

# Proof of Evidence.

In Respect of Sheepwash Solar Farm.  
On behalf of Statkraft UK Ltd.

Date: 19 December 2023 | Pegasus Ref: P22-2992

Author: Chris Cox

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## Document Management.

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# 1. Professional Endorsement

- 1.1. I am Chris Cox BSc (Hons) MA MRTPI and I am an Associate Planner at Pegasus Group, Bristol.
- 1.2. I hold a Bachelor of Science in Geography and Planning from the University of Birmingham, and a Masters of Urban and Regional Planning from the University of Central England. I have been a Chartered Member of the Royal Town Planning Institute since 2008.
- 1.3. I have over 19 years of planning experience, mostly in the private sector. I have specialised in the renewable energy sector, with a core focus on solar farm developments since approximately 2014.
- 1.4. The evidence which I have prepared and provided in this Proof of Evidence is true and is given in accordance with the guidance of the Royal Town Planning Institute. The opinions expressed are my true and professional opinions.
- 1.5. Pegasus Group is a multi-disciplinary consultancy comprising planning, urban design, economics, heritage, landscape design and transport services. We are a national consultancy with 14 offices in the UK. Pegasus has extensive experience and a large team of experts in the energy sector covering developments ranging from solar power, battery storage, electric vehicle charging infrastructure, tidal power, energy from waste and on and offshore wind, including the associated infrastructure.
- 1.6. I was instructed by Statkraft UK Ltd to prepare this appeal evidence in October 2023 and first visited the Appeal Site in early November 2023.



## 2. Introduction

2.1. This Proof of Evidence has been prepared in support of a Section 78 appeal by Statkraft UK Ltd ("the Appellant") against the decision of Maidstone Borough Council ("the Council") to refuse planning application 22/501335FULL relating to Land North of Little Cheveney Farm, Sheephurst Lane, Marden ("the Appeal Site") for development comprising:

*"Installation of a renewable energy led generating station comprising of ground-mounted solar PV arrays, associated electricity generation infrastructure and other ancillary equipment comprising of storage containers, access tracks, fencing, gates and CCTV together with the creation of woodland and biodiversity enhancements."* ("the Proposal").

2.2. An EIA Screening Opinion (CD 1.17) was issued by the Council on 5<sup>th</sup> July 2022 (albeit in relation to a larger 60MW solar farm at the same site) confirming that environmental impact assessment was not required because the proposed development was unlikely to give rise to significant environmental effects.

2.3. In reaching their decision that significant effects were not likely to arise, the Council prepared a 'matrix' (CD 1.18) that explains their reasoning. This includes that:

- *the proposals will not materially affect surface water drainage patterns*
- *structures are generally low lying. Potential impacts will be localised*
- *use of the PROW could continue after development and long term impact depends on the level of screening, but confined to relatively short sections of the respective PROW network*

2.4. A planning application ("the Application") was submitted to the Council on 20<sup>th</sup> May 2022 and ascribed reference number 22/501335/FULL.

2.5. The Application was reported to the Council's Planning Committee on 20<sup>th</sup> October 2022, where a Committee Report (CD 1.24 and CD1.25) prepared by planning officers recommended refusal. Members determined to refuse the planning application and a decision notice (CD 1.26) was issued on 28<sup>th</sup> October 2022.

2.6. An appeal was submitted by the Appellant and ascribed reference APP/U2235/W/23/3321094. Amendments to the proposed development were submitted along with the appeal and the Inspector confirmed in the Case Management Conference call of 10<sup>th</sup> November that these amendments would be accepted and form the basis of the consideration of the appeal.

2.7. The appeal amendments are referred to in the Appellant's Statement of Case as Appeal Amendments and following the Inspector's decision they are referred to in this Proof of Evidence as the 'Appeal Scheme'.

2.8. This Proof of Evidence has been drafted in accordance with the Procedural Guide: Planning appeals – England Updated 21 December 2022 and, The Town and Country Planning



(Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013 (Statutory Instrument 2013/2137).

- 2.9. It provides background information relating to the proposed development. It summarises the relevant planning policy and reviews the Council's decision notice. I assess whether the proposal complies with the Development Plan and whether there are material considerations, including the benefits of the proposal. I then assess whether any of the Council's refusal reasons are well-founded and then consider the planning balance to establish if planning permission should be granted.
- 2.10. This Proof of Evidence should be read in conjunction with:
- Appellant's Statement of Case;
  - Proof of Evidence on landscape matters;
  - Proof of Evidence on heritage matters; and,
  - Proof of Evidence on agricultural land.



### 3. The Refusal Reasons

- 3.1. The decision notice (see CD 1.26) sets out 5 reasons for refusal.
- 3.2. Refusal reason one relates to the proposed use of best and most versatile agricultural land.
- 3.3. Refusal reason two relates to harm to the character and appearance of the countryside.
- 3.4. Refusal reason three relates to alleged harm to the significance of designated heritage assets.
- 3.5. Refusal reason four related to biodiversity impacts.
- 3.6. Refusal reason five related to noise.
- 3.7. Paragraph 38 of the NPPF confirms that local planning authorities should work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Following recent discussion and agreement, the Council will no longer be defending refusal reasons four and five. It is now agreed that ecology and noise can be dealt with appropriately through the use of planning conditions.
- 3.8. Paragraph 55 of the NPPF says that *"local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations"*.
- 3.9. Importantly, a number of the harms that were alleged to be unacceptable when the Council refused planning permission have now been resolved to the Council's satisfaction. The implication of this is that the extent of harm that the Council considered when undertaking the planning balance when refusing planning permission must now be reduced.



## 4. Appeal Site

### The Appeal Site

- 4.1. The Appeal Site is situated approximately 0.75km east of Claygate and approximately 1km west of Marden, and extends to 74.5 hectares.
- 4.2. The Appeal Site comprises six connected agricultural fields bounded by hedgerows and trees, forming part of Little Cheveney Farm and is relatively flat. A visit to the site confirmed that topography and features in the landscape combine to curtail distant views out of the site. This includes trees and hedges and the Southeastern Railways main line that is elevated and forms a strong physical boundary to the north, further strengthened by planting along the railway line.
- 4.3. The southern and western boundaries are less defined, demarked by field boundaries and in part by Sheephurst Lane. The river forms a physical boundary to the east.
- 4.4. Access is obtained to the Site from Sheephurst Lane, via existing farm access tracks.
- 4.5. A public right of way ("PROW") known as footpath KM248/2 extends along the northern boundary of the Site and in part diagonally through the north east corner of a field to the eastern boundary, where it extends to the east as footpath KM248/3 to join a wider network of PROWs.
- 4.6. The majority of the Site falls within Flood Zones 2 and 3.

### The Local Area

- 4.7. The Appeal Site and surroundings are rural in character. The area is characterised by a number of features in the surrounding area:
  - Agricultural fields, often bounded by hedgerows that limit or restrict views from roads;
  - Orchard and vine growing;
  - Pockets of woodland;
  - An elevated railway line that cuts through the landscape;
  - Utility scale pylons that cut across the Appeal site and beyond;
  - A camping site to the north of the railway line,
  - Glasshouses;
  - Scattered dwellings, farmsteads and commercial buildings.





## 5. The Appeal Proposal

5.1. The Proposed Development is for:

*“Installation of a renewable energy led generating station comprising of ground-mounted solar PV arrays, associated electricity generation infrastructure and other ancillary equipment comprising of storage containers, access tracks, fencing, gates and CCTV together with the creation of woodland and biodiversity enhancements.” (“the Proposal”).*

### **The Appeal Scheme**

5.2. The location and layout of the Proposed Development are shown on the submitted drawings.

5.3. The solar generation would consist of a series of south-facing solar arrays arranged across the Site on an east/west axis. The solar arrays comprise a series of short narrow aluminium posts supporting PV modules together with in field sub stations and inverters.

5.4. The distance between each row of solar arrays would range from 3.5m – 5.5m with approximately 29% of the total developed site area utilised for the solar array.

5.5. The panel structures would have a maximum height of 3m above ground.

5.6. The solar energy farm would connect to the local distribution network operated by UK Power Networks. This would require a high voltage (HV) compound and the substation in the HV Compound would connect to the UKPN overhead line by underground cable at the existing pylon.

5.7. The HV Compound would be located toward the south west of the site, adjacent to the pylon and overhead line and would be accessible from an access track from the main entrance to the Site on Shephurst Lane.

5.8. Other proposed tracks lead on from the main entrance and provide access to the transformer stations distributed across the site.

5.9. A proposed 2.4m high deer fence with wooden posts would enclose the solar farm, with motion sensing and infra-red CCTV offering further security.

5.10. Comprehensive soft landscape planting is proposed including hedgerow planting, woodland planting, orchard and wild flower grasses.

5.11. The Proposed Development will deliver a wide range of benefits that are discussed later in this Proof including economic, social and environmental benefits. It is beyond doubt that the Proposed Development is sustainable development.

## 6. Planning Policy and Material Considerations

### The Development Plan

- 6.1. The adopted Development Plan for the Council is principally formed by the Maidstone Borough Local Plan ("LP") (CD 3.1). The LP was adopted in October 2017 and covers the period to 2031.
- 6.2. A number of Neighbourhood Plans also form part of the Development Plan, but none are relevant to the Appeal Site. The Kent Minerals and Waste Plan (as amended) is not pertinent to the appeal.
- 6.3. The LP policies most pertinent to the appeal are:
- Policy SP17 – The Countryside
  - Policy SP18 – The Historic Environment
  - Policy DM3 – Natural Environment
  - Policy DM4 – Development affecting designated and non-designated heritage assets
  - Policy DM24 – Renewable and low carbon energy schemes
- 6.4. All of the above policies are in accordance with national planning guidance and I afford them full weight accordingly.
- 6.5. I understand that the Council interprets policy DM24 differently to myself, and as mandating a sequential approach to the use of Best and Most Versatile Agricultural Land. If that was found to be the case, policy DM24 would be more restrictive than the approach set out in the NPPF and would be inconsistent with national policy.

### Other Guidance

#### Planning Policy Advice Note: Large Scale (>50kW) solar PV arrays (2014) (CD 3.19)

- 6.6. The guidance note provides planning advice in respect of solar photovoltaic (PV) installations with a capacity in excess of 50kW. The Advice Note pre-dates the LP and is not part of the Development Plan for Maidstone.
- 6.7. Paragraph 6.103 of the LP confirms that the Advice Note provides guidance for applicants that should be referenced when making planning applications. It is therefore a material consideration that carries limited weight.

### Emerging Local Plan

- 6.8. The Local Plan Review (CD 3.2) was submitted to the Secretary of State for independent examination on Thursday 31 March 2022. The consultation on Main Modifications closed on Monday 13 November 2023.
- 6.9. The policies most relevant to the assessment of the Proposed Development are:



- Policy LPRINF3 'Renewable and low carbon energy schemes' This is a restatement of Local Plan Policy DM24, but with the addition of support for combined heat and power and district heating schemes.
- Policy LPRSP14(C) 'Climate Change' This provides that to ensure that development in the Borough mitigates and adapts to climate change, the Council will support the provision of renewable energy infrastructure within new development.

6.10. I understand these policies were not subject to proposed modification in the recent Main Modifications consultation. Having been the subject of examination but not yet adopted, but with no objections outstanding and being drafted very similarly to the adopted policies which they seek to replace I afford them significant weight.

### **National Planning Policy Framework**

6.11. The following paragraphs are most pertinent to the appeal:

- Paragraph 11: Presumption in Favour of Sustainable Development
- Paragraph 81: Supporting Economic Growth
- Paragraph 84: Supporting a Prosperous Rural Economy
- Paragraph 155: Increasing the Supply of Renewable Energy
- Paragraph 158: Determining Applications for Renewable Energy
- Paragraph 202: Less Than Substantial Harm to Designated Heritage Assets

### **National Planning Practice Guidance**

6.12. The NPPF is supported by National Planning Practice Guidance (NPPG) which provides more detailed guidance on a range of topics including Climate Change and Renewable and Low Carbon Energy.

6.13. I refer to the NPPG below.

### **National Policy Statements (NPS)**

6.14. I note that paragraph 93 of the Council's Statement of Case (undated, but received by the Appellant on 7<sup>th</sup> November 2023) said draft revisions to NPSs were not material planning considerations. I disagree. Relevant draft NPS provide an up to date understanding of the Government's views on matters such as the level and urgency of the need for new solar generating capacity and as such are necessarily material in the determination of this appeal.

6.15. Furthermore, progress has been made with the new NPS since receipt of the Council's Statement of Case. Revised NPS EN-1 (CD 3.12) and EN-3 (CD 3.13) were published on 22<sup>nd</sup> November 2023 and the government has confirmed that these versions will come into force in 'early 2024'. I therefore consider that not only are the latest published versions of EN-1 and EN-3 plainly material considerations, they should also be given substantial weight having regard to the stage they have reached.



