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

APPELLANT'S CLOSING SUBMISSIONS

Glossary:

SL	Steven Longstaff (Appellant Planning)	SD	Sarah Dee (Council Heritage)
JI	John Ingham (Appellant Landscape)	EIC	Evidence-in-chief
RB	Rob Bourn (Appellant Heritage)	XX	Cross-examination
MD	Matthew Durling (Council Planning)	ReX	Re-examination
DW	David Withycombe (Council Landscape)	SOC	Statement of Case
GR	Graham Rusling (Council PROW)	SoCG	Statement of Common Ground
GC	Grace Connelly (Council Heritage)	POE	Proof of Evidence

Introduction

1. 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"* and, to this extent, *"the government has committed to sustained growth in solar capacity"*. [1] Indeed, renewable energy schemes are supported at all levels of policy from the NPS' and NPPF[2] to Borough wide through the Ashford to Zero Plan;[3] Ashford Climate Change Strategy June 2022;[4] Ashford Corporate Plan 2022-2024;[5] and, Ashford: Our Plan for the Borough 2024-2028.[6]

2. This scheme, which would have a significant generating capacity of up to 49.9MW, goes to the heart of the Government's green energy strategy. The proposal would 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.

3. Once operational the panels would produce enough power to meet the equivalent annual 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_2 for each of the 40 operational years.

4. The benefits of the scheme are therefore undoubtedly substantial.

5. First, there is no dispute that the delivery of urgently needed renewable energy which is intrinsically linked to the UK's net zero obligations, and the Government's intention to deliver clean power by 2030, accords **substantial weight**. MD's attempt to suggest it was a notch lower at significant was based purely on his adoption of the terminology used in the NPPF. Either way, it quite obviously ought to be at the highest end of any scale.

6. Second, and beyond that, a fundamental additional benefit is that the scheme unusually has a pre-2030 grid connection offer. Not only is access to the grid one of the most important (and

[1] EN-3 §2.5.2, 2.10.10 (CD3.13)
[2] §165, 168
[3] CD3.8
[4] CD3.9
[5] CD3.10
[6] CD3.25

indeed constraining) factors in the delivery of solar,[7] but it is well documented that securing future connections to the grid are challenging and associated with significant wait times. Indeed, SL explained in EIC that the industry refers to such agreements as 'gold dust'. 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. In short, the availability of an imminent grid connection (before 2030) means that the scheme can be brought forward quickly to make the required contribution to national and regional decarbonisation targets. Even more so where it is a deliverable scheme being promoted by the Appellant who will actually built it out. The Appellant's expected connection date in 2028, which is clearly evidenced by a letter from NESO[8] and email from National Grid[9], is therefore a **significant benefit**. This was agreed by MD in XX who quite rightfully accepted that his attribution of moderate weight did not reflect policy or indeed the Culters Green Lane Appeal Decision[10] and Secretary of State's decision in the Great Wymondley appeal,[11] which respectively attributed grid connection agreements substantial and significant beneficial weight.

7. Third, the development will deliver a range of biodiversity benefits including a net gain of 250.94 habitat units which equates to a 116.84% net gain on habitats and a 230.36% net gain on hedgerows.[12] In line with the general approach, as illustrated by the Secretary of State's decision in the Kenilworth appeal,[13] that also attracts **substantial weight**. MD quite fairly accepted that his reduction from significant to moderate weight, on the basis that the BNG comes from the landscaping mitigation, was an erroneous double counting exercise of landscape harm.

8. Fourth, the development would generate jobs over the construction, operational and decommissioning phases. Whilst not qualified, such jobs would be wide ranging and include civil engineering design, geotechnical ground investigations, civil works, onsite electrical network design, installation and commissioning, aggregate supply, haulage, plant hire and

[7] NPS EN-3 (CD3.13)
[8] 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)
[9] ID10
[10] CD6.4, §118, 141
[11] CD6.11, §31
[12] As SL confirmed in EIC, there will be no reduction in the BNG calculations if scrub belts are provided instead of hedgerows at the detailed soft landscaping condition discharge stage, as for BNG purposes a scrub belt is essentially an unmanaged hedgerow. The Council's orally confirmed that this is not in dispute.
[13] CD6.10, §25

ancillary and tertiary sectors relating to supplies, accommodation, catering, and so forth. There would, as a result, be socio-economic benefits to local and national UK based contractors, owners of the Site, and the payment of business rates for the completed solar farm which are quantified in the Socio Economic and Sustainability Statement.[14] As SL explains, these ought to attribute **moderate weight**. There will also be an annual £20,000 community fund for the operational lifetime, although it is acknowledged that it does not attract weight in the planning balance.

