

**APPEAL BY EDF ENERGY RENEWABLES LTD.
SOLAR FARM AT LAND SOUTH OF M20, CHURCH LANE, ALDINGTON, KENT**

**CLOSING SUBMISSIONS
ON BEHALF OF THE LOCAL PLANNING AUTHORITY**

Introduction

1. There is no doubt that the appeal site is in a good general location for a solar farm. It is in close proximity to the Sellenge Converter Station and, as we now know, can co-locate a connection with the consented Pivot Power Battery Storage System to deliver up to 49.9MWac to the grid with a connection date currently predicted to be around 2028. All of these things suggest a positive location to deliver on the Government's commitment to net zero. The social and economic benefits of the scheme are more questionable, given the lack of quantification of job creation and the absence of any controls to ensure even a UK-employed workforce, let alone a local one. Whilst the project will require very significant financial investment, again, it is far from certain that that investment would directly benefit the UK economy. Nevertheless, the ability to power up to 17,000 homes, or equivalent¹, with renewable energy is obviously a benefit of the scheme which must be given significant weight.
2. So far, so good. But, as I said in opening, meeting a pressing need is no excuse for poor design and execution. The application has been beset with errors from the outset with it originally marked invalid. Many matters have ended up evolving during, not only the

¹ As Mr Durling said, there is no ability to control where the electricity goes to and experience elsewhere suggests that it may well not power homes and may, for example, be bought by a commercial operator for their own uses.

course of application and appeal,² but also during the course of the inquiry, to the extent that, even as I write this closing, new plans are being prepared on the basis of a slightly smaller number of panels as a result of the Appellant having to correct layout errors due to the obstruction of Footpath AE432 and change the capacity of the inverters to meet the requirements of NPS EN-3 para 3.10.44. The Appellant has been continually reactive in making changes rather than starting out with a well-designed scheme which has benefitted from effective engagement with the Council or other stakeholders, including the local community.³

Significant Adverse Landscape & PROW Effects

3. As Mr Tennant, on behalf of the Church Lane residents' group, said on the first day of the inquiry, local people recognise that it is inevitable that there will be a solar scheme in this location, so close to the grid. They had tried to talk constructively with EDF, but had been rebuffed. They enjoy this countryside and want to have a design they can feel proud of and happy with. The Council agrees that it is not unreasonable for local people to expect this, and indeed policy expects this too. Local Plan Policy SP6 requires development proposals to be of high quality design and to demonstrate a careful consideration of and a positive response to design criteria, including 'character, distinctiveness and sense of place'. The appeal site is strongly representative of the two Landscape Character Areas in which it sits. The northern land parcel is typical of the more rural key characteristics of the Evegat Mixed Farmlands LCA and the western and eastern parcels are strongly representative of the key characteristics of the East Stour Valley LCA.⁴ This is a rural landscape which demands a carefully thought-through, positive response.

² The original ES was defective and required SEI. Historic England were unable to form a judgement on the likely level of less than substantial harm due to confusing visualisations and their concerns were never resolved.

³ As is required by Policy ENV10(d)

⁴ The impacts on landscape character are agreed to be significant adverse (see para 3.10.1 of the Landscape SOCG). As Mr Withycombe said, the land parcels associated with the proposed solar arrays form a substantial part of the respective LCAs (20-30% in both cases). The geographical extent of the proposal in the context of the LCA total areas is an important consideration (PE para 2.9).

4. More specifically, in relation to renewable energy, whilst it is recognised that a developer has limited choice in the physical appearance of panels and supporting infrastructure, there are always opportunities for a developer to demonstrate good design in terms of siting relative to existing landscape character and heritage assets and other features of importance, such as Public Rights of Way (see e.g. EN-3 para 2.10.98). Applicants should take into account topography and the ability to mitigate environmental impacts when considering design and layouts (see e.g. NPS EN-03 para 2.10.60).

