

## **Representations by Church Lane Group, Aldington**

**On the Appeal Reference: APP/E2205/W/24/3352427**

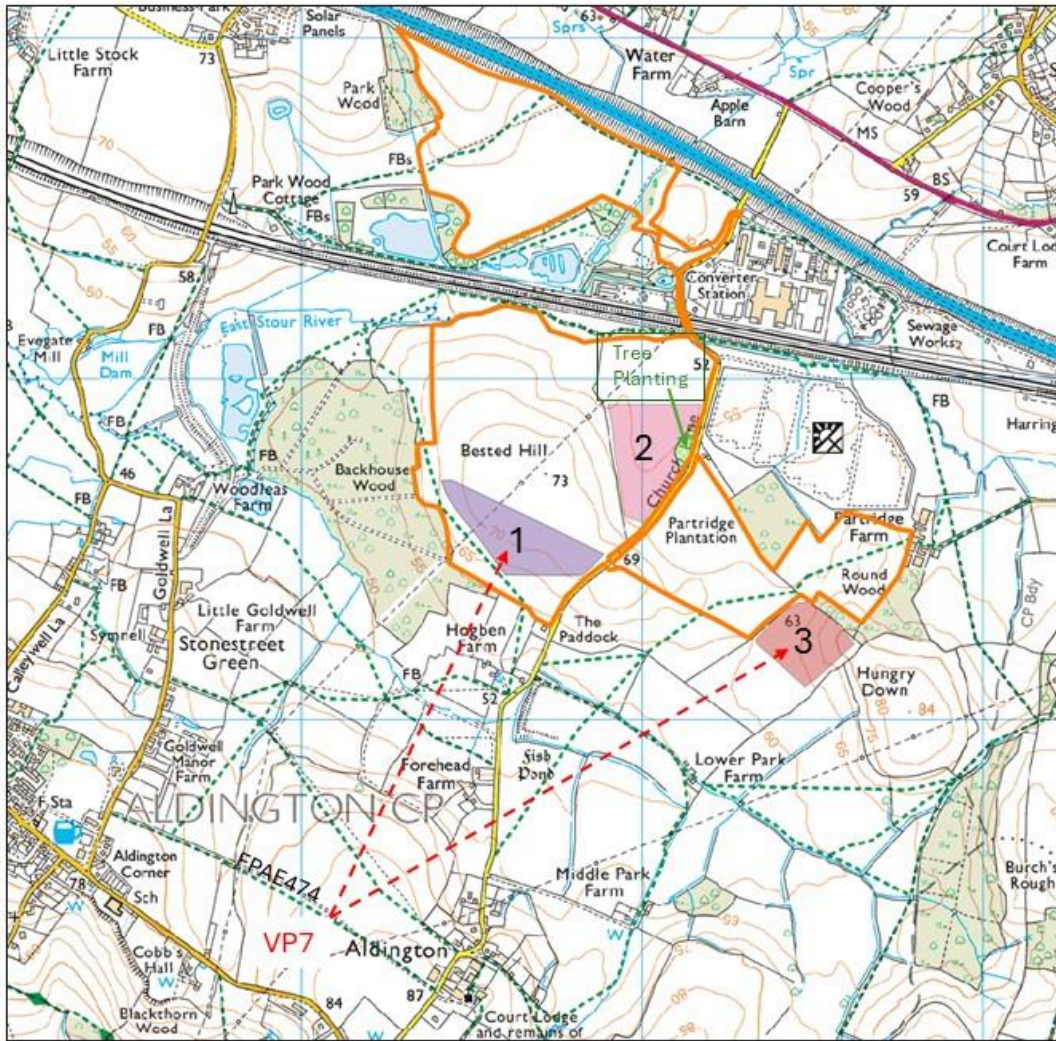
### **Forward**

The Church Lane group comprises residents and landowners that live along Church Lane that stand to be directly affected by the Appellant's scheme. We contacted the Appellant more than three years ago when this scheme was first mooted and had meetings with James Lyons of EDF and others. In those early stages we felt that we were being listened to and having a constructive conversation. During this early phase the Appellant was persuaded to remove solar panels from the extreme eastern area of the proposal – an area known as Hungry Down - arable land – a northward sloping area visible from the public rights of way on the Aldington Ridge to the south and from residential properties within and close to the Conservation Area.