9. Fifth, the proposal is a temporary scheme which would be in place for 40 years. It will remain in continued agricultural use for grazing, and after the lifetime of the development the Site will be returned fully to its current use. The impacts therefore are wholly temporary and wholly reversible.

10. Sixth, in respect of broader locational requirements, there are a number of other factors which reflect the appropriate siting of the scheme:

    a. The Site is in close geographical proximity to the grid connection;
    b. The Site is not within a designated landscape nor is it Green Belt;
    c. The Site is not allocated for any other purpose in the Ashford Local Plan 2030 ("the Local Plan"); and,
    d. 85% of the appeal site is land which is not best and most versatile agricultural land.

11. Indeed, much has been made at this inquiry of what is perhaps best described as a finite and detailed design criticism where solar array has been included on the south side of Bested Hill. The Council's case now hinges on this to suggest that the scheme does not minimise impacts. It obviously goes without saying that what is to be determined is the scheme as proposed. To this extent the Council's suggestion that panels could have been moved from the south side of Bested Hill to the skylark and lapwing ecology mitigation area[15] that has been excluded for residential amenity considerations in respect of Bested House,[16] as well as, as RB described, for archaeological reasons, fails entirely to take into account not only that as a matter of fact it was considered and discounted; but that it would make no material difference in terms of

[14] CD1.7
[15] Main SoCG, §9.28 (CD9.1)
[16] SEI Figure 11.10, Layout Progression (CD1.14.4)

heritage and landscape effects. That is so because the suggested 'pull back line' was that proposed by Church Lane Group as found in DW's Appendix 5. The Council's *new* case is that in fact panels should have been removed entirely from the south side of Bested Hill, right up to and beyond the peak of the hill. That has never been suggested and indeed does not even appear in the Council's evidence before this inquiry. Nevertheless, and in any event, no evidence whatsoever was presented by DW to support an assertion that they could be relocated without adverse residential effects (in the context where there is otherwise no residential amenity RfR); nor that mitigation planting would entirely screen his alternative design layout; nor did he address the potential commercial viability implications. The Council's case in this inquiry has been a frustrating one which wrongly invites dismissal on the factually inaccurate basis that the Appellant has not thought about particular things as part of the design process, when it has been clear through the evidence that it has and there are good reasons why the scheme has been carefully designed as it has.

12. Indeed, it has been very clear through the Appellant's evidence that a *detailed* site selection and design process has been followed.[17] There has been a significant reduction from 238 ha to 65.5 ha[18] 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. That is very much reflected by the fact that Council has only defended one reason for refusal ("RfR") in this appeal,[19] and as set out above and in SL's evidence, the very many both acceptable and positive aspects of the site selection and design ought not to be drowned out by the Council's obsession with the southern side of Bested Hill.

[17] ES Chapter 3 – Site Selection & Design (CD1.8.2); SEI Chapter 11 Section 1 – Solar Farm Design Progression (CD1.14.2)

[18] That being the fenced area (CD1.5.1)

[19] 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;
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.

It is agreed that the above issues have been addressed for the reasons set out in the relevant SoCGs. Accordingly, the main issues reflect the Council's first RfR in the Decision Notice.

13. The Council's evidence makes many references to overplanting, which now appears to have been addressed. The Appellant's overplanting note[20] distinguishes between optimisation, which is the industry standard approach of using a DC to AC ratio of between 1.1-1.4 to push up the bell curve and minimise durations in the day where the energy generation is far below the 49.9MW threshold; and overplanting, which is defined by EN3 as: "*the situation in which the installed generating capacity or nameplate capacity of the facility is larger than the generator's grid connection. This allows developers to take account of degradation in panel array efficiency over time, thereby enabling the grid connection to be maximised across the lifetime of the site."*[21] This scheme does not include any additional solar panels on the basis of degradation. The use of a 1.27 DC to AC ratio fits squarely within the standard industry range and optimisation does not constitute overplanting for the purposes of EN3. In any event, and insofar as the Inspector disagrees and considers that the EN3 definition of overplanting could also incorporate optimisation, EN3 does not actually preclude overplanting, it simply requires that "*For planning purposes, the proposed development will be assessed on the impacts of the overplanted site."*[22] Accordingly, given the DC to AC ratio is within the industry standard, it is an entirely reasonable approach.

14. Moreover, there are two other mechanisms securing the parameters of the scheme in accordance with EN3. First, the Appellant has agreed a condition limiting the inverter units to a maximum of 50MW, in line with the NSIP threshold. Thereafter there would be some losses to the point of connection and therefore the 49.9MW connection limit would not be exceeded. Second, and in any event, references in the Council's POEs to the inability to assess the scheme because the visualisations and plans are only indicative is not correct. MD accepted that the site layout plan[23] is secured by condition. Whilst the condition requires 'accordance' rather than 'strict accordance' this is purposeful to allow some degree of flexibility. However, that is obviously still a highly limited degree of flexibility, and flexibility that is in the Council's control at condition discharge stage. There would therefore be minimal, if any, change to the fence line perimeter which has formed the basis for the ES and which forms the parameters of the siting of solar array.