- 6.16. The NPPF, at paragraph 5, recognises that the NPS for the delivery of major energy infrastructure may be a material consideration in the determination of planning proposals for renewable energy. This position is echoed in paragraph 1.2.1 of EN-1.
- 6.17. One of the key roles of the NPS in terms of their relevance for planning proposals is what they say about Government energy policy, particularly with regard to the need and urgency for new renewable electricity generation.
- 6.18. Section 4.2 of EN-1 is titled 'The Critical National Priority for Low Carbon Infrastructure' and goes on to confirm that the Government has committed to fully decarbonising the power system by 2035.
- 6.19. A key update in the November 2023 version of EN-3 is the new introduction of the following text at paragraph 2.3.6:
- “When considering applications for CNP Infrastructure in sites with nationally recognised designations (such as SSSIs, National Nature Reserves, National Parks, the Broads, Areas of Outstanding Natural Beauty, Registered Parks and Gardens, and World Heritage Sites), the Secretary of State will take as the starting point that the relevant tests in Sections 5.4 and 5.10 of EN-1 have been met, and any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by the urgent need for this type of infrastructure”.*
- 6.20. The above nationally recognised designations are all subject to greater planning restrictions than areas not within such designations, including the Appeal Site. For example, paragraph 177 of the NPPF guides that major development in National Parks, the Broads and Areas of Outstanding Natural Beauty should only be permitted in 'exceptional circumstances'. The instruction of EN-3 to decision-makers that the starting point for renewable energy proposals on sites within nationally recognised designations is that the Critical National Priority outweighs any “significant adverse” effects on the qualities for which those areas are designated underlines the importance attached to the Critical National Priority and is a clear indication that very significant weight must be given to the Critical National Priority in the planning balance.
- 6.21. Paragraph 2.10.10 of EN-3 states that:
- “Solar also has an important role in delivering the government’s goals for greater energy independence and the British Energy National Policy Statement for Renewable Energy Infrastructure (EN-3) Security Strategy states that government expects a five-fold increase in combined ground and rooftop solar deployment by 2035 (up to 70GW). It sets out that government is supportive of solar that is “co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use”.*
- 6.22. Paragraph 2.10.14 of EN-3 confirms:
- “Solar farms can be built quickly and, coupled with consistent reductions in the cost of materials and improvements in the efficiency of panels, large-scale solar is now viable in some cases to deploy subsidy-free.”*
- 6.23. A section of EN-3 beginning at paragraph 2.10.18 confirms relevant factors that will influence site selection and design. These factors include:



- Irradiance and site topography
- Network connection
- Proximity of a site to dwellings
- Agriculture land classification and land type
- Accessibility
- Public rights of ways
- Security and lighting

### **Listed Buildings and Conservation Areas Act 1990 (as amended)**

- 6.24. Section 66 sets out the duty of decision makers in determining applications affecting a listed building or its setting, to have special regard to desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

### **Ministerial Statements**

- 6.25. It is now clearly government policy that the delivery of renewable energy should be sped up, not only because it is morally right, but because it is also economically right and will provide energy security in an unstable world. Prime Minister Sunak, speaking at the COP 27 summit in Egypt in November 2022 said:

*".....I can tell you today that the United Kingdom is delivering on our commitment of £11.6 billion. And as part of this – we will now triple our funding on adaptation to £1.5 billion by 2025. Let me tell you why. First, I profoundly believe it is the right thing to do. Listen to Prime Minister Mottley of Barbados, as she describes the existential threat posed by the ravages of climate change. Or look at the devastating floods in Pakistan where the area underwater is the same size as the whole United Kingdom. When you see 33 million people displaced with disease rife and spreading through the water you know it is morally right to honour our promises.*

*But it is also economically right too. Climate security goes hand in hand with energy security. Putin's abhorrent war in Ukraine and rising energy prices across the world are not a reason to go slow on climate change. They are a reason to act faster. Because diversifying our energy supplies by investing in renewables is precisely the way to insure ourselves against the risks of energy dependency. It is also a fantastic source of new jobs and growth"*

- 6.26. In a speech of 1st December 2023, ahead of the COP28 summit, PM Rishi Sunak said:

*"The world made ambitious pledges at previous COP summits to limit global warming to 1.5 degrees. But the time for pledges is now over – this is the era for action..."*

- 6.27. The Council's Statement of Case (CD 9.2, paragraph 94) refers to a 2015 Ministerial Statement by Eric Pickles. I discuss the weight to attach to this below at paragraph 8.21.



## The Climate Emergency

- 6.28. The UK Government has declared a climate emergency and set a statutory target of achieving net zero emissions by 2050. This is a legally binding target and is therefore a material consideration of significant weight.
- 6.29. The UK Energy White Paper, Powering our Net Zero Future (2020) (CD 3.7), describes (page 5) the costs of inaction as follows:

*“We can expect to see severe impacts under 3°C of warming. Globally, the chances of there being a major heatwave in any given year would increase to about 79%, compared to a 5% chance now. Many regions of the world would see what is now considered a 1-in-100-year drought happening every two to five years.*

*At 3°C of global warming, the UK is expected to be significantly affected, seeing sea level rise of up to 0.83 m. River flooding would cause twice as much economic damage and affect twice as many people, compared to today, while by 2050, up to 7,000 people could die every year due to heat, compared to approximately 2,000 today. And, without action now, we cannot rule out 4°C of warming by the end of the century, with real risks of higher warming than that.*

*A warming of 4°C would increase the risk of passing thresholds that would result in large scale and irreversible changes to the global climate, including large-scale methane release from thawing permafrost and the collapse of the Atlantic Meridional Overturning Circulation. The loss of ice sheets could result in multi-metre rises in sea level on time scales of a century to millennia.”*

## 7. Need for the Development

- 7.1. The NPSs recognise that to meet the Government's objectives and targets for net zero by 2050, significant large and small scale energy infrastructure is required.
- 7.2. Solar is recognised specifically in EN-3 (CD 3.13, paragraphs 2.10.13 and 2.10.14) as being the cheapest form of electricity generation and quick to build.
- 7.3. The benefits of delivering additional renewable energy capacity, particularly capacity that is capable of early deployment, weigh heavily in favour of the proposal. The critical importance of such benefits in the public interest are recognised in guidance and national policy.
- 7.4. Support for solar energy is also clearly identified in Section 14 of the NPPF, where it seeks to increase the use and supply of renewable and low-cost energy and to maximise the potential for suitable such development.
- 7.5. The delivery of suitable renewable energy projects is fundamental to facilitate the country's transition to a low carbon future in a changing climate.
- 7.6. The Appellant's case is that climate change and its impacts are central to the urgent and overwhelming need for a step change in the delivery of renewable energy both in the UK and in Maidstone to control and fight climate change. Without local actions, local targets will not be met, and national targets are therefore also less likely to be met. All areas of the UK must therefore take appropriate steps to ensure they play their full part. This very significant and urgent need for renewable energy is established by national planning policy and is a very significant material consideration. The implications of failing to meet this commitment will be devastating.

### **Relevant Statutory Provisions and National Policy**

- 7.7. The Climate Change Act 2008 establishes a legally binding target to reduce the UK's greenhouse gas emissions by at least 80% in 2050 from 1990 levels.
- 7.8. The need to introduce a step change in how the country deals with climate change has been recognised by the Government who, on 1 May 2019, declared an Environmental and Climate Change Emergency following the finding of the Inter-governmental Panel on Climate Change that to avoid more than 1.5°C rise in global warming, global emissions would need to fall by around 45 per cent from 2010 levels by 2030, reaching net zero by around 2050.

#### Climate Change Act 2008 (2050 Target Amendment) Order 2019

- 7.9. On 27 June 2019 the UK Parliament approved the Net Zero Target in law, thereby changing the original target of 80% reduction of greenhouse gas emissions (compared to 1990 levels) in the UK by 2050 to 100%.

#### British Energy Security Strategy (April 2022) (CD 3.9)

- 7.10. As a response to war in Ukraine, the UK government recognised that accelerating the transition away from oil and gas depends critically on how quickly we can roll out new



renewable energy. The strategy calls for the need to build a British energy system that is much more self-sufficient.

- 7.11. The Strategy says (page 19) there is currently 14GW of solar capacity in the UK split between large scale projects to smaller scale rooftop solar and calls for a five-fold increase in deployment (to 70GW) by 2035 (my emphasis added).
- 7.12. Increasing generation to 70GW by 2035 will mean developing over 4.3GW each and every year, or out another way, delivering around 30% of the total existing solar deployment each and every year. The scale of that challenge, and the consequences of failing to meet it, cannot be understated.

#### Powering Up Britain (March 2023) (CD 3.10)

- 7.13. This paper sets out how the government will enhance the country's energy security, seize the economic opportunities of the renewable energy transition, and deliver on our net zero commitments.
- 7.14. It reiterates that in accelerating deployment of renewables, the goal is to quintuple our solar power by 2035.
- 7.15. Page 5 explains that after decades of reliance on imported fossil fuels, growing renewables will make us much more energy independent, to protect us from volatile international energy markets, while underpinning our clean energy transition, so the UK becomes a net zero economy by 2050.
- 7.16. Page 7 aims that people's homes will be heated by British electricity, not imported gas.
- 7.17. With regard to solar specifically, page 20 says:

*"Solar has huge potential to help us decarbonise the power sector. We have ambitions for a fivefold increase in solar by 2035, up to 70GW, enough to power around 20 million homes. We need to maximise deployment of both ground and rooftop solar to achieve our overall target. Ground-mount solar is one of the cheapest forms of electricity generation and is readily deployable at scale. Government seeks large scale solar deployment across the UK, looking for development mainly on brownfield, industrial and low/medium grade agricultural land. The Government will therefore not be making changes to categories of agricultural land in ways that might constrain solar deployment. Government is seeking widespread deployment of rooftop solar in commercial, industrial and domestic properties across the UK. To support our solar ambitions, we are accepting the recommendation from the Independent Review of Net Zero to set up a taskforce to deliver on this ambition" (my emphasis given).*

#### National Planning Policy Framework

- 7.18. Paragraph 155 identifies a series of steps that local planning authorities should take through their development plans so as to "help increase the use and supply of renewable and low carbon energy". These include providing a positive strategy for energy from these sources that maximises the potential for suitable development while ensuring that adverse impacts are addressed appropriately. It also provides that local planning authorities should consider identifying suitable areas for renewable and low carbon energy sources, and





supporting infrastructure, where this would help secure their development. I consider how Maidstone has approached this issue in its emerging plan below.

- 7.19. Paragraph 158 states that when determining planning applications for renewable and low carbon development, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy and should approve the application if its impacts are acceptable.
- 7.20. The wording of paragraph 158 should be read in the in light of the evidence on climate change, the UK's net zero target and the governments clear policy to substantially increase renewable energy (and solar specifically). Whilst it is of course instructive in terms of the process and steps a developer need not undertake in bringing forward a proposed renewable energy development, it is also, crucially, reflective of the significant and pressing need for renewable energy development. As noted above, paragraph 155 sets out proactive guidance for local planning authorities to help them increase the supply of renewable energy.
- 7.21. In other words, the compelling need for renewable energy generation is so immediate and so great that decision makers should accept this principle as a matter of established policy. We need as much renewable energy as we can deliver, where it can be delivered.
- 7.22. Continuing to wait and resist acceptable schemes in the hope that somehow preferable alternatives might come forward in the Borough, and suggesting other local authorities across the country would meet the shortfall instead is an abdication of responsibility on the part of the Council, and contrary to its own stated commitments in relation to climate change, as discussed below.

#### Other Material Considerations

- 7.23. In a speech of 1st December 2023, ahead of the COP28 summit, PM Rishi Sunak said:

*"The world made ambitious pledges at previous COP summits to limit global warming to 1.5 degrees. But the time for pledges is now over – this is the era for action..."*

#### Climate Change Committee Letter 28 June 2023 (CD 3.14)

- 7.24. In terms of the UK's progress toward addressing climate change, and the implications of failing to meet our legally binding commitments, the Climate Change Committee's letter to the Prime Minister made clear that the UK is falling behind in its progress toward its legal commitments on climate change. An accompanying report found that solar deployment in particular, is falling behind.
- 7.25. The concluding paragraph of the letter left no doubt as to the consequences of the UK failing to meet our legal commitments on climate change:
- "Our children will not forgive us if we leave them a world of withering heat and devastating storms where sea level rises and extreme temperatures force millions to move because their countries are no longer habitable. None of us can avoid our responsibility. Delay is not an option" (my emphasis added).*
- 7.26. In addition to the climate emergency, the UK is in the midst of a cost of living crisis and an energy security crisis due to economic pressures, war in Ukraine and other global events.



These significant challenges amplify the importance that should be attached to increasing the supply of renewable energy in the UK and are material considerations in their own right. I set out the weight to attach to these considerations below.

### Local Policy

- 7.27. The Council declared a Climate Change Emergency in April 2019 and announced a target to make the Borough carbon neutral by 2030, as well as supporting communities to reduce the impacts of climate change across Maidstone Borough. I am not aware that the Council actively monitors this commitment.

#### Climate Change and Biodiversity in Maidstone (CD 3.5)

- 7.28. I understand that the Council's Action Plan was first published in 2020, and that it was subject to some limited updates in April 2023. The document sets out the Council's strategy for the Borough to reach net zero by 2030. The document does not form part of the Development Plan but sets out the corporate policy and position of the Council and its response to the declaration of a Climate Emergency. It is therefore a relevant material consideration that should be afforded significant weight.

- 7.29. Setting the context for the starting point, page 6 clarifies carbon emission reduction aims:

*"we should reduce our carbon emissions by at least 81.8% by 2030".*

- 7.30. Highlighting the seriousness of the climate emergency, and the lack of time in which to respond, page 7 says:

*"Maidstone Borough Council recognised the climate emergency as a way of acknowledging the need for urgent and effective actions throughout the next decade to reduce emissions. The cumulative level of emissions is so important that a cut in emissions now is more valuable than the same cut later. It is vital to cut emissions now and not to delay just because the route for eliminating emissions is not clear at the start" (my emphasis added)*

- 7.31. Theme 3 (page16) confirms that the aim for generating renewable energy is:

*"To take every opportunity to generate renewable energy across the borough" (my emphasis added).*

- 7.32. To summarise, the UK government and Maidstone Council recognise that:

- The affects of climate change will be devastating;
- Delay will only make the challenge more difficult; and
- Renewable energy generation, including large scale solar must be ramped up significantly and to that end a positive approach should be taken where opportunities arise to generate renewable energy so as to maximise the potential for suitable development.

### Progress Toward Net Zero by 2030?

7.33. At a national level, the letter from the Climate Change Committee confirms that the UK is lagging behind, particularly in terms of solar deployment.

