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PROOF OF EVIDENCE
OF
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ON BEHALF OF MAIDSTONE BOROUGH COUNCIL

LAND NORTH OF LITTLE CHEVENEY FARM, SHEEPHURST LANE, MARDEN, KENT, TN12 9SD

APP/U2235/W/23/3321094

19th DECEMBER 2023

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APPENDICES

1. INTRODUCTION

Witness Background

1.1 I am Martin Guy Robeson. I hold a Bachelor of Arts Degree in Town Planning. I have been a Chartered Town Planner since 1975 and a Chartered Surveyor since 1977. I became a Fellow of the Royal Town Planning Institute in 1985 and a Fellow of the Royal Institution of Chartered Surveyors in 1989.

1.2 I am the Managing Director of Martin Robeson & Partners Ltd, the holding company of a Central London town planning consultancy trading under the name, Martin Robeson Planning Practice. I founded Martin Robeson Planning Practice in April 2005 out of the earlier partnership, Littman & Robeson, which I co-founded in 1994. Both firms have provided town planning advice to retailers, the hotel and restaurant sector, house-builders, developers, financial institutions and local planning authorities, with regard to development proposals and projects across the United Kingdom.

1.3 Prior to establishing Littman & Robeson, I was Sainsbury's Director of Town Planning within its Development Division. I held this position from 1986 to 1994. I was responsible for the town planning aspects of the company's development programme. I also contributed, on behalf of the business, to the development of public policy with regard not only to planning but broader issues including deregulation. In this regard, I sat on the then Department of Trade and Industry's Advisory Panel on Deregulation. I was also Chairman of the then British Retail Consortium's Town Planning Sub-Committee and a Member of the Confederation of British Industries', Land Use Panel.

1.4 I have given evidence to a significant number of planning inquiries and appeared as an expert in the High Court and Court of Session. I have also given evidence to the House of Commons Environment Committee.

Matters being addressed

1.5 The main issues as set out within the Inspector's Post-Case Management Conference Note (**CD13.3**) are as follows:

- Impact on the character and appearance of the countryside;
- Impact of the proposal on the supply of best and most versatile (BMV) agricultural land (and the necessity for such use on that land);
- The impact of the proposal on heritage assets;
- The impact of the proposal on biodiversity/ecological matters;
- The planning balance.

1.6 My Proof of Evidence addresses the application of planning policy to the proposed development. This includes land use issues including the use of and justification for the 'Best and Most Versatile' ('BMV') agricultural land for the proposed development, and the overall planning balance.

1.7 In order to complete my evidence on planning matters I refer to and rely upon the evidence of other witnesses acting on behalf of the Local Planning Authority, in terms of landscape and heritage.

1.8 A Statement of Common Ground ('SoCG') (**CD10.1**) has been agreed between the Appellant and the Local Planning Authority ('LPA'), and I refer to this within my Proof of Evidence to avoid repetition of matters already agreed.

1.9 I note that a revised version of the National Planning Policy Framework ('NPPF') (**CD3.3**) is expected to be published during week commencing 18th December 2023. At the time of writing this has not been published and the September 2023 version (**CD3.3**) remains in force. I have therefore prepared my Proof on this basis and, if necessary, I will take account of a revised NPPF in a supplemental Proof of Evidence.

2. BACKGROUND TO THE APPEAL

2.1 It is relevant that the application was validated on 1st June 2022. Three months later it was amended (at application stage) to remove the 'energy storage facility'. This change was supported by a letter provided on 31st August 2022 (**CD1.21**), which stated that *"The reason for its removal is due to the current economic climate which makes an energy storage system of the size proposed at 15MW uneconomic"*.

