

**Proof of Evidence of
Graham Rusling,
Head of Public Rights of Way and Access
Service, Kent County Council**

East Stour Solar

Planning Reference: 22/00668/AS

PINS Reference: APP/E2205/W/24/3352427

Introduction and Background

1. Introduction

- 1.1 My name is Graham Rusling and I am Head of Public Rights of Way (PROW) and Access Service with the Kent County Council.
- 1.2 I manage a team of PROW Officers who are responsible for the delivery of Kent County Council's statutory obligations in respect of PROW and Access including the maintenance and protection of the 6915Km of PROW network, the recording of PROW including the upkeep of the legal record of PROW the Definitive Map and Statement and the processing of legal Orders amending it.
- 1.3 I am a Director of the Institute of Public Rights of Way and Access Management and currently its President. I chair the South East Group of the Association of Directors of Environment Planning and Transportation Rights of Way Managers Group.
- 1.4 I have been employed as a PROW Officer by Kent County Council for over 33 years and have worked in this field for over 34 years. This experience has encompassed acting as a consultee for major development including large housing sites, road schemes, then Channel Tunnel Rail Link (High Speed 1) and Sevington Inland Border Facility. Having enjoyed long service I have seen substantial development through from inception to implementation. I have had direct involvement in, and managed, all aspects of the planning and development process including network design and construction standards, Public Path Orders, Temporary Traffic Regulation Orders, formal enforcement action in protecting PROW and the negotiation of developer contributions.
- 1.5 I am responsible for the delivery of significant programmes of capital expenditure and individual projects ranging from Central Government Active Travel initiatives, the implementation, with Natural England, of the King Charles the Third England Coast Path in Kent, the production and delivery of the Rights of Way Improvement Plan.
- 1.3 I am familiar with the site and routes due to the involvement of Kent County Council Public Rights of Way and Access Service as a consultee. I also have a long-standing

knowledge of the area as at an early stage of my career I was directly responsible for the Ashford area.

- 1.4 I confirm that the evidence set out in this proof is true to the best of my knowledge. The opinions expressed are my own and are formed from professional judgement based on my knowledge and good practice.

2. LEGISLATION

- 2.1 The Public Rights of Way network extends to 6915Km of recorded public rights, comprising

- a) Footpaths (public pedestrian rights)
- b) Bridleways (public pedestrian, equestrian and cycle rights)
- c) Restricted Byways (public pedestrian , equestrian and non-motorised vehicular rights)
- d) Byway Open To All Traffic (public pedestrian, equestrian and vehicular rights – including motor vehicles)

- 2.2 Kent County Council fulfils a number of functions in respect of Public Rights of Way. Specifically:

- a) Highway Authority

Public rights of way are public highways.

The County Council is under section 1 of the Highways Act 1980 the Highway Authority. Acting as the Highway Authority the County Council has a duty to maintain highways maintainable at the public expense (HA1980 sec 41). The overwhelming majority of public rights of way (99%+) are highways maintainable at the public expense. By virtue of section 263 of the Highways Act 1980 the surface of highways maintainable at the public expense is vested in the Highway Authority.

Section 130 of the Highways Act 1980 requires that the County Council assert and protect the right of the public to the use and enjoyment of the highway and act to secure the removal of any obstruction to it.

- b) Traffic Authority

The County Council is the Traffic Authority for Kent by virtue of section 121A of the Road Traffic Regulation Act 1984. This Act, at section 14, provides the County

Council with powers under which it may regulate the traffic on or temporarily close highways in some circumstances. Section 15 of the Act sets out the duration of orders and notices that may be made and requirements in respect of the extension of orders.

2.3 Access Authority

The County Council is the Access Authority for Kent.

Section 60 of the Countryside and Rights of Way Act 2000 placed Kent County Council as Access Authority under an obligation to produce a Rights of Way Improvement Plan within 5 years of commencement.

The Rights of Way Improvement Plan addresses :

- a) the extent to which local PROW meet present and future likely needs
- b) the opportunities provided by local PROW for exercise and other forms of open air recreation and the enjoyment of the authority's area.
- c) Accessibility of local PROW to the blind and partially sighted and those with mobility problems.

- 2.4 The Public Rights of Way and Access Service is delegated the responsibility to deliver these various responsibilities.

