



Appeal Decision

Inquiry Held on 15 August 2023

Site visit made on 14 August 2023

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 29th August 2023

Appeal Ref: APP/W3520/W/23/3319970

Land to the south of Church Farm, Somersham, IP8 4PN and

Land to the east of The Channel, Burstall, IP8 4JL Suffolk

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Bramford Green Limited against the decision of Mid Suffolk District Council.
 - The application Ref DC/20/05895, dated 22 January 2021, was refused by notice dated 17 February 2023.
 - The development proposed is described as ***'Installation of renewable energy generating station, comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping and biodiversity enhancements including Nature Areas.'***
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Decision

1. The appeal is allowed and planning permission is granted for the Installation of renewable energy generating station, comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping and biodiversity enhancements including Nature Areas at Land to the south of Church Farm, Somersham, IP8 4PN and Land to the east of The Channel, Burstall, IP8 4JL Suffolk in accordance with the terms of the application, Ref DC/20/05895, dated 22 January 2021, subject to the conditions set out in Appendix A.

Application for costs

2. At the Inquiry an application for full costs was made by the Appellant. This is the subject of a separate decision.

Procedural Matters and background

3. The Local Planning Authority indicated at the Case Management Conference (CMC) and in its Statement of Case that it had determined it did not wish to ***'defend the reasons for refusal and therefore does not object to the appeal application.'***
4. Following **the Council's change in position** above and before the CMC, the grouping of organisations (being CARE Suffolk CIC, Burstall Parish Council and Bramford Parish Council) that sought and granted **what is known as 'Rule 6'**

status (permitting them to submit a statement and witnesses), requested the withdrawal of this status. This occurred before the CMC, but after the period for written representations on the appeal to be made. In the interests of fairness this party was given an opportunity to submit a written representation, which they did, and the main parties have had an opportunity to respond, where necessary, to its content.

5. Regardless of the position of the main parties, the original decision notice remains extant and the appeal has not been withdrawn. My role is, therefore, to continue to determine the appeal and on the basis of all the evidence put before me; including the comments of interested parties in writing and orally at the Inquiry.
6. I undertook an unaccompanied site inspection, in accordance with Rule 17, before the Inquiry. This site inspection took place in broad correlation with the proposed route suggested by the main parties prior to the Inquiry, and included locations suggested by interested parties. I consider I was able to see the site and its surrounds at this unaccompanied inspection. At the Inquiry, I informed the parties present of my site visit and neither main party requested that I made an accompanied site visit.
7. An Environmental Statement (ES) dated August 2022, together with a non-technical summary, pursuant to the *EIA Regulations 2017* was submitted at the application determination stage. The Scoping Opinion of the Local Planning Authority indicated that the scope of the ES should be Landscape and Visual Impact, Historic Environment, and Ecology and Nature Conservation, together with cumulative impacts (as appropriate).
8. I have taken into account all comments from statutory consultation bodies, that is those required to be consulted in terms of the 2017 Regulations, any representations made by interested parties about the ES and the likely environmental effects of the proposed development, and further information under Regulation 25 and any other information in determining this appeal in arriving at my decision. Furthermore, all other environmental information submitted in connection with the appeal, including that arising at the Inquiry has also been taken into account in coming to the decision made.
9. The appeal proposal is part of an overall scheme: which includes land in the adjacent Babergh District Council (BDC) area. Planning permission is sought for the construction of a solar farm and battery storage which would generate approximately 30MW for a period of 40 years from the date of the first exportation of electricity from the site. The Appellant indicates that decommissioning of the site and its restoration could be addressed by the imposition of planning conditions.
10. BDC approved the full planning application for the larger part of the overall scheme which fell under its jurisdiction, for the same description of development, under application reference DC/21/00060 on 17 February 2023. These are shown on some of the submitted drawings and plans as Field 5 and Field 6 respectively. The appeal site the subject of this appeal forms a smaller part of the Overall Scheme, comprising the land that is located within **Mid-Suffolk District Council's (MSDC)** jurisdiction. This is shown on the submitted drawings as Field 4 and a small part of the northeastern edge of Field 5, and also includes small elements of the cable connection to the nearby substation.

