

**Proof of Evidence  
Heritage (CD10.4)**

**By**

**Rob Bourn**

**Appeal under Section 78 of  
Town and Country Planning Act 1990  
By EDF Energy Renewables Limited**

**Land south of the M20, Church Lane,  
Aldington, Kent  
(known as East Stour Solar Farm)**

**Appeal Ref: APP/E2205/W/24/3352427**

**Application Ref: 22/00668/AS**

**January 2025**

**Report**

Proof of Evidence – Heritage

**Site**

Land south of the M20, Church Lane, Aldington, Kent (known as East Stour Solar Farm)

**Client**

EDF Energy Renewables Limited

**Planning Authority**

Ashford Borough Council

**Prepared By**

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**Report Status**

Final

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## 1.0 Introduction

- 1.1** My name is Robert Bourn and I am Managing Director at Orion Heritage Ltd. Orion Heritage is an independent heritage consultancy based in Brighton and Manchester. The company acts for a wide range of private and public sector organisations across the UK and advises on all aspects of the historic environment related planning policy and practice. Prior to setting up Orion in June 2015, I was a Director of the archaeology team at CgMs Ltd for 15 years. Prior to joining CgMs, I was the Planning Archaeologist for Berkshire County Council and its successor Unitary Authorities for 5 years (1995-2000).
- 1.2** I hold a BA (Hons) in Archaeology & Prehistory (Sheffield University), an MA in Environmental Planning (Nottingham University) & postgraduate diploma in archaeological practices (Oxford University). I am a Member of the Chartered Institute for Archaeologists (CIfA), the professional institute for archaeologists and other cultural heritage professionals. I have 35 years' experience as a professional archaeologist & heritage consultant, 29 of which have been in a planning and development context acting for both the public and private sectors. During this period, I have personally dealt with major developments affecting the historic environment and setting issues throughout the UK, including numerous housing schemes of all sizes at both outline and reserved matters stages. I have also appeared as a historic environment expert witness for housing and renewable energy related public inquiries.
- 1.3** This proof of evidence has been prepared on behalf of the appellant, EDF Energy Renewables Limited, in relation to an appeal for the refusal of planning permission for the installation of a solar farm with a generating capacity of up to 49.9MW comprising: ground mounted solar panels, access tracks, inverter/transformers, substation, storage, spare parts and welfare cabins, underground cables and conduits, perimeter fence,

CCTV equipment, temporary construction compounds and associated infrastructure and planting scheme (the “Proposed Development”). The Proposed Development is to be known as East Stour Solar Farm.

**1.4** I have been involved with the appealed scheme since 2021. I have been working closely with the appellant and my colleague, Sylvia Lock, who has been undertaking the day to day matters of the project throughout the time that Orion Heritage has been involved in the project. The following reports have been produced and submitted in support of the planning application:

- Historic Environment Desk-Based Assessment (February 2022) (CD1.8.3). This report was written by my colleagues, Sylvia Lock and Helen Macquarrie.
- Geophysical Survey Report: Selindge Solar Farm, Kent (November 2021) produced by Magnitude Surveys (CD1.8.3).
- Environmental Statement Chapter 12 Archaeology and Cultural Heritage (CD1.8.2)
- Supplementary Environmental Information (CD1.14)
- Archaeological evaluation May 2023 (CD1.14.3). This was undertaken by PCA in accordance with a Written Scheme of Investigation (WSI) approved by Kent County Council on behalf of Ashford Borough Council.

### **Scope of Proof**

**1.5** This proof of evidence outlines and addresses the built heritage aspects of reason for refusal 1. The designated heritage assets potentially affected are Church of St Martin (grade I NHLE 1071208), Court Lodge Farmhouse (grade II\* NHLE 1071209).

- 1.6 Reason for refusal 2 relating to the potential impacts on non-designated archaeological remains has been resolved and will not be addressed in my proof.
- 1.7 My evidence is distinct from, but informed where relevant, by landscape and visual matters, which are dealt with separately by Mr John Ingham (CD10.2). The consideration of the planning balance (in the context of NPPF 215 and generally) of the proposed development will be dealt with by Mr Steven Longstaff (CD10.6).
- 1.8 The evidence which I have prepared and provide for this appeal in this proof is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

## 2.0 Legislative & Policy Framework

- 2.1 Where development may have a direct or indirect effect on designated and non-designated heritage assets, there is a legislative and policy framework to ensure the proposals are considered with due regard for their impact on archaeological remains.

### National Planning Policy Framework (NPPF)

- 2.2 Government policy in relation to the historic environment is outlined in Section 16 of the National Planning Policy Framework (NPPF) (CD3.4), entitled 'Conserving and Enhancing the Historic Environment' (December 2024).
- 2.3 Paragraph 207 states that planning decisions should be based on the significance of the heritage asset, including any contribution made by their setting. The level of detail supplied by an applicant should be proportionate to the importance of the asset and should be no more than sufficient to understand the potential impact of the proposal upon the significance of that asset.
- 2.4 Paragraph 212 outlines that when considering the potential impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation and that the more important the asset, the greater the weight should be. This is irrespective as to whether the harm to the significance of the asset is substantial or less than substantial. This reflects a number of decided cases. Case law has also established that the decision maker can give lesser weight, such as moderate weight, to the harm to designated assets.
- 2.5 Where the harm to a designated heritage asset's significance is less than substantial, Paragraph 215 states:

*“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”*

### Planning Practice Guidance (PPG)

- 2.6** The NPPF is supported by the PPG (July 2019) (CD3.5). In relation to the setting of designated & non-designated heritage assets, paragraph 002 (002 Reference ID: 18a-002-20190723) states that:

*“Where changes are proposed, the National Planning Policy Framework sets out a clear framework for both plan-making and decision-making in respect of applications for planning permission and listed building consent to ensure that heritage assets are conserved, and where appropriate enhanced, in a manner that is consistent with their significance and thereby achieving sustainable development. Heritage assets are either designated heritage assets or non-designated heritage assets.”*

#### *Setting*

- 2.7** Paragraph 18a-013 (Paragraph: 013 Reference ID: 18a-013-20190723) outlines that although the extent and importance of setting is often expressed in visual terms, it can also be influenced by other factors such as noise, dust and vibration. Historic relationships between places can also be an important factor stressing ties between places that may have limited or no intervisibility with each other. This may be historic as well as aesthetic connections that contribute or enhance the significance of one or more of the heritage assets.

- 2.8** Paragraph 18a-013 concludes:

*“The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to*



*access or experience that setting. This will vary over time and according to circumstance.*

*When assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset's significance may also damage its economic viability now, or in the future, thereby threatening its on-going conservation."*

### *Substantial Harm*

- 2.9** A key aspect of NPPF paragraphs 212-215 is whether a proposed development will result in substantial harm or less than substantial harm to a designated asset. However, substantial harm is not defined in the NPPF. Paragraph 18a-017 (Paragraph: 017 Reference ID: 18a-017-20190723) of the PPG provides additional guidance on substantial harm. The following quote refers to listed buildings but the same principles applies to archaeological designated heritage assets. It states:

*Proposed development affecting a heritage asset may have no impact on its significance or may enhance its significance and therefore cause no harm to the heritage asset. Where potential harm to designated heritage assets is identified, it needs to be categorised as either less than substantial harm or substantial harm (which includes total loss) in order to identify which policies in the National Planning Policy Framework (paragraphs 194-196) apply.*

*Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.*

*Whether a proposal causes substantial harm will be a judgment for the decision-maker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms,*

*substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, **an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed.** The harm may arise from works to the asset or from development within its setting.* (emphasis added).

#### *Less Than Substantial Harm*

- 2.10** Paragraph 215 of the NPPF outlines that where a proposed development results in less than substantial harm to the significance of a heritage asset, the harm arising should be weighed against the public benefits accruing from the proposed development. Paragraph 18a-020 of the PPG (Paragraph: 019 Reference ID: 18a-019-20190723) outlines what is meant by public benefits:

*“Public benefits may follow from many developments and **could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8).** Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, **benefits do not always have to be visible or accessible to the public in order to be genuine public benefits**, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.”* (emphasis added)

#### *No/Negligible Harm*

- 2.11** No harm occurs where a proposed development will have no direct physical effects on heritage assets and/or where a proposed

development is outside of the setting of a designated heritage asset. In such instances, there will be no adverse effects on the significance of designated heritage assets.

- 2.12** Where a proposed development is located within the setting of a designated heritage asset, it potentially can reduce the contribution that the setting makes to the significance of a designated heritage asset(s). However, change (for example visual change) within an asset's setting is not necessarily in itself an impact on the significance of a designated heritage asset. An adverse impact will only occur if the change from a proposed development affects the contribution made by setting to overall significance of an asset. Development within the setting of a designated heritage asset can be a perceivable/appreciable change but one that does not affect the contribution that the setting makes to the significance of the asset or assets. In such a scenario, this effect can be described as having a negligible effect, which in NPPF terms is an effect below less than substantial harm.