7.34. There is currently very limited renewable energy generated in Maidstone. The Renewable Energy Planning Database ((extract of), CD 3.18) is published quarterly by the Department for Business, Energy and Industrial Strategy, and tracks the progress of UK renewable electricity projects over 150kW through the planning system. It purports to provide as accurate and comprehensive a snapshot as possible of projects, and covers planning permissions since around 2012.

7.35. The table below sets out the permitted renewable energy generation schemes over 1MW in Maidstone Borough. All other schemes below 1MW in Maidstone are rooftop schemes that are not utility scale.

Site	Technology	Installed Capacity (MW)	Status
<b>Consented Sites</b>			
East Lenham Solar Farm, East Lenham Rd	Solar	6.6	Operational (12/0013)
Widehurst Farm	Solar	5	Operational (15/505971/FULL)
<b>TOTAL</b>		<b>11.6</b>	
<b>Planning Pipeline</b>			
None		-	

*Extract Data from Renewable Energy Planning Database: October 2023)*

7.36. The table above demonstrates that Maidstone has made very little progress toward increasing the generation of renewable energy. Only two relatively small solar farms exist, these being granted planning permission in 2012 and 2015.

7.37. No new utility scale renewable energy schemes have been granted planning permission since 2015, despite the Council's declaration a climate emergency in 2019 and publishing its Climate Change strategy in 2020 with the clearly stated aim to 'take every opportunity to generate renewable energy'.



- 7.38. It is plainly evident that Maidstone is falling behind its commitment to be carbon net zero by 2030.
- 7.39. Government regional and local authority level energy use statistics (CD 3.20) show that in 2019, Maidstone Borough consumed 640.9.2GWh of electricity. 2019 is taken as a reference year for demand to avoid possible anomalies associated with economic restrictions brought about by Covid-19 lockdowns in 2020 and 2021. 2022 data is not yet available.
- 7.40. 1GWh = 1,000MWh and is the energy provided by a power supply of capacity 1MW for 1,000hrs, or 1,000MW for 1hr.
- 7.41. A reasonable estimate of the annual output from the 11.6MW of built or consented renewable energy development in the Borough would be in the region of 12GWh (equivalent to only about 2% of current energy usage). Thus, to meet the current electricity needs of Maidstone of 640.9GWh from renewable energy, a further 12 solar farms of the size of the Proposed Development would need to be built.
- 7.42. However, the amount of renewable electricity that is required to meet net zero targets is greater than current (2019) electricity usage. This is because, as demonstrated above, UK Government and the Council has committed to move towards carbon neutrality, so must develop plans to swap out fossil fuels, and use clean electricity in its place. For example, the move toward electric vehicles, and away from gas powered heating in homes and buildings means that even more electricity generation from renewable sources will be required. Demand for electricity in the UK is expected to double by 2050.
- 7.43. In summary, Maidstone Borough Council is making very little progress toward increasing the generation of renewable energy, and given the above, sadly appears to be on course to miss its own stated commitments in relation to addressing the Climate Emergency.

#### **The Council's Position on Renewable Energy Need Relating to This Appeal**

- 7.44. In paragraph 26 of the Council's Statement of Case, Mr Robeson says, in part:
- "Whilst the local plan has a policy encouraging the use of renewable energy, it will demonstrate that there is no mandatory requirement, national or otherwise, placed on individual local authorities through the planning system to cause the generation of a given quantum of renewable energy from their individual areas or for such areas to contribute to national targets for solar energy generation".*
- 7.45. I consider that this statement and approach reveals a misunderstanding of the implications of national and local planning and wider policy and legislation. National Planning Practice Guidance (Paragraph: 003 Reference ID: 5-003-20140306) provides that:
- "Whilst local authorities should design their policies to maximise renewable and low carbon energy development, there is no quota which the Local Plan has to deliver".*
- 7.46. The second part of that sentence cannot be read in isolation from the first part. To do so would be to fail to consider the guidance as a whole and, importantly, to apply the guidance in a way that would be contrary to the clear policy position set out in the NPPF and NPS. Furthermore, paragraph 158 of the NPPF acknowledges the presumption of acceptance of need for renewable energy, and paragraph 155 explains how local planning authorities can increase the supply of renewable energy.



- 7.47. At the local level, DM24 encourages renewable energy and the Council's climate strategy says that every opportunity to generate renewable energy should be taken. For Maidstone (or indeed any other local planning authority) to resist proposals for renewable energy generation on the basis that there is no need for individual local authorities "to contribute to national targets for solar energy generation" is effectively to ignore or misunderstand the scale of the need and the importance that opportunities for suitable development are maximised in order to meet that need
- 7.48. The answer to the point about the absence of individual quantitative targets for individual local authorities is essentially the same. There is an ambitious national target for renewable energy generation and specifically for solar that can only be achieved if local authorities recognise the need to play their full part in meeting it.
- 7.49. The Council's Planning policy advice note: 'Large scale (>50kW) solar PV arrays' (CD 3.19, paragraph 2.1 and accompanying map) confirms that the South of England has the greatest irradiation and solar electricity potential in the UK. This shows that Maidstone is ideally placed in an area with high potential to maximise the generation of renewable energy from the sun.
- 7.50. In addition, paragraph 6.100 of the LP (CD 3.1) states:
- "In Maidstone Borough, parts of the natural landscape features and resources mean that there is a technical suitability for the construction of renewable and low carbon energy schemes, such as solar farms, wind farms and biomass. In the longer term, opportunities for such developments may also present themselves in urban areas particularly in relation to larger development schemes" (my emphasis).*
- 7.51. In other words, Maidstone Borough is particularly well placed to make a meaningful contribution to meeting the established and urgent need for substantial additional solar generating capacity.
- 7.52. Notwithstanding that fact, Maidstone Borough Council is not a local planning authority who can be said to have helped to materially increase supply, let alone played its full part in meeting the urgent national need having regard to the potential opportunities in the Borough. It has delivered very little renewable energy on the ground to date. No new planning permissions have been granted for utility scale solar generation since 2015 and as I explain below, no sites have been allocated for such development in the existing or emerging development plans.

#### **How Will Need Be Met?**

- 7.53. The Council has not been proactive in increasing the supply of renewable energy.
- 7.54. Whilst the Council has an adopted policy relating to renewable energy, it has not allocated any sites for renewable energy in the LP.
- 7.55. Neither does the LP identify any suitable areas for renewable and low carbon energy sources as paragraph 155 suggests that plans should do.
- 7.56. I note that the emerging Local Plan also does not seek to allocate sites, or identify suitable areas for renewable energy.



7.57. Thus, renewable energy schemes will only come forwards in this part of the South of England through the submission of speculative planning applications such as that proposed by this appeal.

7.58. I note that the Council fails to make any mention of the climate emergency or the Climate Change and Biodiversity in Maidstone strategy document in both its committee report and its Statement of Case. In my opinion, this indicates either a failure to understand the need for the Proposed Development or a failure to properly acknowledge the implications of that need in development control decision-making.

7.59. As a consequence of this failure, and the misunderstanding regarding need as set out by the planning system, I consider that any planning balance undertaken by Mr Robeson is likely to be flawed.

### **Other Matters**

7.60. I understand that the Council will argue that the weight to be attached to the benefit of renewable energy should be reduced because it considers that proposed landscaping reduces the maximum potential efficiency of land.

7.61. In my opinion this does not reduce the weight to the renewable energy benefit, particularly in the context of the above assessment. In addition:

- The proposed capacity of 46.97MW is very close to the maximum grid export offer of 50MW;
- The proposed capacity is very close to the limit 50MW export limit, over which the project would become a Nationally Significant Infrastructure Project (NSIP);
- Paragraph 2.10.131 of EN-3 (CD 3.13) says that “*applicants should consider the potential to mitigate landscape and visual impacts through, for example, screening with native hedges, trees and woodlands*”.

7.62. I also understand that the Council will argue that the weight to be attached to the benefit of renewable energy should be reduced because no battery storage is proposed. In my opinion this does not reduce the weight to the renewable energy benefit because:

- I am not aware of any planning guidance or policy that indicates that weight should be attached differently to particular renewable and low carbon technologies;
- I am not aware of any planning guidance or policy that indicates that battery storage must, or even should be provided along other renewable technologies;
- The Appellants attribution of weight to renewable energy benefits is based upon the contribution to energy generation, and in addition, benefits to carbon emissions reduction. The absence of battery storage does not diminish either of these contributions of the Proposed Development; and
- I am not aware of any planning appeal decision on a renewable energy scheme (or decision on a renewable energy NSIP) in which an Inspector or the Secretary of State has reduced the weight given to the benefits of renewable energy generating capacity because of the absence of battery storage. I am aware of (and examples



are provided at CD 7.1 and CD 7.15 for example) many cases where substantial or very significant weight is given to proposed solar farms without battery storage.

## 8. Refusal Reason 1– Best and Most Versatile Agricultural Land

- 8.1. Refusal Reason 1 alleges that the proposed use of the best and most versatile agricultural land has not been adequately demonstrated to be necessary.
- 8.2. The Council’s Statement of Case (CD 9.2, paragraph 33) also alleges harm relating to loss of food production.
- 8.3. The Council’s committee report paragraph 6.15, CD 1.24) alleged that:

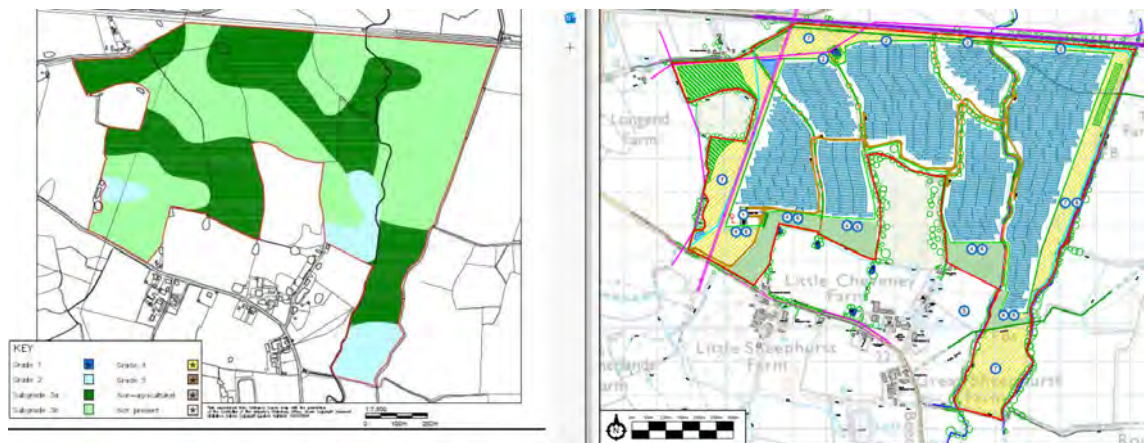
*“Government policy does not say that every district must provide solar PV farms and policy does very explicitly require avoidance of the BMV agricultural land, even if still farmed to a lower type of production. The applicant has not justified breaching this clear policy requirement because of its own business decision to restrict its search to the Borough of Maidstone (which typically has good quality agricultural land) and close to a HV power line”.*

- 8.4. My evidence will show that policy does not explicitly require avoidance of the BMV agricultural land, that the Appellant has already demonstrated beyond doubt that there is a need for this solar farm (and many others) in Maidstone and why a site close to a grid connection is required, with reference to relevant planning policy and material considerations relating to site selection.
- 8.5. My evidence should be read alongside that of Mr Kernon. Mr Kernon deals with the effects of the Proposed Development on land quality, the overall provision of agricultural land resources and impact on food production. Having regard to Mr Kernon’s evidence, I assess any harm caused by the temporary use of best and most versatile land prior to later considering this in the planning balance.

### **Proposed Use of Best and Most Versatile Agricultural Land (BMVAL)**

- 8.6. With regard to the Proposed Development, the planning application was supported by an Agricultural Land Classification report that confirms that the Appeal Site comprises land that is 9% Grade 2, 38% Subgrade 3a and 53% Subgrade 3b. (CD 1.16, page 8).
- 8.7. In total 53% (39.4 hectares) of the site is Subgrade 3b (i.e. not BMVAL) and 47% (35.1 hectares) is BMVAL. Importantly, the Appellant has identified and is seeking temporary planning permission for use of a site that is mostly not BMVAL.
- 8.8. It should further be noted, as demonstrated in the image below, that the vast majority of the Grade 2 land is not being ‘developed’ for solar arrays, with no hard or built interventions in these areas.





8.9. Indeed, the Appeal Scheme amendments reduce the overall amount of agricultural land to be within the developed area as follows:

ALC GRADE	PROPOSED SCHEME (ha)	APPEAL SCHEME WITH AMENDMENTS (ha)	REDUCTION (ha)
Grade 1	0	0	0
Grade 2	2.2	1.6	0.6
Grade 3a	21	18.6	2.4
Grade 3b	31.4	26.1	5.3

Table 2 - Reduction in Developed Land by ALC

8.10. Mr Kernon’s evidence concludes that only 0.35ha of Grade 3a land would be lost, prior to the land being reinstated.

8.11. Mr Kernon’s explanation of that conclusion includes reference to the position of Natural England, who must be consulted where the loss of 20ha or more of BMVAL is proposed.

8.12. Natural England did not object to the proposed temporary use of agricultural land in its consultation response to the planning application.

### National Policy and Guidance

8.13. There is no policy precluding the development of solar farms on BMVAL. Rather, relevant policies confirm that renewable energy development on BMVAL can be acceptable.