11. Whilst cognisant with the site as a whole, my role is to determine the scheme before me. The scheme approved by BDC remains extant. At the Inquiry the main parties confirmed this. As such, this decision does not seek to review the decision of BDC or the part of the site that falls within their jurisdiction. The principles of such matters in relation to the planning decision made by BDC fall outside the scope of matters here. It is the MSDC element of the proposal that was refused permission, and whilst it is not possible to entirely dissociate this from the development on the overall site, my considerations focus on the MSDC element of the proposal.
12. On 14 August 2023, the government added guidance to the national *Planning Practice Guidance* (the Guidance) on Battery Energy Storage Systems (BESS)¹. The main parties were given an opportunity to comment on this addition in writing after the Inquiry. Whilst this part of the Guidance was not specifically discussed at the Inquiry, the subject matter, including consultation with local fire and rescue services, the guidance issued by the National Fire Chiefs Council and the concerns of interested parties were. I do not consider that it prejudices the case of any party in taking this new Guidance into account.

Main Issues

13. The main issues in this case, set out at the start of the Inquiry, are:
- (i) The effect of the proposal on the economic and other benefits of the best and most versatile agricultural land; and,
 - (ii) The effect of the proposed development on the character and appearance of the countryside, including on the Special Landscape Area and users of nearby Public Rights of Way; and,
 - (iii) The effect of the proposal on heritage assets, including archaeology; and,
 - (iv) Whether benefits presented in support of the scheme outweigh any harms identified, and the overall planning balance.

Reasons

Site context

14. The appeal site is located on land east of The Channel, Burstall, situated 1km to the north of the village of Burstall, 440m to the south of Flowton, 1.8km to the south of Somersham and 3km to the west of Bramford². The site generally slopes in westerly direction.
15. The overall site comprises three agricultural fields with boundary vegetation; fields 4, 5 and 6 as shown on the submitted drawings. Flowton Brook flows along the western boundary of the appeal site, with a local road called The Channel which is routed along the western and northern boundary of the appeal site. The field network within the site is characterised by agricultural fields in arable cultivation interspersed by woodland, tree belts and field boundary hedgerows with gaps in places and some localised intrusion of man-made features, which in the local context include the National Grid substation and associated energy infrastructure.

¹ <https://www.gov.uk/guidance/renewable-and-low-carbon-energy>

² All distances are approximate.

16. There are Public Rights of Way (PRoW) which intersect the Site and on land nearby. A footpath (W-174/007/0 / W-250/010/0) is in a general north-south alignment through the eastern boundary of the Site, with a bridleway (W-174/005/0) having an east-west alignment across the southern boundary. An existing permissive footpath connects the footpath on the eastern boundary with The Channel. The highest level is approximately 54 metres Above Ordnance Datum (m AOD) at the eastern boundary and the lowest level is approximately 33 m AOD along the western boundary³.

Best and Most Versatile Agricultural Land (BMVAL)

17. Saved Policy CL11 *Mid Suffolk Local Plan 1998* sets out that the district planning authority will encourage the conservation of agricultural land, with particular protection afforded to the best and most versatile agricultural land (BMVAL).
18. Paragraphs 158(b) and 174(b) of the *National Planning Policy Framework* (the Framework) are referred to on the decision notice. The former indicates that when determining planning applications for renewable development, local planning authorities should approve the application if its impacts are (or can be made) acceptable. The latter: that planning decision should recognise the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land.
19. Footnote 58, which relates to Paragraph 175 of the Framework, indicates that 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. However, **Paragraph 175 is clear in that it relates to 'plans' as opposed to decision-making specifically.** Nonetheless, the overall direction in national policy terms is clear in that areas of poorer quality should be preferred before using BMVAL in the case of significant development of agricultural land.
20. As detailed in the **Appellant's Agriculture Evidence Volume 1: Text**, the appeal site contains approximately 80% Grade 2 and 3a classified agricultural land⁴ – that is within the BMVAL classification. This would be available for agricultural uses for the life of the development; albeit limited principally to sheep grazing. There would potentially **be the 'permanent' loss of about 1.4ha of Grade 2 land** arising from the substation element (this is located in the BDC part of the site).
21. However, this is on the basis that the land for the substation and wider site use as a solar farm would not be removed and restored at the end of the 40-year period. That is not what is proposed here, where the use of planning conditions could ensure the restoration of the land at the end of its use. **Moreover, the evidence submitted by the Appellant's Agriculture expert details how the building works would require fairly low levels of trenching for cables and limited insertion of poles into the ground to support the solar panels.** A majority of the site area would remain for agriculture uses as sheep grazing.
22. The Appellant has demonstrated that within the district, there are large areas of Grade 2 and Grade 3 land. Unfortunately, the Ministry of Farming and Fisheries (MAFF) Agricultural Land Classification (ALC) maps from the 1970s