3. BACKGROUND

- 3.1 KCC PROW and Access Service have supplied two planning application responses to Ashford Borough Council in respect of the application for planning permission for the installation of a solar farm on land south of the M20, Church Lane, Aldington, in August 2022 and March 2024. In both responses we drew the applicant's attention to the following : The following Public Rights of Way are affected by the site: Public Footpaths AE437, AE432, AE457, AE459 all connecting to the wider PROW network in the area. Public Footpaths AE656 and AE657 are in close proximity. The PROW network at this location is also impacted by the proposed NSIP Stonestreet Solar Farm, as well as the proposed Otterpool Garden Village within Folkestone and Hythe, and therefore the connectivity of these routes must be seen through the cumulative impact on the area.

- 3.2 Our initial response of August 2022 placed a holding objection on the consultation as the following further detail was required or some detail was omitted:

Site access during construction and operation and management of PROW

Omission of detail regarding PROW long term within site during operation

Impact on Non-mechanical use of rural lanes during construction

No consideration of wider area visual impact or holistic connectivity between proposed developments and existing communities

Mitigation proposed in terms of planting new vegetation insufficient. KCC PROW and

Access consider the development will have a significant impact on the network and a loss of visual amenity for users of PROW

Our subsequent response of March 2024 stated that issues remained unresolved :

KCC PROW and Access Service concerns remain regarding the impact of this proposal on the PROW Network as some of the issues raised in our previous response have yet to be answered, together with the following comments below. This response should therefore be read together with our previous response.

The approach of dividing the consideration of the effects on PROW and their users across several chapters, makes it difficult for consultees to engage with the process and could lead to misunderstandings of the information provided. There remains an overall underestimation of the significance of the effect of the development and the impact on both the physical resource and the amenity value of the public rights of way as well as the mitigation proposed (new hedgerow planting) remaining insufficient. As previously stated, KCC PROW and Access would expect enhancements to the network in addition to mitigation, compensation, and management strategies that will ensure that the public; residents and visitors alike, retain the quantity and quality of access provision.

The reference to “local” PROW throughout the documents is inappropriate and diminishes the importance of the Network.

The following remain unclear and require clarification:

- *Site access during construction and operation and management of PROW*
- *Omission of sufficient detail regarding PROW long term within site during operation - note the widths proposed but no detail of surface*
- *Impact on Non-mechanical use of rural lanes during construction*
- *Mitigation proposed in terms of planting new vegetation is still insufficient. KCC PROW and Access consider the development will have a significant impact on the network and a loss of visual amenity for users of PROW*

4. Policy Base

4.1 The following policies are relevant to the consideration of this application.

a) NPPF : December 2024

105. Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.

b) National Policy Statement for Renewable Energy Infrastructure (EN-3) including:

2.10.42 Applicants are encouraged to design the layout and appearance of the site to ensure continued recreational use of public rights of way where possible during construction, and in particular during operation of the site.

2.10.43 Applicants are encouraged where possible to minimise the visual impacts of the development for those using existing public rights of way, considering the impacts this may have on any other visual amenities in the surrounding landscape.

2.10.44 Applicants should consider and maximise opportunities to facilitate enhancements to the public rights of way and the inclusion, through site layout and design of access, of new opportunities for the public to access and cross proposed solar development sites (whether via the adoption of new public rights of way or the creation of permissive paths)

2.10.45 Applicants should set out detail on how public rights of way would be managed to ensure they are safe to use in an outline Public Rights of Way Management Plan.

c) KCC Rights of Way Improvement Plan 2018-2028.

KCC strategic policy document setting out its goals and priorities for Public Rights of Way and Access.

d) Ashford Local Plan 2030 Policies

- I. Policy TRA5 - Planning for Pedestrians Development proposals shall demonstrate how safe and accessible pedestrian access and movement routes will be delivered and how they will connect to the wider movement network. Opportunities should be proactively taken to connect with and enhance Public Rights of Way whenever possible, encouraging journeys on foot.
- II. Policy TRA6 - Provision for Cycling Taking opportunities to consider active travel when designing new routes and establishing connections with existing routes, encouraging journeys by bicycle.
- III. Policy ENV5 – Protecting Important Rural Features All development in the rural areas of the Borough shall protect and, where possible, enhance the following features: a) Ancient woodland and semi-natural woodland; b) River corridors and tributaries; c) Rural lanes which have a landscape, nature conservation or historic importance; d) Public rights of way;

e) Aldington and Bonnington Neighbourhood Plan 2030

Policy AB10 – Renewable and Community Energy: Criterion (i) requires applicants to demonstrate that any harm to the local landscape and

environment will be minimised and, where necessary, mitigated. It states that LVIA's should be informed by ABC's relevant SPDs. Criterion (iii) requires existing rights of way to be retained and opportunities for enhancement sought.