8.14. Energy National Policy Statement EN-1 (November 2023) (CD 3.12), paragraph 5.11.12 says that:

*“Applicants should seek to minimise impacts on the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5)”.*

8.15. Paragraph 5.11.34 goes on to say that:

*“The Secretary of State should ensure that applicants do not site their scheme on the best and most versatile agricultural land without justification. Where schemes are to be sited on best and most versatile agricultural land the Secretary of State should take into account the economic and other benefits of that land. Where development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality” (my emphasis added).*

- 8.16. National Policy Statement for Renewable Energy Infrastructure (EN-3) (November 2023) (CD 3.13) provides guidance on agricultural land classification at paragraphs 2.10.28 to 34. It states, in part:

*“Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of “Best and Most Versatile” agricultural land where possible. ‘Best and Most Versatile’ agricultural land is defined as land in grades 1, 2 and 3a of the Agricultural Land Classification”.*

*Whilst the development of ground mounted solar arrays is not prohibited on Best and Most Versatile Agricultural land... the impacts of such are expected to be considered...*

*Applicants should explain their choice of site, noting the preference for development to be on suitable brownfield, industrial and low and medium grade agricultural land.” (my emphasis added).*

- 8.17. The NPPF makes no mention of BMVAL specifically with regard to matters such as its protection or the circumstances in which its loss can be acceptable.
- 8.18. Paragraph 174 of the NPPF says that *“the economic and other benefits of the best and most versatile agricultural land should be considered”.*
- 8.19. Reflecting EN-1, NPPF footnote 58 says *“Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality”.*
- 8.20. Paragraph 013 of the NPPG says:

*“where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays”.*

### **Ministerial Statements**

- 8.21. I am aware of a statement in 2015 by Eric Pickles (CD 3.16) that suggested that the loss of BMVAL must be justified by the ‘most compelling evidence’. However, I afford this very limited weight for the reasons set out below.
- 8.22. It does not form part of the Development Plan, which Section 38(6) of the Act confirms decisions must be made in accordance with, unless material considerations indicate otherwise,
- 8.23. Development Plans must be prepared in accordance with regulations that require minimum levels of public and stakeholder consultation. They are also subject to independent examination to determine if they are ‘sound’ (see NPPF paragraph 35). Paragraph 48 of the NPPF confirms that the stages of preparation and consistency of emerging plans to the NPPF allow a decision maker to give it greater weight.



- 8.24. The NPPF has been revised numerous times since 2015 and has not been updated to reflect the 2015 ministerial statement. The NPPF does not have statutory status but is developed and revised following a process of public consultation and the weight it is given reflects that approach.
- 8.25. In contrast, a Ministerial Statement is not subject to any of the above.
- 8.26. Those differences of process are similar to those noted in the Judgement of Mrs Justice Lieven in *R (Solo Retail) v Torridge DC* [2019] 489 (Admin) (CD 7.22) which considered the relative status of the NPPG (as guidance rather than policy) at paragraph 33:
- “... As is well known the NPPG is not consulted upon, unlike the NPPF and Development Plan policies. It is subject to no external scrutiny, again unlike the NPPF, let alone a Development Plan. It can, and sometimes does, change without any forewarning. The NPPG is not drafted for or by lawyers, and there is no public system for checking for inconsistencies or tensions between paragraphs. It is intended, as its name suggests, to be guidance not policy and it must therefore be considered by the Courts in that light. It will thus, in my view, rarely be amenable to the type of legal analysis by the Courts which the Supreme Court in Tesco v Dundee applied to the Development Policy there in issue”.*
- 8.27. Importantly, in the 9 years since the 2015 ministerial statement, it is clear that legislation and the government and planning policy outlined in Section 7 of my evidence has moved on considerably. There have also been two new Governments elected since 2015 (in 2017 and 2019) each with a new manifesto.
- 8.28. A clear roadmap is evident whereby the Government has committed to both increasing solar deployment (i.e. five-fold to deliver 70GW in total) and also increasing the speed of delivery (i.e. bringing net zero targets forward) so as to avoid making the effects of climate change even more difficult to address. As discussed above, the British Energy Security Strategy and Powering Up Britain emphasise the need for greater speed of deployment of renewable energy schemes.
- 8.29. It has therefore become more evident since 2015 that agricultural land will be required to accommodate solar development. As discussed above, Powering Up Britain (2023) (CD 3.10, page 20) confirmed that the *“Government will therefore not be making changes to categories of agricultural land in ways that might constrain solar deployment”*
- 8.30. As discussed above, EN-1 and EN-3 were published in November 2023 and are due to come into force in early 2024. They provide clear policy guidance to applicants and developers on the approach to agriculture land and make no mention of needing to provide ‘compelling evidence’ to justify its use for renewable energy development.
- 8.31. Paragraphs 10 to 12 of an appeal decision (reference 3315877) (CD 7.15) for a solar farm at land south of Leeming Substation says:
- “10. The Written Ministerial Statement on solar energy (25 March 2015) indicates that the use of BMV for solar farms has to be justified by the most compelling evidence.*
- 11. The Planning Practice Guidance (PPG) on Renewable and low carbon energy, which also dates from 2015, provides a list of planning considerations that relate to large scale ground mounted solar photovoltaic farms . These include: encouraging the effective*

*use of land by focussing such developments on previously developed and non-agricultural land provided it is not of high environmental value; and where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.*

*12. However, the Framework which has been updated on several occasions since 2015, makes no such requirement and only indicates where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of higher quality. In addition, whilst the draft National Policy Statement for Renewable Energy (EN-3) (March 2023), seeks to avoid the use of BMV land where possible, it also indicates that land type should not be a pre-dominating factor in determining the suitability of the site location. Whilst this is a draft and relates largely to proposals that form part of the National Infrastructure regime, it still gives an indication of the government's most recent thinking on this issue" (my emphasis given).*

8.32. An Inspector determining a recent planning appeal decision (CD 7.23, paragraph 166) said:

*"I recognise that the 2015 WMS requires the most compelling evidence for the development of solar farms on BMV. However, this must be read in light of more up to date events..."*

8.33. I therefore conclude that the 2015 ministerial statement carries very limited weight.

8.34. The 2015 WMS says:

*"In light of these concerns we want it to be clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence. Of course, planning is a quasi-judicial process, and every application needs to be considered on its individual merits, with due process, in light of the relevant material considerations".*

8.35. The Council's Statement of Case says at paragraph 94 that 'submissions relating to Site Selection and the Use of BMV agricultural land' indicate that the threshold of "most compelling evidence" has not been reached. But it is important to recognise that what constitutes compelling evidence does not relate only to a narrow question of whether the poorest quality land has been used.

8.36. Compelling evidence should reasonably include relevant material considerations including, but not limited to, the need for renewable energy, site selection considerations, lack of alternative sites and lack of delivery of renewable energy schemes.

8.37. This was the approach that an Inspector determining a recent planning appeal decision (CD 7.23, paragraph 166) took in concluding that:

*"...together with the specific considerations in this case, I conclude that these factors provide the most compelling evidence to justify the use of BMV in this instance".*

8.38. In any event, the 2015 WMS itself makes clear that BMVAL is a material consideration and refers to needing to make planning decisions in light of material considerations. Thus, any harm from using BMVAL can be outweighed by other material considerations. That was the



approach taken by a planning inspector who did refer to the 2015 WMS in relation to planning appeal reference 3295140 (see paragraphs 14 and 38, CD 7.14).

- 8.39. I note that the Council appears to agree that any loss of BMVAL is simply a material consideration. The last sentence of paragraph 94 of the Council's Statement of Case does not argue that if 'compelling evidence' is not provided the appeal should be refused. Instead, it acknowledges that even on its own case this would simply constitute a material consideration in deciding whether to grant planning permission.

#### **Maidstone Borough Local Plan (2017)**

- 8.40. Policy DM 24 confirms that:

*"Preference will be given to existing commercial and industrial premises, previously developed land, or agricultural land that is not classified as the best and most versatile"* (my emphasis added).

- 8.41. I understand that the Council's Statement of Case (CD9.2, paragraph 24) takes a different approach to DM24 and takes 'preference' to mean that the policy imposes a mandatory requirement to show in precedence (or priority) that poorer land cannot be used. In other words, a sequential approach. In my opinion, this interpretation of DM24 is wrong and seeks to import a level of restriction and prescription that the words themselves do not contain or imply. Further, if this was the correct interpretation it would mean that the policy does not reflect the NPPF and instead enforces a stricter test. I discuss this further below. The Council's approach leads it to wrongly assert (at paragraph 31 of its Statement of Case) that the inclusion of BMVAL of itself 'causes a breach of Policy DM24'.

- 8.42. I do not read DM24 as expressly or impliedly requiring a sequential approach and note that the word 'preference' reflects the wording of NPPF footnote 58. Also, the supporting text to DM24 (CD 3.1, para 6.104) refers to the Council's 2014 large scale solar Advice Note (CD 3.19) as providing guidance for applicants. This is discussed below.

#### **Planning Policy Advice Note: Large scale (>50kW) solar PV arrays: January 2014 (CDXX)**

- 8.43. Section H (page 13) of the guidance sets out how the use of BMVAL should be assessed in relation to solar development. It does not set out a sequential approach to site assessment. Rather, the approach set out in that guidance is more one of justification of using higher quality land.
- 8.44. The flow chart confirms that the use of BMVAL land can be acceptable. This is plainly inconsistent with the Council's assertion that inclusion of BMVAL of itself 'causes a breach of Policy DM24'. Such an interpretation would put the policy and the advice note in conflict with one another, and further supports the conclusion that the Council's suggested approach is incorrect.
- 8.45. I note that the supporting text to policy DM24 (paragraph 6.104) cross refers to the Advice Note.

#### **Is a BMVAL Sequential Test Mandatory?**

- 8.46. The Council's Statement of Case indicates that it considers that a sequential approach is required.

- 8.47. There is no national planning policy or guidance that expressly or impliedly requires a sequential approach to the use of BMVAL note sets out a test for considering its use. Where national policy requires a sequential test to be applied (e.g. sequential tests for retail uses or flooding in the NPPF) it expressly states this.
- 8.48. Paragraph 2.3.9 of EN-3 states:
- “As most renewable energy resources can only be developed where the resource exists and where economically feasible, and because there are no limits on the need established in Part 3 of EN-1, the Secretary of State should not use a consecutive approach in the consideration of renewable energy projects (for example, by giving priority to the re-use of previously developed land for renewable technology developments)” (my emphasis given).*
- 8.49. A planning appeal decision (ref:3315877) for solar farm south of Leeming Substation said (paragraph 27, CD 7.15)
- “I have not been provided with any evidence that indicates that there is any national or local policy requirement to carry out an assessment of alternative sites for solar farm developments. Nevertheless, the appellant provided a sequential assessment”.*
- 8.50. In the Bramley Solar Farm Residents Group Judgement (CD 7.11) handed down on 15<sup>th</sup> November 2023, Mrs Justice Lang concluded that:
- “The PPG is merely practice guidance which supports the policies in the Framework. It is not a binding code which prescribes the steps that must be taken when planning a solar farm” (paragraph 177)*
- “I agree with the Secretary of State and BSL that the PPG does not mandate the consideration of alternatives. Still less does it require a sequential test be adopted”.* (paragraph 179)
- “I also agree with the Secretary of State and BSL that draft policy EN-3 cannot be read as mandating a sequential search for alternatives, as it only applies “where possible” and states that “land type should not be a predominating factor in determining the suitability of the site location”” (paragraph 180).*
- “In view of his conclusion that BSL (the developer) was not required to demonstrate a sequential approach to alternative site selection, the Inspector did not have to address Mr Bailey’s evidence on alternative sites” (paragraph 185)..*
- 8.51. In summary, there is no requirement for a sequential test in national policy or guidance.
- 8.52. In terms of the Development Plan, Policy DM24 sets out a ‘preference’ for using poorer quality agricultural land but the policy reflects (using identical language) the NPPF (footnote 58) and does not go on to identify a process or method for any sequential approach. The supporting text to DM24 does refer to a separate guidance document for assessing the use of BMVAL, but that document sets out a process of justification, not a sequential test. Consequently, the Council’s assertion that a sequential or preferential approach is required is simply wrong.

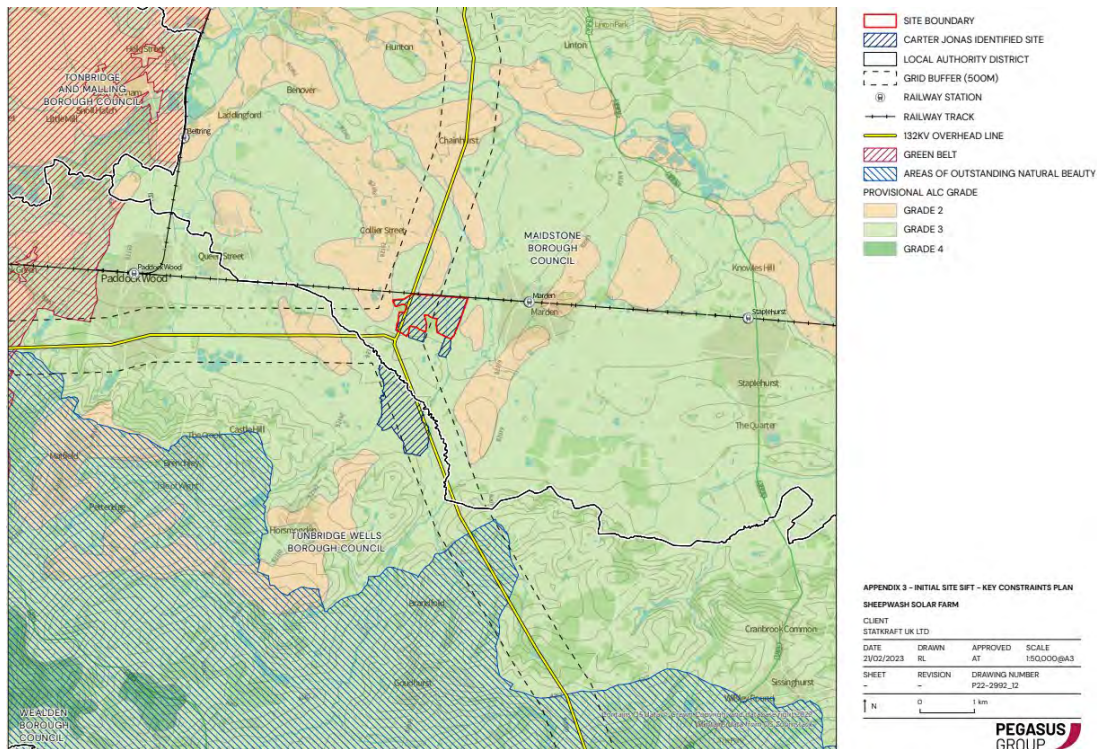


### **Appellants Approach to Site Selection**

- 8.53. Notwithstanding that a sequential approach is not required, the Appellant acknowledges that policy and guidance indicates that poorer quality land should be used in preference to higher quality land and that the Appellant should explain the choice of site.
- 8.54. Paragraph 30 of the Council's Statement of Case sets out how it considers that a site search could be undertaken, but the approach set out there is not related to any guidance or policy (national or local), let alone mandated by it.
- 8.55. My evidence below addresses specific criticisms of the site search made by the Council, before setting out the approach that the applicant has taken, explain why that was reasonable and proportionate and ultimately demonstrate why the Appellant's choice of site, which is part (and mostly not) BMVAL, is justified.