³ *Environmental Statement: Main Report August 2022*, Page 9, Para 2.9 and 2.10

⁴ *Agricultural Evidence on behalf of the Appellant by Tony Kernon*, Volume 1: Text, dated July 2023, Pages 17 and 18, Paragraphs 4.7 and 4.8

- are limited by the fact that they are not based on specific soil surveys for all land in the district. This is further compounded by the fact that they do not distinguish between Grade 3a land which is within the BMVAL definition and Grade 3b which is not.
23. Whilst appreciating that this is imperfect, it nonetheless is evident that around 97.2%⁵ of the land in the district falls within Grades 2 and 3 of the ALC. In this respect, the proposal, comprising around 33.4ha of agricultural land⁶, would represent a considerably less significant development of agricultural land when considered against the quantum in the district as a whole. Furthermore, even taking into account the part of the nearby site approved by BDC, the overall relative quantum would not increase so as to alter this assessment.
24. The proposal would therefore lead to the temporary loss over 40 years of around 33.4ha of agricultural land from arable⁷ **uses to solar 'farming' and sheep grazing**. Within this figure around 24.3ha⁸ would be within the fenced area of the proposal. In this respect, the proposal would continue to provide economic and other benefits associated with BMVAL; albeit this is likely in the short-to-medium term (of 40 years) to be of a different and potentially smaller calorific-yield compared to its use as arable farmland⁹.
25. Even then, the evidence¹⁰ before the Inquiry here is persuasive in that the conversion of arable farmland to grassland for a period of 40 years, with sheep grazing (or other ruminant mammals such as goats) taking place on the land is *'good for soil carbon, results in increased organic matter compared to arable land, reduces the risk of erosion, and soil biodiversity (including earthworms) will improve'*¹¹. Considered in that way, the evidence here indicates that the proposal would encourage the conservation of the agricultural land through these nature-funded improvements and improve the overall quality of the land for future generations. These are improvements in soil quality – which is different from BMVAL classification – that can be secured by planning condition.
26. Concerns have been raised that the 40 years lifespan for the development proposed could extend beyond that period. In effect, this would mean the **'permanent' loss of the agricultural land**. However, the use of planning conditions only permitting operational activity to take place over 40 years and require decommissioning to take place at the end of this period, provides certainty for the Appellant in the 40 years. It would be a matter for the local planning authority to consider further schemes or proposals submitted by an applicant at that stage in the future. It is also open to the Council to enforce any breaches in planning conditions imposed if, for example, a condition requiring decommissioning was not being followed.
27. I therefore find that the land would continue to be used for some agricultural purposes over the 40-year life of the solar farm; that the soil quality is likely to improve as a result of its use as grassland grazing rather than arable farming; that whilst there would be a small loss of BMVAL to the substation part of the site, this would be a very small part of the site and both this element and the

⁵ *Ibid*, Pages 21 and 22, Paragraphs 6.2-6.3, based on figures of: - Grade 2; 18.5 + Grade 3; 78.7 = 97.2

⁶ *Ibid*, Pages 17 and 18, Paragraphs 4.7 and 4.8

⁷ *Ibid*, Page 24, Paragraph 6.13

⁸ *Ibid*, Pages 17 and 18, Paragraphs 4.7 and 4.8

⁹ At the Inquiry, neither Mr Kernon nor any other person was able to articulate the differences in calorific yield between arable farming of the site and sheep grazing, or as a more general calculation.

¹⁰ *Agricultural Evidence on behalf of the Appellant by Tony Kernon*, Volume 1: Text, dated July 2023, pgs 27 to 30

¹¹ *Ibid*, Page 29, para 6.36

site as a whole would and could be converted back to arable farming at the end of the 40 year period; and lastly, that control over any extension to the life of the solar farm and associated infrastructure at the end of the 40-year period would be within the remit of the local planning authority to manage at that stage.

28. Accordingly, I find that the proposal would accord with Saved Policy CL11 of the MSLP which seeks the aforesaid aims. It would also accord with Paragraphs 158 and 174 of the Framework including recognising the economic and other benefits of BMVAL and ecosystem services.

