹³⁸ Net Zero Strategy CD D18 at p23, p94, p98, p.103. For example, it stats that "*a low-cost, net zero consistent electricity system is most likely to be composed predominantly of wind and solar generation, whether in 2035 or 2050.*"

¹³⁹ Draft National Policy Statement for Energy EN-1 CD D3 at section 3

¹⁴⁰ Net Zero Strategy CD D18 at p78

renewable energy generation proposals have been satisfactorily addressed, and the Allocations and Development Management DPD Policy DM4, which sets out a permissive approach where the benefits are not outweighed by detrimental impacts.

Ecological Enhancements

84. It is agreed that a further benefit of the proposed scheme is the provision of overall Biodiversity Net Gain (“BNG”). The position agreed at the Inquiry was that there would be a BNG of 36.78% in habitat units, secured through landscape planting, habitat enhancements and long-term management.¹⁴¹ These considerable biodiversity benefits, which will not be achieved without the scheme, should clearly attract **significant positive weight**, particularly in the context of the agreed locally, nationally and internationally recognised biodiversity decline (including in the Environment Act 2021).
85. However, the BNG of 36.78% was calculated on the old Metric 2.0, and the calculation has now been undertaken place pursuant to Metric 3.0. That yields a BNG of 91.74%. That figure is not agreed, and the Council has responded through its consultants ‘Via’. The Appellant has responded to the queries raised by Via, but given the timing of that correspondence, these submissions proceed on the basis of the Council’s case, which is that there will be a BNG of 72.88%.
86. At the Inquiry Ms Whitfield gave the biodiversity benefit a moderate weight, as the benefits accord with policy and partly relate to mitigation. She accepted that the 37% goes over and above either pure mitigation or any requirement of policy (1% would be compliant), but refused to accept that 37% is “*significant*” (while being unable to say what would be significant).¹⁴² In her Addendum Proof, Ms Whitfield accepts that Metric 3.0 is a more accurate calculation of the BNG that could be achieved on site, and that moderate-significant weight attaches to that benefit of the scheme since 72.88% is self-evidently a higher number than 36.78%. That doesn’t change the Council’s overall planning balance, and the weight is tempered because Ms Whitfield considers that the BNG is by way of mitigation and reflects common practice in the development of solar farms, as well as the expectation of national policy – on the approach it is difficult to see how any benefit achieves “significant weight”. Surprisingly Ms Whitfield also appears to reduce the weight

¹⁴¹ SoCG CD C4 §8.39

¹⁴² HW in XX

because there will be a loss of arable land; it is not clear why the Council would conflate the two issues and then fail to acknowledge that the land use will be far better off in biodiversity terms than an arable use, and will not actually be “lost” at all.

87. Ultimately, the Inspector will decide the wisdom of those arguments and the weight to be given to this benefit, suffice it to say that what is proposed goes way beyond mitigation, will not be achieved on site without the development, and far surpasses any requirement of local or national policy for the achievement of biodiversity enhancement.

Landscape and Flood Risk Enhancements (see above)

88. There are landscape enhancements which have already been addressed above, and which it is agreed achieve **moderate positive weight** in the planning balance. Ms Whitfield confirmed in XX that landscape benefits attract moderate weight through the post-decommissioning legacy of planting, notwithstanding this planting being identified as residual harm by the Council’s other witnesses. It is also agreed that flood risk betterment attracts **moderate positive weight**, fully addressed by Mr Burrell in his PoE.¹⁴³

Socio-Economic Benefits

89. Finally, there will be notable socio-economic benefits arising from the creation of up to 80 construction jobs, as well as ongoing operational and supply chain jobs, £30m private of capital investment, and business rates contribution to the District Council of approximately £190,000.¹⁴⁴ Mr Burrell assigns these **moderate-significant** positive weight. The Council finds moderate weight, with Ms Whitfield again reducing the weight because the benefits would accrue in similar generic hypothetical schemes.

Planning Balance

90. The statutory framework, as always, remains the starting point. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, as amended, set out that applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. The appeal

¹⁴³ See PB PoE CD C7-A §§11.20-11.27

¹⁴⁴ As set out in CD A42. Longstanding agreement on this is clear from Council SoC CD C3 §4.30

scheme accords with the statutory development plan, and is further supported by other material considerations. No material considerations indicate permission should be refused.

91. The relevant policies are listed in the SoCG.¹⁴⁵ In terms of the correct approach to assessing development plan compliance, it is agreed that:¹⁴⁶

- i) if a policy is not listed in the RfR, it can be taken as complied with;
- ii) conflict with one or more policies should not automatically be taken to lead to conflict with the development plan as a whole;¹⁴⁷
- iii) conflict with part of a policy does not necessarily mean conflict with the whole policy, and consideration must be given to the policy's overall aim;
- iv) the level of conflict **and** compliance with the development plan must be considered.