2.2 The application, as otherwise submitted, was refused nearly two months later on 28th October 2022, with the Decision Notice (**CD1.26**) specifying five Reasons for Refusal ('RfR'). RfR 1 (the primary reason to be addressed by my evidence) read as follows:

> 1. The site includes a significant proportion of the best and most versatile agricultural land which has economic and other benefits that NPPF requires to be recognised. The proposal is also contrary to National Energy policies and Planning Practice Guidance and policy DM24 of the Maidstone Borough Local Plan 2017 which direct solar farms towards lower grade agricultural land. The proposed use of the best and most versatile agricultural land has not been adequately demonstrated to be necessary.

2.3 RfRs 2-5 are set out in full within the SoCG (**CD10.1**).

2.4 The appeal was lodged in April 2023, with a substantial package of additional documentation, some of which related to amendments to the proposed development, and some of which provided new or updated evidence in support of the proposal. It was at that time not clear whether all of the supporting assessments provided at application stage have been superseded by corresponding new documents, or whether overlapping sets of assessments were to be relied upon at the appeal.

2.5 The Appeal Amendments were accepted by the Inspector at the Case Management Conference ('CMC') on the condition that additional consultation be undertaken by the Appellant to avoid any procedural unfairness with the appeal process.

2.6 The list of drawings and documents that constitute the appeal material are now listed in the Statement of Common Ground (**CD10.1**).

3. SITE AND SURROUNDING AREA

3.1 A description of the appeal site ('Site'), its planning history and the surrounding area is contained within the agreed SoCG (**CD10.1**).

4. THE PROPOSED DEVELOPMENT

4.1 A description of the proposed development is contained within the agreed SoCG (**CD10.1**).

5. THE DEVELOPMENT PLAN

5.1 The development plan comprises the Maidstone Borough Local Plan (adopted October 2017) (**CD3.1**) and the Kent Minerals and Waste Plan (adopted in 2020).

5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that *"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Act, the determination must be made in accordance with the plan unless material considerations indicate otherwise".* Section 70(2) of the Town and Country Planning Act 1990 provides that "*In dealing with an application for planning permission the authority shall have regard to: a. the provisions of the development plan, so far as material to the application b. any local financing considerations, as far as material to the application, and c. any other material considerations."*

5.3 I consider that the most relevant policies to this appeal, as agreed in SoCG (**CD10.1**), are up to date and should attract full weight. These Local Plan policies are:

- Policy DM24 Renewable and low carbon energy schemes;
- Policy SP17 Countryside;
- Policy SP18 The Historic Environment;
- Policy DM1 Principles of good design;
- Policy DM3 Natural environment;
- Policy DM4 Development affecting designated and non-designated heritage assets;
- Policy DM30 Design principles in the countryside.

I note that DM1 and DM30 should be read alongside paragraph 126 of the NPPF (**CD3.3**) which provides additional considerations relating to design.

The Emerging Local Plan

5.4 I disagree with the Appellant's suggestions at 8.7 of its Statement of Case ('SoC') (**CD9.1**) that DM24 may be out of date due to its adoption pre-dating the declaration of a national climate emergency.

5.5 Since 2019 the Council has been engaged in preparing a Review of the Local Plan (**CD3.2**). As a review it has focused on bringing the Plan up-to-date in terms of any post 2017 changes to national policy and other relevant considerations. This process therefore identified policies within the adopted plan that were considered to be out of date or otherwise requiring amendment and additional policies addressing new issues, together with policies that could be maintained in their present form. The most important adopted policy for my evidence (as discussed below) is DM24 and the corresponding draft LPR policy is LPRINF3.

5.6 I understand that within the emerging Local Plan Review (**CD3.2**), DM24 is carried forward as LPRINF3, unchanged other than minor amendments relating to heating schemes (indeed the Appellant recognises this at 8.8 of its SoC (**CD9.1**)).

5.7 There are no Modifications (**CD3.21**) being consulted on and no outstanding objections relating to this issue. The emerging policy will have had regard to the current version of the NPPF (**CD3.3**) in casting its policy approach to renewable energy generation development, and has no proposed modifications. Therefore, I find that there is no justification for the Appellant's suggestions, and Policy DM24 remains up-to-date and should be given full weight.