Effect on character and appearance, and landscape

29. Policy CL2 of the MSLP sets out that within Special Landscape Areas, particular care will be taken to safeguard landscape quality, and where development does occur it would be sensitively designed, with high standards of layout, materials and landscaping.
30. Policy CS5 of the *Core Strategy 2008* (CS) sets out that all development will maintain and enhance the environment, and that the Council will protect and conserve landscape qualities taking into account the natural environment and the historical dimensions of the landscape as a whole rather than concentrating solely on selected areas.
31. Paragraph 158 of the Framework sets out that when determining planning applications for renewable and low carbon development, local planning authorities should not require applicant to demonstrate the overall need for renewable energy, and recognise that even small-scale provide a valuable contribution to cutting greenhouse gas emissions, and that they should approve the application if its impacts are (or can be made) acceptable.
32. Paragraph 174(a) indicates that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes (in a manner commensurate with their statutory status or identified quality in the development plan).
33. The conflict with the policies above led the Local Planning Authority to conclude, at the decision-making stage, that the proposal would not represent sustainable development under Paragraph 11 of the Framework.
34. The proposal would clearly lead to a change in the appearance of the appeal site. The character and appearance, currently formed by open arable fields, which in many places are bordered by established hedgerows, would change. There are PRoW which intersect the appeal site and link to the network on land nearby.
35. The ES sets out that the effects on landscape character – including Ancient Plateau Claylands and Rolling Valley Farmlands - would be of a medium sensitivity, medium magnitude, moderate significance and neutral to adverse. This is principally based on the noticeable change from an agricultural landscape to a solar farm development where visibility would be available.¹²
36. The summarised effects on visual receptors – that is human beings based on parts of Flowton Road and Public Rights of Way and footpaths – is assessed to

¹² *Environmental Statement: Main Report* August 2022, Pages 76 to 77

be of medium sensitivity, low to high magnitude, low slight to major moderate significance and from neutral to adverse. This is on the basis on some views being filtered and/or seen against a backdrop provided by woodland and existing electricity transmission pylons, whereas as other views would see the loss of the open aspect of the existing views, which is distinctive to the plateau landscape.¹³

37. In terms of cumulative impacts, the ES **indicates that** *'There is potential for localised significant effects on landscape character within the Ancient Plateau Claylands LCT if the Proposed Development and the other two proposed solar developments all come forward'*.¹⁴ However, the overall assessment by the ES is that there would be no significant effects to the landscape character, SLAs or significant cumulative effects. On the basis of the evidence before me, and the following reasoning, I see no reason to not concur with this assessment.
38. Having visited the appeal site and its surrounds, I am persuaded by the evidence submitted by Mr Kratt at the Inquiry, in that the large visual impacts would be limited to those within the immediate context of the appeal site – this would be especially so for users of the permissive footpath and bridleway and PROW. I saw that the appeal site was fairly self-contained and together with the various landscaping and biodiversity enhancements of the site, would be fairly well-screened, and naturally so, from the views of most observers. Whilst users of the PROW would be channelled between or next to hedgerows adjacent to the perimeter fencing, this is unlikely to be that dissimilar than walking along The Channel, which on the appeal side already has large areas of hedgerows and trees bounding it.
39. The wider farmed landscape character would prevail and would not appear to be industrialised beyond the established large electricity pylons linking to the nearby substation. Furthermore, the proposal does not irreversibly change the landscape nor the topography of the land. Indeed, due to this topography, wider views of the appeal site would be fleeting rather than seen **'in total'**.
40. The Appellant concedes that there would be some adverse landscape and visual effects arising from the scheme which lies in open countryside. This is harm that I afford extremely limited weight in the context of the reasons given above. The effects would be localised during the operational phase of the proposal, and reversible at the end of the 40-year operational period. I also find that there would be some limited harm to the character and appearance of the area: by their nature solar panels and associated infrastructure are different to arable fields. But this harm would also be extremely limited; both in terms of quantum within the wider landscape and duration as planting schemes such as hedgerows establish and blend into the existing character and appearance of the area. The landscaping could be secured by means of a planning condition relating to LEMP.
41. For the reasons indicated above, I find that the proposal would safeguard landscape quality – including that of the SLA – and would protect and conserve landscape qualities taking into account the natural environment and the historical dimensions of the landscape as a whole. Whilst there would be harm arising from effects on landscape, visual, character and appearance this would