[20] ID10
[21] Footnote 84
[22] Ibid
[23] Amended version (ID10)

15. It is a matter of agreement that the NPSs ought to be attributed greater weight[24] in this appeal as a result of scheme's significant generating capacity of up to 49.9MW, which sits just below the 50MW NSIP threshold. That forms important policy context as both EN1 and EN3 explicitly recognise that *"virtually all NSIPS will have adverse effects on the landscape…"*[25] and *"this scale of development will inevitably have impacts, particularly if sited in rural areas"*.[26] It goes without saying that utility scale solar 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.

The Main Issues

16. The Inspector identified the main issues reflected in the Council's single RfR[27] 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.

The Council's RfR and the Council's position now

17. As we set out in openings, it is important to recognise that the Council's RfR, which forms the entirety of its 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 MD's evidence,[28] is contingent on the Council's conclusions on **both** landscape and heritage

[24] In line with NPPF §5; MD POE, §2.9 (CD11.8)
[25] EN1 §5.10.5
[26] EN3 §2.10.17
[27] CD9.13
[28] CD11.8, §4.14.4, §5.22: "*When weighing all of the benefits of the appeal proposal against the cumulative harm…".* MD accepted in XX that it is the cumulative harm that he considers to be unacceptable.

impacts being preferred by the Inspector. In the event, for example, that GC'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.

18. It is also important to recognise that MD's invitation to the Inspector to dismiss this appeal at the close of his oral evidence was not for the reasons that this scheme was previously refused planning permission by the Council. MD has accepted that his attribution of weight to multiple benefits of this scheme were too low and should have been higher. Despite this, without explanation and off the cuff in XX, his 'planning judgement' was still that the benefits do not outweigh the harms.

19. But that it only one of the problems. The next is that RfR1 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*." It is simply not procedurally fair, given the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, which requires an RfR to state clearly and precisely why planning permission is refused, to go behind what it actually says. Consistent with DW's evidence, which in substance agrees with JI's that there will be localised significant adverse landscape character and visual effects, the landscape dispute as crystallised through the POEs was about the appropriateness and proportionality of mitigation. DW quite fairly accepted in XX that the disagreement was actually one about terminology, the infamous question being: 'when does a hedgerow become a scrub belt?', that can quite easily be dealt with by a minor tweak to the condition wording. The result is that the Council no longer disputes that appropriate and effective mitigation can be secured. Whilst there will obviously still remain significant adverse effects (which has never been in dispute), the presence of those largely inevitable effects is **not** the basis on which RfR1 is worded. The Council cannot now fairly suggest that the scheme should nonetheless be refused where the dispute on mitigation has been overcome through the evidence.

20. That is equally true for heritage. Even on the Council's own case, permission was originally refused because heritage harm was said to be at the higher end of less than substantial harm ("LTSH") for both the Grade I Church of St Martin and the Grade II* Court Lodge

Farmhouse. That conclusion confusingly seems to have mixed Historic England's ("HE") consultation responses, which never indicated the level of harm within the LTSH category but did expressly refer to the two assets, with SD's informal internal consultation response[29] (which was not based on a site visit[30]) concluding that there was higher LTSH to 'assets' (*i.e.* there was no reference to any particular assets). However, that is not even GC's evidence, which puts harm at middle end of LTSH for Court Lodge. MD simply attempted to make up a reason why his position hadn't changed in XX, despite not addressing the internal inconsistency in his POE and accepting that his approach to the internal heritage balance was just plain wrong. The substance and credibility of the Council's heritage case otherwise is addressed in detail below.

21. In summary, the Council's position in this appeal has been one of steadfast objection to the scheme, despite learning that many of its concerns have simply been factually wrong, or have since fallen away through the evidence. As a result, the basis on which the Council now closes this inquiry is one which superficially suggests that its position remains the same, despite the fact that under the surface the justification and accompanying explanation has now largely crumbled away.

PROWs

22. The reference to PROWs in RfR1 has always been a source of confusion. To GR's credit, his evidence was clear that insofar as there was any allegation that user experience would be affected by the scheme, it was as a result of two things: the potential disruption caused during the construction process; and the landscape and visual effects associated with the development. In line with the officer's report ("OR") (which calls into question why it was even in GR's POE) GR accepted that any concerns about safety or user experience would be addressed through the detailed PROW management condition.

