

**LAND SOUTH OF THE M20, CHURCH LANE, ALDINGTON, KENT  
(KNOWN AS EAST STOUR SOLAR FARM)**

**APPEAL BY EDF ENERGY RENEWABLES LIMITED  
(TRADING AS EDF RENEWABLES)**

**PINS REF: APP/E2205/W/24/3352427**

**LPA REF: 22/00668/AS**

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**APPELLANT'S OPENING SUBMISSIONS**

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**Introduction**

1. The appeal is made by EDF Energy Renewables Ltd (“the Appellant”) and seeks full planning permission for a solar farm with a generating capacity of up to 49.9MW on Land South of the M20, Church Lane, Aldington, Kent (“the Site”). It is known, and will be referred to, as ‘East Stour Solar Farm’.
2. The proposal will generate renewable energy and export it to the grid via the nearby Sellindge Converter Station through the use of transformer units and a substation compound on the Site. The increase in renewable energy production specifically from solar projects is *“a key part of the government’s strategy for low-cost decarbonisation of the energy sector”*, to this extent *“the government has committed to sustained growth in solar capacity”*.<sup>1</sup>
3. The benefits of the scheme are uncontroversially substantial. Once operational the panels will produce enough power to meet the equivalent needs of approximately 17,000 Ashford Borough homes, an equivalent of 32% across the Borough. It will save the equivalent of 14,300,000 kg of CO<sub>2</sub> for each of the 40 operational years.

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<sup>1</sup> EN-3 §2.5.2, 2.10.10 (CD3.13)

4. The scheme also unusually benefits from a pre-2030 grid connection offer. Not only is access to the grid one of the most important (and indeed constraining) factors in the delivery of solar,<sup>2</sup> but it is well documented that securing future connections to the grid are challenging and associated with significant wait times. Projects that have secured a grid connection are therefore fundamental to achieving the government's net zero targets and the recent Clean Power 2030 Action Plan, and the Appellant's expected connection date in 2028<sup>3</sup> is a significant benefit.
5. The Appellant has followed a detailed site selection and design process.<sup>4</sup> There has been a significant reduction from 238 ha to 65.5 ha<sup>5</sup> through careful consideration of landscape and heritage impacts, amongst others. It has been brought forward in a way that seeks to maximise deliverability by taking advantage of an adjacent grid connection and grid connection offer, whilst reducing impacts so far as possible including through effective mitigation.
6. The main issues in this appeal were identified in the Inspector's post-CMC note<sup>6</sup> as follows:
  - a. Landscape – the effect of the proposal on the character and appearance of the area but also taking into account impact on any public right of way ("PROW");
  - b. Heritage – the effect of the proposed development on the setting and thereby the significance of designated heritage assets; and,
  - c. Planning – taking into account the development plan and national policy, the benefits of the development, and any planning balance.
7. It should be noted that the Ashford Borough Council's ("the Council") refusal to grant planning permission originally comprised of five reasons for refusal ("RfR"). Four of those five RfRs are no longer being defended by the Council, including:
  - a. The impacts on the significance of heritage assets with archaeological interest;

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<sup>2</sup> NPS EN-3 (CD3.13)

<sup>3</sup> The scheme has a secured grid connection offer for 2026, however as a result of the planning delays an extension has been sought to push the connection to 2028 – SL Rebuttal, Appendix A (CD10.8)

<sup>4</sup> ES Chapter 3 – Site Selection & Design (CD1.8.2); SEI Chapter 11 Section 1 – Solar Farm Design Progression (CD1.14.2)

<sup>5</sup> That being the fenced area (CD1.5.1)

<sup>6</sup> CD9.13

- b. The management of construction vehicles during the construction phase of the development;
  - c. The mitigation and enhancement measures for badgers, breeding birds and brown hare; and,
  - d. The impact of the scheme on safeguarded mineral deposits on the Site.
8. It is agreed that the above issues have been addressed for the reasons set out in the relevant SoCGs.<sup>7</sup> Accordingly, the main issues reflect the Council's first RfR in the Decision Notice.<sup>8</sup>
9. It should be recognised at the outset that the only remaining RfR, which forms the entirety of the Council's case, is premised on the alleged harms to both landscape character and visual amenity **and** heritage harm, which together are said not to be overcome by the benefits of the scheme. Landscape and heritage impacts are not separate RfRs which in and of themselves were considered by the Council to constitute freestanding reasons to refuse permission. The clear implication is that the Council's case that permission should not be granted, and indeed Mr Durling's evidence,<sup>9</sup> is contingent on the Council's conclusions on **both** landscape and heritage impacts being preferred by the Inspector. In the event, for example, that Ms Connelly's assessment of heritage harm is found to be erroneously high, the basis on which permission was refused simply falls away. It would be impermissible for the Council to suggest, for example, that the appeal should in any event be refused solely on landscape grounds when that is not why it was refused.
10. The Appellant's outline case, in relation to each issue, is as follows.