### Area of Search

- 8.56. The Council alleges (paragraph 26 of its Statement of Case, CD 9.2) that the Appellant's study area is based on the local authority's administrative area without justification and goes on to say that there is no given quantum of renewable energy that must be delivered in Maidstone. I have already addressed this point above.
- 8.57. However, the Appellant did consider site availability beyond the Borough. Appendix 2 of the Appellants updated Sequential Analysis Study (April 2023) (PDF pages 65-66, CD 1.31) refers to initial work undertaken in 2020 to identify a suitable site.
- 8.58. As the Council advocates (paragraph 30 of its Statement of Case CD 9.2), it is clear that this early work was of a technical nature, and grid led, seeking to find where grid capacity may exist along a 132kV line that had been identified as having capacity for a grid connection from a large scale solar farm. I note that many of the parameters adopted in that early work reflect the site selection considerations set out in EN-3. The work refers to constraints such as Areas of Outstanding Natural Beauty in neighbouring authorities and a predominant occurrence of BMVAL in the wider area and these clearly influenced initial site finding.
- 8.59. The 132kV infrastructure map on page 4 of the Grid Report by Roadnight Taylor (page CD 1.28) puts in context the sparse physical opportunities presented to connect to the grid across the South East from a physical and geographical perspective and illustrates very clearly why the initial phase of site selection is grid opportunity led. In addition, the UK grid is highly constrained and it not the case that all this 132kV infrastructure will have capacity to connect a utility scale solar farm.
- 8.60. The report by Roadnight Taylor also identifies that much of the area in the South East is constrained by restrictive designations. The below extract image from the Updated Sequential Analysis Study (CD 1.31) illustrates this clearly, demonstrating that no land across a large area spanning across parts of 3 different local authorities is any lower than Grade 3, and that there are large areas subject to AONB and Green Belt (but not in this area of Maidstone).



- 8.61. Having identified a more suitable area and a potential site, the Appellant will rightly have noted that LP policy DM24 is supportive of renewable energy. With regard to further and more detailed matters of site selection, issues of need and supply, planning policy context, site specific impacts of development and other material considerations, these are entirely matters for the relevant local authority to assess as part of a future planning application.
- 8.62. Housing, employment and retail matters, for example, are typically all dealt with on the basis of the administrative boundary of Maidstone Borough. From a legal and practical perspective, the Council cannot assess or make decisions upon land beyond its boundaries. The Council has not agreed to joint working or co-operation with adjoining local authorities in relation to delivering renewable energy,
- 8.63. There is no policy which says a sub-regional, regional or even national approach to site selection or delivery of renewable energy more generally must be considered. Rather, as discussed above, national and local planning and wider policy provides that Maidstone is and should be supportive of the development of renewable energy. It is therefore entirely reasonable for the Appellant to only consider other sites in Maidstone once a preferred site had been identified.

Necessary Use of Agricultural Land

- 8.64. We welcome the Council’s acceptance at paragraph 27 of the Statement of Case that there are no suitable brownfield sites and that the use of agricultural land is necessary to accommodate the Proposed Development. This is a material consideration in determining the appeal.





### Soil Sampling

- 8.65. The Council's second criticism (paragraph 27 of the Statement of Case) relates to the fact that the applicant has not undertaken soil sampling to obtain the "3a/3b split across potential alternative sites". The wording of this acknowledges the reality of the situation, that a site within the search area is likely to contain at least some BMVAL. Mr Kernons evidence (CD 11.4, paragraph 7.36) confirms that land quality in the Borough is better than the England average. The amount of Grade 2 land in the Borough is about twice the national average. The Appeal site has, purposefully, avoided these strategic areas of higher quality land.
- 8.66. From a practical perspective, it is not reasonable or proportionate to expect those seeking to develop urgently needed renewable energy schemes to sample all Grade 3 land in an entire area of search, let alone the cross local planning authority search area that the Council suggests should have been adopted.
- 8.67. The submitted Agricultural Land Classification and Soil Resource report (CD 1.16)) confirms that 93 soil profiles were examined and 5 soil pits were excavated. This gives an indication of the cost and time associated with undertaking soil testing.
- 8.68. In addition, land owner permission is of course required to access and survey the land. Landowners and farmers are likely to refuse access for this scale of surveying where they may have crops or stock on the land, and where they have no financial interest in the proposed development. They would also likely seek financial compensation for testing of their land.
- 8.69. I am not aware of any planning appeal decisions supporting the notion that sampling soil across an entire search area is necessary and reasonable and that failure to do so would justify refusing planning permission.

### Site Size

- 8.70. The Council also (at paragraph 27 of the Statement of Case, CD 9.2) suggests that rejecting sites of a similar size was unreasonable.
- 8.71. The Appellant benefits from a grid connection offer that will allow for the generation of a substantial amount of renewable energy (up to 50MW) and this should be welcomed, particularly given the demand and supply issues I have referred to.
- 8.72. In its Statement of Case, the Council has said (CD 9.2, paragraph 95) that the renewable energy benefits of the Proposed Development may be reduced due to the alleged relative inefficiencies of the scheme. It must be without question that a smaller solar farm, or a series of smaller solar farms equating to the same generation would, even if technically feasible or deliverable, be less efficient than the Proposed Development because each solar farm would require its own supporting infrastructure including a connection point, switch gear and larger sites allow a more efficient layout of panels. The Council cannot have it both ways.
- 8.73. EN-1 (CD .312) states at 4.3.22:

*"Given the level and urgency of need for new energy infrastructure, the Secretary of State should, subject to any relevant legal requirements (e.g. under the Habitats*



Regulations) which indicate otherwise, be guided by the following principles when deciding what weight should be given to alternatives:

- the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner; and
- only alternatives that can meet the objectives of the proposed development need to be considered” (my emphasis given).

- 8.74. Paragraph 4.3.23 goes on to explain that any alternatives should be capable of delivering the same capacity in the same timescale as the proposed development. As explained, the nature of the grid consenting process is such that, if planning permission is not granted for this site, then any other new proposal would have to begin the process of securing a grid connection agreement and any future connection offer is very likely to be 5 or more years into the future.
- 8.75. Case Law has established that there must be ‘exceptional circumstances’ to justify treating an alternative site as a material planning consideration. In *SASES v. SoS* [2022] EWHC 3177 (Admin) CD 7.21) in concluding that alternative sites did not need to be considered, Lang J concluded at paragraph 214:

*“Furthermore, in my judgment, the Defendant and Applicants were correct to submit that the case law does indicate that consideration of alternative sites will only be relevant in exceptional circumstances”.*

- 8.76. There is no policy requirement here that requires consideration of alternative sites in the context of BMVAL, and the circumstances could not be described as exceptional. In this case, the Council determined through its ES Screening Opinion that significant environmental effects would not result. LP Policy DM24 is supportive of renewable energy, the Council accepts that agricultural land is required to accommodate a large scale solar farm and the Councils strategy ‘Climate Change and Biodiversity in Maidstone’ says that every opportunity should be taken to bring forward renewable energy schemes. The LP does not allocate any alternative sites and the Council has not indicated to the Appellant that any alternative site exists.
- 8.77. In this context, and understood in the context of the above case law it is incorrect and unreasonable to seek to justify the refusal of planning permissions by suggesting that the Appellant was required to consider smaller sites.

- 8.78. In a recent appeal decision (CD 7.23, paragraph 120) the Inspector concluded:

*“It has been suggested that alternative sites which are smaller than the appeal site should have been considered. However, there is no requirement in national or local policy for developers to seek smaller sites or to fragment their proposed operations”.*

#### Site Search Boundary

- 8.79. The Sequential Analysis Study (2022) (CD 1.8) and Updated Sequential Analysis Study (2023) (CD 1.31) adopt a search area that relates to land 500m either side of the existing overhead line. This extent was defined by the Appellant based upon its own assessment of site viability and feasibility.

- 8.80. Relevant to this the Grid Connection Assessment (CD 1.5, page 3) explains that the cost of laying an underground 132kV cable is circa £1m per kilometre. Any cable over 500m would require a 'breaker', costing a further £1m. To avoid these costs and make the scheme efficient, it is necessary for any site to be able to make a connection within 500m of the point of connection. I consider that this approach is reasonable and proportionate.
- 8.81. NPS EN-3 (CD 3.13) states at paragraph 2.10.21:
- "Many solar farms are connected into the local distribution network. The capacity of the local grid network to accept the likely output from a proposed solar farm is critical to the technical and commercial feasibility of a development proposal."*
- 8.82. Paragraph 2.10.24 states:
- "In either case the connection voltage, availability of network capacity, and the distance from the solar farm to the existing network can have a significant effect on the commercial feasibility of a development proposal"*.
- 8.83. Paragraph 2.10.25 states:
- "To maximise existing grid infrastructure, minimise disruption to existing local community infrastructure or biodiversity and reduce overall costs applicants may choose a site based on nearby available grid export capacity"*.
- 8.84. In addition, Planning Practice Guidance paragraph: 006 Reference ID: 5-006-20140306 acknowledges that proximity of grid connection infrastructure can affect the siting of renewable energy technologies.
- 8.85. Locating the Proposed Development close to the proposed connection point (overhead line) where a grid offer has been made is therefore fully in accordance with the approach set out in NPS EN-3 and Planning Practice Guidance.
- 8.86. Paragraph 28 of a planning appeal decision (ref:3315877) for a solar farm at Leeming Substation in Hambleton District (CD 7.15) says:
- "...However, given the proposal is seeking to use the spare grid capacity at this sub-station, and bearing in mind the limited opportunities that currently exist for grid connections nationally, I consider it is, in this case, justified to only consider sites within an area that could also make use of this capacity, rather than capacity that may exist at other substations elsewhere. In addition, from the technical considerations set out by the appellant at the hearing regarding how connections to the substation need to be made, I consider that the area of search utilised in the appellant's assessment is reasonable"*.
- 8.87. The importance of a grid connection and the constraints that this brings to site selection is recognised by the Council in its Planning Policy Advice Note: Large scale (>50kW) solar PV arrays: January 2014, which states at paragraph 3.41:
- "The capacity of the electrical grid network in the borough may be one of the greatest constraints to the development of solar PV farms. Such development is likely to be attracted to suitable sites within 2km of an existing electrical substation with sufficient capacity to accommodate the additional electrical supply. There is likely to be*



*considerable interest in some areas and electricity substations may be unable to accommodate all development interest. It is likely that developers will have approached the relevant power distribution network provider to evaluate sites as part of the pre-application process”.*

- 8.88. Firstly, it is relevant to note that in addition to the Council’s climate strategy objective to take every opportunity to generate renewable energy, the Council also acknowledges that grid capacity is one of the greatest limiting factors. This only serves to emphasise why this grid connection must be utilised.
- 8.89. In drafting its advice, the Council has rightly recognised that solar farms must be close to their point of connection. The example given relates to proximity to a substation connection rather than overhead line, but the fundamental point holds true.
- 8.90. The Council has not pointed to any other grid connection that is available to connect the Proposed Development. Nor has it even justified coherently or clearly, an alternative site search area that would be appropriate or a mechanism to establish that search area. The Council’s suggestion that the search area should extend beyond Maidstone’s administrative boundaries is clearly at odds with the advice in its own Advice Note.
- 8.91. In a recent appeal decision (CD 7.23) the Inspector said at paragraph 118:

*“...Given the constraints in the availability of grid connections nationally, this is an important factor. It has been well documented recently that constraints on connection to the National Grid is causing significant delay in allowing projects to contribute to renewable energy goals”.*

- 8.92. At paragraph 119 of the same decision the Inspector found that the point of connection was relevant to considering potential alternative sites and it was not appropriate to consider sites beyond the local authority boundary.

*“It is therefore reasonable for the 4km distance to be used to assess alternative sites and I understand that connection difficulties can arise as the distance from the grid connection point increases. I therefore give little weight to arguments that the development should be located on unidentified lower quality agricultural land elsewhere in Essex or beyond”.*

#### The Appellants Justification For Selecting the Appeal Site

- 8.93. The Appeal Site is ideally located for the provision of energy generation development with the existing power lines that cross it providing onward transmission through the network. As discussed above solar farms, like other renewable energy-generating infrastructure, require grid capacity and a viable connection to operate. This requirement places a locational restriction on site selection that limits the number of appropriate sites for such a facility. Having established the search area, the Sequential Analysis Study (2022) (CD 1.8) and Updated Sequential Analysis Study (2023) (CD 1.31) set out a methodology for assessing land. The methodology employed reflects guidance in EN-3 beginning at paragraph 2.10.18 that confirms relevant factors for assessing site selection, and these echo many of the factors mentioned in Planning Practice Guidance.
- 8.94. A number of site and development constraints were identified and these were mapped to understand how they relate spatially.