23. GR also quite fairly accepted that his references to Local Plan policies TRA5 and TRA6 were misplaced, not least because they were not part of RfR1, but also because MD did not even consider them to be relevant to the appeal.[31] He also accepted in XX that given the scheme did not physically impact any existing PROWs, both individual PROWs and the wider network

[29] ID8
[30] Confirmed by MD in XX
[31] MD POE, §2.4 (CD)

would be protected in accordance with Policy EN5 of the Local Plan and AB10 of the Neighbourhood Plan. He similarly accepted that, if not permissive path A, at the very least permissive path B may be said to be a benefit and therefore enhancement, which also reflects the aspiration of seeking such opportunities in the relevant development plan policies. The PROW management condition itself also at criterion (i) also requires "*where impacted by the works, commitment to restoring and reviewing opportunities to enhancing any PROW…"* Accordingly, insofar as EN5 and AB10 require exploring opportunities for enhancement, that is provided for in any event.

24. At this juncture it should also be made clear that Mr Evan's reference to a historic route across Bested Hill itself is not on the Definitive Map. Whilst he is correct in his note[32] that as a matter of fact that does not mean it never existed, it would require a robustly evidenced DMMO application (which has not been made) to seek to amend it, and the aptly named Definitive Map is otherwise conclusive evidence *per* section 56 of the Wildlife and Countryside Act 1981.

25. GR also accepted in XX that the two footpaths that run through the northern and eastern parcels respectively have wide offsets, of between 25-60m and 12-16m.[33] Such offsets are particularly generous and avoid the feeling of enclosure. However, and in any event, the permissive routes would give users the options of not having to pass through the panels and instead follow the boundary of each parcel should they prefer.

26. The remaining effect on PROW users therefore, as wholly constrained to landscape and visual effects, is comprehensively addressed through the landscape evidence and does not require distinct assessment. That is equally true of the effectiveness of mitigation. With respect to GR's experience of mitigation on other sites, he is not a landscape expert and the efficacy of the same has now been agreed between JI and DW.

Landscape

27. The result of this inquiry is that there now very little in dispute between JI and DW. The POEs prepared for this inquiry revealed that, in reality, the fundamental difference between JI and DW was whether the adverse effects could be acceptably mitigated. Mr Withycombe's proof

[32] ID9

[33] SEI Figures 11.17-18. 11.22-24 (CD1.14.4)

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."*[34]

28. The XX of DW revealed that his position was perhaps easily avoidable with a simple conversation about terminology. Whilst JI has clearly explained that hedgerows (of whatever numbered rows) could effectively provide sufficient density to meet DW's density requirements, DW did not agree, suggesting that instead scrub belts should be planted. Whether we will ever know at what stage a particular number of hedgerows becomes a scrub belt is not clear, but what is clear is that in practice DW's problem with the mitigation proposed has been premised on an assumption that the terminology used on the landscaping mitigation plan[35] secured particular densities, which he did not think sufficient. DW was made aware, seemingly in XX for the first time, that 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.[36] It is therefore secured, but will be subject to a condition requiring the submission of full landscaping details. DW also accepted in XX that the carefully designed mitigation plan itself is either sufficiently flexible to incorporate, or indeed already does incorporate, most of the suggestions he made at §8.7 of his POE; or more than appropriately already provides for effective screening. On this basis, DW quite rightly updated his position and he now agrees that appropriate and proportionate mitigation can be provided. The extent to which this updated position in and of itself overcomes the Council's RfR is addressed above.

29. The only remaining point of disagreement between JI and DW is the approach to determining effects on LCAs. There is no actual substantive dispute about the landscape character effects, rather the dispute is about the approach to whether those effects affect the whole of the Evegate Mixed Farmlands and East Stour Valley LCAs, or just part of them. DW says that on the basis the Site geographically extends to 20-30% of the LCAs, that is such a large proportion that it ought to be said to affect the whole of the LCAs. JI explained that such an approach fails to recognise two things. First, LCA boundaries are entirely arbitrary. Some LCAs in the country are very big, others are small. Taking the boundary as a definitive area on which a scheme is assessed does not recognise that they are merely a tool used to assess the landscape

[34] Ibid, §9.2
[35] CD1.21
[36] SEI Figure 11.9 Revision B (CD1.14.4)

character of particular areas. Second, and most importantly, significant swathes of both LCAs are entirely unaffected the scheme where there is no intervisibility between the Site and those areas. For the northern parcel, the ZTV[37] illustrates that to the north of the M20 and south of the northern parcel there will be no intervisibility and therefore such parts cannot be affected. The same occurs for various parts in the East Stour LCA as a result of the lack of intervisibility with the western and eastern parcels. JI therefore takes a real world, not superficial, approach and quite rightly concludes, as agreed in the Landscape SoCG[38], that *parts* of those LCAs will be affected. In substance, and in any event, it is not the landscape character effects which differ between the witnesses, it is the description of them in conjunction with the LCAs, and therefore the difference does not really take the Council anywhere anyway.