Over the course of the last three years, we have had two site meetings with the Appellant looking in detail at the scheme and ways in which the impact of the proposal could be mitigated. From the outset we suggested to them that if the footprint of the panels was to extend down the southern slope of Bested Hill it would not be possible to mitigate the impact of this when viewed from various locations on the Aldington Ridge. We suggested to them that this medium distance view looking northwards would inevitably impact on the panoramic views available to walkers, views which take in the North Downs in the distance and that this was unacceptable in terms of unmitigated visual impact. This impact would be particularly striking for walkers on public rights of way and not least those who had perhaps just stepped off the Saxon Shore Way which lies adjacent and just to the south of the Aldington Ridge (and within the AONB). It was with this in mind that we felt the setting of the AONB would be affected as well.

Rather than suggesting that the panels on the southern slope of Bested Hill should simply be removed from the scheme with the inevitable loss of potential output, we have, in some detail, indicated how the Appellant can relocate this area of panels to land that is already within the red line boundary. This alternative location is on poorer agricultural land – a fact acknowledged to us from time to time by the landowner – and above all capable of being screened through hedging and tree planting from virtually all vantage points including that of the single residential property (Bested House) which stands to be the house most affected by the scheme.

Overleaf is the detailed plan that we submitted making the case for this reorganisation. The Appellant has already removed Area 3 on the plan from its scheme and our proposal was and remains that Area 1, also in line of sight from Aldington Ridge, should also be removed. However, this area could be replaced, acre for acre in Area 2. Additional hedge and tree planting in the lane where shown would screen the panels in this triangular field from those in the lane as well as views from Bested House.



## Mitigating Visual Impact (22/00668/AS)

Regrettably what started as a reasonable exchange of ideas and dialogue between our group and the Appellant fell away nearly 2 years ago to a point where we were getting no response whatsoever to our correspondence with its agents, no return of our telephone messages and we were left resorting to making written representations as part of the process. This was a very disappointing conclusion particularly when the remaining changes we were looking for seemed straightforward enough and yet, if they were not, the Appellant never explained why it would not consider these.

Whilst pleased with the proposals for mitigation in some areas - notably the retention of the existing alignments of public rights of way and mitigation provided in terms of additional hedging for these (and now some additional permissive paths as well in the latest iteration) we could not see why – and can still not see why our further requests for hedge and tree planting to protect views for those travelling in southwards in Church Lane (which incidentally is not just motorists and their passengers but also walkers and horse riders) cannot be incorporated at little additional cost.

The other aspect was the Construction Traffic Management Plan (CTMP). Church Lane is not suitable for construction traffic along the majority of its length. Indeed, it is only the relatively short section running southwards from the A 20 to the entrance into the National Grid Converter station that is wide enough to allow vehicles to pass each other. Widening of the lane through this area and the large bridge that takes the M 20 was all designed to afford safe access to and from the converter station when it was built in the 1980's. There is now a cluster of substantial infrastructure facilities located at the northern end of Church Lane, specifically lying between the motorway bridge and the two railway bridges. There are six of these in all. Some, like the Converter station and the Southern Water Sewage Works have long since been completed while others like the Pivoted Power Battery project and the Welsh Power Synchronised Condenser unit are in the early stages of construction.

Having these industrialised areas at the northern end of the lane has caused problems with construction traffic over the years and our group could see that if the Appellant's scheme was consented – at whatever stage – it was imperative that rather than repeating the problems of the past with all the inherent safety issues it would be essential that the lane was temporarily closed to traffic during the construction phase.

Ironically, having explained all of the issues to the Appellant, it indicated that if asked by the Highways Authority they would be prepared to look at this as an alternative to the provisions in its CTMP. Regrettably Kent County Council (KCC), the highways authority for the county, remains unwilling to even ask the Appellant to consider this option, let alone demand that it should be done. KCC cites issues that are, in terms of resolution, far, far less of an issue than will be the consequences if it is left open to all traffic in both directions throughout the estimated 12 months of construction.

In summary, it is so disappointing that we have now reached the stage where the Appellant has decided to appeal the refusal of this scheme which remains materially the same scheme that our group found unacceptable from the outset. It would not have been difficult for the Appellant to have devised a slightly reorganised scheme, removing panels from the most visible high ground area and relocating them into an area (within the red line) which is far less visible and easily capable of further landscape mitigation.

Such reorganisation would have done nothing to reduce the intended renewable energy output from the scheme and the area from which the panels would be removed would in so many ways provide a much better location for the replacement wildlife habitat and wildflower/grassland area proposed.