5. It is in this context that Local Plan Policy ENV10 supports renewable energy schemes but not at any cost. Developments will be permitted provided they meet each of the criteria (a) to (d). Criterion (a) is relevant and states that: ‘The development, either individually or cumulatively does not result in significant adverse impacts on the landscape, natural assets or historic assets, having special regard to nationally recognised designations and their settings, such as AONBs, Conservation Areas and Listed Buildings’.

6. There is agreement that, on the face of it, there are ‘significant adverse effects’ identified in the Environmental Statement on both landscape character and a number of visual receptors. There is also agreed less than substantial harm to a Grade I and a Grade II* listed building. There was much discussion at the inquiry about what Policy ENV10 means by ‘significant adverse effects’ and whether it is automatically breached whenever significant adverse effects are identified in the EIA context. In the Council’s submission, the use of the words ‘significant adverse effects’ in the policy were not intended to be equated to significant adverse effects in the EIA context. The policy simply requires a judgement on the part of a decision maker as to whether a particular harm (to landscape or to heritage, for example) is a significant harm. This is not, however, necessarily a higher threshold to the EIA threshold. It is simply a different judgement. It may indeed be possible for an effect which is identified as moderate adverse in the EIA context to still be considered significantly harmful as a matter of planning judgement.

7. There is no support whatsoever in national policy for the Appellant’s position that significant adverse landscape and visual effects are an inevitable part of large-scale

utility solar and therefore must just be ‘taken on the chin’.⁵ Change is inevitable and some effects may well be adverse. However, with careful design, adverse effects can be minimised and residual effects not found to be significantly harmful. This is what is expected by Neighbourhood Plan Policy AB10 criterion (i), which provides that solar development will only be supported where the applicant can demonstrate that any harm to the local landscape and environment will be minimised. Even in the case of much larger NSIP schemes, NPS EN-1 only states that virtually all nationally significant energy infrastructure projects will have ‘adverse effects’ on the landscape.⁶ It does not state that these adverse effects will necessarily be significantly harmful.

8. Mr Longstaff failed to acknowledge the applicable guidance to this scale of solar farm in the PPG, which is very clear that, whilst the deployment of large-scale solar farms can have a negative impact on the rural environment, “the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively”. Indeed, “with effective screening and appropriate land topography the area of a zone of visual influence could be zero”.⁷
9. Good design is not just a case of committing to providing a landscaping scheme to be approved by the Council after permission is granted. Good design goes to the heart of layout within the broad site availability area and consideration of what the maximum capacity of a site actually is to accommodate panels bearing in mind its physical topography, views, location of PROWs and heritage assets.
10. The Design and Access Statement makes clear that, when looking for land within relative proximity to the Sellindge Converter Station, the developer considered the proximity to designated sites, available of adequate contiguous land, viable grid connection route, proximity to settlements, agricultural land classification, access and location of PROW.⁸ Whilst all of these factors are obviously important, the topography of the land and exposure to longer range views and listed buildings were clearly not key considerations from the outset. The DAS goes on to state that it was considered

⁵ Longstaff PE para 6.29

⁶ EN-1 para 5.10.5

⁷ Renewable and Low Carbon Energy chapter: Paragraph: 013 Reference ID: 5-013-20150327

⁸ See paras DA7 – DA9

that, with careful design, a further area of ground mounted panels could be accommodated amongst the existing infrastructure (e.g. power lines, railway line), thus potentially minimising impact on landscape character and it appears that a layout was presented to residents and the Council for comment.⁹ That larger layout was far bigger than needed for a 49.9MWac solar farm and included the whole of Hungry Down.¹⁰ The Appellant subsequently accepted these southern slopes needed to be removed¹¹ and the initial development boundary removed the southern slopes of Hungry Down but retained the whole of the south side of Bested Hill, as well as what has during the inquiry been termed the ‘Bested House exclusion zone’, and an area to the south east of the eastern parcel which has since been removed.¹² Again, this area was clearly larger than needed for a 49.9MWac solar farm.