30. What otherwise remains is agreement that there would be localised significant adverse landscape and visual effects. Indeed, DW's additional viewpoints made absolutely no difference to the LVIA conclusions. That is clear even from his POE. Given they made no difference, it is patently wrong to suggest that the viewpoints provided as part of the ES and SEI were not representative. Indeed, JI explained in EIC how 18 viewpoints itself (as contained in the ES and SEI) was on the higher end for a solar farm scheme. Equally, given there is no substantive disagreement on the effects, DW's grumble about methodology is irrelevant. His criticisms are not accepted, and at their highest are presentational as opposed to substantive, but need not be addressed in closings. The only point that does is DW's criticism that the LVIA did not include winter views. He accepted in XX that landscape experts are capable of exercising their judgement and seemed surprised when he was taken to seasonal variation references in almost every section of Chapter 11 of the ES. Again, given that we are now in winter anyway the Inspector will form his own informed view.

31. Fundamentally, the localised significant effects are to be expected for *any* utility scale solar farm development. Indeed, the inevitability of adverse effects is explicitly expressed in national policy.[39]

32. In terms of the landscape character baseline, the Site is well suited for the scheme. The scheme is situated in three parcels. The northern parcel lies between the M20 and the HS1 rail line; the

[37] JI POE, Appendix 1 (CD10.2)
[38] CD9.2, §3.10.1
[39] EN-1, §5.10.5 (CD3.12); EN-3, §2.10.17 (CD3.13)

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 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.[40] Recent consented and constructed development, including the Sellindge Grid Stability Facility; Sellindge BESS scheme and Sellindge Solar Farm, also fall within the LCAs.

33. 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.

34. 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. Furthermore, Mr Ingham explains that there are no overriding landscape sensitives which indicate that the Site is not capable of accommodating the change proposed.

35. 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.

[40] CD4.5

36. Importantly, there are not significant visual effects on PROW AE475, as illustrated by viewpoint 7 from Aldington Ridgeline. It is this viewpoint that is affected by the south side of Bested Hill and therefore it is important to recognise that given the panels would be nestled within a mature vegetation framework and be backclothed by mature woodland along the M20 motorway; sit well below the horizon and not interrupt the skyline or the long distance view towards the Kent Downs National Landscape; and be located in a field where large pylons and overhead lines are already present (*i.e.* Bested Hill); the solar array would be a noticeable albeit mid distance feature along these routes and therefore the effect would not be significant.[41] Any reference to reducing visual effects by pushing back the solar panels from the south of Bested Hill is already in the context where it is agreed there would not be significant visual effects. In this context the Council's repeated reference to the south side of Bested Hill is even more bewildering.

37. 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[42] that DW does not dispute.[43]

38. Turning then to policy. First, it ought also to be noted that MD accepted that ENV1 was mistakenly referenced in the RfR.[44] Next, Policies SP1 and SP6 are overarching strategic policies. Ultimately, if the scheme accords with the specific landscape (and heritage) policies the consequence is that both must also be met. It is also important to note that MD's allegation of conflict with SP6 was based on the alleged failure to *consider* the removal of the south side Bested Hill panels.[45] That factual error was clarified in JI's rebuttal and as a result it is plain that, in compliance with EN1[46], the Appellant clear did take into account landscape and visual matters in the design process.

39. Turning then to Policies ENV3a and ENV5. MD accepted in XX that the scheme complies with all of the ENV3a criteria but for he says criterion (h). That already moves things on from his POE where he alleges harm to the landform and topography of Bested Hill (criterion (a)),

[41] JI POE, §7.14(CD10.2)
[42] CD1.14.2
[43] DW POE, §7.15 (CD11.2)
[44] 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)
[45] MD POE, §3.22 (CD11.8)
[46] Ibid, MD references EN1 §5.10.19

which he accepted in XX would remain unaltered and be returned to its current status at the end of the development period; and conflict with the reference to locally identified significant landscape features (criterion (j)), where Bested Hill is not so recognised in the Neighbourhood Plan.[47] ENV3a only requires that proposals "*shall demonstrate particular regard to the following landscape characteristics, proportionality…".* For the reasons given in JI's evidence, there has plainly been regard to the Landscape Character SPD, given the Evegate Mixed Farmlands LCA (in which the northern parcel is located) is of low sensitivity and poor condition. That is important where MD refers to failing to avoid development on higher ground. Even on MD's case it cannot be said that there is conflict with Policy ENV3a as a whole.