Furthermore, the Appellant has made no approach to KCC nor to Ashford Borough Council (ABC) of its own accord to secure a temporary closure of Church Lane for the duration of the construction phase.

## **Our case**

We have made submissions into the process at various stages, and we are grateful for the fact that the Inspector will consider each of these. For reference purposes these are our submissions dated 26.07.22, 09.08.22, 30.08.22, 21.10.22 and 02.03.24. We appreciate that it is not necessary for us to restate the points already made because these will be taken into consideration. We have therefore instead carefully reviewed the Appellant's Statement of Case and propose to address and contest various of the points they have made. Their Statement primarily contests the decision of the local planning authority (ABC) but with references to submissions made by statutory consultees and just occasionally references to comments made by the Church Lane Group.

We as a group support ABC's decision to refuse this application and believe that this decision should be upheld. Notwithstanding this, and as already referred to above, we believe that there was a scheme here which was capable of obtaining a planning consent by promoting a compromise design that would have addressed, we think to a satisfactory degree, the concerns raised in terms of unacceptable environmental impact. It was this environmental impact that was weighed in the balance against the benefits of the renewable energy this scheme could deliver, and it was found wanting.

There are five specific areas of the refusal which the Appellant addresses in its Statement of Case and we will in what follows address three of these (those in bold font):

- 1. Landscape and Visual**
2. Heritage
- 3. Traffic and Transport**
- 4. Ecology and ornithology**
5. Minerals

In each of the following sections overleaf we have as necessary referred to the paragraph number within the Appellant's Statement of Case.

### **1. Landscape and Visual – "The benefits of the scheme would not outweigh the harms"**

The Landscape Character Area (LCA) designations were adopted by ABC in their Landscape Character SPD in April 2011. Those LCA that are within the footprint of the Proposed Development have been referred to by the Appellant.

**At paragraph 8.4** it is mentioned that the LCA designations are intended to "*ensure new development makes a positive contribution to the landscape, including its key characteristics and features in which it is located*".

We submit that unless and until a scheme for solar on this land is designed in a way that is capable of effective mitigation – and this is not that scheme – it is impossible for this LCA requirement to be met. This is primarily because the Aldington Ridge LCA has not been respected and, except in the Heritage section of the Statement of Case hardly touched on at all in the Appellant’s narrative.

**At paragraph 9.6** the Appellant suggests that “*draft changes to the NPPF can only be given limited weight*”. We contend, and hopefully the Inspector will agree, these draft changes which are still out for consultation at the time of this Appeal should in fact be given no weight at all.

**At paragraph 9.15** the Appellant cites EN-3 in regard to its provisions regarding proximity to an available point of connection. However, this cannot be something which can allow an applicant to believe that this aspect is one which will override the requirement for a scheme to provide adequate environmental mitigation.

**At paragraph 9.20** the Appellant usefully cites section 14 of the 2023 NPPF. At clause 160 (a) it says “... *Whilst ensuring that adverse impacts are addressed satisfactorily.... including visual impacts*”.

**Paragraph 9.25** the Appellant refers at some length to the provisions within the NPPG (as adopted 06.03.14) and specifically at paragraph 013 sets out that –“*The deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. However, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively*”.

A further important extract from this NPPG is quoted, where it requires that: “*The proposed use of agricultural land has been shown to be necessary and poor-quality land has been used in preference to higher quality land*”. This is particularly relevant in the context of the reorganisation of panels which would accord with this guidance through moving them from better quality land to poorer land.

A further extract states that “*with effective screening and **appropriate land topography** the area of a zone of visual influence could be zero*”. (bold font our emphasis).

**At paragraph 10.4** ABC are criticised by the Appellant for not providing detail of the harm and amenity to users of PROW. The Church Lane Group, in its representations, did so - endlessly. We explained how these impacts could be mitigated and yet the Appellant refused to engage with us.

The below photomontage, produced by the Appellant, remains probably the best visual description of the impact the Southern block of the scheme will have as viewed from the south – most notably from footpath AE 474 (also known as Viewpoint 7).



EDF's Proposition for Bested Hill  
Their Viewpoint 7 in Visualisations  
On Footpath AE474 West of Church



In early 2022 we carried out our own research to investigate how, through realignment of the southern boundary of the Southern block, it might be possible to mitigate these significant adverse visual impacts when the scheme was viewed from the south.

The detail of what we did and the results can be seen within our submission of 09.08.22.