### **Local Planning Policy**

- 2.13** The Ashford Borough Council Local Plan 2030, adopted in 2019 (CD3.1) contains the following relevant policies relevant to this assessment:

#### *Policy ENV13 – Conservation and Enhancement of Heritage Assets*

*Proposals which preserve or enhance the heritage assets of the Borough, sustaining and enhancing their significance and the contribution they make to local character and distinctiveness, will be supported. Proposals that make sensitive use of heritage assets through regeneration, particularly where these bring redundant or under-used buildings and areas into appropriate and viable use consistent with their conservation, will be encouraged.*

*Development will not be permitted where it will cause loss or substantial harm to the significance of heritage assets or their settings unless it can be demonstrated that substantial public benefits will be delivered that outweigh the harm or loss.*

*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, or where a non-designated heritage asset is likely to be impacted, harm will be weighed against the public benefits of the proposal, including securing the optimum viable use of the heritage asset.*

*All applications with potential to affect a heritage asset or its setting should be supported by a description of the asset's historic, architectural or archaeological significance with an appropriate level of detail relating to the asset and the likely impact of the proposals on its significance.*

#### *Policy ENV14 – Conservation Areas*

*Development or redevelopment within Conservation Areas will be permitted provided such proposals preserve or enhance the character and appearance of the Area and its setting.*

*Proposals should fulfil each of the following:*

- a) The scale and detailed design of all new development and alterations should respect the historical and architectural character, proportion and massing, including roofscapes, of the area, the relationship between buildings, the spaces between them and with their setting;*
- b) The materials proposed should be appropriate to the locality and complement those of the existing buildings;*
- c) Buildings and streets of townscape character, trees, open spaces, walls, fences or any other features should be retained where they contribute positively to the character and appearance of the area;*
- d) The development should not generate levels of traffic, parking or other environmental problems which would result in substantial harm to the character, appearance or significance of the area;*
- e) The use should be appropriate to and compatible with the character, appearance and historic function of the area; and,*
- f) The development would not prejudice important views into or out of the conservation area.*

## Neighbourhood Planning Policy

- 2.14 The Aldington & Bonnington Neighbourhood Plan 2022–2030 (CD3.3) contains the following relevant policy:

### *POLICY AB11: CONSERVING HERITAGE ASSETS*

- A. The following buildings and structures as shown in Figure 18 (and detailed in Appendix D) are identified as non-designated heritage assets:*
- 1. The Post Office stores*
  - 2. Aldington primary school*
  - 3. The Reynolds Playing Field gate*
  - 4. The War Memorial*
  - 5. The Millennium Stone*
  - 6. The Mission Hall*
  - 7. Kentish ragstone walling*
  - 8. Coopers Cottage*
- B. Development proposals affecting designated heritage assets (Figure 17) either directly or indirectly, should preserve or enhance the significance of the asset, including those elements of the setting that do not contribute to the significance. This could include, where appropriate, the delivery of development that will make a positive contribution to, or better reveal the significance of, the heritage asset, or reflect and enhance local character and distinctiveness with particular regard given to the prevailing styles of design and use of materials in the local area. Proposals affecting non-designated heritage assets will be assessed having regard to the scale of any harm or loss against the significance of the heritage asset.*
- C. Development proposals should demonstrate that they have taken into account the potential impact on above and below-ground*

*archaeological deposits to ensure that evidence that could contribute to the understanding of human activity and past environments is not lost. Where a scheme has a potential impact on archaeological remains (below or above ground) a Heritage Statement or similar should be prepared in support of planning applications.*

- D. A proactive stance will be taken to any heritage assets that may be at risk. This will include working with property owners to find a use that will enable them to be put back into optimum viable use.*
- E. Particular care should be taken in the Conservation Areas to ensure that alterations and new buildings contribute to the enhancement of the historic environment, in accordance with the guidance set out in the Conservation Area Appraisals and consistent with their conservation.*

**2.15** It is noted that this policy is not consistent with NPPF due to the absence of the consideration of the public benefit balance where heritage harm is identified. However, per paragraph 87 of *City & Country Bramshill Ltd v Secretary of State for Housing Local Government and Communities, Hart District Council, Historic England & The National Trust for Places of Historic Interest or Natural Beauty [2021] EWCA Civ 320 (CD 6.14)*, the absence of reference to the planning balance between harm and public benefit in AB11, does not mean that such balance should not still be applied. Once the outcome of that balance is determined, in line with the NPPF, if it is against the proposal, the policies may still be given weight. Conversely, if that balance is in favour of the development (as is argued by the Appellant here) the judgement on policy weight is to be made in the knowledge that the policy and the Framework have led to different outcomes, underscoring the lack of consistency of the local policy with the Framework. This would clearly indicate reduced weight

to the local policy in the decision-making process. That is the Appellant's position in this appeal.

- 2.16** The first sentence of Paragraph B of the policy also incorrectly applies the Setting of Heritage Assets guidance (CD5.2). The sentence outlines that development proposals should preserve or enhance the significance of designated assets '*including those elements of the setting that do not contribute to the significance*'. By definition, if there are elements of an asset's setting that do not contribute to the significance of that asset, change within that aspect of the setting will have no effect on the significance of the asset and there will be no harm to that asset by development in that element of the setting. The need to preserve or enhance of aspects of the setting that do not contribute to significance would have no effect on the significance.

Historic Environment Good Practice Advice in Planning Note 2, Managing Significance in Decision-Taking in the Historic Environment (Historic England 2015) (CD5.1)

- 2.17** The purpose of this document is to provide information to assist local authorities, planning and other consultants, owners, applicants and other interested parties in implementing historic environment policy in the NPPF and NPPG. It outlines a six-stage process to the assembly and analysis of relevant information relating to heritage assets potentially affected by a proposed development.
1. Understand the significance of the affected assets;
  2. Understand the impact of the proposal on that significance;
  3. Avoid, minimise and mitigate impact in a way that meets the objectives of the NPPF;
  4. Look for opportunities to better reveal or enhance significance;

5. Justify any harmful impacts in terms of the sustainable development objective of conserving significance and the need for change; and
6. Offset negative impacts on aspects of significance by enhancing others through recording, disseminating and archiving archaeological and historical interest of the important elements of the heritage assets affected.

Historic England (HE) Good Practice Advice in Planning Note 3 (GPA 3) 'The Setting of Heritage Assets' 2017 (Second Edition) (CD5.2)

**2.18** *Historic England's Historic Environment Good Practice Advice in Planning Note 3* (Second Edition) provides guidance on the management of change within the setting of heritage assets.

**2.19** The document restates the definition of setting as outlined in Annex 2 of the NPPF. Setting is also described as being a separate term to curtilage, character and context; while it is largely a visual term, setting, and thus the way in which an asset is experienced, can also be affected by noise, vibration, odour and other factors. The document makes it clear that setting is not a heritage asset, nor is it a heritage designation, though land within a setting may itself be separately designated. Its importance lies in what the setting contributes to the significance of a heritage asset.

**2.20** The Good Practice Advice Note sets out a five-stage process for assessing the implications of proposed developments on setting:

1. Identification of heritage assets which are likely to be affected by proposals;
2. Assessment of whether and what contribution the setting makes to the significance of a heritage asset;



3. Assessing the effects of proposed development on the significance of a heritage asset;
4. Maximising enhancement and reduction of harm on the setting of heritage assets; and
5. Making and documenting the decision and monitoring outcomes.

**2.21** The guidance reiterates the NPPF in stating that where development affecting the setting of heritage assets results in a level of harm to significance, this harm, whether substantial or less than substantial, should be weighed against the public benefits of the scheme.

### Relevant Case Law

*Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council* [2014] EWCA Civ 137 (CD 6.7)

**2.22** The key outcome of the ruling in relation to this appeal is that Section 66 of the 1990 Act requires the decision maker to give considerable importance and weight to the desirability of preserving the setting of designated heritage assets when balancing harm against benefit as required by paragraphs 133 and 134 of the 2012 NPPF, which have the same wording as paragraph 213-215 of the 2024 NPPF. Harm arising from a development is based on the effect it has on the contribution that setting makes to the significance of a heritage asset. The Court of Appeal ruling stresses that it is the weight that is accorded to the harm that is the important element in the test for the decision maker. This in turn leads to the appropriate weighting of the harm arising from a development against the public benefits accrued from the development.

**2.23** The second key point from the *Barnwell Manor* ruling is the importance of adequate articulation of how the assessment of harm has been arrived

at. The assessment of the level of harm has to be based on the contribution that the setting of an asset makes to its significance and how a proposed development affects this. This should not be on such narrow grounds as whether a reasonable observer would always be able to understand the development was a modern addition to the landscape. The process required here is the 5-staged approach to the assessment of the setting of a heritage asset as outlined in Historic England's Historic Environment Good Practice Advice in Planning Note 3 The Setting of Heritage Assets (2017) (CD5.2) as outlined in paragraph 2.20 above.

*Bedford Borough Council v Secretary of State for Communities and Local Government & Nuon UK Ltd ([2013] EWHC 2847 (Admin))* (CD 6.1)

**2.24** This case addressed the issue of what constitutes substantial harm in cases where there are impacts arising on the setting of an assets instead of physical direct effects. Paragraph 24- 26 stated:

*24. ...What the Inspector was saying was that for harm to be substantial, the impact on significance was required to be serious such that **very much, if not all, of the significance was drained away.***

*25. Plainly in the context of physical harm, this would apply in the case of the demolition or destruction, being a case of total loss. It would also apply to a case of serious damage to the structure of the building. In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that **its significance was either vitiated altogether or very much reduced.***

*Jones and Mordue and Secretary of State for Communities and Local Government v South Northamptonshire Council [2015] EWCA 539 (Admin)* (CD 6.6)

- 2.25 The relevant aspect of the case is that paragraph 132-134 of the NPPF (213-215 of the 2024 NPPF) lays down an approach that corresponds with the duty of section 66 of the 1990 Planning Act. That is, if a decision maker has worked through the tests in the NPPF, they will have accorded with S66 of the 1990 Act. Paragraphs 132-134 of the 2012 NPPF have the same wording as paragraphs 213-215 of the 2024 NPPF.

*Catesby Estates Ltd v Peter Steer [2019] 1 P&CR 5, McFarlane, Lindblom, Asplin LJJ [2015] EWCA Civ 1243* (CD 6.5)

- 2.26 The key aspect about this case is the issue of historical associations and other non-visual connections, the identification of the setting, whether there is harm to the significance of an asset and the need for the decision maker to apply “considerable importance and weight” to the conservation of the significance of the set.