11. The scheme was then further reduced. It appears that as a result of public consultation and environmental assessments, the far south east block of the site was removed to reduce landscape character impacts when viewed from some rights of way to the south of the site¹³, and several sections of solar panels were removed when considering the residential views from Bested House and The Paddocks.¹⁴ This is the scheme which was assessed in the ES and, in broad terms, nothing has materially changed since.
12. In relation to Bested House, there is very little, if any, explanation as to why such a large area of panels (or indeed any panels) needed to be removed from the flat land to the west of Church Lane. The SEI goes into great detail to explain that the residents at Bested House were visited to discuss their concerns, to understand how they use their property day to day and to hear their requests regarding the layout, particularly in relation to Areas 2 (west of Church Lane) and 3 (south eastern blocks). Their ‘key request’ noted was that their view from the house towards the church tower at Aldington

⁹ DA9 – DA12

¹⁰ ES Plate 3.5 on p. 51

¹¹ The SEI Solar Farm Design Progression states that “It was concluded that visibility of these southern slopes was too prominent and unable to be suitably mitigated through proposed planting measures. A decision was made to reduce the proposed layout to just north of the natural ridgeline partway along Church Lane, thereby greatly reducing any potential visibility of the proposal from Aldington” (para 11.8).

¹² ES Plate 3.6 on p. 52

¹³ ES para 3.80 p. 53

¹⁴ SEI para 11.12 p. 67

not be interrupted by the solar farm (across Area 3). This is completely understandable and (rightly) resulted in the removal of a strip of panels within the field immediately east of Church Lane. However, this does not account for the removal of panels from the west of Church Lane.

13. Mr Ingham, who was only instructed by the Appellant on 6 December 2024 and had nothing to do with these decisions, sought to justify the exclusion on the grounds of residential amenity (it seems principally due to isolated views from upstairs windows of the house¹⁵). However, the degree of set back from that property appears vastly inconsistent with the approach taken to other properties e.g. The Paddocks and, as Mr Withycombe said, more panels could be brought into the exclusion area whilst still retaining visual amenity. There is no justification for why the zone of exclusion has to be to this extent and none of this was ever explored in dialogue with the Council. The Partridge Farm solar scheme is much closer to the house.¹⁶ There is also a similarly isolated property in the Stone Street scheme which is proposed to be completely surrounded by panels, as explained by Mr Tennant.

14. Mr Bourn's suggestion (which was reiterated by Mr Longstaff) that panels were removed from the exclusion zone for archaeological reasons is completely unfounded. There are archaeological remains throughout the site, including where panels are sited, and there is nothing particularly more special about this part of Area 2. As the Archaeological Mitigation Strategy states, the remains identified are all considered to be of local to regional significance and are not design constraints.¹⁷ As Mr Withycombe said, the 'exclusion zone' would in fact be a very good area to site panels, being flat low quality agricultural land. In short, the reasons for removing such a large area of panels away from Bested House appear weak. Whilst none of this may have mattered if there were ample space for panels elsewhere without causing harm, this is not the case.

15. The particular area of contention where the Council and objectors argue that panels could, and should, have been removed to minimise landscape and heritage harm, is the

¹⁵ Ingham PE para 8.4.15

¹⁶ See Withycombe Appx 4 p. 16

¹⁷ CD1-25 at para 2.6

south side of Bested Hill. This is prominent in longer-range views, that have been identified as of local significance in the Neighbourhood Plan, from the Aldington Ridgeline (from both footpaths AE474 and AE475, although only a viewpoint from the former has been included (viewpoint 7)). The pylons on the hill are typical in this rural area, as in many other rural areas, and are not significant detractors. The East Stour valley, with its views towards the Kent Downs National Landscape, remains very much a rural and tranquil landscape from these southern locations and the panels are a significantly urbanising and detracting feature in these longer-range views. The rationale for excluding panels on the southern slopes of Hungry Down, as set out in the SEI Design Progression Strategy, on the grounds of impact on prominent views which cannot be mitigated, would appear to have force in relation to Bested Hill too.