We maintained that there was a balance to be struck. Some may call for the removal of panels from Bested Hill in its entirety. High ground is not suitable in terms of topography if it cannot be screened but on the other hand the vantage points from the north looking at Bested Hill are few, at a greater distance and less impactful than those from PROW on the Aldington Ridge LCA, which abuts the AONB (National Landscape).

**At paragraph 10.10** the Appellant suggests that *“the long-term change.....of landscape character is inevitable by virtue of a change of use”*. Actually, a long-term change in the landscape’s character through a specific change of use requires that change of use to be visible. As such the change from agricultural use to solar generation will inevitably “industrialise” the specific land on which such infrastructure is located but there is no inevitability about the creation of an impact on the wider landscape.

That impact will depend on natural landform, established woodland and vegetation and importantly mitigation through landscape planting. There is no virtue in including areas of the scheme on land which is incapable of adequate mitigation.

The Appellant goes on to suggest that this long-term change of landscape character should be accepted as inevitable because *“otherwise it would be impossible to site any solar farm in the UK”*. This is a fatuous statement to make if only because if it were correct, it would negate the need for any planning decision-makers to be involved at all. In short, the Appellant is suggesting that every solar scheme is going to change the character of the landscape and that this should be accepted as the norm.

The Appellant's views on this seem to ignore the importance of mitigation – adequately achieved in very many other consented solar schemes and, we believe, achievable here had the Appellant only considered what we had, in detail, suggested to them. For whatever reason they chose to cease communication with us without explanation.

**At paragraph 10.11** the Appellant indicates that “the decision making needs to consider *“the extent to which these impacts can be mitigated such that, when placed in the planning balance, these effects can be considered acceptable”*. As stated, it has elected not to change its panel footprint. We cannot see how making the proposed change would affect in any way the viability of the scheme. Had we been seeking a reduction in the panel footprint of between 15 and 20 acres as a stand-alone demand we could perhaps understand the Appellant's reaction and its unwillingness to communicate further. However, as recorded in our previous submissions, we were seeking the relocation of this area to another within the application red line boundary.

**At paragraph 10.37** the Appellant is keen to emphasise the “*context of the current landscape*” diminishing this baseline so far as possible. However, unfortunately, of the six infrastructure developments referred to, only one of these is visible from the key location of the Aldington Ridge LCA and that is the pylons. They can be seen in the various photomontages and have been part of the landscape for more than 60 years. Each one of the other items are completely hidden in this panoramic view from the Ridge, except for the extreme rooftop of parts of the Converter Station which can be glimpsed in amongst the trees. We don't feel the context given is a fair one and hope the Inspector will agree.

We have referred on a number of occasions to the Aldington Ridge LCA and yet the Appellant seems at pains to studiously avoid referring to it in this section.

If it had chosen to do so, it could have highlighted the prescription for the Aldington Ridge LCA. Clearly this is not like the other neighbouring LCA in one important respect. It is, as the name suggests, landform on a ridge of high ground, an ancient route developed by the Romans and very probably before that. As such views experienced within the LCA are just as important as those looking out from it. This is made clear in the prescription which among other things states as part of the Landscape Actions a requirement to “*Conserve the infrequency of built form and **conserve open views***”. (bold font our emphasis).

**At paragraph 10.56** the Appellant introduces an extraordinary concept by suggesting that the impact may not be considered quite as bad “*by some*”. This seems to suggest that somehow it is no longer necessary to look at this sort of dramatic change of use in terms of its impact on the natural landscape (that has evolved over millennia) objectively and compare, contrast and consider.

Instead, there is an inference that some people out walking are going to be inclined to say something like *“oh look! There is a solar generating station in the middle of the rural landscape, drawing attention to itself in the middle distance as we look towards the escarpment of the North Downs AONB, but that’s okay because there is an overriding need for these things”*.

**At paragraph 10.61.5** there is the following jaw dropping statement in relation to Viewpoint 7 on PROW AE474: *“no significant effects on the visual amenity of walkers due to distance, with the western, central and eastern parcels partially screened by intervening vegetation and landform”*. One wonders whether the Appellant is looking at the same photograph.

**At paragraph 10.61.6** the Appellant adopts a straight cut and paste for Viewpoint 8 as if preferring to move on. Why did it leave these two viewpoints (the ones which in the later summary it indicates are perhaps those on which there is the greatest impact) until last? Why did it its original seek to avoid any reference at all to Viewpoint 7?

**At paragraph 10.69** the Appellant might like to consider that those using Church Lane are not just motorists (and their passengers) but strangely enough also those who regularly walk in the lane and those who ride horses. These interests are important too.