26. *[It is not the case] that factors other than the visual and physical must be ignored when a decision-maker is considering the extent of a listed building's setting. Generally, of course, the decision-maker will be concentrating on visual and physical considerations, as in Williams (see also, for example, the first instance judgment in R. (on the application of Miller) v North Yorkshire County Council [2009] EWHC 2172 (Admin), at paragraph 89). But it is clear from the relevant national policy and guidance to which I have referred, in particular the guidance in paragraph 18a-013-20140306 of the PPG, that the Government recognises the potential relevance of other considerations – economic, social and historical. These other considerations may include, for example, “the historic relationship*

*between places". Historic England's advice in GPA3 was broadly to the same effect.*

*27. It has also been accepted in this court that the effect of development on the setting of a listed building is not necessarily confined to visual or physical impact. As Lewison L.J. said in **R. (on the application of Palmer) v Herefordshire Council** [2016] EWCA Civ 1061 (in paragraph 5 of his judgment), "[although] the most obvious way in which the setting of a listed building might be harmed is by encroachment or visual intrusion, it is common ground that, in principle, the setting of a listed building may be harmed by noise or smell". In that case the potential harm to the setting of the listed building was by noise and odour from four poultry broiler units.*

*28. Three general points emerge. First, the section 66(1) duty, where it relates to the effect of a proposed development on the setting of a listed building, makes it necessary for the decision-maker to understand what that setting is – even if its extent is difficult or impossible to delineate exactly – and whether the site of the proposed development will be within it or in some way related to it. Otherwise, the decision-maker may find it hard to assess whether and how the proposed development "affects" the setting of the listed building, and to perform the statutory obligation to "have special regard to the desirability of preserving ... its setting ...".*

*29. Secondly, though this is never a purely subjective exercise, none of the relevant policy, guidance and advice prescribes for all cases a single approach to identifying the extent of a listed building's setting. Nor could it. In every case where that has to be done, the decision-maker must apply planning judgment to the particular facts and circumstances, having regard to relevant policy, guidance and*

*advice. The facts and circumstances will differ from one case to the next. It may be that the site of the proposed development, though physically close to a listed building, has no real relationship with it and falls outside its setting, while another site, much further away, nevertheless has an important relationship with the listed building and is within its setting (see the discussion in sections 14.3, 15.2 and 15.8 of Mynors and Hewitson's "Listed Buildings and Other Heritage Assets", fifth edition). Under current national planning policy and guidance in England, in the NPPF and the PPG, the decision-maker has to concentrate on the "surroundings in which [the heritage] asset is experienced", keeping in mind that those "surroundings" may change over time, and also that the way in which a heritage asset can be "experienced" is not limited only to the sense of sight. The "surroundings" of the heritage asset are its physical surroundings, and the relevant "experience", whatever it is, will be of the heritage asset itself in that physical place.*

*30. Thirdly, the effect of a particular development on the setting of a listed building – where, when and how that effect is likely to be perceived, whether or not it will preserve the setting of the listed building, whether, under government policy in the NPPF, it will harm the "significance" of the listed building as a heritage asset, and how it bears on the planning balance – are all matters for the planning decision-maker, subject, of course, to the principle emphasized by this court in **East Northamptonshire District Council v Secretary of State for Communities and Local Government** [2015] 1 W.L.R. 45 (at paragraphs 26 to 29), **Jones v Mordue** [2016] 1 W.L.R. 2682 (at paragraphs 21 to 23), and **Palmer** (at paragraph 5), that "considerable importance and weight" must be given to the desirability of preserving the setting of a heritage asset. Unless there has been some clear error of law in the decision-maker's approach, the court*

*should not intervene (see **Williams**, at paragraph 72). For decisions on planning appeals, this kind of case is a good test of the principle stated by Lord Carnwath in **Hopkins Homes Ltd. v Secretary of State for Communities and Local Government** [2017] 1 W.L.R. 1865 (at paragraph 25) – that “the courts should respect the expertise of the specialist planning inspectors and start at least from the presumption that they will have understood the policy framework correctly”.*

***R (James Hall and Company Ltd) v City of Bradford MDC*** [2019] EWHC 2899 (Admin), HHJ Belcher (CD6.3)

**2.27** This case addressed the three categories of heritage harm (i.e. no harm, less than substantial harm and substantial harm). Paragraph 34 states:

*“In my judgment the three categories of harm recognised in the NPPF are clear. There is substantial harm, less than substantial harm and no harm. There are no other grades or categories of harm, and it is inevitable that each of the categories of substantial harm, and less than substantial harm will cover a broad range of harm. It will be a matter of planning judgement as to the point at which a particular degree of harm moves from substantial to less than substantial, but **it is equally the case that there will be a number of types of harm that will fall into less than substantial, including harm which might otherwise be described as very much less than substantial**. There is no intermediate bracket at the bottom end of the less than substantial category of harm for something which is limited, or even negligible, but nevertheless has a harmful impact. **The fact that the harm may be limited or negligible will plainly go to the weight to be given to it as recognised in Paragraph 193 NPPF**. However, in my judgment, minimal harm must fall to be considered within the category of less than substantial harm.”*(emphasis added)

**2.28** This case is important. Whilst considerable importance and weight (or great weight) should be afforded to the principle of preserving or enhancing the significance of designated heritage assets, given the relevant statutory tests (*supra*), it is the actual impact to the relevant heritage asset which needs to be weighed in the balance, taking into account the statutory tests. Not all impacts to all heritage assets are the same. All things being equal: the same impact to a Grade I listed building will be afforded greater weight than to a Grade II listed building. Similarly, a lesser impact to a heritage asset (impact to the wider rural setting) will be given less weight than a greater impact (total demolition) to the same heritage asset.

**2.29** It follows that there is a scale of impact. The calibration of impact (or harm) must be capable of allowing for the full range of such impacts. The NPPG requires the assessor to identify where on the less than substantial harm bracket (in this case) the harm lies. In this case, the harm to the designated heritage assets affected by the proposed development lies to the lower end of less than substantial harm.

### **Summary of the Key Points in Relation to Setting**

- 2.30** Government policy aims to preserve the significance of heritage assets.
- All heritage assets have a setting, and that setting may contribute to the significance of the asset.
  - Change in the setting of a heritage asset may (or may not) affect that contribution.
  - Change (for example visual change) is not in itself an impact on the significance of a heritage asset. An impact will only occur if the change affects the contribution made by setting to the significance of the heritage asset.

- It is the scale of the impact to the significance of the asset which is important, not the scale of the change.
- The correct basis for an assessment is therefore an analysis of the significance of the heritage asset, including the contribution made by setting and the impact caused to that significance.
- In cases where only setting is affected, only the portion of significance derived from setting can be affected.
- It cannot be assumed that visual change constitutes an adverse impact or that more visual change will be a greater impact. So, proximity to and intervisibility are not useful criteria on their own for the assessment of impact magnitude. What must be understood is how this visual change affects the contribution to significance made by setting before a conclusion can be reached about the magnitude of any impact.
- It cannot be assumed that a more important asset (typically a high-grade designated asset) will experience a greater magnitude of impact. What matters is the extent to which its significance derives from setting and this is unrelated to the importance of the asset. In most cases, the majority of significance ascribed to a heritage asset lies in its form and fabric and this will be unaffected by change in the setting.
- Harm in all cases, means 'harm to the significance of a heritage asset'. Where the setting of a heritage asset contributes to its significance, change in that setting may harm the significance of the heritage asset. Policy and law does not recognise separate concepts such as 'harm to the setting' or 'harm to the significance of a setting'.
- For the purposes of paragraphs 213 and 214 of the NPPF, "substantial harm" means an impact which would have such a serious impact on the significance of the asset that its significance was either removed or very much reduced. Paragraph 26 of *Bedford Borough Council v Secretary of State for Communities and Local Government &*



*Nuon UK Ltd* ([2013] EWHC 2847 (Admin) (CD6.1) is of relevance in this respect:

*“In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.”* (emphasis added)

- Where there is harm on a designated heritage asset’s significance from a proposed development, the decision maker should put great weight on the asset’s conservation (the more important the asset, the greater that weight should be). This is irrespective of whether potential harm amounts to substantial harm total loss or less than substantial harm to its significance.
- Where a planning authority finds that a proposed development will cause harm to the setting of a designated heritage asset, it must give considerable importance and weight to that harm in any subsequent balance against public benefits.
- However, the degree of harm is relevant to the balance of harms against benefits; *R (James Hall and Company Ltd) v City of Bradford MDC* [2019] EWHC 2899 (Admin) (CD6.3). That is, there is a range of harm within the less than substantial harm range. The level of harm within this range goes to the weight that is given to that harm in the NPPF paragraph 215 balance against public benefits.

### 3.0 Statutory Consultee Responses, Committee Report and Reasons for Refusal in Relation to Heritage Matters

#### Historic England Consultation Responses

- 3.1** Historic England provided their comments on the planning application in a letter to Ashford Borough Council dated 5<sup>th</sup> September 2022 (CD2.1.9). This letter identified that the Church of St Martin, Court Lodge Farm and Barrowhill Barrow Cemetery scheduled monument could potentially be affected by the Proposed Development. Historic England considered that additional visual information was required in order to assess the potential effect of the proposed scheme. They requested an additional view to be taken in the area of Viewpoint 8 and Viewpoint 7 and additional visualisations from Barrowhills.
- 3.2** This additional material was produced subsequent to receipt of Historic England's letter and submitted as part of the SEI in January 2024 (CD1.14).
- 3.3** Following receipt of the SEI, Historic England provided a second consultation response dated 11<sup>th</sup> March 2024 (CD2.2.5). In summary, this concluded that they considered that there would be less than substantial harm to the Church of St Martin and Court Lodge Farmhouse but considered that there was not enough information to advise on the level of less than substantial harm. This was because Historic England considered that a verified rendered view for Viewpoint 8 had not been provided. However, this is not correct and will be addressed in paras 4.26-4.31 below. Historic England appears to have not fully understood the additional visualisations provided. A verified rendered view was indeed provided for Viewpoint 8. Historic England also requested an additional viewpoint be provided to the north east of viewpoint 8. This was provided in the SEI.