16. The suggestion of removing panels from the south side of Bested Hill is not one which the Council first raised in Mr Withycombe's proof of evidence, as Mr Longstaff sought to suggest in re-examination. On the contrary, it was squarely raised in Land Management Services Ltd.'s review of the ES dated 5 December 2022.¹⁸ It was also raised before that time by the Church Lane Residents Group and Aldington Parish Council. This was well before the production of the SEI in January 2024 and the Design Progression Strategy and therefore there was ample scope for the issue to be properly considered as part of the application process.

17. It does not appear that the Appellant has ever given any real, serious consideration to removing panels from the south side of Bested Hill, of what the alternatives might be and / or what the implications of removal would be in terms of renewable energy production. In a typically reactive fashion, it now seems from Mr Ingham's rebuttal that a visualisation was produced for the Church Lane Residents Group in September 2022 showing Viewpoint 7 with 'pulled back' panels on the south side of Bested Hill in response to their request. Due to the topography of the land, the Appellant is keen to point out that you can still see the panels over the brow of the hill. And it is on this basis that the Appellant suggests that that pulling back the panels would not result in any improvement at all, even with low hedge planting in front of them.

¹⁸ See first paragraph on p. 5 of Mr Withycombe's Appx 1

18. This visualisation is reactive not only in the sense of having been produced in response to a request but also in that the degree of ‘pull back’ was calculated entirely by reference to the line drawn by the residents (who are not professional surveyors) to indicate where the panels should run to, rather than a potential reduced design being worked out organically by the Appellant as part of design evolution. The option of pulling back the panels is not even mentioned in any of the SEI supporting text and the visualisation was never shared with the Council. It therefore was no more than a reactive response to the residents to say to them, essentially, ‘it won’t look much better’, rather than a properly thought through option as part of design consideration.
19. Mr Withycombe disagrees that it won’t look much better and that the harm would not be materially reduced. Even if the panels could not be pulled back any further over the crest and onto the northern slope of the hill, considerably more screening should be possible than shown in the visualisation that contains mitigation.¹⁹ And in any event, the effect of pulling back the panels still releases significantly more ‘green’ land on the side of the hill, even if you can still see a distant strip of panels on the crest. There would be clear landscape benefits in reducing the extent of panels on the elevated slope, as well as heritage benefits too, as was accepted by Mr Bourn.
20. For unknown reasons, about which one can only speculate, the ‘pulled back’ panel position was erroneously included in the SEI visualisation for Viewpoint 7, ironically in the context of a layout refinement purporting to show areas excluded for broad visual amenity reasons. This visualisation is, however, helpful in indicating that, in terms of height and prominence, there really is very little difference between Bested Hill and Hungry Down and that pulling back the panels on Bested Hill would have had significant landscape and heritage advantages. The panels would have aligned the layout to the natural ridgeline partway along Church Lane in respect of both hills providing a consistent sweep across the landscape.
21. Whilst the Inspector was correct to note during the evidence that there is no requirement to consider alternatives and he is judging solely whether what is proposed is acceptable, there is nevertheless a policy requirement to minimise harm so far as is possible through

¹⁹ Although no formal assessment of this has been carried out, it is common sense.

good design. The Bested Hill issue is the starkest example of the Appellant's failure to do this. Not only does the Appellant have an alternative location to locate panels (in the Bested House exclusion zone) which would have limited landscape harm being on flat land which is not visible in long-range views, but the Appellant has also failed to justify why it needs so many panels in the first place in order to deliver its renewable energy benefits.

22. We know that the size of the scheme has been significantly reduced since the pre-application stage indicating that there is sufficient flexibility to make concessions. Even now, the Appellant seems prepared to lose some panels to account for the alignment of PROW 432 and to reflect inverter limits without any suggestion this renders the scheme unviable. We also know, now, that the scheme is overplanted²⁰ at a ratio of around 1.27.²¹ The Appellant says this is within a typical range and this is accepted. However, it does not follow that 'max-ing out' energy production and 'dumping' large amounts of wasted energy is the only option and no calculations have been provided to demonstrate the actual reduction in renewable energy generation that would result if the panel numbers were reduced in line with removal from the south side of Bested Hill. It is not as simple as stating that, if there is an X% reduction in panel coverage, there will be a corresponding X% reduction in energy exported to the grid. Furthermore, it is also reasonable to assume that panels will increase in efficiency over the lifetime of the scheme and thus the direction of travel points to needing a smaller site area rather than a larger one. In other words, you should buy your shoes as small as possible at the

²⁰ Contrary to statements in Mr Longstaff's proof at para 6.76 and 6.82 that no overplanting will occur.