### **Landscape**

11. The scheme is situated in three parcels. The northern parcel lies between the M20 and the HS1 rail line; the western parcels extend across Bested Hill to the south of the rail line and west of Church Lane; and the eastern parcel is to the east of Church Lane across fields adjacent to Partridge Plantation and Round Wood. High voltage overhead electricity lines and pylons cross through the western land parcel and across Bested Hill to link into the Sellindge Converter Station which is positioned between the M20 and HS1 rail line and close to the northern and

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<sup>7</sup> Main SoCG §9.38, 9.39 (CD9.1); Supplementary SoCG (CD9.3)

<sup>8</sup> Decision Notice (CD1.20)

<sup>9</sup> CD11.8, §4.14.4, §5.22: "*When weighing all of the benefits of the appeal proposal against the cumulative harm...*"

western parcels of the Site. The northern parcels fall within LCA 29: Evegate Mixed Farmland, and the western and eastern parcels are located within LCA 10: East Stour Valley, of the Ashford Borough Council Rural Fringes Landscape Character Assessment 2009.<sup>10</sup> Recent consented and constructed development, including the Sellindge Grid Stability Facility; Sellindge BESS scheme and Sellindge Solar Farm, also fall within the LCAs.

12. The site is not within any national or local landscape designations, nor will there be any significant or unacceptable impacts on the setting of the Kent Downs National Landscape. The Site is close to an existing grid connection; does not require any disturbance to existing landscape fabric (indeed landscape mitigation would enhance the existing landscape fabric once established); the scheme is on 85% non-BMV agricultural land adjacent to existing major infrastructure; in a location which benefits from mature woodland structure providing a degree of screening; has a relatively small number of residential properties within close proximity; and does not result in the restriction of, or any physical effect on, existing PROWs.
13. The proofs of evidence prepared for this inquiry reveal that there is, in reality, very little between the parties on the issue of landscape and visual impact. There are nuanced differences between Mr Ingham and Mr Withycombe but the actual substantive effects appear to be largely common ground. To this extent methodological criticisms are of little relevance or assistance.
14. There is no dispute that there would be some limited and locally significant adverse landscape and visual effects. Fundamentally, however, these are to be expected for *any* utility scale solar farm development. To that extent the inevitability of adverse effects is explicitly expressed in national policy.<sup>11</sup>
15. In respect of landscape character, significant effects would be limited to the Site itself and the immediately adjoining fields to the west of the northern parcel and east of the western/ eastern parcels. Beyond approximately 0.5km to the south of the Site, longer distance glimpses would be framed by mature woodland blocks and would not give rise to a significant effect on landscape character. Significant effects therefore would be contained to *parts* of both the Evegate Mixed Farmlands and East Stour Valley LCAs. Furthermore, Mr Ingham explains that

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<sup>10</sup> CD4.5

<sup>11</sup> EN-1, §5.10.5 (CD3.12); EN-3, §2.10.17 (CD3.13)

there are no overriding landscape sensitivities which indicate that the Site is not capable of accommodating the change proposed.

16. In respect of visual amenity, significant effects would be limited to a section of Church Lane and certain sections of PROWs AE432, AE437, AE457, AE459 and AE656, as well as the two proposed permissive footpaths. There would also be some significant adverse effects on the private visual amenity of Bested House and the Paddock. Again, therefore, significant visual effects would be highly localised.
17. Moreover, the cumulative effect on landscape character and visual amenity would be no more significant than the *solus* effects of the scheme. That is clear from the SEI conclusions<sup>12</sup> that Mr Withycombe does not dispute.<sup>13</sup>
18. Nor does the Council dispute that these adverse effects could be acceptably mitigated. Indeed, Mr Withycombe's proof is clear that: "*more appropriate and effective mitigation (including changes to the layout) could have been proposed which would have addressed some if not all of the concerns in relation to landscape and visual harm.*"<sup>14</sup> The substantive dispute therefore appears to be constrained to whether the mitigation proposed is appropriate. The Appellant's provided mitigation plan is a conceptual illustration of the landscape mitigation proposed for the purposes of setting the parameters against which the landscape and visual effects have been assessed.<sup>15</sup> It is therefore secured, but will be subject to a condition requiring the submission of full landscaping details. Accordingly, the carefully designed mitigation plan itself is either sufficiently flexible to incorporate, or indeed already does incorporate, most of Mr Withycombe's suggestions; or more than appropriately already provides for effective screening. The result is that it comprehensively addresses residential properties, Church Lane, PROWs and wider viewpoints.
19. As a result, the approach is proportionate and appropriate and therefore the scheme complies with policies SP1, SP6, ENV1<sup>16</sup>, ENV3a, ENV5, ENV10 of the Ashford Local Plan ("LP") and Policies AB4 and AB10 of the Aldington & Bonnington Neighbourhood Plan ("NP").