6. ISSUES ARISING FROM THE DEVELOPMENT PLAN: POLICY DM24

6.1 I see that the most important policy to the determination of this appeal for my evidence, and indeed the principle of the proposed development on this site, is Policy DM24: Renewable and low carbon energy schemes.

6.2 Policy DM24 has three components, the first of which states that *"applications for larger scale renewable or low carbon energy projects will be required to demonstrate that the following have been taken into account in the design and development of the proposals:…"*, and provides six criteria which must have been taken into account. Included are criteria which relate to cumulative impacts of proposals, landscape and visual impact, and impacts on heritage assets and their setting, local residents' amenity, the local transport network, and ecology and biodiversity.

6.3 I see that the definition of 'design and development of proposals' should be interpreted so as to include matters relating to site selection.

6.4 It is material to the proper interpretation of DM24(1) that, while the policy requirement is for the 'taking into account' of the criteria, all of these criteria are couched in terms of 'impact'. Therefore I see that the proper test in terms of 'taking into account' these potential impacts within the design and development of proposals, would be that any unacceptable impact against the listed criteria i – vi would result in a failure against DM24(1).

6.5 I thus find that if any one of the six criteria are failed in respect of any of the potential impacts listed, the proposed development would fail to comply with DM24(1).

6.6 DM24(2) provides 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"*. I discuss the interpretation of Policy DM24(2) and the way in which proposals can comply with its provisions below.

6.7 However, it is relevant to note that the interpretation of planning policy and its justification is a matter of law as per the Judgment in Tesco Stores Ltd v Dundee City Council [2012] P.T.S.R. 983 (**CD7.25**), at paragraphs 18 and 19. Furthermore, development plans should, *"…contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals"* (NPPF (**CD3.3**) paragraph 16(d)).

6.8 DM24(3) requires that *"Provision for the return of the land to its previous use must be made when the installations have ceased operation"*.

6.9 I see that failure to comply with any of the three parts of DM24 (or any of the criteria of DM24(1)) would result in conflict with DM24 as a whole.

6.10 I assess matters relating to compliance with DM24(2) in this section, and compliance with DM24(1) later in this proof with reference to the evidence of the other witnesses instructed by the Council. I consider that compliance with

DM24(3) could be secured by condition, as is suggested within the Council's Statement of Case (**CD9.2**).

6.11 I note, however, that while a condition to give effect to DM24(3) would make the proposed development acceptable (in this respect) in planning policy terms, the practical outcome in terms of the 'temporary' nature of the proposed development is another matter. Paragraph 158(c) of the NPPF (**CD3.3**) provides 'significant weight' to the benefits of repowering or life extension of an existing renewable energy site and so in practical terms the environmental harms of the proposal may well endure beyond the 37 year period.

Policy DM24(2) - Use of BMV Agricultural Land

6.12 It is common ground between the parties that the proposed development would be located on (and remove from current agricultural use for a period of at least 37 years) a significant quantity (i.e. 35.1 ha) of BMV agricultural land. The question therefore that I have addressed within my evidence is the necessity of and justification for the use of BMV land for the proposal, and whether the evidence provided would meet the requisite tests for the use of BMV agricultural land, as set out within the development plan.

6.13 I see that submissions on behalf of the Appellant relating to the extent of the impact on the supply of BMV land or on food security (e.g. relating to agricultural matters or soil quality) are matters to be considered under 'other material considerations'. Consideration under and compliance with Policy DM24(2) relates only to the binary question of whether the proposal would use BMV land, and the site selection process to deal with the 'preference' under Policy DM24.

Policy DM24(2) - Justification and Site Selection

6.14 Local Plan (**CD3.1**) Policy DM24 criterion 2 provides the lynchpin for the Council's case relating to the use of BMV land for the proposed development.