92. Mr Burrell's PoE addresses in detail how the scheme complies with the development plan, read as a whole.¹⁴⁸ The principal policies of relevance for renewable energy projects are CP10 and DM4, both agreed to be permissive policies, providing support and encouragement for renewable schemes where adverse impacts (which are taken for granted) can be satisfactorily addressed and are outweighed by benefits.¹⁴⁹ It was conceded that the only way E6 can be read as NPPF-compliant is as similarly requiring a balancing exercise, providing support for schemes where impacts can be made acceptable.¹⁵⁰ Only partial conflict is alleged, limited to landscape and heritage harm (just landscape for E6¹⁵¹).

93. The Appellant is clear that the scheme complies with these permissive policies, and it is Ms Whitfield's own case that the scheme would accord with **the thrust** of CP10.¹⁵² The development plan is silent as to suitable areas for renewable technology and contains no targets or caps on its promotion. As such, it is common ground not only that this scheme requires a countryside location, but also that developments of this nature can be acceptable in the open countryside, despite some inevitable site-specific impacts.¹⁵³ In short, it now a

¹⁴⁵ SoCG CD C4 pp15-16

¹⁴⁶ HW in XX

¹⁴⁷ Having regard to the principles in R. (Corbett) v Cornwall Council [2020] EWCA Civ 508 (CD H7)

¹⁴⁸ PB PoE CD C7-A Section 8

¹⁴⁹ PB in XiC; HW in XiC

¹⁵⁰ HW in XX

¹⁵¹ HW in XiC

¹⁵² HW in XX; HW PoE CD C8-A at §4.3

¹⁵³ HW in XX; A43A at p.23; SoCG CG C4 at §8.6

matter of agreement that even with remaining harm to landscape and heritage, compliance with CP10 is possible.¹⁵⁴ The slight degree of harm found to landscape and the historic environment in this case can be made acceptable, is outweighed by the benefits of the scheme, and is thereby policy compliant – for the reasons addressed in detail above.

94. While conflict is also alleged with DM12, this policy simply sets out the appropriate balancing act **process**. In terms of the topic-based policies, it is fully acknowledged that this large scheme will result in a degree of harm to landscape and heritage. However, CP13, CP14, DM9, DM5 and E6 do not require refusal of schemes that result in any harm at all – instead, the degree of harm, whether it can be addressed, and its justification in terms of public benefits are critical.¹⁵⁵
95. Renewable energy projects of this scale will inevitably have some impact on local landscape character because of their scale (a point emphasised in EN-1, an agreed material consideration) and in all likelihood some impact on heritage because of the very many heritage assets in the area.¹⁵⁶ Harm must also be set in context of time limited nature of scheme – something not given consideration in Ms Whitfield’s PoE, but set out clearly as important in EN-3 and the PPG.¹⁵⁷ In this case, it is notable that once the project is decommissioned the landscape and heritage assets will be available for future generations to enjoy, with Ms Whitfield accepting that planting will be a beneficial legacy not a harm (apparently but sensibly in conflict with the evidence of her colleagues).¹⁵⁸
96. As Mr Burrell concluded in XiC, while there is conflict with parts of some policies, notably DM9, the scheme does accord with the development plan taken as a whole. The benefits far outweigh the adverse impacts in respect of the key permissive policies for renewable energy. Therefore, in accordance with the NPPF planning permission should be approved without delay (NPPF, paragraph 11 (c)).

¹⁵⁴ HW in XX

¹⁵⁵ HW in XiC and PB in XiC

¹⁵⁶ Agreed by HW in XX. EN-1 is at CD D3-A, relevant passage on p. 96

¹⁵⁷ EN-3 CD D4-B at §2.49.13 at p.85; PPG CD D2 Renewable and Low Carbon Energy §013

¹⁵⁸ HW in XX

97. However, even if the Inspector were to find conflict with the development plan, this is a case where the benefits are so stark that material considerations indicate that permission should nonetheless be granted.

98. The very small amount of harm identified to the setting of the CA by Ms Garcia should be weighed against the public benefits of the proposed scheme, in line with paragraph 202 of the NPPF. Section 72 of the LBA is not part of the Council’s case.¹⁵⁹ Ms Garcia’s evidence is that s.66 is also not engaged. It was in any event agreed by Ms Whitfield in XX that:

- i) while considerable importance and weight must be given to harm to listed buildings, harm does not always require refusal of permission and need not be a “paramount” consideration in determining acceptability;¹⁶⁰
- ii) not every harm attracts equal weight in the planning balance;¹⁶¹
- iii) the statutory duty does not require an assessment beyond that in NPPF para 202;
- iv) the presumption against heritage harm is rebuttable, can be outweighed by sufficient benefits, and there may be competing presumptions at play.