40. Policy ENV5 is titled '*protecting important rural features'* and compliance is achieved by protecting and where possible enhancing the listed features. There is no physical effect, and therefore there is protection in compliance with the policy wording, on rural lanes or PROWs. There is also, in any event, some enhancement as set out at §23 above. MD's allegation of conflict with criterion (e) is mistakenly premised on his view that Bested Hill ought to be regarded as a local landscape feature that helps distinguish the character of the area.[48] It is telling that neither JI, nor the Council's own landscape witness, DW, refers to Bested Hill as such. Nor was it based on any reference in the Local Plan or Neighbourhood Plan. Rather, MD accepted in XX it was his non-landscape qualified opinion. Just because it is referred to as Bested Hill (*i.e.* its name) by local residents, that does not elevate it to some sort of distinguishing landscape feature. Indeed, local residents might call the local supermarket by its name 'Tesco', but that does not make it some distinguishing part of Ashford. Indeed, as JI explained, Bested Hill is less a hill and more a mound anyway(!).

41. In relation to Policy AB4 of the Neighbourhood Plan, the development would be partially visible from the ridgeline between Church Lane and Goldwell Lane but would not result in significant visual effects (see §36 above). MD also attempted to allege conflict with part B of Policy AB4 of the Neighbourhood Plan. As SL explains, part B is confined to consideration of locally significant views *"within the shaded arcs"* shown in the figures. Figure 9 of the Neighbourhood Plan shows that the shaded arc associated with viewpoint 3 clips the southernmost edge of Bested Hill, but does not include any land where there is development.

[47] Two references at VP3 and 4. The former states: "*Bested Hill and Hungry Down are seen at close distance, to the north and north-east, with the location of the traditional annual Point-to-Point event lying between them"* and the latter: "*At night, lighting at the Sellindge Converter Station bleaches the sky beyond Bested Hill, but looking towards the coast is rewarded with dark skies."* (CD3.3)
[48] MD POE, §3.23 (CD11.8)

It follows that there is no conflict with the policy. MD's attempt to read into the policy wording from the supporting text is plainly an unlawful approach.

42. The crux in respect of development plan policy compliance is more generally whether the landscape character and visual effects are outweighed by the scheme's benefits. That is so because as MD indicated, ENV10 of the Local Plan, and AB10 of the Neighbourhood Plan, are the most important landscape policies. There are obvious problems with both. MD's interpretation of ENV10 is that it attracts instant conflict where a scheme results in even just one significant adverse effect. As JI explained, any utility scale solar scheme would result in at the very least significant adverse landscape character effects in respect of the site in which it is located, if not also beyond. A narrow interpretation of ENV10 results in a policy which, despite its intention to support renewable energy projects, would be inconsistent with NPPF §165a which recognises that adverse impacts ought to be addressed appropriately. Such an interpretation of ENV10 would mean that it could never support a utility scale solar farm (nor indeed other renewable energy infrastructure such as a wind farm). Moreover, it also conflicts with the approach to LVIAs set out in GLVIA3 which recognises that:

> *"It should be noted that judgements of significance are not judgements of acceptability considering the policy context, which is a matter for decision makers. For example, it may be the case that the LVIA concludes that a proposal would result in 'significant' adverse effects on receptors, but the proposal could still be considered acceptable when judged alongside other factors in the overall planning balance. Conversely, the LVIA could identify 'no significant effects' but the proposal could be found to be unacceptable when judged alongside other factors in the overall planning balance."*[49]

43. Insofar as Policy ENV10 is inconsistent with national policy, so too is Policy AB10 of the Neighbourhood Plan. Although AB10 does set out a balance (at criterion (v)), a scheme cannot comply with AB10 without first complying with the requirements of ENV10, given compliance with ENV10 is a prerequisite before even considering its additional criteria.

44. The alternative way of interpreting ENV10 is to take a broad interpretation of the reference to significant adverse impacts, which must require assessing whether the significant adverse landscape character and visual effects are acceptable or not (*i.e.* applying a balance). As SL explains, that requires asking whether individual significant adverse effects, when considered

[49] CD4.2, page 8

together, amount to a significant adverse impact on the landscape in the context of a utility scale solar development.[50] Such an approach would be consistent with national policy and indeed would be compliant with the balance already contained in AB10.

45. SL explained that given the highly localised nature of the significant effects, in the context of a landscape which is neither nationally nor locally designated, and in the context of inevitable effects associated with utility scale solar, they are limited in weight and clearly outweighed by the substantial public benefits addressed above. It must also be borne in mind that the scheme is a temporary and reversible one, such that there is no permanent landscape and visual effect; indeed the mitigation planting would be a landscape fabric, and character, benefit after decommissioning.