²¹ See Solar Capacity Note. The Appellant states that this is optimisation rather than overplanting in the sense of EN-3 para 2.10.55. The Inspector should note that the Secretary of State refers to this situation as 'overplanting': see para 3.2.90 of Ex-A report dated 8 August 2024 in respect of application for DCO for West Burton Solar Project which was supported by the SoS. The Inspector has been informed that, whether this is permissible at all, in the context of a TCPA 1990 application relying on a 49.9MWac threshold, is the subject of an outstanding legal challenge (to APP/P3040/2/23/3330045). For the purposes of this appeal, however, it is accepted that the Inspector must adopt the Secretary of State's position which is that overplanting for reasons other than to address degradation is legitimate both generally and within the context of a scheme sitting just under the NSIP threshold. However, this should not be taken to amount to any concession on the part of the Council that this is indeed the correct approach.

current time on the basis that your feet are likely to shrink rather than leaving room for growth. The Appellant does not appear to have designed its scheme with this in mind.

23. The design progression has also failed to consider the visual effects from local PROWs and whether consideration was given to the creation of more substantial footpath corridors in order to reduce the identified significant adverse effects from PROWs running through or adjacent to the proposed solar panels. Such significant adverse visual effects are not unavoidable if managed sensitively. No consideration has been given to whether greater set-backs could be provided, particularly in the case of PROWs where no effective mitigation screening can be provided. The experience for users of these PROWs will be dramatically different and an alien one more akin to light-industrial when walking through what is supposed to still be seen as countryside. Security fencing will line either side of the PROWs, along with all the solar kit including cabins and inverter boxes, as shown in, for example, visualisations of Viewpoints 1A and 1B. Given that the number of panels is uncontrolled, as is their density, the Inspector must assume a worst-case scenario²² that panels could cover the entire area within the fenceline boundary. As Mr Rusling said, these footpaths are used, particularly in the summer months. And with the huge new town permitted at Otterpool, there are set to be thousands more people in the area looking for recreational opportunities. Policy ENV5 is not just about preserving the lines of the paths. It is about protecting user experience and, where possible, enhancing it.²³ The Appellant has had no discussions with KCC about potential enhancements either to these paths or other nearby paths in compensation.²⁴ Whilst some things may be able to be achieved through discharge of the PROW condition, the failure to think proactively about such opportunities is yet another example of a poorly designed scheme which has done the bare minimum.

24. Again reactively, this time in response to Mr Withycombe's criticisms of the degree of mitigation proposed, there appeared to be some concessions during Mr Ingham's

²² See NPS EN-1 para 4.3.12

²³ Neighbourhood Plan Policy AB10 also states that "Opportunities will be sought to enhance access for walking, cycling and equestrianism" (criterion (iii)).

²⁴ The two new permissive paths proposed will not be particularly advantageous, as Mr Rusling explained.

evidence that denser mitigation could be provided in some areas which would be appropriate and provide effective screening to some footpath users. The success of this hangs entirely on the plans which are approved as part of the landscaping condition. The Council has legitimate concerns that what will ultimately be planted will not be as effective as promised, based on experiences elsewhere and also given this developer's reluctance to provide effective mitigation in earlier plans, as set out by Mr Withycombe in Section 8 of his proof. Whilst final landscaping details are not within the Inspector's control, as requested during the inquiry, the decision letter (if planning permission is granted) should set out the degree of screening anticipated in informing judgements as to visual effects. This can then, in due course, be used as a benchmark for assessing the acceptability of mitigation plans which come forward for approval. It is understood that the Inspector was able to view the degree of screening provided by the Partridge Farm solar scheme planting on the site visit. This, according to the condition discharge plans at Mr Withycombe's Appx 7, represents a 3m wide planting belt. The planting is established and has been in place for 8 years.²⁵ It is a useful reference point to show the reality of the degree of screening which can be achieved in practice.