99. While the Council has not carried out a discrete heritage balance per para 202 of the NPPF, this has been done by Mr Burrell, who is of the opinion that the less than substantial heritage harm is more than outweighed by the public benefits.¹⁶²

100. Mr Burrell reaches the same result with regard to the overall planning balance: the combined identified harm to heritage assets and landscape character, both of which he gives moderate weight, is significantly and demonstrably outweighed by the substantial and urgently needed benefits of the scheme.¹⁶³

101. The Council admits it does need this type of development – it just does not want the scheme at the proposed location. Similarly, several local residents told the Inquiry they are not opposed to green energy – they just do not want it in Halloughton. However, it is agreed that there are no available brownfield sites, that no land has been specifically allocated for

¹⁵⁹ HW in XiC

¹⁶⁰ Contra HW PoE CD C8-A at §§2.51-2.52. See discussion in CD H3 Barnwell Manor Wind Energy v East Northamptonshire DC [2014] EWCA Civ 137.

¹⁶¹ CD H5 Palmer v Herefordshire Council [2016] EWCA Civ 1061 at §34

¹⁶² PB PoE CD C7-A at §8.25

¹⁶³ The Appellant’s planning balance is at PB PoE CD C7-A at

renewable energy in the development plan, and that no better site is available in the immediate locality.¹⁶⁴ As such, those bold statements of support ring somewhat hollow. Remarkably, the absence of alternative sites has only been given limited weight in the Council's planning balance.

102. It is common ground that the advantages of this development cover the environmental, social and economic elements of sustainability under the NPPF.¹⁶⁵ Other relevant matters, namely agricultural land, amenity and noise, highways and transport, and public rights of way, attract neutral weight. The scheme benefits from the presumption at paragraph 158 of the NPPF, as its impacts are (or can be made) acceptable. In short, the planning balance requires permission to be granted, whether or not development plan conflict is found.

Conclusion

103. This proposal represents an unmissable opportunity to power more than 12,000 homes with renewable energy, preventing the release of some approximately 20,690t of CO₂ into the atmosphere over its lifetime. As Mr Burrell concluded in XiC, it is remarkable that a scheme of this size, generating this quantum of energy, can be accommodated with such limited impact. In short, in the context of the climate emergency, the challenges of locating solar projects like these, and the very limited harm of the proposals, this is a situation where permission should clearly be granted.

104. There is undoubtedly a climate emergency, and the steer from the national government to decision-makers is clear: approve renewable energy where impacts can be made acceptable. Such scheme are not required to have no impacts. The scheme presents a real opportunity for NSDC as an area to make an appreciable contribution to the immense challenge of meeting the targets in the Climate Change Act 2008. It can hopefully be a start of "*great shift in promoting renewable energy schemes*" that all agree is needed to tackle a crisis that is a threat not only to buildings and landscapes but also to lives, wellbeing, and society as a whole.

¹⁶⁴ HW PoE CD C8-A at §3.73

¹⁶⁵ HW in XX

105. While the Appellant recognises the need to give great weight to the conservation of heritage assets, the slight harm to the historic environment and landscape come nowhere near the threshold of outweighing the substantial benefits of the scheme. It is abundantly clear permission should be granted whether the scheme is found to be in conflict with the development plan by virtue of the limited harm and the very significant benefits – chief among them, but certainly not exclusively, the provision of urgently needed renewable energy.

106. Accordingly, the Appellant invites the Inspector to grant permission subject to appropriate conditions.

14 January 2021

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Annexe 1 – Abbreviations

NSDC:	Newark and Sherwood District Council
SoCG:	Statement of Common Ground
NPPF:	National Planning Policy Framework
PPG:	Planning Practice Guidance
DPD:	Development Plan Document
LBA:	Planning (Listed Buildings and Conservation Areas) Act 1990
CA:	Conservation Area
CHIA:	Cultural Heritage Impact Assessment
ES:	Environmental Statement
LVIA:	Landscape and Visual Impact Assessment
LCA:	Landscape Character Assessment
BNG:	Biodiversity Net Gain
PoE:	Proof of Evidence
XX:	Cross Examination
XiC:	Examination in Chief
Re-X:	Re-Examination
SoS:	Secretary of State
LG:	Laura Garcia
PB:	Paul Burrell
AC:	Andrew Cook
HW:	Honor Whitfield
AP:	Adam Partington
HJ:	Helen Jones
CG:	Cathy Gillespie