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<sup>12</sup> CD1.14.2

<sup>13</sup> DW POE, §7.15 (CD11.2)

<sup>14</sup> Ibid, §9.2

<sup>15</sup> SEI Figure 11.9 Revision B (CD1.14.4)

<sup>16</sup> Policy ENV1 relates to biodiversity which is not relevant to the matters raised in the RfR. The impacts on ecology are agreed to be acceptable in the Main SoCG (CD9.1).

## Heritage

20. The Council's basis for refusing permission on heritage grounds, as set out in the officer's report ("OR"), was based on the impact on the Grade I Church of St Martin and the Grade II\* Court Lodge Farmhouse.<sup>17</sup> Those assets were also expressly referenced in the SoCG.<sup>18</sup> Unfortunately, for reasons not known to the Appellant, the Council attempted to introduce a significant number of additional (both designated and non-designated) assets in Ms Dee's proof of evidence. That has now sensibly been withdrawn. The Council does not contend therefore that any impact on other assets, beyond the church and Court Lodge, are unacceptable.
21. The Site forms part of, and makes a minor contribution to, the wider rural setting of both the church and Court Lodge. In turn, the wider setting, which is not referenced in either of the assets' listing descriptions and which are premised on the architectural and historic interest of each, makes a much lesser contribution to the significance of each than the buildings themselves.
22. The result is that the development would have a minor adverse effect on the contribution that aspects of the setting provide to the church and Court Lodge. The 'worst' effect is encountered at viewpoint 7<sup>19</sup>, which even then, due to the very limited visual effect, would be no more than minor. The majority of the setting of the assets will be unaffected by the proposed development. The primary aspects of significance, being the form and fabric, and historical interest connected with the long association with the Archbishops of Canterbury, will be entirely unaffected.
23. It simply cannot be the case therefore that the harm is, as the Council suggests, at the higher end of less than substantial harm. The High Court clarified in *Bedford Borough Council v Secretary of State for Communities and Local Government*<sup>20</sup> that substantial harm arises where "very much, if not all, of the significance was drained away"; or where there is non-physical or indirect harm equally where it "would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced".<sup>21</sup> The higher end of less than substantial harm sits just

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<sup>17</sup> CD1.19

<sup>18</sup> CD9.1

<sup>19</sup> RB POE, Appendix 1, Figures 10-14 (CD10.4)

<sup>20</sup> [2013] EWHC 2847 (Admin) (CD6.1)

<sup>21</sup> Ibid, §24-25

below that definition. Given the minor effects on *parts* of the wider rural setting which only *partly* contribute to the significance of the church, there can be nothing higher than harm at the lowest end of less than substantial harm. Moreover, given the wider rural setting contributes to an even lesser degree to the significance of Court Lodge, and there is *no* intervisibility between the Site and Court Lodge, that applies even more clearly to Court Lodge. The impacts on the assets taken together then is, at its highest, at the lower end of less than substantial harm.

24. The substantial public benefits<sup>22</sup> associated with this renewable energy scheme undoubtedly outweigh the less than substantial harm to the heritage assets. The scheme is therefore also in accordance with Policy ENV13 of the Local Plan and Policy AB11 of the Neighbourhood Plan, applying the internal heritage balance.

### **Benefits and Planning Balance**

25. The context for this appeal is one of significant national policy support for renewal energy schemes and an urgent need to transition to green energy and achieve net zero. That is also expressly recognised and supported locally by the Council through various plans and strategies.<sup>23</sup> It goes without saying that the utility scale solar required to reach these targets cannot be delivered with no impacts. It is well recognised that some adverse effects from energy development can and must be tolerated in order to achieve the Government's ambitions for energy security and combatting climate change.
26. The scheme has gone through a considered design selection process to minimise impacts and mitigate them effectively. That is evidenced by the very limited harm to the setting of two heritage assets; and the highly localised significant landscape and visual effects. The consequence is that the scheme accords with the development plan and national policy. Moreover, the benefits of the scheme attract substantial weight, including the contribution towards the generation of renewable energy, the pre-2030 grid connection agreement, the significant biodiversity net gain, and wider economic benefits. Finally, the scheme is temporary and reversible. Not only therefore will the Site continue to enable grazing and as such be capable of remaining in agricultural use whilst in operation; but following decommissioning,

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<sup>22</sup> SL POE, Section 8 (CD10.6)

<sup>23</sup> Ibid, set out at §8.4

the soils will also be in a better condition than at present, when the Site will be returned to its current use. Any impacts therefore associated with the scheme are also entirely temporary and reversible. Accordingly, even if there was some harm, it would patently be outweighed by the benefits.

### **Conclusion**

27. Accordingly, the Appellant will invite the Inspector at the conclusion of the inquiry to allow the appeal.

**SHEMUEL SHEIKH**

**Kings Chambers**

**Manchester | Birmingham | Leeds**

**4<sup>th</sup> February 2025**

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**LIST OF APPEARANCES ON BEHALF OF  
THE APPELLANT**

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