- 8.95. Appendix 3 of the Updated Sequential Analysis Study (2023) (CS 1.31) set out key constraints, and as described above, provide a useful summary of the wider land and constraints that Carter Jonas considered in their early work.
- 8.96. Appendix 5 overlays the search area with the constraints identified. It should be noted that mapping beyond the defined search area was undertaken. This gave the authors and reader an appreciation of not only the wider context (for example the area where Grade 1 and 2 land is more common) but it would also be reasonable to assume, for example, that a theoretical pocket of Grade 4 or non-agricultural land would have been noted and could have been considered to some degree at least for robustness. But in this case, there is no land lower than Grade 3 available in the wider area.
- 8.97. Appendix 6 identifies two areas of unconstrained land within the search area (as per the constraints applied listed at 4.33 above) and which have an ALC classification of Grade 3 as shown within the Defra predictive mapping, and were therefore no more preferable. The two areas were however additionally ruled out as unsuitable for other reasons.
- 8.98. In summary, the Appellant has taken a reasonable and proportionate approach to site selection that reflects guidance provided in EN-3 and Planning Practice Guidance.

**Would adopting a 2km corridor either side of the line have drawn a different conclusion?**

- 8.99. Whilst the Appellant's position remains that a site must be within 500m of the point of connection to be able to connect at a pylon and to avoid significant increased cost, of at least a £1m breaker, plus cable costs, we note the Council's criticism that the search area has been too restricted.
- 8.100. Having considered the Council's criticism of the width of the search area in its Statement of Case, the Appellant has undertaken a sensitivity analysis of the Sequential Analysis Study to ascertain if there are any potential alternative sites within 2km either side of the 132kV overhead line. This analysis is appended to my Proof at Appendix 3.
- 8.101. The sensitivity analysis demonstrates that all land in the enlarged study area falls into at least grade 3 agricultural land. As such, there is no suitable and available potential alternative site that is more preferable in terms of agricultural land.
- 8.102. Notwithstanding this, a total of 9 potential sites have been identified after considering other site and development constraints. More refined assessment of these sites has been undertaken which confirms they do not form viable, deliverable or more preferable alternative sites.
- 8.103. Thus, even on a larger search area, the use of this site for a solar farm is justified.

**Planning Policy Advice Note: Large scale (>50kW) solar PV arrays: January 2014**

- 8.104. Section H of the guidance sets out how the use of BMVAL should be assessed in a flow chart (see PDF page 73 of CD 3.19). The flow chart differentiates between land in grades 1 and 2 and land in grade 3a. In this regard, I note that only a small proportion of the site is grade 2 (as set out below) and none is grade 1. The vast majority of the Grade 2 land will not form part of the 'developed' solar farm and will not be subject to any physical or built interventions.



8.105. The flow chart confirms that the use of BVMAL land can be acceptable. The guidance for grade 3a lists considerations that should be assessed. I set these out below and provide a response to each:

- Why the site cannot be located on land of a lesser classification

8.106. The evidence submitted by the Appellant in relation to grid constraints, grid connectivity requirements, the cost of a connection, the overall availability of BMVAL in the Borough and the search area, the land take of the Proposed Development and the resulting likelihood of avoiding BMVAL, the fact that the majority of the site is not BMVAL, that the majority of the grade 2 land is excluded from development and the site search analysis demonstrate why the site cannot be located on lesser classification land, but also how the Appellant has sought to direct the Proposed Development toward lesser quality land.

- Impact on the supply of land in the same classification in the local area

8.107. The mapping within the Sequential Analysis Study demonstrates that all land in the local area is Grade 3 or above. In addition, most of the Appeal Site is not BMVAL and Mr Kernon's evidence (CD 11.4, paragraph 7.54) is that the Proposed Development results in a loss of only 0.35ha of Grade 3a land.

8.108. Mr Kernon's evidence (CD11.4, paragraph 7.36) is that the land quality of the Borough is better than the England average and that the amount of Grade 2 land in the Borough is about twice the national average.

- Impact on the farm and its function

8.109. Mr Kernon's evidence (CD11.4, paragraph 8.37) is that the existing economic benefits of the land are modest. The submitted Agricultural Land Use Statement by Bidwells (CD 1.15) concludes at paragraph 6.3 that:

*"The impact of the potential harms and benefits associated with the removal of land from arable production are related to land area and productivity. The land area is proportionally small (only 7.5% of the arable land across the holding) therefore the impact on the farming business as a whole will be minimal and temporary. Furthermore, the loss is more than offset by the benefits of securing a diversified income stream with a more consistent cashflow profile for the farming business".*

- The cumulative impact on the supply of land in the same classification.

8.110. Mr Kernon's evidence (CD 11,4, paragraph 7.35) is that Maidstone, is recorded as having an area of 39,335 ha and that the Appeal site lies in the area of generally poorer quality land within the Borough.

#### **Is the Use of BMVAL Land Justified?**

8.111. It has been demonstrated that there is no sequential approach mandated by policy and no prohibition on utilising BMVAL.

8.112. The Appellant has justified how it has sought to identify and use poorer quality land in preference to higher quality land. This includes at a strategic grid search level, with regard to the agreed point of connection, and within the site itself through layout of the solar farm.

8.113. The Proposed Development therefore accords with Policy DM24, which does not preclude the use of BMAL.

**The Harm Caused by the Use of BMVAL Land**

8.114. The use of BMVAL land weighs negatively against the proposal. I set out below material considerations that inform the weight I attach to this harm.

8.115. The site is mostly not BMVAL and the proposed layout has sought to exclude areas of Grade 2 land.

8.116. Mr Kernon’s evidence is that only 0.35ha of Grade 3a land would be lost, and this land would be capable of being restored at the decommissioning phase.

8.117. The Council accepts agricultural land is required to accommodate the proposal. There is a high proportion of BMVAL land in the Borough.

8.118. There is no alternative land of lesser quality than Grade 3 in the extended search area or its wider surroundings.

8.119. The Council’s emerging LP seeks to develop large areas of BMVAL for residential use that would be lost forever. The Council’s Agricultural Land Assessment 2021, (CD 3.17) Table 2, is a desktop only (the Council did not undertake any soil sampling of sites) that provides the Maidstone level total for all grades, along with the loss per grade on a percentage basis and the total loss by grade:

**Table 2 – Maidstone Totals**

Grade	Area m2	Hectares	Total loss by grade	% loss
Grade 1	6,106,250.55	610.63	16.00	2.62
Grade 2	107,233,095.06	10,723.31	747.41	6.97
Grade 3/3a	236,572,401.88	23,657.24	685.64	2.90
<b>Total Grade 1-3</b>	<b>349,911,747.49</b>	<b>34,991.18</b>	<b>1,449.05</b>	<b>4.14</b>
Grade 3b/4/5 Urban	7,664,102.83	4,206.61	178.30	4.24
<b>Maidstone Totals</b>	<b>391,977,814.07</b>	<b>39,197.79</b>		

8.120. Table 2 confirms that over 750 hectares of Grade 1 and 2 BMVAL will be lost as a consequence of the emerging local plan. Paragraph 5.2 justifies this:

*“The results of the above analysis demonstrate that land in grades 1–3a would be lost as a result of development, however it is nevertheless important to view this within the context of overall availability of the best and most versatile agricultural land”.*

8.121. The Climate Emergency is no less pressing than the housing crisis and the temporary use of land for a solar farm must be set in the same context of overall availability of the resource. In addition, it is relevant that, unlike housing, the agricultural land proposed to be



temporarily used would not be lost and the solar farm would help to address the impacts of climate change, which present a threat to all agricultural land in the UK and beyond.

8.122. Paragraph 5.8 says:

*“In pursuing a sustainable pattern of growth, it is inevitable that in some instances this growth will take place on land in grades 1-3/3a. This study demonstrates that MBC has considered the quality of agricultural land in its strategy and allocations to ensure that the loss of the best and most versatile agricultural land would be minimised in accordance with paragraph 174 of the NPPF”.*

8.123. Given that the Council accepts that agricultural land is required to accommodate a solar farm, I consider that the Council should acknowledge that it will be similarly inevitable that solar farms will need to be sited on BMVAL, just as it has recognised that substantial loss (as opposed to temporary use) of BMVAL will be needed to accommodate the development of housing within its administrative area.

8.124. Whilst it is acknowledged that a 37-year period of use is not a short amount of time, the solar farm would be removed from the site once its operational period has concluded. There will be only a small loss of 0.35ha of BMVAL, and so longer term adverse impact on its productive capacity will result.

8.125. Paragraph 013 Reference ID: 5-013-20150327 of the PPG recognises *“that solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use” (my emphasis added).*

8.126. The Appeal Site will remain in agricultural co-use through livestock grazing, so agricultural use will be retained on the site.

8.127. Mr Kernon’s (CD11.4, paragraph 8.2) evidence is that there will be benefits to soils.

8.128. A planning condition requiring a soil improvement plan is proposed, which paragraph 2.10.34 of EN-3 recommends as suitable mitigation to minimise impacts on soils.

8.129. I have considered a number of appeal decisions on this matter:

Appeal ref	Core Document Reference	Note on Inspector’s Decision
3295140	CD 7.14	However, BMV land is plentiful in the Councils’ administrative areas and the proposal would utilise a small amount of that land. Furthermore, given the proposed connection to the intended substation, this proposal could also not be located on previously developed land or non-BMV land, as demonstrated by other solar farms that have been located on such land nearby. I am also mindful the SADMPP does not identify any suitable sites for the location of solar farms in KLWN. Accordingly, I only afford <b>moderate weight</b> to the





		conflict of the proposal with the development plans to effectively avoid development of BMV land. (Paragraph 29)
3319970	CD 7.16	The Inspector gave <b>neutral</b> weight to the use of BMV:  <i>“The proposal, in this case, would also not result in the permanent loss of agricultural land and recognises the economic and other benefits from the BMVAL”.</i> (Paragraph 68)

8.130. Taking all of the above into account, I consider that **limited harm** would arise from the temporary use of BMVAL to accommodate the reversible Proposed Development.

## 9. Refusal Reason 2 – Landscape

- 9.1. Refusal reason 2 alleges that the Proposed Development would cause significant harm to the character and appearance of the countryside and does not adequately mitigate these impacts.
- 9.2. The Appeal Scheme being considered is different to that following the amendments made at the time of submitting the planning appeal. Changes made include a reduction in the number of panels and changes to the mix of planting species to faster growing species that would introduce more effective screening sooner.
- 9.3. I also note that the committee report (CD 1.24, paragraph 7.04) said:
- “The development will create bunds of stored topsoil. Whilst the applicant has failed to provide details, they would be visually harmful. The proposal in this regard is therefore contrary to the NPPF and to Policies SP17, DM1, DM24 and DM30 of the MBLP”.*
- 9.4. It is evident that despite stating details were not known, the Council has assumed that the proposed bunds will cause a level of visual harm, such that they do not comply with the relevant planning policies.
- 9.5. Ms Walters’ evidence clarifies that top soil removed for construction of the HV compound will temporary be stored in proposed bunds up to 3m high. These were never intended to remain in situ for the operational lifetime of the development and will be re-used to aid proposed planting across the site. Thus, there are no permanent bunds that will cause visual harm.
- 9.6. The implication is that the Council determined the planning application on the basis of a harm that was not substantiated, and this will also have had inevitable consequences for the planning balance that the Council undertook.
- 9.7. The Appellants evidence in relation to refusal reason 2 is provided by Ms Walters. Her evidence is that for landscape character, the scale and massing of the development without the landscape mitigation would equate to slight-moderate harm. However, with the proposed landscape mitigation, the harm would reduce to limited.
- 9.8. For visual receptors Ms Walters concludes that the overall harm of the Appeal Scheme reduces substantially with increase in distance from the site. Within a limited area of 500m of the site the impact would be moderate. However, with landscape mitigation and within 5-10 years the harm in this limited area would reduce to limited.
- 9.9. I note that this harm would be temporary only, with the Proposed Development removed and the land restored after the operational period. The site is also not a valued landscape in the context of NPPF paragraph 174 and is not subject to any specific protective designations or allocations such as AONB or special landscape area. Having regard to these considerations and the above harm identified by Ms Walters, I afford this harm **limited weight**.



## 10. Refusal Reason 3 – Heritage

- 10.1. Paragraph 75 of the Council's Statement of Case (CD 9.2) concludes that the public benefits of the Proposed Development do not outweigh the less than substantial harm to designated assets that the Council has identified.
- 10.2. Paragraph 67 of the Council's Statement of Case confirms that it considers that there is impact to Little Long End and the group at Little Cheaveny Farm. Paragraph 73 confirms that the impact to these assets would be 'less than substantial'.
- 10.3. Paragraph 5.30 of the committee report (CD 1.24) confirms that this harm is "*at the lower end of less than substantial*".
- 10.4. The evidence of Mr Sutton is that there is no harm to designated heritage assets.
- 10.5. If the Inspector agrees with the Council that there would be some less than substantial harm to the designated heritage assets the decision maker must therefore consider the test at paragraph 202 of the NPPF. I consider the heritage balance below.

## 11. Refusal Reasons 4 and 5 – Ecology and Noise

### Refusal Reason 4

- 11.1. Refusal reason 4 relates to ecology harm to badgers and skylark habitat, and harm to ancient woodland and the Lesser Teise as a result of proposed permissive footpath.
- 11.2. The evidence of Mr Danny Thomas explains that following further discussion with Council officers, the Council is no longer objecting to the Proposed Development on the basis of these matters and has accepted that potential impacts can be suitably mitigated and controlled through the use of planning conditions.
- 11.3. Draft planning conditions dealing with badgers, skylarks and impact on the Lesser Teise are being agreed in the draft Statement of Common Ground.
- 11.4. It is therefore understood that the Council are no longer pursuing refusal reason 4 as part of this appeal.