Criterion 2 states 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."*

6.15 I see that the interpretation of this policy rests upon the use of the word 'preference', which in this context can be defined as having 'precedence', rather than simply a 'liking' (per the Oxford Dictionary of English (second edition)). I see that the supporting text to DM24 (paragraph 6.100-6.104) provides support for this interpretation, for example in referencing the need for proposals to be *"appropriately sited and not conflict with landscape character or existing uses"* (6.101).The fact that the types of land listed within DM24(2) have a strict precedence over all other types of land, requires that a consideration of whether the proposed development could be located on the listed land types is undertaken.

6.16 I consider it logical that this 'consideration' should take the form of an assessment of alternative sites. This means that the land types listed with DM24(2) are strictly 'better' than those land types that are not listed, and that only if the proposal could not be located on those land types could proposals on any other land be compliant with DM24(2).

6.17 By way of justification for this interpretation, I note that DM24 is an important development plan policy (not guidance), and is specifically a development management policy. In my experience it is logical and typical for such a policy to set a 'test' which must be met in order to comply with the policy. The proper functioning of such a policy for development management requires proposals to be assessed as to their compliance. If, hypothetically, DM24(2) were to be construed as not requiring consideration of alternative sites, I cannot see what the 'test' would be for proposed development to be assessed against. I conclude that the policy criterion's 'test' must be that proposals that would use BMV land can only be compliant if they could not be located on lower quality

land (which needs to be demonstrated through consideration of alternative sites).

6.18 I find that Policy DM24(2) requires some consideration of alternative sites. Indeed the fact that the appellant has undertaken some form of sequential assessment (although I do not find its parameters to be satisfactory) supports this conclusion. It therefore must be determined what would be an appropriate search area for these alternative sites. On this, the appellant seems to have taken an overly limited and illogical approach in using the Maidstone administrative boundary as a search area.

6.19 As a matter of principle, the grid connection agreement (and the relevant application) has been referred to within the appellant's documentation but has not been provided by the appellant either in the planning application or to the inquiry. I have therefore not had the opportunity to review the agreement and cannot comment on its terms or provisions. Without this information being provided, I would submit that the existence of a grid connection agreement cannot be relied upon for the purposes of decision making, and that at best very limited weight, if any should be afforded to it.

6.20 Aside from this point, in my view I do not see that proximity to the particular grid connection that has been agreed provides an acceptable parameter for the area of search for alternative sites. It would be entirely inappropriate for an existing grid connection to trump all other planning considerations which would determine the acceptability of a site for this use.

6.21 Further, the appellant refers to the fact that the existing grid connection agreement avoids the extensive delays that would be required to obtain an agreement elsewhere. While it is acknowledged that there have been delays in the past due to grid connections being dealt with on a 'first come first served' basis, Ofgem announced a recent change to rules regarding grid connection applications, which would allow stalled projects to be dismissed and for viable

and deliverable generation schemes to be 'fast-tracked' (see press release "*Ofgem welcomes focus on grid connections and transmission network build in Autumn Statement*" (22nd November 2023) at Appendix 1. This ability for schemes that are 'ready to go' (as the appellant claims) to obtain grid connection agreements rapidly further supports my prior conclusion that the site of the existing grid connection should not constitute the extent of the assessment of alternative sites. This would allow the aims and objectives of DM24 to be more robustly implemented in decision making.

6.22 It is further not reasonable to use the Maidstone Borough boundary as the search area for sites, as seems to have been the case within both of the Sequential Analysis Study (February 2022) (**CD1.8**) and its 'update' (April 2023) (**CD1.31**) that was submitted when the appeal was lodged. My understanding is that the Maidstone area neither has any relevance to possible connection to the grid at the 132kV line, nor to the area in which the energy produced would actually be used.

6.23 The entirely unsatisfactory Sequential Analysis Study from February 2022 (**CD1.8**) failed to provide any justification for its study area, stating very simply that *"The study area for spatial assessment is not defined within the 2014 PPG. The methodology for this assessment has therefore defined the study area as Maidstone Borough Council."* (paragraph 2.9). No further justification for this study area is provided, beyond the fact that this site happens to fall within the administrative boundary of Maidstone.