- 3.4** Historic England confirmed that following provision of the additional verified rendered views from Barrowhill scheduled monument, there would be ‘very little’ impact on the significance of the scheduled monument.

#### **Ashford Borough Council’s Officer Report (CD1.19)**

- 3.5** The Officer’s report set out the legislative and policy in relation to setting and the impacts on the significance of designated assets from development within the setting of such assets and summarises the conclusions of the ES and its supporting technical appendices and Historic England’s position.
- 3.6** Paragraph 131 had an implicit criticism of the historic environment desk based assessment that Orion Heritage undertook (CD1.8.3), stating that as it was desk-based, the evidence presented was limited in relation to the extent of the understanding of the Church of St Martin and Court Lodge Farmhouse and the historic landscape. This implication that Orion Heritage’s assessment was only desk-based is incorrect. The assessment was informed by detailed and robust research and multiple site visits. It was not just a desk based exercise. The use of the term ‘desk-based assessment’ comes from the Chartered Institute for Archaeologists (“CIfA”) Standards and Guidance for Historic Environment Desk Based Assessments (2020) (CD5.4) which is the accepted standard for assessments such as Orion Heritage undertook for the Proposed Development.
- 3.7** Paragraph 131 also criticised the report by stating that there was little assessment of the historic landscape and setting. This is also incorrect. A detailed and robust assessment of this was undertaken and presented in paragraphs 5.8 – 5.17 of the report submitted with the planning application. It should be noted that Historic England did not criticise

Orion Heritage's assessment of the significance and setting of the assets in question. Their concerns related to the verified rendered views, not the methodology of the assessment and understanding of the significance of the designated assets and how their setting contributes to their significance.

**3.8** Paragraph 136 of the Officer's report agreed with Historic England's conclusion that there would be less than substantial harm to the Church of St Martin and Court Lodge Farmhouse. This is also in accordance with Orion Heritage's assessment of the effect on the significance of the two assets. The Officer stated that they did not agree with Orion Heritage's assessment that the harm would be at the lowest of the less than substantial harm range. The Officer considered the harm to be at the higher end of the less than substantial harmful range. While the Officer is entitled to come to their own conclusions on this matter, their conclusion that the harm is at the higher end of the spectrum is not based on any advice that they have been provided by Historic England, or indeed any other statutory consultee. It is therefore unclear as to how the Officer reached this view in the absence of any evidence from heritage experts as to this level of harm arising as a result of the Proposed Development. It should be noted in respect to the Officer's Report conclusion on this matter, that the Case Officer is a planner not a qualified and experienced heritage expert.

**3.9** As outlined above Section 2, substantial harm is a very high test and is the point at which the special interest of the asset in question has been either vitiated altogether or very much reduced. Consequently, an effect at the higher end of the less than substantial harm range is one that would be close to an effect that would either vitiate altogether or very much reduce the significance of the assets. As outlined in the Orion

Heritage assessment, the effect of the Proposed Development is far away from such a drastic effect on the significance.

- 3.10** In relation the NPPF paragraph 215, the Officer's Report concludes that the public benefit would not outweigh the harm to the significance of to 'various designated heritage assets of exceptional interest'. This is a matter of planning judgment for Mr Steven Longstaff.

### **Ashford Borough Council Reasons for Refusal**

- 3.11** The planning application was refused permission on 29<sup>th</sup> April 2024 (CD1.20). Reason for refusal no 1 states:

*"The proposed development would result in significant adverse individual and cumulative effects on landscape character and on visual amenity that cannot be appropriately mitigated. The development would also harm the amenity and experience of users of the public rights of way network and would cause less than substantial harm to the setting of designated heritage assets. The benefits of the proposed development would not outweigh these harms. The development would therefore be contrary to policies SP1, SP6, ENV1, ENV3a, ENV5, ENV10 and ENV13 of the Ashford Local Plan, policies AB4, AB10 and AB11 of the emerging Aldington and Bonnington Neighbourhood Plan 2030 and the provisions of the National Planning Policy Framework and National Policy Statements EN-1 and EN- 3."*

- 3.12** Reason for refusal 2 which related to archaeological matters has been resolved in the lead up to the exchange of proofs and is no longer a contested issue in this appeal.

## 4.0 Assessment of Significance and Impact on Designated a Heritage Assets

### Introduction

- 4.1** The approach to assessing the effect on the settings of heritage assets adopted in my proof of evidence follows the approach that is set out in Historic England's *Historic Environment Good Practice Advice in Planning Note 3* (CD5.2). The 5 staged approach is as follows:
1. Identification of heritage assets which are likely to be affected by proposals;
  2. Assessment of degree to which the setting of these assets makes to the significance of the heritage assets or allow the significance to be appreciated;
  3. Assess the effects of the proposed development, whether beneficial or harmful on the significance of a heritage asset or on the ability to appreciate it;
  4. Explore ways to maximise enhancement and avoid or minimise harm; and
  5. Make and document the decision and monitoring outcomes
- 4.2** Stage 5 is for the decision maker to undertake and so will not be undertaken in my proof.
- 4.3** This assessment utilises the research undertaken for the Orion Heritage Historic Environment Desk Based Assessment, Chapter 12 of the ES and the SEI, which was written by my colleagues, Sylvia Lock and Helen MacQuarrie and site visits by myself. Orion Heritage's report was undertaken in accordance with Historic England's Statements of Heritage Significance: Analysing Significance in Heritage Assets Historic England Advice Note 12 (2019) (CD5.3).

- 4.4 This proof presents my own assessment of the significance and setting of Church of St Martin (grade I NHLE 1071208) and Court Lodge Farmhouse (grade II\* NHLE 1071209) and the effect of the proposed development upon their significance. However, the two assessments should be read together as they are in accord with each other.
- 4.5 In all instances, the significance of the assets primarily resides within their architectural and historic interest (i.e. their form and fabric). Consequently, as the proposed development will have no direct effects on any designated heritage assets, the core of the significance of all of the assets potentially affected will not be impacted upon. The setting in each case is a much more modest component of the asset's significance, when compared to the architectural and historic interest of the buildings themselves. The listings for Church of St Martin and Court Lodge Farmhouse do not refer to the setting of the building.
- 4.6 Historic England's listing describes the architectural elements of the two designated heritage assets. This is indicative of their architectural values.

### **GPA3 Stage 1**

- 4.7 As outlined above, there are two designated heritage assets that are affected by the proposed development. These are:
- Church of St Martin (grade I NHLE 1071208)
  - Court Lodge Farmhouse (grade II\* NHLE 1071209)
- 4.8 Figure 1 shows the location of these two designated heritage assets in relation to the appeal site.

## GPA3 Stage 2

- 4.9 The following section will outline the significance of the designated heritage assets. The assets have interrelated and overlapping settings so this proof will consider the setting of the assets together but, where relevant, will draw out the differences in the settings.

### *Church of St Martin (Grade I, NHLE 1071208)*

#### *Significance*

- 4.10 The church is located c. 1.13km to the south of the proposed development. The listing description for the Church of St Martin states:

*Parish church. C11 (Saxo-Norman). Chancel extended C13, chapel and aisles C13/14. Tower 1507-1557 (evidence of wills), battlements 1911. Restored 1876 (with later work) by Sir Arthur Blomfield. Ragstone, squared and hammer-dressed to tower. Plain tiled roofs.*

*Chancel with south chapel, nave and south aisle with south porch and western tower. Large western tower of three stages with string courses and offset buttresses rising to full height of tower to battlements. Octagonal north-eastern angle vice. Triple, two tier belfry openings, single lights on second stage, and deep set restored three-light Perpendicular style west window, flanked by canopied niches, with cusped quatrefoil panels and ogee headed niche below, with four centred arched doorway with label hood, waterstoup and flanking quatrefoil panels. Nave with separately roofed south aisle with projecting vestry. C19 fenestration and timbered south porch. North nave wall with buttresses and exposed jambs of round headed C11 windows, now blocked, as is north door; C19 fenestration. C19 fenestration to chancel, with restored perpendicular five-light east window, with the jambs of C13 lancets. South chapel, projecting, with lancets.*

*Interior: fine, tall tower arch, with continuous wave moulding and attached inner piers with octagonal capitals. Four centred arched door to north to stair vice. Late.C13 two bay arcade to south aisle with round pier and octagonal responds. Nave roof with scissor- braced rafters in two levels, partly with tie-beams. South aisle with vestry at west end with blocked lancet to aisle and with massive walls and re-used timber ceiling, identified as base of C11 south-western tower. Lancet in gable to south chapel, with double chamfered arch below on corbels. Tenoned*



*purlin roof. Rood passage door to south, and at gallery level to nave. Restored double chamfered chancel arch on octagonal corbels with carved heads. Exposed jambs of lancet east windows, with shafts and capitals, and also exposed jambs of east end of C11 chancel, before C13 extension. C19 scissor-braced roof.*

*Fittings: C14 priest's door and three sedilia in chancel with cusped ogee heads, roses in cusped spandrels with rose, oak leaf and heraldic enrichments and embattled top. Iron twist turned altar rails with moulded top rail. Choir stalls, inserted probably for use by Archbishop of Canterbury's entourage while resident in his adjacent hunting lodge. C15, partly restored, with poppy head bench ends, arcaded panels to front of benches; south range incorporates open screen to south chapel, with four bays with ogee tracery, brattished top rail and four centred arched doorway. Western range incorporates base of nave rood screen, north range with simple boarded panelling. Misericords mainly with foliage decoration, on south with foliage and castles. South chapel with C17 arcaded panelling with mannerist pilasters, with strapwork frieze and enrichment, with a separate panel with lozenge and guilloche decorations and inscribed AN 1617 WK . RA . WF . C, with yet a third different section to west wall. All introduced late C19, and possibly from the demolished Scott's Hall, Smeeth. Nave with two pulpits, with panelled walls behind, C17 with strapwork, geometric panels, and foliate enrichment, that to north of two tiers, probably made up from domestic panels, and incorporating a wooden relief panel of a Pelican in her piety, said to have come from Pattison's Farmhouse, Aldington. C12 square font bowl on five piers, with C17 wooden cover, with arcaded base with detached Ionic colonettes with modillion cornice and finial with ogee scrolled lantern with finial. Wrought iron gate and screen to tower, dated 1891, removed from Olantigh Towers, Wye, and set up here by Sir Reginald Blomfield.*