¹³ *Ibid*, Page 77

¹⁴ *Ibid*, Page 85, para 5.308. The two other proposed solar developments are the EDF Energy Tye Lane Scheme (ref DC/21/04711) ABD the Greybarn Solar Energy Farm (ref DC/22/00683) as set out at ES, page 80, Para 5.279

- be extremely limited and could be mitigated through the use of planning conditions.
42. I also do not find, on the basis of the evidence before me, that the appeal scheme would result in a negative cumulative impact on this issue. Whilst noting the concerns of interested parties as to other proposals coming forward for solar farms in the area, the surrounding fields are still in 'traditional' agricultural uses such as arable farming. It would be for the Council to consider proposals on those if or when they arise. There would not be a proliferation of solar farm developments arising as a result of this scheme.
43. At the Inquiry, there was discussion on the point raised by interested parties on Policy CS 3: Reduce contributions to Climate Change of the CS and the relationship with Paragraph 3.7 of the *Core Strategy Focus Review 2012* (CSFR). Policy CS 3 and its supporting paragraphs set out that the **Core Strategy aims to 'promote the development of renewable energy resources'** including promoting and encouraging development of stand alone renewable energy schemes. Paragraph 3.7 of the CSFR sets out that '***The environmental and landscape sensitivity of the district means that large-scale, on-shore renewable energy generation will often be difficult to accommodate in the landscape in an acceptable way.***'
44. It was suggested by interested parties that this meant that large-scale renewable energy schemes would not be acceptable in principle in this district. However, that is to mis-read the text. I have found that the proposal here would not result in unacceptable harm to landscape; the Appellant has found a way to ensure the landscape acceptably accommodates the proposal here. Moreover, Policy CS 3 does not prohibit renewable energy schemes. Whilst the *Regional Spatial Strategy* referred to in the Policy has now fallen away, the general direction of local and national policy towards being supportive of renewable energy schemes when their impacts are carefully considered (and can be mitigated when there are negative or adverse impacts), has not altered. I do not find that the proposal would be contrary to Policy CS 3 of the CS nor paragraph 3.7 of the CSFR.
45. Accordingly, I find that the proposal would accord with Policy CL2 of the MSLP and Policy CS5 of the CS which seek the aforesaid aims. For similar reasons, it would also accord with the aims of Paragraphs 158 and 174 of the Framework. With regard to Paragraph 11, whilst this is part of the overall planning balance, in terms of character and appearance and landscape matters, I find the proposal would represent sustainable development.

Heritage

46. The principal heritage **assets for which concern have been raised are St Mary's Church in Flowton and non-designated heritage asset Flowton Hall.** I note that there are other listed buildings, including some within the BDC area on Church Hill. The main parties have not raised specific concerns in terms of any harm to these listed buildings in relation to the appeal scheme. On the basis of the evidence before me and given the distances and relationships between those assets and the appeal site, I see no reason to disagree.
47. With regard to the two identified heritage assets, the ES states that the Grade I Listed Church of St Mary in Flowton is located approximately 525 m to the north of the Site. The church derives its significance from its architectural and

historic interest as an unusually complete example of an early 14th century parish church. The building derives further significance from its value as a functioning church and religious focal point for the parish as well as a community asset.¹⁵ Based upon my site inspection, I concur with this assessment and where the significance of the listed building derives from. I also find that the setting of the church, in a rural location, also contributes to its significance.