6.24 The April 2023 (**CD1.31**) Study presents itself as an 'update' report, but upon review I find that it is an attempt by the appellant, having realised that the 2022 Study (**CD1.8**) was insufficient, to retrospectively justify the conclusion that Maidstone should be used as a study area. This self-serving exercise is not a true 'site assessment' exercise and is unsuccessful.

6.25 The 2023 Study (**CD1.31**) sets out, at Section 4, to justify the study area used. The 2023 Study explains that the initial search for sites by Carter Jonas was undertaken along the Northfleet to Hartley 132kV line, 500m either side of the line to minimise costs of cabling. The site search exercise undertaken by Carter Jonas is not provided, but a brief overview (written three years after their instruction) is provided at Appendix 2 of the 2023 Study (**CD1.31**). No justification is provided as to why the search was terminated at Hartley, rather than more logically stretching between Northfleet and Ninfield, the two Grid Supply Points which I understand are connected by the 132kV line and through which energy generated in the area would likely be distributed.

6.26 It is then stated at 4.24 of the 2023 Study (**CD1.31**) that, due to a number of constraints, the site area was focussed on the area south of the railway line between Ashford and Tunbridge Wells. Given that the Carter Jonas exercise is not provided in full, and all of the Plans focus on Maidstone itself, the Inquiry is unable to determine whether this was a reasonable decision. On balance I consider it very unlikely that all of the land between the railway line and Northfleet can be discounted due to reasonable constraints.

6.27 The Appellant's Grid Review Planning Report (March 2023) **(CD1.28),** argues that the UKPN website indicates that there is no further capacity headroom available at Northfleet East, and so without the obtained agreement there could be delays or reinforcement costs. Again in principle this information has not been appended to the Report or otherwise provided to the Inquiry, limiting the weight that can be afforded to this submission, as the accuracy or recency of this capacity data cannot be confirmed.

6.28 Further, it is relevant to note the reforms aiming to speed up connection agreements (see above at 6.21), and that presumably if the Appeal scheme was not granted permission, the capacity 'taken up' by the referenced agreement would be freed up for another, more appropriately sited proposal(s).

6.29 The Updated Sequential Analysis Study 2023 **(CD1.31)** notes that two sites were identified by this exercise: the appeal site, and another site further south in Tunbridge Wells, which was discounted as the landowner *"advised Carter Jonas that they were not interested in pursuing a solar scheme at that time"* (paragraph 4.28).

6.30 On the Tunbridge Wells site, it is relevant to note that, in considering the 'availability' of a site, i.e. whether the landowner "*is willing to lease land long term for the solar farm development",* it is not sufficient at the time of this appeal to rely upon a search undertaken in March 2020, almost four years ago and notably predating the Covid-19 pandemic. It is perfectly reasonable to assume that circumstances may have changed and that sites which were not available then might be available now.

6.31 Based upon all of the above parameters, which I see as being overly restrictive and given the supporting exercise by Carter Jonas has not been provided, the 2023 Study **(CD1.31)** concludes that the application site was the only suitable site. The Study notes that the site is situated in Maidstone, before making the jump in 4.31 that *"Accordingly, the Study Area corresponds within the administrative area within which the Application Site is situated, which in this case is Maidstone Borough Council".* It is not clear how this conclusion is reached, given the previous Sequential Analysis Study **(CD1.8)** seemed to look at a wider area I find that this conclusion is, again, a retrospective exercise with a pre-determined conclusion, and aims to justify the erroneous parameters and conclusions of the 2022 Study **(CD1.8)**.

6.32 I am therefore of the view that there has been no justification provided to support the use of the Maidstone Borough administrative boundary as the study area, other than for the Appellant's own purposes of justifying their pre-selected site.

6.33 This raises the question of what I see as an appropriate study area. While there is an argument that, given that the production of renewable energy ultimately contributes towards a national target, a search could be undertaken nationally, I do not see this as practical or reasonable to expect of developers.