5. DESCRIPTION OF THE ROUTES

- 5.1 An extract from the Definitive Map and Statement is attached, showing the legal status and alignment of the affected PROW (see Appendix 1). The Definitive and Statement provides conclusive evidence as to its contents.
- 5.2 AE432 runs from Church Lane in the west 154m approx. to the junction with AE434, continues Northeast towards and along south side of M20 for 1285m approx. to junction with AE437. It is a cross field path with open arable field views of Park Wood to Northwest and further woodland to the southeast.
- 5.3 AE437 runs from the junction with AE435 Northwest, adjacent to site, then into the development, clipping the corner of a solar parcel, 680m approx., then East to Church Lane, 292m approx., within the redline boundary of the site. It is an open field route, adjacent to woodland and ponds.
- 5.4 AE457 runs for 1265m approx., from Church Lane, North and then Northwest to the junction with AE657. A cross field route, running along the edge of Backhouse Wood.
- 5.5 AE459 runs from Church Lane North/northeast entering the site at Partridge Plantation through the middle of proposed solar panels, crossing over bridge continuing to Partridge Farm, Northeast of Round Wood. Approx 924m, then continues NE offsite. Cross field route with open views and views of Round Wood to Southeast.

6. POTENTIAL IMPACT OF PLANNING APPLICATION

- 6.1 If the appeal is consented, this will have a major impact on the Public Rights of Way Network both those routes directly affected and also those in the surrounding area.
- 6.2 The impact would be felt during construction, operation and decommissioning phases, which together amount to a considerable timespan: 40 years operational, 6 months at least of construction and de-commissioning, respectively.
- 6.3 Construction : potential conflict on the proposed delivery route, between vehicles and non-motorised users (NMUs) as the rural lane network of the area is used by walkers and cyclists connecting across the PROW network. PROW routes within site will be adversely affected by temporary closures, no detail has been provided regarding management during construction (see conditions). Loss of amenity of use during construction due to noise, visual impact, closures. PROW routes adjacent to the site would be impacted by the same as the PROW within site connect to the surrounding network.
- 6.4 The operational phase, proposed as a forty year period, would significantly impact the PROW user amenity and user experience, including through the development detracting from the rural character and existing views, impacting on the natural tranquillity and ambience of the site and surroundings and through creation of user stress through route uncertainty and safety concerns. We understand that the routes will not be permanently diverted during the life of the solar farm but will remain on existing alignment. This will mean that the routes run between land parcels of solar equipment, or in the case of AE457 will have Backhouse Wood on one side, and the solar panels on the other, removing all sense of open space and views.

- 6.5 The decommissioning phase will have a similar impact as construction, see 6.3.
- 6.6 The sole mitigation proposed is in terms of hedgerow planting or screening, neither of which are extensive enough nor immediate. Hedgerows can take up to year 15 to reach maturity and screening can have the reverse effect to that intended by screening the views from the user as well as screening the solar farm. The applicant has not acknowledged that this project provides an opportunity to improve the PROW network through partnership working or funding for offsite works. The public benefits of such work would help to compensate for any disruption caused by the construction of the solar park and negative effects on the PROW network, which result from the delivery of the solar park.
- 6.7 In conclusion the mitigation as proposed is insufficient to outweigh the harm caused. The proposed Solar Farm will alter the character of the area and would have a significant impact on the PROW network, causing disruption to path users during the construction period, affecting the experience of path users during the operational phase and during decommissioning. The application fails to meet the requirements of NPPF paragraph 105, National Policy Statement for Renewable Energy Infrastructure (EN-3) paragraphs 2.10.42 – 2.10.45 inclusive, Ashford Local Plan policies TRA5, TRA6 and ENV5 and Aldington and Bonnington Neighbourhood Plan policy AB10.

**APPENDIX 1: EXTRACT OF THE DEFINITIVE MAP OF PUBLIC RIGHTS OF WAY
FOR THE COUNTY OF KENT**