*Monuments: brasses; small inscription in south chapel to Margaret Blechynden, d.1596, John Weddcot, d.1475; 19 inch brasses of armoured knight and Lady. The reverse records George Sibley of Boston (d.1474). John Blechynden, d1607; black and white marble wall plaque, with scrolled and enriched base, simple aedicule with Arms Cartouche over. Latin hexameter inscription.*

*Glass: fragments in chancel north window. The Reverend George Blomfield (Rector from 1868) was brother-in-law of Sir Arthur Blomfield (restored the church 1876) and father of Sir Reginald Blomfield, who embellished the church and designed the lychgate. The quality of medieval work is linked to the church's use as a chapel to the adjacent hunting lodge of the Archbishops of Canterbury (see Court Lodge), who also appointed Thomas Linacre Rector 1509 (founder of Royal College of Surgeons) and Desiderius Erasmus, briefly in 1511.*

- 4.11** The significance of the church resides in its architectural interest from its original 11<sup>th</sup> century elements, the 13<sup>th</sup>/14<sup>th</sup> century aisles and chapels, 16<sup>th</sup> century tower and its much later 19<sup>th</sup> century restoration. The details of the external and internal architectural interest are described in detail in the listing.
- 4.12** The church's historic interest resides in its association with the Archbishops of Canterbury. The Manor of Aldington belonged to the See of Canterbury and one of the Archbishop's palaces was located adjacent to the church. The church was used as the chapel for the adjacent hunting lodge (Court Lodge) of the Archbishops of Canterbury. The historic interest is enhanced by its restoration in 1876 by Sir Arthur Blomfield. Blomfield became president of the Architectural Association in 1861, a Fellow of the Royal Institute of British Architects in 1867 and vice-president of the RIBA in 1886.
- 4.13** The church has considerable archaeological interest relating to its origins and development through the medieval period as well as the potential for remains of the Archbishop's palace.

#### *Setting*

- 4.14** The church has nested elements to its setting. Its immediate setting comprises its churchyard, Court Lodge & Court Lodge Farm, the grass field to the east and Parsonage Farm (the former rectory for the church). It is within this area that the church's physical and historic relationship with Court Lodge and the former Archbishop's manor house is best appreciated. This element of the setting has a very strong positive contribution to the significance of the church. The wider Aldington – Church Area Conservation Area with its historic buildings (both designated and non-designated) and its layout form an important but

secondary element of the setting of the church which provides a strong contribution to the significance to the church.

**4.15** With its location on the ridge of the southern flank of the Stour Valley, the church has an extensive wider landscape setting which has a positive contribution to the church's significance. The tower of the church can be seen in approaches to the village from all directions especially along the ridge on which the church is located and from Roman Road to the south of the church. It can also be seen from within the Stour Valley to the north of the church. These views toward the church have a positive contribution to the significance of the church as they enable an appreciation of the church within its wider landscape. The contribution of these views makes to the church's significance diminishes with distance.

**4.16** The appeal site is within the wider landscape setting of the church. The church is visible from the highest point within the site's southern area ('Bested Hill'), from parts of the higher ground of the northern parcel of the appeal site and from parts of the eastern area of the appeal site. Due to intervening development in the form of Court Lodge and its associated structures, at ground level there are no views of the appeal site from the church. While the views from the appeal site towards the church are not designed views, the topography and sparse development do mean that they have a positive contribution to the significance of the church, as it allows for an appreciation of the church from a distance.

#### **Court Lodge Farmhouse (Grade II\*, NHLE 1071209)**

**4.17** The listing describes the building as follows:

*Farmhouse incorporating remains of Archiepiscopal hunting lodge. C14, much extended c.1500 and altered early C19. Ragstone, with some brick dressings and repairs, with plain tiled roofs. Entrance front: early C19, re-using medieval stone and possibly foundations. Two storeys with brick quoins and corbelled eaves to roof with kneelered parapet gables and*

*stacks to left and to right. Three segmentally headed glazing bar sashes on each floor and ribbed panelled door to centre left. Long 2 storey wing extending to rear, with irregular wooden casements and boarded doors, and C14 blocked traceried windows on north and south elevations; and 1 to east elevation; one on south especially revealing tracery pattern (3 daggers over 2 cinquefoiled lights). Hipped extension with weather boarded outshot at north-east end. A second parallel range is adjacent to the south, the west and east ends rebuilt in late C20 brick (old photographs show oast roundels), the other elevation of stone and early C18 brickwork, used as garage/ stabling, with boarded door and ventilation slits, with jambs of blocked medieval window exposed. Interior: the main range to rear with screens- passage (stone jambs to cross-passage doors survive) 3 windows traceable on each long side, and 1 large eastern window and smoke-blackened barrel roof, and is probably the great hall not a chapel as previously maintained. The southern range may well be a kitchen block in origin. C17 inserted stacks with inglenooks, and beamed ceilings in main range. This was a manor house and hunting lodge of the Archbishops of Canterbury, particularly favoured and improved by Archbishops Morton (1486-1500) and Wareham (1508-1532), both of whom also embellished the adjacent parish Church of St. Martin. The house, park and Chase (some 1000 acres) were bought and extended by Henry VII in 1540, the whole complex said to have 5 kitchens, 6 stables and 8 dovecotes.*

- 4.18** Court Lodge's significance resides primarily in its architectural and historic interest. It incorporates elements Archbishop's 14<sup>th</sup> century hunting lodge. It was extended in very late 15<sup>th</sup>/early 16<sup>th</sup> century with 19<sup>th</sup> century alterations. Each of these elements has architectural interest but the remains of the 14<sup>th</sup> century hunting lodge have particular interest due to its very early date. Its historic interest resides in it being the surviving elements of the Archbishop's manor house and hunting lodge and, like the Church, its association with and use by with the Archbishops of Canterbury and its association with Henry VII. Court Lodge also has archaeological interest relating to the Bishop of Canterbury's manor house.

### *Setting*

- 4.19** Court Lodge is located immediately to the north of Church of St Martin. The setting of the farmhouse comprises its plot, the church and

churchyard to the north and the field immediately to the east. It is within the plot and from the access track off Church Lane that the setting has a positive contribution to the significance of the house, as it is within this context that the house has been experienced throughout most of its existence and the historic relationships can be best appreciated. The modern agricultural structures immediately to the west have a negative contribution to its significance. The rural and agricultural wider context of the landscape generates a degree of illustrative context to the farmhouse.

- 4.20** Visually, the appeal site is outside of the setting of Court Lodge Farmhouse. It cannot be seen from the appeal site and vice versa. There is a historic ownership link with the appeal site. At the time of the tithe survey in 1842 Court Lodge Farm was owned by William Deedes Esq, whose tenant was Stephen Southon. The estate included the appeal site's southern area. In 1950, the estate was put up for sale, and the appeal site's southern area formed part of Lot 2, which also included Court Lodge Farmhouse (Figure 2 of Orion's HEDBA (CD1.8.3). This ownership link was severed c. 70 years ago. The appeal site in its current state is considered to make a neutral contribution to the significance of Court Lodge Farmhouse.

### **GPA3 Stages 3 & 4**

- 4.21** The potential impacts on the two designated heritage assets will be considered together.

#### *Effects From Within the Site*

- 4.22** The Church of St Martin overlooks the wider surrounding countryside from an elevated position and its setting is formed by its immediate surroundings in the form of the churchyard and Court Lodge with its associated structures, as well as the wider agricultural/rural landscape

surrounding the church, with its environs designated as the Aldington Church Area Conservation Area. There are some views toward the church from within the appeal site. These are incidental views and are not designed views. It is considered that due to topography and sparse development in the area, this visual relationship means that these views have a positive contribution to the significance of the church, as it allows for an appreciation of the church from a distance. Once constructed, the proposed solar farm would mean that these views of the church tower will still be possible but will be seen in the context of the solar farm. Due to this change, the contribution that this view makes to the significance of the church will be reduced, but not removed entirely. This will be a very minor adverse effect on the significance of the church.

- 4.23** There is no intervisibility between Court Lodge Farm and the appeal site. There is a historic ownership link between Court Lodge Farmhouse and the southern area of the appeal site, which has been severed for the last 70 years and so this has only a very limited contribution to the house's significance. The appeal site also forms part of the wider countryside within which the farmhouse is located. The proposed development does not require the field boundaries to be removed and so consequently the legibility of historic field parcels would remain unchanged, leaving the illustrative historic value to Court Lodge Farmhouse unaffected. Due to the limited contribution that the appeal site makes to the significance of Court Lodge, the change in part of the building's wider setting would only have a very limited adverse effect on Court Lodge Farm's significance.