**At paragraph 10.83** we come to a very telling section. It relates to Heritage and here we find a much more understanding and contextual reference to the Aldington Ridge LCA. The Appellant refers to the ridge as *“a relatively elevated landscape with views to the north forming part of the character of this LCA”*. It is very revealing to contrast this statement with that made earlier by the Appellant (at paragraph 10.50) where it makes no mention at all of this important neighbouring LCA.

**At paragraph 10.152** the Appellant states categorically that *“there are no views of the Proposed Development from the Church”* (St Martin’s Church, Aldington). Well, there are views from the church, and the below photograph is taken from the church tower looking north towards Bested Hill. The area to be covered with panels is verged red on the photograph. As such this part of the scheme is visible from this Grade 1 listed building located within the village’s only Conservation Area which includes the remaining buildings that comprised the historic Archbishop’s Palace.





**At paragraph 10.161** the Appellant, in this section on Heritage talks further about Viewpoint 7, and contradicts what it has said earlier by describing this viewpoint as having a large panoramic view and *“that there are long distant views from the footpath to the east and west and also to the north across the Stour valley to the Downs in the distance”*.

**At paragraph 10.162** the Appellant goes further and states that *“the Proposed Development will not dominate the view, but it will be **easily visible** in the middle distance”* (bold font our emphasis). It is revealing to now cross compare this statement with that which is found earlier at paragraph 10.61.5 which considers visual impact and states that *“no significant effects on the visual amenity of walkers due to distance with the western parcel..... **partially screened by intervening vegetation and landform**”*.

### **3. Traffic and Transport – safety and cumulative impact**

Our previous representations have highlighted the concerns we have about the prospect of the Appellant using Church Lane as the means of access to its compounds in conjunction with the continuing public use of the lane. We do not believe that the arrangements set out in the draft Construction Traffic Management Plan (CTMP), nor the comments put forward by the Highways Authority (KCC) demonstrate an understanding of the constraints imposed by the nature of the highway and the demands put on it – particularly on the short section between the bridge under the M 20 and the two railway bridges.

We will again try and explain the impracticality of keeping the lane open to all traffic throughout the construction phase but will only address this, as in the previous section, by reference to the points made by the Appellant in its Statement of Case.

**At paragraph 10.186** the Appellant indicates that, to avoid any risk of HGVs delivering to the project being of a height that would contravene the 3.80m height limit under the railway bridges, all vehicles will turn in and out of the access to the northern site compound to complete a “goalpost” test. This means that all deliveries to the gated access into the southern area of the project (just beyond the small bridge over the River Stour) will be affecting traffic in the lane more than would usually be the case.

**At paragraph 10.191** the Appellant indicates that a banksman will hold traffic approaching from the south along the lane at a point just south of the river while HGVs (if of the right height) or a tractor and trailer unit with decanted loads travels from the access adjacent to the M 20 bridge to the southern gateway.

The vehicle or vehicles travelling between the two compounds under direction of the contractor, will pass access and egress points to no less than six separate infrastructure entities or infrastructure construction sites. These are Southern Water Sewage Works, UKPN’s substation (which stands to be accessed by construction traffic associated with the Stonestreet Green NSIP - if consented), National Grid’s Converter Station, the Synchronised Condenser project (under construction) Pivoted Power’s Battery installation (consented and construction imminent) and the other UKPN/HS1 substation adjacent to the railway bridges.

There will be no control over vehicles (including HGVs) exiting (left or right) from these six premises whilst the construction vehicle or vehicles are travelling south along the lane. Because this section is mostly singletrack, vehicles will not be able to pass each other and as a result the time taken for the vehicle or vehicles to travel between the two compounds may be considerable.

During this process, traffic coming along the lane from the south will be held south of the river on an unpassable single-track section of the lane. The lane is not busy all the time, but it can be, and it is likely that a queue of vehicles will frequently develop.



Added to these issues the lane by the railway bridges often floods during the winter months (see photograph above) and this problem will be exacerbated by mud on the road caused by vehicles existing the heavy clay fields where construction will be taking place south of the river.

All of this begs the question as to why exactly is there so much resistance to a temporary closure of Church Lane? Even the Appellant has in conversations with us indicated that if the Highways Authority were minded to seek a temporary closure during construction they would cooperate with this.

We believe the only conceivable issue from the Highway Authority's point of view is consideration of the refuse collection in the lane once a week.