Significant Adverse Heritage Effects

25. There is absolutely no basis within national or local policy to expect heritage harm as an inevitable consequence of solar energy. Even in this part of Kent which contains both modern industrial features such as the motorway and the infrastructure around it with a number of heritage assets, it is still not inevitable that these assets must be harmed. The Sellinge Sub-Station is a significant distance away from the sensitive areas and there is a strong difference in the landscape character of the northern part of the site, where the infrastructure is located, and the much more tranquil, rural and historic East Stour LCA. Within the historic village of Aldington lie the Grade I listed Church of St Martin and Grade II* listed Court Lodge farmhouse, significantly far to the south of the scheme. The impacts on them are therefore to their wider setting rather than to the immediate setting of the buildings themselves but, again, with a well-designed scheme, the level of impacts are not inevitable.

²⁵ Withycombe PE para 8.6

26. The history of the two buildings is recorded in Historic England’s consultation response of 5 September 2022.²⁶ Mr Bourn accepts HE’s description of the buildings and assessment of their significance. Both buildings are described as “highly prominent”, an “unusually fine group” and deriving significance from their “landscape settings which help explain their rural origins and provide an attractive backdrop which enhances their aesthetic value in key views”. They also derive some significance from the surrounding landscape, including the appeal site, as a result of their farming origins. The fact that their significance is derived from their architectural fabric and immediate setting should not diminish the role that their wider setting plays. With respect to those who appeared at other inquiries, the ‘cake analogy’, referred to by the Inspector, is unhelpful. Just because a large slice of significance is derived from a building’s architectural fabric does not necessarily mean that its wider setting’s significance ends up being small as a result. The chapters of a book analogy suggested by Mrs Connelly is better: some chapters of a book may be longer than others, but the book must be read as a whole and the story cannot be understood without the telling of each chapter.
27. HE were initially unable to assess the application on a desk-based basis due to inadequate representative viewpoints. Attempts were made to rectify this in the SEI and HE were re-consulted. However, in their 11 March 2024 letter²⁷, they were still unable fully to assess the level of harm and be precise about where the harm falls within the spectrum of less than substantial without fully rendered views. Mr Bourn states that HE may have misunderstood the effect of Viewpoint 8, and the Council sees the point. However, it is deeply regrettable that the Appellant – for whatever reason – chose not to go back to HE during the course of this appeal to clarify the images and seek a final response setting out their views. Consequently, the inquiry lacks the expert opinion of the Government’s advisor on heritage; an opinion which would always be forthcoming in the case of harm to assets such as these, being Grade I and II*, and should have been available to be able to be taken into account.
28. The Appellant sought to suggest that it was somehow implicit in HE’s comments that they would find the harm to be at the lower end of the less than substantial harm range,

²⁶ CD 2/1/9

²⁷ CD 2/2/5

in line with Mr Bourn's views. However, reading their letter, that is clearly not the case. HE went to great lengths to state they have "concerns regarding the application". In relation to Viewpoint 7 (which it is agreed they had not misunderstood), they again had concerns. They elaborated on these concerns in some detail: "Whilst there is some distance between the development site and the church, view 7 is dominated by the magnificent fifteenth century tower which is set on high ground and framed by open fields. We also believe the panels could harm the longstanding visual tie between the agricultural settlement and the rural landscape by obscuring some of the fields which contribute to the setting's significance". These are real objections on valid grounds which do not support a negligible or lower end finding of harm. As Mrs Connelly said, footpath AE474 would have been the original route to the church from the village of Aldington. The experience when walking towards the church is not a blinkered one, and the church is currently seen in the context of the surrounding, open, rural landscape. In any event, setting is not determined solely by visibility; it is about experience. The panels on the south side of Bested Hill will dramatically harm that experience. The hunting lodge has a historical connection to the adjacent chapel. Even though it is less prominent in the landscape than the Church, it was still placed deliberately on a hill, and visitors would have traversed across Church Lane. The approach and experience of travel to the Lodge is important in its inherent experience.