*Effects on Views from and Toward Church of St Martin and Court Lodge Farmhouse*

- 4.24** The primary issue of concern that Historic England has in relation to the church and Court Lodge Farm is views toward the assets from the south east and west. The relevant viewpoints are 6, 7 and 8 of the ES (CD1.8.5) and viewpoints 7 and 16 of the SEI (CD1.14.5) (included in Appendix 1 for ease of reference).
- 4.25** There are no views of the appeal site from the church or Court Lodge Farm. The experience of the designated assets from within the area where their significance is best appreciated and the contribution to significance that their immediate setting has is strongest, will be unaltered by the proposed development.
- 4.26** It is in relation to the co-visibility, primarily of the church, from other viewpoints toward the church and Court Lodge Farm that the proposed development has the greatest potential to have an effect of the significance of the assets. As outlined in paragraph 3.4, Historic England requested further visualisations in relation to the areas around the Aldington assets, Viewpoints 7 and 8 in particular, and the area to what Historic England described as the 'liturgical east' of the church.
- 4.27** These viewpoints will be addressed in turn starting with Viewpoint 8 as this is the viewpoint that the Officer's report focusses on in paragraph 133 (CD 1.19). This paragraph states:
- "HE's assessment of impact relates primarily to the impact of the development on the Church of St Martin and particularly in northerly views from the Roman Road where the wireline drawing from viewpoint 8 demonstrates there is the potential for panels to be experienced on either side of the church tower."*

- 4.28** Viewpoint 8 is located on the Roman Road to the south of church. The baseline photograph shows the church tower as the most prominent thing in the view located in an area of tall mature trees with Parsonage Farm (grade II) to its left hand side. The Downs form a distant backdrop about halfway up the church tower. In this view, the church's position overlooking the Stour valley is very evident, as is its relationship to Court Lodge Farm and the other buildings in the conservation area. There is some modern infrastructure visible (electricity line) but this does not detract from the appreciation of the church and Court Lodge Farm.
- 4.29** The wireframe drawing shows that, in theory, the proposed development will be seen below and to the east and west of the church (Appendix 1 Figure 2). The photomontage at completion demonstrates that the vast majority of the proposed development will be blocked from view by the trees within which the church and Court Lodge Farm are located. A small portion area of solar panels in the western area of the proposed development will be just visible in the distance to the left (west) of the church but separated by trees to the west of the tower (Appendix 1 Figure 3). A small area of the proposed development will be visible in the distance to the right of the trees that the church is located in. The two small areas of panels that can be seen is clearly in the distance, visually recessive, occupying c.5% of the view, visually separated by the tree belt to the south, east and west of the church and also 'below' the bottom of the church.
- 4.30** Historic England's 11<sup>th</sup> March 2024 letter (CD2.2.5) described the panels of the appeal scheme being experienced 'either side' of the church tower. This implies a very close visual interaction between the tower and the proposed development. However, as can be seen from the Viewpoint 8 visualisation, at the most, two small areas of panels will be possible to be experienced in the far distance and separated from the



church both laterally and vertically. This separation is extenuated by the trees within which the church tower is located in in views from Roman Road which provide an additional visual separation between the church and the two small areas of panels. Consequently, far from the church having panels 'either side of it', there will be a very small magnitude of change in the distance in a very limited aspect of this view. The effect of the proposed development in this view is a very minor adverse effect on the contribution that the setting makes to the significance of the Church of St Martin.

**4.31** Historic England also requested an additional viewpoint to the 'liturgical east' of the Church of St Martin. Viewpoint 16 was produced to address this. Due to access having to be on parts of the area that are publicly available, this location is not absolutely east of the church but is close as it was possible to get to a location 'liturgical east' of the church. The location was also selected as the spot where the proposed development will be the most visible. Consequently, Viewpoint 16 is the worst case scenario location (Appendix 1 Figure 4, 5 & 6).

**4.32** Views toward the church and Court Lodge Farm (the building to the right of the church) from this location will have no panels within it due to topography (see SEI Viewpoint 16 (left) – Appendix 1 Figure 4). The view to the right from this location has Grove Cottage (grade II) on the left hand side of the photograph and a line of trees crossing in the middle ground, behind which heavily filtered views west along the Stour valley are possible (Appendix 1 Figure 5). The wireframe drawing indicates that, theoretically, two blocks of the solar panels can be seen at an oblique angle in the distance. In reality, as the photomontage at completion demonstrates, a small area of the right hand block of panels is just possible to discern in amongst the trees' branches in the far distance (Appendix 1 Figure 6). This area of the Proposed Development is hard to

discern with any clarity at all in this view. Viewpoint 16 was taken in winter and so in summer, it will not be possible to experience the panels at all. Due to the lateral visual separation from the church and Court Lodge Farm and the barely discernible nature of the proposed development, there will be no adverse effect on either designated heritage asset or Grove Cottage from this location or nearby.

**4.33** Viewpoint 6 is taken from a location to the west of Grove Cottage (Appendix 1 Figure 7 & 8). In this view, the church and Court Lodge Farm would be to the rear (south) and higher than the observer. That is, when looking in the direction of the proposed development, the church and the other listed buildings within the conservation area will be behind the observer. In this view, the photomontage demonstrates that two blocks of solar panels will be visible in the distance lower down the valley. The completion at 10 year photomontage shows that the planting along the southern edge of the eastern (right) block will heavily filter the views of the panels (Appendix 1 Figure 9). Although the panels will be visible in this view, as none of the designated assets are also experienced in this view, this change will not have an adverse effect on the significance of any of the designated assets in the conservation area.

**4.34** Viewpoint 7 is to the west of the Church of St Martin. Historic England in their 2022 consultation response (CD1.18) requested for additional verified rendered views from this location as they considered the ones submitted with the application did not address how the church tower dominates the view and the experience of an observer as they travel east toward the village. These additional visualisations were provided in the SEI submission.

**4.35** Viewpoint 7 is a large panoramic landscape view (Appendix 1 Figures 11-14). There are long distance views along the footpath to the east and

west and also to the north across the Stour valley to the Downs in the distance. These views, which include the church tower to the east, have a positive contribution to the significance of the church as it is both very visible and enables an observer to experience the church as a key spiritual and religious focus overlooking the Stour Valley. An observer can appreciate how the church was built to be seen across long distances within the Stour valley. The view includes a palimpsest of types of land use and includes the pylons and cables orientated north east south west crossing over the footpath in between the church and the majority of the view.

**4.36** As both the original ES and SEI verified rendered views demonstrate, there will be two blocks of the proposed development visible in the distance to the north in this view. The photomontage after 10 years demonstrates that the planting around the eastern (right) block will heavily filter the panels making them hard to discern clearly (Appendix 1 Figure 12). At completion the panels will be a noticeable new feature within this view. The proposed development will not dominate the view but it will be easily visible in the middle distance on the lower ground of the valley. It will not be in the same plane of vision as the church. There will be a large degree of separation between the church and the eastern block of the proposed development. The church is on much higher ground and there is a tall pylon and associated cables between the church and the eastern block of the Proposed Development. The proposed development will be modern change in this view which may have a slight detracting effect from the church tower, but this is a slight effect as the church will still be experienced unencumbered by the development as it is currently. However, this change is considered to have a minor adverse effect on the contribution that the setting makes to the church.

### Conclusions on the Level of Harm

**4.37** The harm to the significance of the Church of St Martin and Court Lodge Farmhouse from the changes within the proposed development outlined above, is considered to be in the lower end of the less than substantial range, consequently, paragraph 215 of the NPPF is the relevant test in this instance. Paragraph 215 requires the decision maker to weigh the harm to a heritage asset against the public benefit of the proposed development. As per paragraph 199, the decision maker is required to give this harm considerable weight. However, per *R (James Hall and Company Ltd) v City of Bradford MDC* [2019] EWHC 2899 (Admin), HHJ Belcher (CD6.3), where the harm to the significance of a heritage asset is toward the lower end of the less than substantial harm range, as is the case here, even following the application of considerable weight to that harm, the potential for the ability of the public benefits to outweigh this harm, is greater than where the harm is higher on the less than substantial harm range. This planning balance exercise is a planning not a heritage task and this is dealt with by Steven Longstaff.

## 5.0 Summary and Conclusions

**5.1** EDF Energy Renewables Limited has appealed against the refusal of planning permission for the installation of a solar farm with a generating capacity of up to 49.9MW comprising: ground mounted solar panels, access tracks, inverter/transformers, substation, storage, spare parts and welfare cabins, underground cables and conduits, perimeter fence, CCTV equipment, temporary construction compounds and associated infrastructure and planting scheme (application ref: 22/00668/AS).

**5.2** Reason for refusal no 1 outlines that the Council considers that the proposed development will result in less than substantial harm to undisclosed designated heritage assets:

*“The proposed development would result in significant adverse individual and cumulative effects on landscape character and on visual amenity that cannot be appropriately mitigated. The development would also harm the amenity and experience of users of the public rights of way network and would cause less than substantial harm to the setting of designated heritage assets. The benefits of the proposed development would not outweigh these harms. The development would therefore be contrary to policies SP1, SP6, ENV1, ENV3a, ENV5, ENV10 and ENV13 of the Ashford Local Plan, policies AB4, AB10 and AB11 of the emerging Aldington and Bonnington Neighbourhood Plan 2030 and the provisions of the National Planning Policy Framework and National Policy Statements EN-1 and EN- 3.”*

**5.3** Orion Heritage’s assessment report submitted in support of the planning application concluded that the proposed development would result in low level less than substantial harm to the significance of the Church of St Martin and Court Lodge. The Ashford Borough Council Officer’s

report also concluded that there would be a less than substantial harmful effect on these two assets, although it concluded that the harm was toward the higher end of the less than substantial harmful range (i.e. getting close to being substantial harm).