Historically a large refuse lorry used to travel from the south of the lane to the north end and, being unable to get under the bridges routinely turned round in a gateway about 100 m before the bridges. It happens that today the refuse lorry is much smaller and can negotiate the bridges and continues northwards rather than turning round.

It will during the course of the scheme be essential for emergency services to be able to travel southwards down the full length of the lane. If the Appellant is anyway arranging to have banksman manning the access into the southern compound, they would be able to safely facilitate the passing of the refuse truck one day a week (Mondays, around midday). They would similarly be able to facilitate emergency vehicle access if and when that were ever required from the north.

It is worth noting that based on the predicted scenario referred to above of queueing traffic, why is it considered safe to pursue the plan to leave the lane open when this would risk obstructing emergency services - not by construction vehicles travelling southwards but by queueing traffic waiting for those vehicles to come through?

If there are reasons as yet unexplained as to why the Highways Authority continue to resist the request for a temporary closure from those living in the lane perhaps the Inspector can get clarification as to the reasoning behind this. Just in terms of public safety it is difficult to understand why KCC feels that on balance it is acceptable for the arrangement proposed to be invoked as per the CTMP, for what is likely to be at least a period of 12 months serious disruption to road users, as opposed to temporary closure.

#### **4. Ecology and Ornithology – “Lack of mitigation and enhancement for badgers, breeding birds and Brown Hare”**

There is a sense of the Appellant’s irritation when it responds on aspects of its survey work which are criticised by ABC and others. Against this background we remain concerned on the following points.

##### *Badgers*

There are two substantial Badger sets located close to the boundary of the Southern block, one in Church Lane on the block’s eastern boundary and one at approximately the same contour level on the western boundary of the Southern block adjacent to Backhouse Wood (Ancient Woodland).

To those of us that have lived here a long time (over 35 years) these sets are well known, substantial and have always been very active. It is not unreasonable to assume that there is some interaction between the two communities and that Badgers traverse the existing arable land on the southern slope of Bested Hill. Whether or not that is the case, the arable land has provided an established and valuable foraging area for this protected species.

Whilst the Appellant talks about the usual safeguards in terms of excavation in proximity to Badger sets and the need to undertake authorised work only between July and November, where is the analysis of any linkage between these two large and established sets and an assessment of the loss of arable foraging area? Badgers eat wheat and barley, a valuable food source ahead of hibernation.

There is already a substantial area of permanent pasture for foraging to the east on the Point-to-Point course.

It is of concern to us to hear that the Ecologists never contacted the East Kent Badger Group at any point over the last three years. This group is recognised as holding data on Badger sets in this part of Kent based on countless surveys carried out over many years – not least within the Aldington parish since the Chairman of the group and custodian of these records has lived in the village for many years and has not been contacted.

### *Breeding Birds*

At paragraph 10.211 the Appellant indicates that the area where we are fortunate to have a breeding pair of Lapwing, possibly making a comeback in the area on arable ground, is an area of “sub optimal habitat”. If - however unexpectedly - these birds have selected this area for breeding and, however precariously, they are potentially the start of some increasing numbers why is it reasonable to suppose that they can be displaced on the unfounded assumption that they are going to magically recolonise an area some distance to the south on different terrain and in close proximity to the construction of a solar generating station?

### *Brown Hare*

There is the sense of the Appellant’s irritation at being picked up on the fact that it’s Ecologists did not identify Brown Hare during their visits to site. There is almost a suggestion that the video clip provided from within our group at a location no more than 600 m from the red line boundary of the application might somehow not be reliable.

It is reliable and can as necessary be verified. Why does the Ecologist move from the position of their original report (Brown Hare must be considered as absent because none were recorded during surveys) to a stance which is – *“It is therefore considered that any Brown Hare present within and adjacent to the Site are in very low densities”*. How many photographs/videos and conversations with local people would it take to convince the Ecologists that actually these wonderful animals are present and not only in “very” low densities.

It is this sort of approach to biodiversity and protected species that does nothing to convince communities affected by these schemes that these things are being taken seriously. This is particularly the case when the conclusion is reached that not only is the impact “minor adverse” but possibly “neutral” or potentially “positive”. There is nobody that is going to run checks and balances on these subjective assessments over the many years ahead and in any event, if the projected results are found to be wrong who is going to address the issue and what, if anything, can be done to rectify the situation even if there was a willingness to do it?

We hope the Inspector will dismiss this Appeal. The benefits do not outweigh the environmental harm that will be caused

Jonathan Tennant for **Church Lane Group**

**25<sup>th</sup> November 2024**