### Refusal Reason 5

- 11.5. Refusal reason 5 says that the Appellant failed to adequately demonstrate that there would be no harm to residential amenity from noise.
- 11.6. However, the amendments made under the Appeal Scheme includes the relocation of the HV compound further west, away from 8 Sheephurst Cottages.
- 11.7. Following ongoing discussion with the Council it has been agreed that there would be no significant impact on 8 Sheephurst Cottages as a result of the relocation of the HV compound.
- 11.8. However, the Council is seeking a proposed planning condition that requires the carrying out of post installation sound assessment. The proposed condition requires a scheme of mitigation would be required to be submitted, approved and implemented only in circumstances where the results of the post installation noise assessment should find that levels set out in the dBc noise impact assessment are exceeded.
- 11.9. The Appellant agrees that this planning condition would meet the relevant tests and a draft planning condition has been agreed with the Council and is to be included in the Statement of Common Ground.

### Implication

- 11.10. The Council no longer intends to pursue refusal reasons 4 and 5. It is clear from the committee report (CD 1.24, paragraph 7.06) that the Council attributed negative weight to the perceived harm to ecology in the planning balance.
- 11.11. By agreeing these matters are acceptable, or can be made acceptable through the use of planning condition, harm that the Council alleged was of sufficient weight to justify the refusal of planning permission has been removed. This must change the planning balance that the Council undertook in refusing to grant planning permission.



11.12. Furthermore, I consider that the impact on ecology is in fact a material benefit of the scheme and this is discussed below.

## 12. Material Considerations

12.1. A number of material considerations are important, which are as follows:

1. The need for renewable energy, both nationally and locally
2. The ability to efficiently and viably connect this site in the short term
3. Absence of proactive planning policies to bring forward renewable energy schemes
4. Absence of any allocated or permitted sites, which further emphasises the need for this proposal
5. All alternative sites within the Borough would be on agricultural land and inevitably have some degree of landscape impact
6. Agriculture by grazing of sheep will assist in the recovery of the soil, after many years of intensive arable production
7. The landscape is not a “valued landscape” within the meaning of paragraph 174(a) of the NPPF; nor is it protected by any statutory or policy landscape designations. Adverse impact on the landscape is relatively low and can be mitigated.
8. The development is temporary and fully reversible
9. Biodiversity Net Gain will be significantly greater than 10%
10. The Proposal will generate both short term and longer term employment opportunities. In the short term, a local labour force will be required to prepare the site, deliver materials to the site and erect the solar farm. In the longer term a labour force will be required to monitor the site through CCTV, maintain the panels, and maintain the site, including the hedges and trees.
11. The landowner will receive a consistent and elevated income (per acre) for the land, over the period of the installation. The rent for the land would be expected to exceed the return for conventional farming on this land. This makes a significant contribution towards the rural economy, at a time when farming is becoming less viable and when farmers are beginning to rely upon innovative farm diversification schemes to support and compliment traditional farming practices.
12. The development will be required to pay business rates representing an increase to the Council’s income in comparison to the existing agricultural land use which is exempt from business rates.

12.2. I discuss the key material considerations below and set out my conclusion on the weight that should be afforded to them in the planning balance. In doing so, I attribute levels of weight from very limited (being the lowest possible amount of positive weight) to very significant (being the highest amount of positive weight).



### Renewable Energy Need

- 12.3. This Proposal offers the opportunity to secure a renewable energy scheme with a generation capacity of 46.9MW.
- 12.4. As explained above, there is an urgent and compelling unequivocal need for this development and very strong policy support for solar development, to help increase the supply of renewable energy. Section 4.2 of EN-1 confirms a Critical National Priority to deliver utility scale renewable energy.
- 12.5. Planning policy DM24 is a positively worded policy that offers support to renewable energy schemes, subject to meeting criteria.
- 12.6. Paragraph 155 of the NPPF says that local plans should provide a positive strategy for energy that maximises the potential for suitable development and that plans should also consider identifying suitable areas for renewable and low carbon energy sources. The LP does not provide for these proactive steps, meaning that it will be necessary for speculative planning applications to come forward to meet this need.
- 12.7. In terms of the progress that the Council is making to help deliver renewable energy, the Council has a positively worded policy relating to renewable energy but has not identified any sites for renewable energy development, either in the Local Plan or other guidance or evidence based report. The emerging Local Plan proposes the same approach as Policy DM24. Therefore, the Council is, and will remain reliant upon speculative planning applications that can take advantage of grid connectivity opportunities to increase local renewable energy generation in order to meet Net Zero targets.
- 12.8. The small number of renewable energy schemes in Maidstone identified in Chapter 7 of this statement are steps toward moving away from fossil fuels, but it has been demonstrated that much more renewable energy is still required in Maidstone and the UK as a whole.
- 12.9. In summary, there is a firmly established need for this development, the relative lack of delivery of renewable energy schemes in Maidstone compared to its energy demands, and the absence of a sufficiently proactive planning strategy or identified sites to ensure that sufficient renewable energy schemes are delivered increases the weight that should be attached to the benefits of this Proposal.
- 12.10. The Proposed Development will help address climate change, meet locally identified need to increase renewable energy generation, help to address the national shortfall in renewable energy generation and provide a clean and cheap source of energy that assists UK energy security.
- 12.11. I consider that the provision of renewable energy should be afforded **very significant** weight. A number of appeal decisions that support this position have been submitted to the appeal, which I summarise below:

Appeal ref	Core Document Reference	Note on Inspector's Decision
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3292579	CD 7.1	'the provision of clean renewable energy which contributes to security of supply attracts <u>substantial positive weight</u> ' (paragraph 33)
3300222	CD 7.4	The benefits of renewable energy raise <u>substantial benefits</u> in favour of the proposal (paragraph 91)
3304561	CD 7.5	In my judgement, the public benefits of this proposal which would contribute towards achieving net zero as part of a decisive shift away from fossil fuels, assist with increasing solar capacity in the UK from 14GW to 70GW by 2035, assist with achieving the Council's Climate Emergency Action Plan (2021), reduce carbon dioxide emissions by around 9,381 tonnes annually and provide a biodiversity net gain of 100%, are <u>very significant</u> and outweigh the less than substantial harm to the affected designated heritage assets, giving great weight to the conservation of each of them. (paragraph 84).
3295140	CD 7.14	Given the scale and urgency of the emergency, I attach <u>significant weight</u> to this material consideration, including the impact of climate change on food production. A balance therefore needs to be struck to reduce the former to protect the latter, including in certain cases BMV. Energy and food security are therefore both key issues, which are affected by foreign markets. (Paragraph 31).
3315877	CD 7.15	The support in both national and local policy for renewable energy is caveated by the need for the impacts to be acceptable, or capable of being made so, nevertheless, the renewable energy benefit of the proposal must be accorded <u>substantial weight</u> (paragraph 36).

#### Ecology and Biodiversity Net Gain (BNG)

- 12.12. The Proposed Development has been subject to a full ecological impact assessment, supported by site surveys and desk study information.
- 12.13. The impact assessment identifies potential effects upon a number of protected and notable species and presents avoidance and mitigation measures, in line with the mitigation hierarchy aimed at minimising and reducing the adverse effects that the development will have upon ecology. The Council's ecologist confirms that the measures are appropriate and should be secured through appropriate planning conditions.
- 12.14. The Proposal will secure a biodiversity net gain of 57.08% for area based habitats and 37.72% for linear habitats (CD1.35, paragraph 3.7).
- 12.15. I consider that the proposed BNG should be afforded **significant weight**.



12.16. The appeal decisions summarised below demonstrate that achieving a BNG has been given substantial or significant weight by Inspectors.

Appeal ref	Core Document Reference	Note on Inspector's Decision
3295140	CD 7.14	'I am mindful that biodiversity net gain BNG is not yet mandatory for new developments, but the Framework is supportive of measurable attempts to secure such benefits. There would be BNG and landscape enhancement through implementation of the proposal, with onsite enhancement and mitigation measures, including considerable new hedgerow planting. Most of these benefits would be at least throughout the lifetime of the development, as there is a commitment to monitor and report on biodiversity, with a contingency to re-seed pasture and species-rich grassland areas if they do not establish. Environmental benefits associated with these aspects of the proposal would be of <u>significant weight</u> (Paragraph 33)
3292579	CD 7.1	There would be an agreed, and high, level of biodiversity net gain resulting from this scheme, and some enhancement to the land around the solar panels by the introduction of flower rich meadows. This attracts <u>significant weight</u> in favour of the proposal (paragraph 34)

12.17. There are other wider environmental benefits of renewable energy in addition to BNG, including responding to climate change and the likely catastrophic impacts of failing to address rising temperatures.

12.18. The Proposal therefore complies with Policy DM3, the Natural Environment.

No Other Sites

12.19. The Council has not allocated any sites for renewable development, nor does it have adopted policies in place, or other guidance that indicate, spatially, where a solar farm should be located. The Council therefore cannot point to any other sites where it is expecting utility scale solar (or other renewable energy) development to meet the identified need, let alone a more suitable site (or sites) where the Proposal could be located.

12.20. Even if a potentially superior site was identified, it would not weigh against the grant of planning permission. Alternative sites are only material considerations in exceptional circumstances, which do not arise here. There is no policy requirement to consider alternative sites or to demonstrate this is the most suitable site. Moreover, the scale of the need is such that multiple sites are needed to accommodate the numerous solar farms (or other renewable energy schemes) that will be required if the Council (and the UK) is to meet its Net Zero target. All of the required projects within Maidstone Borough will need to use agricultural land.



- 12.21. In respect to policy DM24, the Appellant submitted a site selection assessment in support of the planning application. The assessment establishes the point of connection as the basis for defining the area of search and found that there is no land of lesser quality in the search area.
- 12.22. Given the context of the identified need for renewable energy, the very limited amount of renewable energy delivered in Maidstone, the absence of any further renewable energy generating capacity in the pipeline and the secured grid offer I conclude that the lack of other sites capable of addressing the need or even making a substantial contribution in the near future is a material consideration that should be given **significant weight**.

#### Availability of a Grid Connection

- 12.23. The Appeal Site is well placed to be quickly, directly and simply connected to the grid and could be delivering renewable energy in a very short time. The Appellant is confident that this could be achieved within 12 months of a positive decision.
- 12.24. In light of the urgent need to address climate change and the lack of progress in Maidstone and the UK, I consider that the fact the Proposal can be delivered quickly is a relevant material consideration that attracts **significant** positive weight in the planning balance.

#### Economic Benefits

- 12.25. In terms of the economic investment, the Proposal would represent a total capital investment of approximately £35m.
- 12.26. The specific local benefits of the proposal include the business rates for the solar farm of approximately £50,000 per annum, which would be payable to the Council. Over the lifetime of the development, and conservatively assuming inflation at 3%, this would be £3,308,710m directly into the local economy.
- 12.27. During construction it would employ up to approximately 150 people at peak times, and a minimum of around 20 people at other times, dependent upon the stage of construction. During the operational phase the Proposed Development would direct support approximately 2 or 3 full time equivalent jobs.
- 12.28. The Proposal will help to address UK energy security and increase low cost and subsidy free energy generation, which is particularly important at a time of a cost of living crisis and energy security crisis. This is a clear economic benefit to the households and business owners in Maidstone Borough, many, if not all of whom, will be experiencing the negative effects of rapidly rising energy costs. Powering Up Britain (March 2023) recognises that solar is the cheapest form of electricity generation and sets out how the government will enhance the country's energy security and seize the economic opportunities of the renewable energy transition.
- 12.29. NPPF paragraph 81 says that significant weight should be placed on the need to support economic growth and the economic benefits of the proposal should therefore be afforded **significant weight**.



### Farm Diversification

- 12.30. The Proposed Development is a rural development and solar farms are now a common feature of the countryside across the UK.
- 12.31. The solar farm will support the rural economy through farm diversification, allowing continued agricultural use for sheep grazing and ensuring that decommissioning after the 37-year operational period will see the land returned to its current state. I afford the benefits to farm diversification **limited weight**.



## 13. Third Party Comments

- 13.1. A number of representations have been submitted to the appeal by third parties who are typically residents who live in the surrounding area. These deal with a number of different matters and I discuss these ordered thematically below.
- 13.2. The need for the development, including in the context of the nearby Bockingfold Solar Farm granted planning permission (22/O2773/FULL) by Tunbridge Wells Borough Council in December 2022 is raised. Matters relating to need are discussed in Chapter 7 of this Proof of Evidence.
- 13.3. A number of representations raise concerns relating to the loss of agricultural land and loss of land from productive use. These issues are addressed in Mr Kernon's evidence.
- 13.4. Some representations refer to the impact on nearby heritage assets. The impact on these assets is discussed by Mr Sutton's evidence relating to heritage matters.
- 13.5. Matters relating to impact on the landscape and the character and appearance of the area, including through cumulative impacts are raised. This is addressed in the landscape evidence of Ms Walters.
- 13.6. Representations relating to the impact on flooding, including movements of any flood waters across the Appeal Site and the impact to flows and movement of water beyond the Appeal Site boundaries has been raised in several comments. Flooding has been appropriately considered as part of the planning application and the Appellant submitted supporting information including a Flood Risk Assessment with the planning application. This information has been duly assessed by the Council, Kent County Council and the Environment Agency. The Council's committee report (CD 1.24, paragraph 6.64) confirms that the Council resolved that "there are no flood risk or drainage concerns".
- 13.7. Nevertheless, at the Case Management Conference call of 10<sup>th</sup> November relating to this appeal, the Inspector requested information that would address the comments raised by third parties in relation to flooding matters. The Appellant has therefore provided an Addendum Flood Risk Assessment to address these matters, which is provided at Appendix 1 and a Flood Sequential Test Statement at Appendix 2.
- 13.8. The Addendum FRA demonstrates that the proposal is acceptable in terms of flood risk matters.
- 13.9. Concerns were raised on matters relating to residential amenity, including overlooking, glint and glare, noise and overlooking/outlook. Residential amenity matters have been assessed by the Council in its committee report (paragraphs 6.49 to 6.55) and the scheme was concluded to be acceptable, with the exception of noise impact from the proposed HV compound.
- 13.10. However, as set out above the changes made to the Proposed Development through the Appeal Scheme amendments move the HV compound and the Council is satisfied that there will be no unacceptable noise resulting from the Proposed Development and a planning condition is proposed to ensure that if the predicted noise levels are exceeded in practice suitable mitigation measures will be put in place.