48. **The Appellant's heritage** evidence¹⁶ is compelling in that any views of the **appeal site from the church's graveyard would be very slight. I saw during my** site inspection that visitors to the church would continue to benefit from large tracts of farmed land interspersed with hedgerows and/or trees when looking towards the appeal site. Even in winter, with less leaf coverage on deciduous plants, most people would be hard pressed to see a tiny slither of the appeal development across nearly 0.5km with the existing intervening vegetation. In practical terms, visitors to the church would continue to enjoy the peace and tranquillity of this attractive church and its grounds. In doing so, I do not find that the appeal scheme would result in any harm to its significance. Nor would the proposal fail to preserve its setting or features of historical or architectural importance.
49. In terms of Flowton Hall, this is location about 380 metres to the north-west of the appeal site, and to the south-east of **St Mary's Church. It is thought to** date from the 19th Century and was originally a farmhouse. Whilst not a designated heritage asset it nonetheless has some heritage value. Accordingly, I have considered it as a non-designated heritage asset (NDHA) as set out in the Framework in this case. Its heritage significance principally lies in its physical form, although the remaining outbuildings and landholdings provide some illustrative values with the agrarian setting also contributing to its significance. The closest part of development proposed would be on the southern edge of The Channel. In this respect, the development proposed would, with the intervening vegetation, have a minimal effect on the significance of this NDHA and how it is experienced. I do not, therefore, find that the proposal would result in harm to the setting of this NDHA.
50. In terms of archaeology; a desk-based assessment, a geophysical survey and trial trenching undertaken across 175 trenches¹⁷ has been undertaken, to varying degrees, across the whole site. This is a pragmatic and appropriate approach in which to assess the potential for archaeological remains on the site prior to works taking place. On the basis of this evidence, it is likely that further finds on the site are likely to be no greater than local or regional significance. Various construction methods can be used to minimise the impact on remains that would stay in situ on the site. Moreover, it would be reasonable, through the use of planning conditions, to secure a watching brief undertaken by a suitably qualified person(s), so that any unforeseeable remains that arise can be reported and recorded, as appropriate, to the local planning authority.
51. Accordingly, I find that the proposal would not result in harm, whether to the building fabric or setting, to the nearby listed buildings or NDHA. Moreover, I find that there would be no harm to archaeological remains that on the site,

¹⁵ *Ibid*, Page 121, Para 6.153

¹⁶ *Proof of Evidence: Heritage*, July 2023, Pegasus Ref: P22-1030

¹⁷ *Proof of Evidence: Heritage*, July 2023, page 21, para 5.6

and the use of planning condition(s) in terms of archaeology is proportionate in this case.

Other Matters

52. A number of concerns have been raised by interested parties, I now consider these before undertaking an overall planning balance and considering what planning conditions might be imposed.
53. In terms of biodiversity and nature conservation, the ES sets out that this has been informed by a desk-based study and a series of field surveys. I heard at the Inquiry that it is a known fact that there are Great Crested Newts located in a pond outside of, but close to, the appeal site to the south east. The protection of these can be suitably ensured through the use of a condition requiring a Construction Environment Management Plan.
54. In terms of Skylarks, the existing four territories on site would be lost. However the evidence of Dr Buisson at the Inquiry explained that Skylarks **ests are essentially 'rebuilt' every year as arable farmland is cleared** when the crop is harvested. The birds are not territorial in the same way that a woodland bird might be, where nests are likely to remain undisturbed for years. That said, the appeal site would still provide a habitat for feed areas. Moreover, a *Skylark Mitigation Strategy* secured by means of condition, would ensure that sufficient off-site nesting habitat for the displaced Skylark territory is provided. This would be habitat secured for a period of at least 40 years.
55. The establishment and careful management of the land between and around the solar arrays will lead to significant biodiversity and ecology improvements of 159.35% habitat gain and 64.69% hedgerow gain¹⁸. Concerns were raised at the Inquiry by interested parties over the Biodiversity Net Gain metric – which is that published by Natural England and DEFRA. But, in the main, these were about the use of the metric and how it produced a final value. It is clear that the proposal would result in significant positive benefits for plants, mammals and invertebrates.
56. These would be benefits that are in accordance with overall trends to conserve and enhance biodiversity as set out in government policy and guidance, and legislation such as s40 of the *Natural Environment and Rural Communities Act 2006*, as amended. Accordingly, I do not find that the biodiversity and nature conservation matters, including in relation to Skylarks, weigh against the grant of permission in this case.
57. In terms of flood risk, the Appeal Site lies within Flood Zone 1, with the **exception of a small section of the Appeal Site's western boundary along Flowton Brook**. The Appellant has submitted various documents including a site-specific Flood Risk Assessment and a Surface Water Drainage Strategy. These have been reviewed by the Local Lead Flood Authority (LLFA) and the Environment Agency(EA), neither who have raised holding objections to the proposal.
58. I note the various photos and reports about flooding in the local area. However, there is little in the information before the Inquiry which indicated that the **positions of the LLFA and EA, nor of the Council's professional officers** (who were of the view that the FRA and drainage strategy were adequate) were