29. The eastern block of panels will be visible from the field to the east of the Church and Lodge (viewpoint 16). This field contains a PROW but the effect on a setting is not limited to the experience of users on any public right of way. Whilst there is some vegetation on the boundary of the field, the 3m tall panels will be seen and experienced in relatively close proximity to the assets, again changing their setting from a purely rural one to one containing industrial features and, in the course of so doing, causing harm. There will also be some visibility of the panels from Viewpoint 8, although it is accepted that this may not be to the degree that HE were concerned about.
30. Placing a widespread alien industrial feature in an otherwise undisturbed historic setting is harmful on the higher end of the scale in relation to the Church and at the middle end of the scale in relation to the Lodge, as Mrs Connelly said, resulting in an overall higher end of less than substantial harm. This is consistent with the findings in the officer's report which were informed by a desk-based conservation officer assessment, but Mrs

Connelly's findings have had the benefit of her detailed site visit, as well as Ms Dee's previous site visit carried out when preparing her proof. Higher end of the scale is a broad concept and is not to be equated with 'highest end', or just short of substantial harm, as the Appellant sought to paint the Council's case. The scale is not linear, and the test is ultimately one of judgement based on a number of factors in the round. Given the size of the solar farm, its prominence on the south side of Bested Hill and in views from the eastern field, the experience of the wider rural setting of the designated assets will be completely changed so it cannot be said that the harm will be negligible or low.

31. In any event, wherever on the scale of less than substantial the harm lies, the duty in s. 66 of the Planning (Conservation Areas and Listed Buildings) Act 1990 is engaged and special regard must be had to the harm and the fact that the setting of the assets will not, in this case, be preserved. In the NPPF context, it is clear that any harm to the significance of a designated heritage asset should require clear and convincing justification (para 213). This clear and convincing justification must relate not solely to the general benefits of a scheme but, in this case, to the particular layout justification which has resulted in the heritage harm.

The Planning & Heritage Balances

32. As a matter of judgement, both the landscape impacts and impacts on historic assets are significantly adverse, and thus the development is in breach of Policy ENV10 criterion (a). It is necessary in relation to both to weigh the public benefits against the harm. I note that this juncture that Neighbourhood Plan Policy AB10 states that proposals for solar will only be supported where the benefits of renewable energy can be proven to outweigh the landscape and environmental impacts. On a literal reading, this applies to all solar schemes, including those that harm the landscape or designated heritage assets but not in a significantly adverse way. Schemes which harm the landscape or heritage in a significantly adverse way will be in breach of Policy ENV10 and are therefore de facto in breach of the development plan, irrespective of the public benefits (and Policy AB10 makes clear that Policy ENV10 still applies). This is the Council's interpretation of how the Policies ENV10 and AB10 interact as a matter of law. However, there is of course always scope for a breach of policy to be justified on the basis of other material considerations, including the public benefits of the scheme, and it is accepted that a

balance must apply irrespective of whether the decision-maker considers that within the context of the development plan or by way of the s. 38(6) PCPA 2004 balance. The Council has properly considered the harms cumulatively in Reason for Refusal 1 (in line with the drafting of Policy ENV10).²⁸

33. Separately, there is also the heritage balance to consider in the context of NPPF para 215 and Policy ENV13²⁹. In this context, it is important to recognise that the balance does not only reflect the level of harm on the range of less than substantial harm. Great weight should be given to the asset's conservation and the more important the asset, the greater the weight should be (para 212). The greatest possible weight must be given to harm to the Church as it is a Grade I listed building, a category ascribed to a mere 2.5% of listed buildings. Court Lodge is also rare being Grade II*, with only 5.5% of all listed buildings being so designated. Harm to Grade I and II* listed buildings, even if it is at the lower end of the scale, may well require more justification than a greater level of harm to a Grade II listed building. The temporary and reversible nature of the harm does not temper the weight to be given to these matters, given that 40 years is such a long period of time. As Mrs Connelly said, it is effectively the experience of a generation.