6.34 Rather, I consider that it may be reasonable to consider the area which the proposed development in its generation of electricity would serve.

6.35 In referring to the area that this development would serve, no justification can be found for using Maidstone Borough Council as the area at all. I understand that the 132 kV line supplies the Northfleet East substation, which in turn feeds substations across the southeast. In this sense, therefore, a search area could be adopted to include sites within 500m of any 132kV line that supplies the Northfleet East substation.

6.36 Indeed, the Appellant has not provided any evidence to demonstrate that any of the electricity generated by the proposed development would be used in Maidstone borough. This further supports my conclusion that the Maidstone administrative boundary is not a relevant consideration for site selection.

6.37 Further to the search area selected, I would raise issue with the way in which the assessment of alternative sites was undertaken. It is relevant to note that the application was submitted with a generating capacity of 49.9MW, falling just below the threshold for onshore energy schemes to be considered as Nationally Significant Infrastructure and requiring the more arduous DCO process.

6.38 I see that the choice of a scheme aiming to be just below the 50MW threshold has predetermined the site selection exercise, in requiring a particularly large site area and only examining a limited search area.

6.39 Indeed the 2023 Grid Report (**CD1.28**) admits that *"A scheme of this size would be unlikely to fit onto a 33 kV circuit so it requires a 132 kV connection or a 33 kV connection back at a substation"*, providing further evidence that the scale of the scheme chosen by the applicant has artificially limited the site selection process.

6.40 The purpose of these artificial limits was to retrospectively justify the Appeal site, where a grid connection agreement had already been obtained outside of the planning process, rather than to truly search for a preferred site which would comply with the requirements of DM24.

6.41 For the reasons set out above, I consider that the site selection analysis undertaken has not justified the use of BMV land instead of relying on less 'preferable' land types resulting in the proposals conflicting with Policy DM24(2).

7. EXTENT OF COMPLIANCE WITH THE DEVELOPMENT PLAN

Compliance with development plan policies

7.1 As I have concluded above, the proposed development would not comply with Policy DM24(2) in terms of its conflict with the preference for land that is not BMV and the failure to justify the selection of a site with a significant quantum of BMV land.

7.2 Further, with reference to the evidence of Peter Radmall (**CD12.4**), I note that the proposed development would cause harm to the character and appearance of the area, and would therefore fail to comply with Policies SP17, DM1 and DM30.

7.3 This would result in conflict with DM24(1), with reference to criterion (ii), and thus further conflict with DM24.

7.4 With reference to the evidence of Jeremy Fazzalaro (**CD12.6**), I note that the proposed development would result in some harm to the significance of Little Long End and Little Cheveney Farm, through harm to their settings including the additional buildings including oasthouses within the latter.

7.5 Policy DM4 requires conservation and, where possible, enhancement of assets but further notes that the Council will apply the tests set out within the NPPF. I see that this therefore applies the 'great weight' to the asset's conservation as per NPPF paragraph 199, as well as the tests set out at paragraphs 201-203.

7.6 Relying upon the evidence of Jeremy Fazzalaro (**CD12.6**), the scale of the harm would be 'less than substantial' at the lower part and thus it is necessary to consider whether this harm would be outweighed by the public benefits of the proposal, in accordance with paragraph 202 of the NPPF (**CD3.3**).

7.7 The public benefits asserted by the appellant are:

- Renewable energy generation
- BNG of 57% for habitat units and 38% for hedgerow units
- Introduction of two permissive footpaths
- Economic benefits from farming diversification and construction, maintenance and operation.

7.8 I note that *"great weight*" is to be given to an asset's conservation (NPPF paragraph 199) and special regard paid to preserving heritage assets and their settings (Section 66 of the Planning (LBCA) Act).