13.11. A Glint and Glare Study was undertaken in support of the planning application by Pager Power (CD 1.4). Pages 69 and 70 identified two properties that may experience approximately 1 hour of glint and glare per day, for approximately 3 months of the year, and so assesses the impact as only moderate. The study suggests that existing vegetation may provide screening that prevents the impact. Moreover, the Appeal Scheme has removed panels in the south west corner of the site that could have caused some glint and glare. Areas of proposed panels in the south east corner of the site remain, but proposed blocks of woodland planting (combined with existing vegetation that will be retained) will provide adequate screening.

13.12. Notwithstanding that the impact on residential amenity (following the relocation of the HV compound) is found by the Council to be acceptable, the Appeal Scheme amendments include removing panels closest to 8 Sheephurst Cottages to increase the separation distance between the solar arrays and this dwelling and the introduction of additional landscape planting that will help screen the Proposed Development.

#### River Bank Corridor

13.13. Comments to the planning application provided by Upper Medway Internal Drainage Board (CD 2.1.32) refer to the need to retain an 8m gap between the watercourse and the Proposed Development.

13.14. Through recent discussions with the Local Planning Authority as part of the negotiations on ecology conditions, it has become evident that there is a small pinch point in the south east corner of the Proposed Development where a proposed fence would impinge upon this 8m buffer and which may require the fence to be relocated.

13.15. It is currently proposed that this issue would be appropriately addressed by a planning condition which the Appellant is currently discussing with the Council, to be agreed through the Statement of Common Ground. The Council also indicated that they would not object to the 8m standoff being addressed by a revised plan to be submitted and referred to in a condition.

## 14. The Balances



### **The Heritage Balance**

- 14.1. The Appellant's position is that there is no harm to designated heritage assets. However, the Council's position is that there is less than substantial harm, at the lower end of the scale.
- 14.2. If the Inspector agrees with the Council that there would be some less than substantial harm to the designated heritage assets the decision maker must therefore consider the test at paragraph 202 of the NPPF.

While 'great weight' should be given to the conservation of designated heritage assets (NPPF paragraph 199), when this harm is 'less than substantial' this needs to be weighed against the public benefits. Council's Weighting of the Public Benefits

- 14.3. At paragraph 75 of its Statement of Case (CD 9.2) and paragraph 7.05 of the Committee Report (CD 1.24), the Council suggests that the public benefits have been, or should be discounted on the basis that the scheme could be provided elsewhere at more appropriate sites. That is an incorrect approach.
- 14.4. As discussed earlier, the judgment *SASES v. SoS* [2022] EWHC 3177 (Admin) confirms that there must be 'exceptional circumstances' to justify treating an alternative as a material planning considerations.
- 14.5. Furthermore, paragraph 4.3.24 of EN-1 (CD 3.12) says:

*"The Secretary of State should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, and should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals".*

- 14.6. It must be noted that no suitable other site has been identified by the Council, let alone one that would deliver the same range and scale of benefits as the Proposed Development. But even if other sites were available in Maidstone, this is a not a situation where developing such a site would mean the need no longer exists (see above). Hence the weight to be attached to the benefits could not reasonably be reduced even if another site or sites could be identified on which more renewable electricity could be generated. It is all urgently needed.
- 14.7. The Council's approach to assessing public benefits is therefore flawed and unreasonable.

### **My Weighting of the Public Benefits**

- 14.8. The key public benefits of the Proposed Development are discussed below. In my opinion, these are all public benefits that should be considered as part of the heritage balance exercise at NPPF paragraph 202. The weight I attach to each of these public benefits is discussed below.
- 14.9. In undertaking this balance, I assume that great weight would be given to the less than substantial harm to the setting of the designated heritage assets that the Council identifies, in the event that the Inspector agrees with the Council, notwithstanding the evidence of Mr Sutton that there is no harm.

Appellant's Weighting of the Public Benefits

- **Provision of Renewable Energy**

14.10. As discussed above, there is a very strong planning policy and wider policy imperative to increase rapidly the generation of renewable energy in order to meet Net Zero targets. The contribution of the Proposal in this regard is therefore a very significant public benefit. In reaching this conclusion, I have regard to the relative lack of progress in delivering utility scale renewable energy projects in the Borough.

- **Biodiversity Net Gain**

14.11. The Proposal will deliver a substantial BNG, well in excess of the 10% that is expected, but not yet required by relevant legislation. The BNG enhancements that are proposed will have positive impacts on the landscape and act as habitat, feeding and foraging areas for wildlife. In line with the appeal decisions referenced above, I give significant weight to this public benefit.

- **Economic Benefits**

14.12. The Proposal will support a small number of jobs, plus jobs through the construction phase. Service. The Proposal would represent a total build cost of approximately £35m and generate business rates for the Council of approximately £50,000 per annum.

14.13. I give these public benefits significant weight. NPPF paragraph 81 confirms that "significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development".

Summary of Weight to Public Benefits

<b>Public Benefit</b>	<b>Weight Applied in Committee Report</b>	<b>Weight Applied in Council's Statement of Case</b>	<b>Appellant Weight</b>
Provision of Renewable Energy	Acknowledged, but weight not stated	Not addressed	Very Significant
Biodiversity Net Gain	Acknowledged, but weight not stated	Not addressed	Significant
Economic Benefits	Acknowledged, but weight not stated	Not addressed	Significant

14.14. Recognising the great weight to be afforded to the harm to designated heritage assets, I conclude that the public benefits of the Proposed Development would in this case far outweigh the less than substantial harm to designated heritage assets that is suggested by the Council.



14.15. In respect of designated heritage assets, the correct approach confirmed by the Courts, is that it is only if the less than substantial harm to the significance of the heritage asset is outweighed by the public benefits that the decision maker should return to the planning balance to determine the application.

14.16. In this case, if indeed there is any harm, public benefits of the Proposed Development would clearly outweigh the less than substantial harm.

#### **The Planning Balance**

14.17. Section 38(6) of the Planning and Compulsory Purchased Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

#### **The Council's Balance**

14.18. I consider that the balancing exercise undertaken by the Council is flawed in a number of respects:

- The Council consider that Draft EN-1 and Draft EN-3 (as they were at the time of drafting the Statement of Case) are not material planning considerations;
- The Council makes no reference to the climate emergency or it's own climate strategy and commitments in either the Committee report or the Statement of Case. In doing so, it has failed to acknowledge the Council's commitment to urgently bring forward renewable energy projects;
- The Council says there is no mandatory minimum requirement for each authority to deliver a given quantum of renewable energy, but this does not mean there is no need. This is not a Council that can say it has been successful in delivering renewable energy projects, despite its overarching support for them;
- The Council suggest that the lack of battery storage means the renewable energy benefit could be reduced;
- Harm sufficient to justify the refusal of planning permission was attributed to matters that the Council now accepts can be suitably controlled by planning conditions (i.e. impact on badgers, skylarks and the Lesser Teisse).
- The Council attributed 'significant' visual harm to proposed bunds whereas the Appellant has confirmed that these should cause no visual harm

14.19. In light of the above, the planning balance exercise undertaken by the Council is flawed and the decision to refuse planning permission was unreasonable.

#### **Appellant's Balance**

14.20. There are a large number of material considerations that weigh in favour of granting planning permission and I have discussed these in Section 12 of my evidence and above in relation to the



- 14.21. There is some limited harm to the use of BMVAL for a temporary period and limited harm to the landscape for a temporary period. The Council's case is that there is also some heritage harm. Even allowing for the great weight to be attached to the level of heritage harm that the Council suggested, I conclude that the positive material considerations far outweigh these harms.

### **Compliance With The Development Plan**

- 14.22. Section 38(6) of the Planning and Compulsory Purchased Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Policy DM24 relates specifically to renewable and low carbon energy schemes. It is the policy that is most relevant to the Proposed Development and as such, is one of the most important policies in the Development Plan.
- 14.23. DM24 and its supporting text offers in principle support for renewable energy schemes, subject to meeting the relevant criteria.
- 14.24. It should be recognised that it is inevitable that any utility scale solar farm proposal in Maidstone will cause some harm from both landscape impact and temporary use of agricultural land. In addition, the map of Listed Buildings within Maidstone Borough in Mr Suttons evidence demonstrates the wide proliferation of Listed Buildings (let alone other heritage designations) across the Borough, both in terms of their density and geographical spread. This map indicates that any utility scale solar farm is relatively likely to be located near to designated heritage assets and/or the countryside that surrounds them.
- 14.25. In my opinion, Policy DM24 recognises these such constraints and the policy lists a number of criteria that should be taken into account when assessing applications for large scale renewable energy, including landscape, heritage, ecology and transport.
- 14.26. DM24 says that preference to using existing premises, previously developed land and land not classified as best and most versatile will be given. It does not rule out the use of best and most versatile land (to do so would put it in conflict with the NPPF) and the material considerations relating to this part of the policy are discussed above in Chapter 8.
- 14.27. DM24 seeks to ensure the return of land to previous use following the end of the operational lifetime. A proposed planning condition would ensure this is secured.
- 14.28. In summary, the Proposed Development is in accordance with DM24. The impacts have been shown to be acceptable and the Appellant has explained the use of the Appeal Site.
- 14.29. The Council's reasons for refusal refer to other LP policies and these are considered below.
- 14.30. Policy SP17 sets out the spatial strategy for the countryside. It provides that development not in accordance with other LP policies should not be permitted. It is now common ground that the Proposed Development requires a countryside location, which is a significant material consideration. Moreover, as the Proposed Development accords with DM24 it follows that it is in accordance with SP17.
- 14.31. Policies DM1 and DM30 are design policies requiring good design. DM30 relates to design and the impact on character and appearance in the countryside but is most relevant to housing and other proposals for buildings. Nevertheless, the policy relates to landscape



impacts and says that where there is impact on appearance and character this should be mitigated. The evidence of Ms Walters is that there is limited impact on the receiving landscape. In addition, the impacts of the built (temporary) elements of the Proposed Development have been considered and are complemented by proposed planting that will offer suitable mitigation by means of screening. I therefore consider that the proposal accords with policies DM1 and DM30.

- 14.32. Policy DM3 seeks to protect the natural environment and ensure that development incorporates measures to enhance the natural environment. The Council refer to this policy in relation to refusal reason 4 only, concerning ecology matters. Given that it is now agreed with the Council that these matters are acceptable, subject to the imposition of planning conditions, it is therefore assumed that the Council accepts the Proposed Development would not be contrary to policy DM3.
- 14.33. It should be recognised that the Proposed Development will deliver a biodiversity net gain of 57.08% for area based habitats and 37.72% for linear habitats, which is far in excess of the 10% net gain that is to be required through legislation.
- 14.34. Policy DM4 relates to heritage matters. The policy refers to the relevant tests laid out in the NPPF relating to harm to designated heritage assets. In my opinion, if less than substantial heritage harm does arise as the Council alleges, the public benefits far outweigh the less than substantial harm, and there would be no conflict with DM4.
- 14.35. I consider that the Proposal is in accordance with the Development Plan. However, in my opinion even if there is found to be non-accordance with the Development Plan, the material considerations referred to above clearly indicate that permission should nonetheless be granted.



## 15. Conclusion

- 15.1. This Proof of Evidence has been prepared on behalf of Statkraft Limited to support an appeal against the refusal of the Council to grant planning permission for the development of a solar farm at the Appeal Site.
- 15.2. The Proposed Development represents sustainable development as defined by the NPPF and it will play an important role in meeting the need for renewable energy both at a national and local level.
- 15.3. The Council accepts that agricultural is required to accommodate the Proposed Development and given the lack of site constraints and landscape or environmental designations and the available grid connection the Appeal Site is suitable for renewable energy development.
- 15.4. It has also been demonstrated that there is a high proportion of BMVAL in the Borough, that the Proposed Development would result in a very small 0.35ha loss of BMVAL and that no agricultural land of a lesser classification could accommodate the Proposed Development. Any other site utilising a different grid connection would not be able to be delivered in the same timeframe.
- 15.5. The Appeal Site is relatively free of constraints and the limited adverse impacts of the Proposed Development can be made acceptable and mitigation is proposed to reduce the adverse impacts in the form of substantial tree and hedgerow planting that will deliver a significant Biodiversity Net Gain and which will most likely remain in situ far beyond the 40-year temporary operational lifetime of the solar farm.
- 15.6. My evidence explains that the Appellant's case is that the Proposal is compliant with the Development Plan and NPPF as the Courts have confirmed is the relevant test. Indeed, there are no conflicts with local plan policy.
- 15.7. The development is sustainable development and meets all three objectives in NPPF paragraph 8, namely: economic, social and environmental.
- 15.8. Even if there is found to be limited conflict with the Development Plan, the benefits and other material considerations would far outweigh this limited conflict.

Town & Country Planning Act 1990 (as amended)  
Planning and Compulsory Purchase Act 2004

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