34. The public benefits of delivering renewable energy are not in dispute and must be given substantial weight. The ability to deliver those benefits through a grid connection which should become available before 2030 is also significant. The renewable energy generation is, however, like the harms, in a sense temporary, being limited to a period of 40 years. If any reduction in weight is given to the harms of the scheme on account of them being temporary and reversible, then the only logical approach is similarly to limit the renewable energy benefits of the scheme.

²⁸ If the Inspector disagrees with the Council as to the degree of harm to any element, then naturally the balance will change. However, a finding that an element of the harm is lower than the Council (or even non-existent) does not render the entire Reason for Refusal invalid, as the Appellant at one point sought to suggest.

²⁹ Note that arguments concerning the interpretation of Neighbourhood Plan Policy AB11 and what is meant by the reference to preserving or enhancing the significance of the asset, including those elements of the setting that do not contribute to the significance are not relevant in this case. The Appellant agrees that the elements of the setting which are harmed contribute to the significance of the assets in question.

35. Whilst the public benefits of the scheme in a general sense are not in dispute, the weight to be given to what can be termed the ‘consequential add-ons’ is. BNG³⁰ comes about solely as a result of the landscape mitigation which, in itself, is only necessary to mitigate harm. It is not a freestanding benefit of the scheme. In any event, it will either be temporary or, if the planting is left in place after the de-commissioning of the panels, it will lack maintenance and be detrimental to historic landscape character as a result of the creation of unnatural and arbitrary field boundaries. I have already dealt at the outset with the limited weight that can be given to construction jobs and the investment to build the scheme.
36. Critically, however, as I said at the outset, meeting a pressing need and delivering a scheme with public benefits in the general sense is not a justification for the landscape, PROW and heritage harm caused as a result of poor design which could, and should, have been minimised. The location of panels on the south side of Bested Hill should have been entirely avoidable, either through relocation closer to Bested House or through recognising that this undulating landscape simply does not have the capacity to accept this level of solar development. Just because a company is able to piggyback on the existing battery storage 49.9MW grid connection agreement does not mean that the connection must be exploited to its maximum extent.
37. The DAS states that it was considered that with careful design an area of ground mounted solar panels could be accommodated amongst the existing infrastructure (e.g. power lines, railway line), thus potentially minimising impact upon landscape character.³¹ If that was actually what had been designed, then it seems unlikely anyone would have objected. However, that is not what has been delivered. The heritage and landscape harm arising from longer range views from the sensitive southern area, together with the scale of the incursion of panels along the numerous public rights of way, is unacceptable and could have been either avoided, or minimised with a better designed scheme which could still have delivered significant renewable energy benefits. Had the Appellant engaged more constructively with local people and the

³⁰ There is uncertainty as to the current level of BNG given the suggested landscape mitigation changes during the inquiry. However, the Council does not consider this will make a material difference to the BNG weighting.

³¹ DA10 at pp. 7-8

Council,³² then it may have been possible for an acceptable scheme to come forward. However, the scheme before this inquiry does not represent good design and has failed to minimise landscape and heritage harm to an acceptable level. Given that the grid connection has been delayed, there is still time to bring forward an amended scheme. At the current time, however, the public benefits of delivering renewable energy do not justify saddling this part of Kent, which is already under huge pressure from solar and other industrial developers³³, with an ill-thought through development which will cause lasting harm. That is not a sustainable way of delivering net zero. For these reasons, the Inspector is invited to dismiss the appeal.

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13 February 2025**

³² The failure to disclose the Bested Hill ‘pull back’ visualisation to the Council until Mr Ingham’s rebuttal or to have any discussions with KCC PROW team which might have revealed the scheme’s obstruction with a PROW in the northern parcel are cases in point.

³³ With the Partridge Farm scheme in proximity as well as the pending Stonestreet Green scheme DCO, as well as other infrastructure such as the BESS.