7.9 In my view the less than substantial harm to multiple designated assets, noting the 'great weight' and 'special regard' to be applied, would not be outweighed by the public benefits of the proposal, and therefore the proposed development would not accord with NPPF (**CD3.3**) paragraph 202 and Policy DM4

Compliance with the development plan as a whole

7.10 In assessing whether the proposed development would comply with the development plan when read as a whole, I see it as relevant to note that DM24 is the most important policy guiding decisions on the principle of proposals for renewable energy schemes. The conflict with DM24 is fundamental and on multiple grounds, relating to DM24(1) and (2).

7.11 Further, the harm to the character and appearance of the landscape and countryside would be significant and would result in conflict to Policies SP17, DM1, DM30 and DM24(1).

7.12 As I have concluded above, the proposal would fail to preserve and enhance nearby designated heritage assets, in conflict with Policies DM4 and DM24(1).

7.13 I understand that the Council's prior objection on ecology grounds is, at the time of writing, expected to be resolved by condition(s) to be agreed within the SoCG (**CD10.1**).

7.14 My conclusion, therefore, is that the proposed development would not accord with the development plan when taken as a whole. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, permission should therefore be refused unless there are other material considerations which would indicate otherwise.

8. OTHER MATERIAL CONSIDERATIONS AND THE PLANNING BALANCE

8.1 In this section I examine whether there are any other material considerations which would indicate that determination ought to be made other than in

accordance with the development plan. I also examine whether there are any other material considerations which would weigh further against the granting of planning permission.

Other Relevant Planning Policy And Guidance

8.2 The content of the following documents may contain detail that could constitute a material consideration for the purpose of decision-making

8.3 NPPF (**CD3.3**) paragraph 155(b) states that plans should *"consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development"*. It is relevant to note the use of the word 'consider'; the Local Authority has considered whether or not to identify suitable areas and has chosen not to do so. This is confirmed through the Local Plan and the progress of the emerging Policy LPRINF3 through examination without amendment.

8.4 I note that paragraph 158(a) of the NPPF (**CD3.3**) provides that local authorities should *"not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions"*. The overall need for such development has not been disputed by the Council.

8.5 I note that paragraph 158(b) directs authorities to approve an application *"if the impacts are (or can be made) acceptable"*. This is not the case in respect of the appeal proposal. I further note the issue raised at paragraph 158(c) of the NPPF supporting life-extension of existing renewables sites (as set out above).

8.6 In considering other national policy which may provide material considerations, I see it useful to also refer to the 2015 Written Ministerial Statement ('WMS')

(**CD3.16**), the relevant section of which is entitled 'Solar energy: protecting the local and global environment'. This states that:

"We are encouraged by the impact the guidance is having but do appreciate the continuing concerns, not least those raised in this House, about the unjustified use of high quality agricultural land. 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."

8.7 I see the status of the WMS (**CD3.16**) as a piece of national policy in its own right – stronger than planning guidance that is only intended to provide direction. I find that the WMS (**CD3.16**) itself constitutes a national policy with which development proposals may comply or conflict. The WMS (**CD3.16**) provides a 'test' for proposals to be considered against i.e. whether there is the 'most compelling evidence' to support the use of BMV land. It must be emphasised that the 'most compelling evidence' is a very high threshold. It is not sufficient to merely provide evidence, or even compelling evidence; it must be the <u>most</u> compelling. I see that this should be interpreted as requiring demonstration that proposals cannot be located on agricultural land that is not BMV (or non-agricultural land). This logically would comprise a consideration of alternative sites whereby BMV land is strictly 'worse' than other types of land, i.e. a form of sequential assessment. This level of assessment is proportional to the high threshold set by the requirement for the '<u>most compelling</u> evidence'.

8.8 There is further guidance contained within the Planning Practice Guidance (**CD3.4**) in relation to the planning considerations relating to solar farms. It should be noted that the status of this content is 'guidance' rather than 'policy' as above.

8.9 The recently published draft National Policy Statements EN-1 (**CD3.12**) and EN-3 (**CD3.13**) are due to come into force in early 2024. Regarding whether and to what extent the NPSs are material to decisions under the 1990 Act, paragraph 1.2.2 of EN-1 explains that this *"will be judged on a case-by-case basis and will depend upon the extent to which the matters are already covered by applicable planning policy"*. I see that development plan Policy DM24 can be considered up-to-date and addresses relevant considerations.