#### *Significance & Setting of the Heritage Assets*

- 5.4 An assessment of the significance of the grade I Church of St Martin and grade II\* Court Lodge Farmhouse in relation to the proposed development has found that the appeal site forms part of the assets' wider rural setting. However, the contribution the appeal site makes to the significance of the cottage is considered to be minor and this contribution is a small part of the contribution that the wider landscape provides to the church and Court Lodge.
- 5.5 As outlined above, the proposed development will have a minor adverse effect on the contribution that aspects of the setting provide to the Church of St Martin and Court Lodge Farm. The majority of the setting of the designated assets will be unaffected by the proposed development. The primary aspects of the significance of the assets (i.e. the architectural of their form and fabric and historical interest connected with the long association with the Archbishops of Canterbury) will be unaffected.
- 5.6 Due to the very limited visual effect, the significance of the church will be no more than minor (viewpoint 7 is the 'worst' effect). This is considered to be a less than substantial harmful impact on the significance of the Church of St Martin and Court Lodge Farm. This effect is on the lowest end of the less than substantial harmful scale as the significance of the designated assets is almost entirely unaffected.
- 5.7 Unlike paragraph 136 of the Officer's report (CD1.19), the effect cannot be on the higher end of the less than substantial harm scale. To be at

that level, the visual effects of the scheme would have to be far greater than they have been demonstrated to be and the proposed development would have to be closer to the assets so as to be overbearing and dominating the experience of the assets to the point that the significance was significantly reduced. The calibration of harm used by the case officer is considered to be too high and does not accord with Historic England's assessment of harm. Historic England's issue was that they considered that not enough information had been provided to assess the precise level of harm. However, as discussed above, Historic England have not read the verified rendered photomontage at Viewpoint 8 correctly or apparently taken Viewpoint 16 into account. The reality is that the effect of the proposed development is slight. With the information available before Historic England, the material is considered to be sufficient to enable the assessment of where on the less than substantial harm range the effect is. In my extensive experience, with similar material before it, Historic England has been confident in stating where it considers that the harm would be on the higher end of the less than substantial harm range scale.

- 5.8** As the effect of the Proposed Development is less than substantial, paragraph 215 of the NPPF applies. That is, the Inspector, having given great weight to the conservation of the designated assets significance, will have to balance the limited less than substantial harmful effect of the scheme against the public benefits of the scheme. Of relevance in this consideration is paragraph 34 of *R (James Hall and Company Ltd) v City of Bradford MDC* [2019] EWHC 2899 (Admin) (CD6.3), where the judge stated:

*"In my judgment the three categories of harm recognised in the NPPF are clear. There is substantial harm, less than substantial harm and no harm. There are no other grades or categories of harm, and it is inevitable that each of the categories of substantial harm, and less than*

*substantial harm will cover a broad range of harm. It will be a matter of planning judgement as to the point at which a particular degree of harm moves from substantial to less than substantial, but **it is equally the case that there will be a number of types of harm that will fall into less than substantial, including harm which might otherwise be described as very much less than substantial.** There is no intermediate bracket at the bottom end of the less than substantial category of harm for something which is limited, or even negligible, but nevertheless has a harmful impact. **The fact that the harm may be limited or negligible will plainly go to the weight to be given to it as recognised in Paragraph 193 NPPF.** However, in my judgment, minimal harm must fall to be considered within the category of less than substantial harm.”(emphasis added)*

- 5.9** It is my view that, as the proposed development results in less than substantial harm to the significance of the Church of St Martin and Court Lodge, as long as the decision-maker has followed the process outlined in paragraphs 212-215 of the NPPF, and the public benefits outweigh the harm (which has been given considerable weight), then the proposed development will not be contrary to local plan policies ENV13 and ENV14 4 and Neighbourhood Plan policy AB11. This planning balance is not a task to be undertaken by the heritage experts.
- 5.10** In light of the conclusions of my proof, I do not consider that the historic environment provides a constraint to developing the site as per the proposed development.



Proof of Evidence  
Heritage  
Appendix 1

By

Rob Bourn

Appeal under Section 78 of  
Town and Country Planning Act 1990  
By EDF Energy Renewables Limited

Land south of the M20, Church Lane,  
Aldington, Kent  
(known as East Stour Solar Farm)

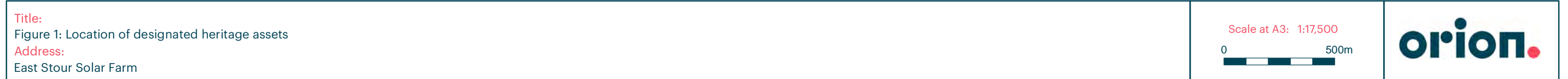
Appeal Ref: APP/E2205/W/24/3352427

Application Ref: 22/00668/AS

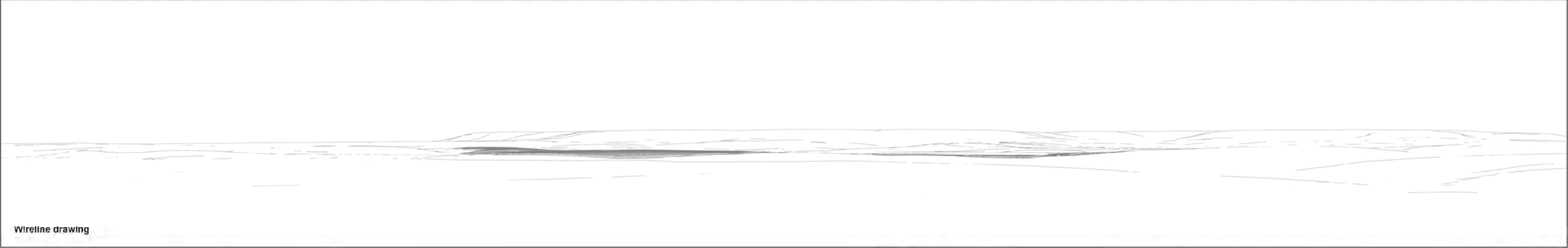
January 2025

## Figures

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- Fig. 4 Viewpoint 16 (left) – Baseline photograph & Wireline drawing
- Fig. 5 Viewpoint 16 (right) – Baseline photograph & Wireline drawing
- Fig. 6 Viewpoint 16 (right) – Photomontage at completion
- Fig. 7 Viewpoint 6 – Baseline photograph & Wireline drawing
- Fig. 8 Viewpoint 6 – Photomontage at completion
- Fig. 9 Viewpoint 6 – Photomontage after 10 years
- Fig. 10 Viewpoint 7 – Baseline photograph & Wireline drawing
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- Fig. 14 Viewpoint 7 (right) – Cumulative illustration & wireline drawing







VIEWPOINT 8: Footpath AE485 Saxon Shore Way by Roman Road near Postling Green

East Stour Solar Farm



PO Address:	2075045 1 974393	Visualisation Type:	Type: D	Screen:	Distance 800m AGL
AOD:	96m	Horizontal field of view:	90° (cylindrical projection)	Lens:	Canon 50mm PFL
Direction of view:	20°	Vertical field of view:	14.2°	Camera height:	1.5m AGL
Nearest solar panel:	1713m	Enlargement factor:	90% @ A1	Date and time:	11/10/2021 11:11
Prepared by New Visual Solutions Ltd for Verdo Environmental Limited					

Title:  
Figure 2: Viewpoint 8 – Baseline photograph & Wireline drawing  
Address:  
East Stour Solar Farm

Not to Scale:  
Illustrative Only







Photomontage at completion

VIEWPOINT 8: Footpath AE485 Saxon Shore Way by Roman Road near Postling Green

East Stour Solar Farm



P.O. (Antenna): 26770545 1.0874393  
A.O.D.: 96m  
Direction of view: 20°  
Nearest solar panel: 1713m

Collimation Type: Horizontal field of view: 25°  
Vertical field of view: 25°  
Enlargement factor: 90% @ A1

Type: 3 30° (cylindrical projection)  
Lens: Canon 50mm PFL  
Camera height: 1.5m AGL  
Date and time: 11/10/2021 11:11

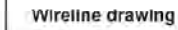
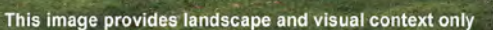
Prepared by New Visual Solutions Ltd for Verdo Environmental Limited

Title:  
Figure 3: Viewpoint 8 – Photomontage at completion  
Address:  
East Stour Solar Farm

Not to Scale:  
Illustrative Only



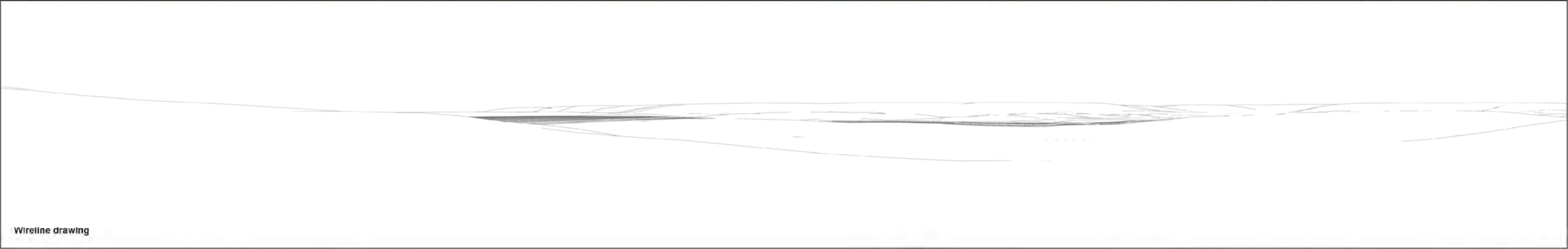




Prepared by New Visual Solutions Ltd for Verto Environmental Limited







VIEWPOINT 16: Footpath 0005/AE478/1 to the east of Church of St Martin, Aldington (right)

East Stour Solar Farm



PO Address:	000005 1500003	Visualisation Type:	Type: 3D	Client:	Orion Heritage Ltd
AOD:	74m	Horizontal field of view:	90° (cylindrical projection)	Lens:	Canon 50mm PFL
Direction of view:	13°	Vertical field of view:	14.2°	Camera height:	1.5m AGL
Nearest solar panel:	1310m	Enlargement factor:	30% @ A1	Date and time:	10/02/2023 12:01
Prepared by New Visual Solutions Ltd for Orion Environmental Limited					

**Title:**  
Figure 5: Viewpoint 16 (right) – Baseline photograph & Wireline drawing

**Address:**  
East Stour Solar Farm

Not to Scale:  
Illustrative Only







VIEWPOINT 16: Footpath 0005/AE478/1 to the east of Church of St Martin, Aldington (right)