Heritage

46. The Council's basis for refusing permission on heritage grounds, as set out in the OR was based on the impact on the Grade I Church of St Martin and the Grade II* Court Lodge Farmhouse.[51] Those assets were also expressly referenced in the SoCG.[52] 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 SD's POE. That was sensibly withdrawn. MD's attempt to suggest that it was withdrawn because the Council could not risk to potentially pay a costs award is purposely distracting. If the Council did not consider that their behaviour, by including additional assets on which the Inspector was invited to dismiss the appeal on heritage grounds for the first time in SD's POE, was unreasonable there would be no concern following an indication costs might be pursued. The Council does not contend therefore that any impact on other assets, beyond the church and Court Lodge, are unacceptable.

47. The Site forms part of, and makes a minor contribution to, the wider rural setting of both the church and Court Lodge. In turn, RB explains that the wider setting, which is not referenced in either of the assets' listing descriptions and which are premised on the architectural and

[50] SL POE, §6.32 (CD10.6)
[51] CD1.19
[52] CD9.1

historic interest of each, makes a much lesser contribution to the significance of each than the buildings themselves.

48. It is no exaggeration to say that GC's XX was overwhelmingly disagreeable. Whereas most professional witnesses agree on methodology and part way sometime thereafter when applying their professional judgements, GC decided that she disagrees with almost every single aspect of RB's approach. RB is an incredibly experienced heritage expert;[53] his evidence set out in detail an objective, justified and clear methodology that reflects Historic England guidance[54], and his overall judgement was based on thresholds set by case law. GC, on the other hand, did not. She expressly disagreed with aspects of the HE guidance in XX; her POE contained no methodology; and she refused to explain the basis on which she had reached her 'professional judgement'. She also entirely confused herself about the interrelationship between the three categories of harm, where LTSH obviously sits in the middle of no harm and substantial harm, she insisted that they were not related and there was not a tipping point (contrary to established case law[55]). She simply said she had been to the Site and had a look around. That is not good enough, and on the basis that her judgement is wholly inconsistent with the established approach and indeed case law, the Inspector is firmly invited to prefer the clear, consistent and reasoned evidence of RB.

49. In respect of the church, RB explains that its significance is primarily derived from its architectural and historic interest. In terms of the former, the the church derives significance from its original 11th century elements, the 13th/14th century aisle and chapels, 16th century tower and its later 19th century restoration, as described in detail in the listing.[56] Its historic interest resides in its association with the Archbishops of Canterbury.[57] The church also derives some significance from its setting, mostly from its immediate setting comprising its churchyard, Court Lodge and Court Lodge Farm, the grass field to the east and Parsonage Farm (the former rectory for the church), where its physical and historic relationship with Court Lodge and the former Archbishop's manor house is best appreciated; but also from its

[53] RB POE, Section 1 (CD10.4)
[54] CD5.1-5.3
[55] *R (James Hall and Company Ltd) v City of Bradford MDC* [2019] EWHC 2899 (Admin), HHJ Belcher (at §34): *"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"* (CD6.3)
[56] RB POE, §4.10-4.11 (CD10.4)
[57] RB POE, §4.12 (CD10.4)

wider setting where the church tower can be seen across a variety of long range views.[58] It is also important to note that those wider views are not specifically associative (*i.e.* they are not designed views), and are just PROWs in the wider landscape that happen to have views given the location and height of the church.[59] In heritage cake terms, the biggest slice is the form and fabric of the church (*i.e.* the architectural and historic interest), the medium slice is the immediate setting, and the slimmest slice is the wider setting. All are important contributors, but they contribute to different extents.

50. The same approach is true of Court Lodge. Its significance resides primarily in its architectural and historic interest.[60] In terms of its setting, it is from within the plot, the church and churchyard to the north and the field to the immediate east (*i.e.* its immediate setting) where the farmhouse has been experienced throughout most of its existence and the historic relationships can be best appreciated. Modern agricultural structures immediately to the west have a negative contribution to its significance.[61] It is one of the alarmingly few points of agreement that the wider historic landscape in respect of Court Lodge's significance is less wide spread than the church.[62] That is right because the rural and agricultural wider context of the landscape generates a degree of illustrative context to the farmhouse.[63]

51. Unfortunately, GC refused to accept that different elements contribute to different extents towards the significance of an asset. She simply said they were all important and dismissed the Inspector's cake analogy. On her approach one cannot take just a thin slice of the cake, it must be left precisely intact; or, if any harm does occur to *any* element that makes *any* degree of contribution one has essentially sat on and destroyed the whole cake. That approach is obviously wrong. It cannot be right that wider landscape contributes even to the same extent as the immediate setting of the assets. That would mean that whether development was directly adjacent to the assets, or 5 miles away where the church was just a spec on the horizon, there would be equal harm to significance.