8.10 I see EN-1 and EN-3 (2023) (**CD3.12** and **CD3.13**) together with other Government and departmental statements (as set out in the SoCG (**CD10.1**)) concerning climate change and renewable energy as important considerations to which significant weight should be given.

Renewable Energy Generation

8.11 The most substantial benefit that would arise from the proposed development derives from the generation of renewable energy.

8.12 Whilst recognising the substantial need to provide renewable energy across UK, there is no component to DM24 requiring or proposing for the Council to grant a given amount of solar power, or to make agricultural land available of this scale.

8.13 The references within the Appellant's SoC **(CD9.1)** to 9,300 new houses under the emerging Local Plan **(CD3.2)** in Maidstone should not be afforded any weight in the planning balance. That is to attempt to create a spatial reason to justify the proposal being sited in this Borough. And in doing so to seek to justify some kind of compliance where none exists. Grid connection should not be used as a justification to grant permission. Notwithstanding my prior objections, I have not seen the Grid Connection Agreement and so this cannot be relied upon in decision making.

8.14 I have further identified inefficiencies within the Appeal Proposal which are also relevant to the weight which can be afforded to this benefit. First, the proposal does not include any battery storage provision, which one might expect a scheme of this size to provide. Thus, the scheme does not benefit from the more balanced and resilient supply afforded by battery storage.

8.15 Secondly, the substantial landscaping which is intended to 'hide' the proposed development and mitigate (unsuccessfully, in the Council's view) the landscape harm, has resulted in a lower efficiency in terms of output per land area used. This is seen in the relatively low coverage of solar panels across the Site.

8.16 Given all of the above I therefore conclude that the generation of renewable energy should attract **substantial positive weight**.

Other matters for the planning balance

8.17 Biodiversity net gain of 57% for habitat units and 38% for hedgerow units – **moderate positive weight.**

8.18 Introduction of two permissive footpaths – **neutral weight.**

8.19 Economic benefits from farming diversification – **neutral weight.**

8.20 There would be limited economic benefits resulting from the construction, operation, and maintenance of the proposed development, which I find attracts **limited positive weight**.

8.21 Even if the proposal were to be considered acceptable under DM24(2), it would result in the loss of an intensive agricultural use, partially on high quality agricultural land, for a period of at least 37 years. I find that this must attract

significant negative weight in the planning balance as per the Inspector's approach in the Swadlincote Appeal Decision (**CD7.26**).

8.22 In relying upon the evidence of Mr Peter Radmall (**CD12.4**), I see that the proposal would cause harm to the character and appearance of the area and the countryside, which attracts **moderate to significant negative weight**.

8.23 In relying upon the evidence of Mr Jeremy Fazzalaro (**CD12.6**), I see that the proposal would fail to preserve or enhance the significance of designated heritage assets, and would not comply with the relevant test set out at paragraph 202 of the NPPF (**CD3.3**). I find that this attracts **moderate to significant negative weight** in the planning balance.

8.24 I note the Appellant's submission that the land could be used for grazing purposes alongside the proposed electricity generation. In considering whether this could be secured by way of condition, I note the tests established within Pyx Granite Co Ltd v Ministry of Housing and Local Government [1958] 1 QB 554 and formalised in Newbury DC v Secretary of State for the Environment [1981] AC 578, and now set out as a six-fold test within the PPG (**CD3.4**). I do not see that this would be enforceable, and this therefore cannot be afforded any weight.

<u>Conclusions: the outcome of the planning balance</u>

8.25 I would conclude that, on balance, the proposed development would fail to accord with the development plan as a whole, and that the 'other material considerations' identified, both positive and negative, would not indicate when all weighed in the balance that determination ought to be made other than in accordance with the development plan.

8.26 The appeal should therefore be dismissed, and planning permission refused.