East Stour Solar Farm



P.O. Reference: 1077207C 118000293  
A.O.B. 74m  
Direction of view: 13°  
Nearest solar panel: 1310m

Collaboration Type:  
Horizontal field of view: 90°  
Vertical field of view: 25°  
Enlargement factor: 90% @ A1

Figure 6  
30° (cylindrical projection)  
Lens: Canon 50mm PFL  
Camera height: 1.5m AGL  
Date and time: 10/02/2023 12:01

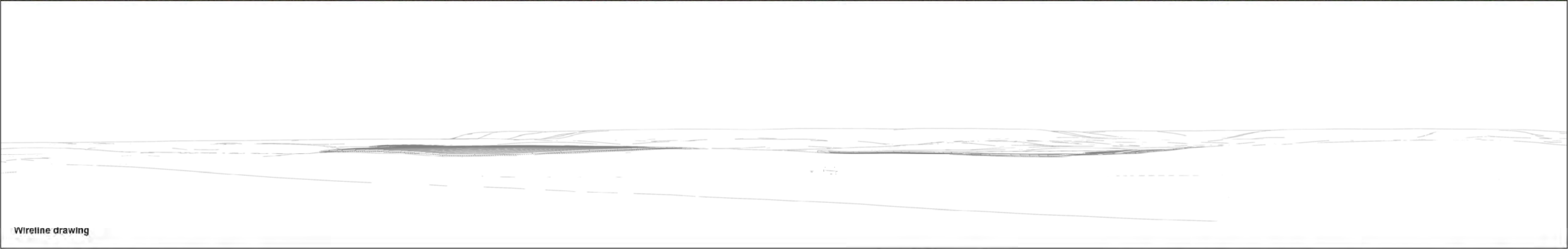
Prepared by New Visual Solutions Ltd for Viero Environmental Limited

Title:  
Figure 6: Viewpoint 16 (right) – Photomontage at completion  
Address:  
East Stour Solar Farm

Not to Scale:  
Illustrative Only







VIEWPOINT 6: Footpath AE477 near Grove Cottage, Aldington

East Stour Solar Farm



Location Plan

POB Address:  
AOD:  
Direction of view:  
Nearest solar panel:

Distance to horizon:  
79m  
18°  
1203m

Visualisation Type:  
Horizontal field of view:  
Vertical field of view:  
Enlargement factor:

Type: 3D  
90° (cylindrical projection)  
14.2°  
90% @ A1

Camera:  
Lens:  
Camera height:  
Date and time:

Distance to site (m):  
Canon 50mm F1.8  
1.5m AGL  
11/10/2021 10:37

Prepared by New Visual Solutions Ltd for Verbis Environmental Limited

Title:  
Figure 7: Viewpoint 6 – Baseline photograph & Wireline drawing  
Address:  
East Stour Solar Farm

Not to Scale:  
Illustrative Only







VIEWPOINT 6: Footpath AE477 near Grove Cottage, Aldington

East Stour Solar Farm



P.O. Reference:  
A00,  
Direction of view:  
Nearest solar panel

Distance to nearest  
79m  
18°  
1203m

Collimation Type:  
Horizontal field of view:  
Vertical field of view:  
Enlargement factor:

View:  
30° (cylindrical projection)  
25°  
90% @ A1

Camera:  
Lens:  
Camera height:  
Date and time:  
Canon 50mm FFL  
1.5m AGL  
11/10/2021 10:37

Prepared by New Visual Solutions Ltd for Verbis Environmental Limited

Title:  
Figure 8: Viewpoint 6 – Photomontage at completion  
Address:  
East Stour Solar Farm

Not to Scale:  
Illustrative Only







VIEWPOINT 6: Footpath AE477 near Grove Cottage, Aldington

East Stour Solar Farm



P.O. Reference:  
A00,  
Direction of view:  
Nearest solar panel

Distance to nearest  
79m  
18°  
1203m

Collimation Type:  
Horizontal field of view:  
Vertical field of view:  
Enlargement factor:

View:  
30° (cylindrical projection)  
25°  
90% @ A1

Camera:  
Lens:  
Camera height:  
Date and time:  
Canon 50mm FFL  
1.5m AGL  
11/10/2021 10:37

Prepared by New Visual Solutions Ltd for Verbis Environmental Limited

**Title:**  
Figure 9: Viewpoint 6 – Photomontage after 10 years  
**Address:**  
East Stour Solar Farm

Not to Scale:  
Illustrative Only







VIEWPOINT 7:   Footpath AE474 west of Aldington

East Stour Solar Farm

Location Plan

POE Reference:

AOD:

Direction of view:

Nearest solar panel:

2077220 E 1.9829183

85m

20°

1161m

Visualisation Type:

Horizontal field of view:

Vertical field of view:

Enlargement factor:

Type: 3

90° (cylindrical projection)

14.2°

90% @ A1

Client:

Lens:

Camera height:

Date and time:

Orion Heritage Ltd Site 11

Canon 50mm F1.8

1.5m AGL

11/10/2021 10:37

Prepared by New Visual Solutions Ltd for Vierlo Environmental Limited

**Title:**  
Figure 10: Viewpoint 7 – Baseline photograph & Wireline drawing

**Address:**  
East Stour Solar Farm

Not to Scale:  
Illustrative Only

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Photomontage at completion

VIEWPOINT 7: Footpath AE474 west of Aldington

East Stour Solar Farm



Location Plan

File Information:  
AOD: 85m  
Direction of view: 20°  
Nearest solar panel: 1101m

Collaboration Type:  
Horizontal field of view: 30°  
Vertical field of view: 25°  
Enlargement factor:

View: 1  
30° (cylindrical projection)  
90% @ A1

Hardware:  
Lens: Canon 50mm f/1.8  
Camera height: 1.5m AGL  
Date and time: 11/10/2021 10:37

Prepared by New Visual Solutions Ltd for Vierlo Environmental Limited

**Title:**  
Figure 11: Viewpoint 7 – Photomontage at completion  
**Address:**  
East Stour Solar Farm

Not to Scale:  
Illustrative Only







VIEWPOINT 7:   Footpath AE474 west of Aldington

East Stour Solar Farm



Location Plan

File Information:  
AOD: 85m  
Direction of view: 20°  
Nearest solar panel: 1101m

Collaborative Type:  
Horizontal field of view: 30°  
Vertical field of view: 25°  
Enlargement factor:

View: 1  
30° (cylindrical projection)  
90% @ A1

Hardware:  
Lens: Canon 50mm f/1.8  
Camera height: 1.5m AGL  
Date and time: 11/10/2021 10:37

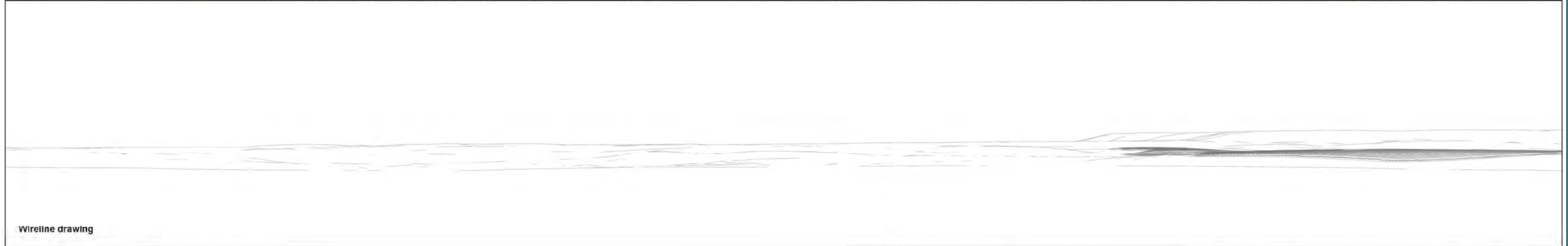
Prepared by New Visual Solutions Ltd for Vierlo Environmental Limited

**Title:**  
Figure 12: Viewpoint 7 – Photomontage after 10 years  
**Address:**  
East Stour Solar Farm

Not to Scale:  
Illustrative Only







**VIEWPOINT 7 (Cumulative) left:** Footpath AE474 west of Aldington

**Development Scenario 2**

### East Stour Solar Farm



**Location Plan**

Fast Stru Solar	1161m
Otterpool PGT	2502m
Sellinge BESS	2141m
Sellinge GSF	2252m

1161m  
2502m  
2141m  
2252m

ΔE (chromaticity): 657229E 118231M  
AOD: 85m  
Direction of view: 344°

**Illustration Type:**  
 Horizontal field of view:  
 Vertical field of view:  
 Enlargement factor:

Type 2  
90° (cylindrical projection)  
14.2°  
90% @ A1

Lens:	Canon 50mm FFL
Camera height:	1.5m AGL
Date and time:	11/10/2021 10:37

Prepared by New Visual Solutions Ltd for Vento Environmental Limited

**Title:**  
Figure 13: Viewpoint 7 (left) – Cumulative illustration & wireline drawing

**Address:**  
East Stour Solar Farm

Not to Scale:  
Illustrative Only





VIEWPOINT 7 (Cumulative) right

Development Scenario 2

Footpath AE474 west of Aldington

East Stour Solar Farm

Location Plan

Distance to site

East Stour Solar

Otterpool PGT

Sellindge BESS

Sellindge GGT

1161m

2502m

2\*41m

2262m

OS Grid Reference

AOD

Direction of view

207770E 198291N

85m

74°

Visualisation Type

Horizontal field of view

Vertical field of view

Enlargement factor

Typical

90° (cylindrical projection)

14.2°

90% @ A1

Client

Lens

Camera height

Date and time

Orion Heritage Ltd

Canon 50mm F1.8

1.5m AGL

11/10/2021 10:37

Prepared by New Visual Solutions Ltd for Verbis Environmental Limited

**Title:**  
Figure 14: Viewpoint 7 (right ) – Cumulative illustration & wireline drawing

**Address:**  
East Stour Solar Farm

Not to Scale:  
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