---

[58] Ibid, §4.14-4.16

[59] See page 7 of HE Statements of Heritage Significance: Analysing Significance in Heritage Assets, HE Advice Note 12 (CD5.3)

[60] RB POE, §4.18 (CD10.4)

[61] RB POE, §4.19 (CD10.4)

[62] Confirmed by GC in XX; GC POE, §8.1 (CD11.9)

[63] RB POE, §4.19 (CD10.4)

52. RB therefore explains 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[64], which even then, due to the very limited visual effect, would be no more than minor. That is so because as RB explained it is a large panoramic view with a large degree of separation between the church and eastern block of the development. His approach also, as explained, takes into account the wider experience and does not treat viewpoints as static views. GC's main concern appeared to be with viewpoint 16 (the liturgical east), where she stated in XX that there would be a "major adverse effect". That just cannot be correct. Views towards the assets from viewpoint 16 would be entirely unaffected due to the topography. One would need to turn around, with the church behind, to see some heavily filtered views west along the Stour Valley of the development. The same approach is true for viewpoint 6. GC's plain weird explanation that the user would still know the development is behind them when looking at the church entirely fails to take into account both that the plane of vision which the church and Court Lodge sit in would be unaffected and, as RB explained, dominated by the assets; and that even then the views in the distance of the panels would be very much limited.

53. RB also explains that the effects where HE were perhaps most concerned, in relation to viewpoint 8 where the panels would be seen in the same view as the church, would only have a very minor adverse effect on the contribution that the setting makes to the significance of the church.[65] Indeed, GC agreed in XX that the panels would be experienced at a far distance and separated from the church both laterally and vertically, such that there would only be a very small magnitude of change to a very limited aspect of the view.

54. Accordingly, where there is an impact on the wider setting it also needs to be remembered that there is only an effect on *some* of the *many* views towards the church from the wider landscape. The majority of the setting of the assets will be unaffected by the proposed development. Moreover, 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.

[64] RB POE, Appendix 1, Figures 10-14 (CD10.4)
[65] RB POE, §4.33 (CD10.4)

55. As a result, it cannot be the case that the harm is, as the Council suggests, at the higher end of less than substantial harm (or indeed middle for Court Lodge). The High Court clarified in *Bedford Borough Council v Secretary of State for Communities and Local Government*[66] 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"*.[67] The higher end of less than substantial harm sits just 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 lower 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.

56. The substantial public benefits[68] associated with this renewable energy scheme undoubtedly outweigh the less than substantial harm to the heritage assets, (*i.e.* the Appellant's heritage case). They would, as SL explained in EIC, also outweigh the heritage harm on the Council's case. The scheme is therefore in accordance with Policy ENV13 of the Local Plan, which accurately reflects the internal heritage balance at NPPF §215, and Policy AB11 of the Neighbourhood Plan, which despite erroneously referring to aspects of the setting which do not contribute to the significance of an asset, does not preclude an internal balancing exercise as established by the *Bramshill* judgment.[69] MD fairly accepted that his automatic attribution of great weight to heritage harm, which he considered top trumped the significant weight to renewable energy, was an erroneous approach. As SL explained, the application of the internal heritage balance under NPPF §215 reflects the attribution of great weight to heritage conservation and *Hall*[70] expressly indicates that the level of harm goes to the weight to be given to it. MD's position that even on the lower end of LTSH the highly limited heritage harm would not be outweighed by a 49.9MW renewable energy scheme with a pre-2030 grid connection date is just not credible.

---

[66] [2013] EWHC 2847 (Admin) (CD6.1)

[67] Ibid, §24-25

[68] SL POE, Section 8 (CD10.6)

[69] 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)

[70] R *(James Hall and Company Ltd) v City of Bradford MDC* [2019] EWHC 2899 (Admin), HHJ Belcher (at §34): "*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."* (CD6.3)

Conclusion

57. In conclusion, the appeal scheme, which delivers a significant amount of the urgently needed renewal energy required to transition to green energy and achieve net zero, ought to be granted without delay. It is a scheme which is consistent with the development plan and secured by appropriate conditions.

58. 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. It goes without saying that the utility scale solar required to reach both the Government and Council's targets cannot be delivered with no impacts. It is well recognised that some adverse effects from energy development must be tolerated in order to achieve ambitions for energy security and combatting climate change. That was perhaps best summarised by GR in XX who said that one might take the view that effects were "*part and parcel of renewable energy*". Moreover, the benefits of the scheme attract substantial weight, including the contribution towards the generation of renewable energy, the pre-2030 grid connection agreement which means it can be delivered quickly, 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, the soils will also be in a better condition than at present, when the Site will be returned to its current use. Accordingly, the substantial benefits would patently outweigh the highly limited and largely inevitable harm flowing from this substantial 49.9MW utility scale solar farm. Accordingly, it is firmly submitted that this scheme should be granted consent, and the Inspector is therefore respectfully invited to allow the appeal.

SHEMUEL SHEIKH

Kings Chambers

Manchester | Birmingham | Leeds

13th February 2025