¹⁸ *Environmental Statement: Main Report* August 2022, Page 13, Para 3.6

- incorrect. Moreover, there is little before me which suggests that the proposal here would result in any adverse contribution to localised areas of flooding. As such, this matter does not provide justification for the refusal of permission.
59. In terms of glint and glare, the concerns of interested parties mainly revolved around users of the public footpaths and horse riders. However, given the use of conditions to landscape the site and ensure that this remains in place I do not consider that the proposal would give rise to glint and glare issues which would be harmful to users of nearby and adjacent paths or roads.
60. With regard to noise, the application was accompanied by a noise impact assessment¹⁹. This concludes that the development will give rise to noise **impacts that would be categorised as 'No Observed Adverse Effect Level'** (NOAEL) within the PPG Noise guidance. This means that even if noise can be heard it does not cause any change in behaviour, attitude or other physiological response. It can slightly affect the acoustic character of the area but not such that there is a change in the quality of life²⁰. This would also be a similar case for horse-riders and/or walkers using nearby roads and/or PROWs/permissive footpaths and bridleways, who are likely to do so in a transitional way. Accordingly, I do not find that this provides justification for the refusal of permission in this case.
61. My attention has been drawn to matters of crime and potential harm to health and well-being. In particular Chapter 8. Promoting healthy and safe communities and 12. Achieving well-designed places of the Framework. There is little evidence before me that crime in rural areas are exacerbated by the presence of solar farms. It is unclear as to whether crimes taking place at solar farms are especially prevalent compared to rural crimes such as the stealing of agricultural machinery or fly-tipping. Nonetheless, the Appellant has suggested measures, such as CCTV, fencing and remote monitoring of the BESS equipment, in order to reduce the potential for crime to occur on the appeal site. There is little to suggest that such measures would be ineffective.
62. I have found that there would be very limited harm to landscape and visual impacts, although these would be localised. Indeed, when visitors are travelling through the landscape there are large vistas of open farmed landscapes which would remain. Whilst the appearance of solar farms and associated infrastructure is different from an arable field, as considered elsewhere in this decision, over time the landscaping will mature screening the development in a similar fashion to how existing hedgerow boundaries screen the arable fields. As such, the potential impact on health and well-being does not provide justification for the dismissal of the appeal scheme.
63. Concerns have been raised in terms of the impact of the proposal on local tourism. This includes on a nearby campsite and in terms of visitors to the area more generally. However, for similar reasons to those in relation to well-being, it is unlikely that people would be dissuaded from visiting the area because there is a relatively small solar farm there, which would mainly be visible adjacent or within the site. I do not, therefore, find that the proposal would directly or indirectly result in tourists and visitors to this part of Suffolk to not continue to visit the area and enjoy its aesthetic beauty.

¹⁹ See Core Document - CD1.29B

²⁰ See Core Document - CD1.29B, Noise Impact Assessment, page 24.

64. With regard to fire risk from batteries, this element of the proposal would be located within the BDC area of the site. **The Officer's Report to the Planning Committee**, relates that Suffolk Fire and Rescue Services are '*generally satisfied with the information submitted provided the developer works with the fire service to prepare a risk reduction strategy to include the prevention of pollution to ground water and air.*'²¹ A suggested planning condition to that effect was submitted to the Inquiry. Therefore, whilst acknowledging the concerns raised by interested parties on this matter, I do not find that this forms a basis for the refusal of permission in this case.
65. In terms of highway safety and construction traffic, this would principally be restricted to the 40 week construction period. The use of suitably worded conditions could ensure that such movements are managed in a responsible manner and would align with the proposed condition on the wider site. I am reinforced in this view by the fact that no objections were raised by the local highways authority beyond suggesting the use of conditions. This matter does not provide justification for the refusal of permission in this case.
66. My attention has been drawn to appeal decisions²². I have also been provided with a number of appeal decisions within the Core Documents. Across all of these decisions, various decision-makers have both granted and refused planning permission for developments similar to that sought here. Having taken these into account, I do not find that they provide justification in themselves for making a decision either way. I note the approaches taken, but ultimately I have determined the appeal scheme here on the basis of the evidence put before me.
67. Taking all other matters into account I do not find, whether individually or cumulatively, they provide justification for the dismissal of the appeal scheme.

Planning balance

68. The proposal would result in a number of benefits listed in the submitted evidence. These include: the positive contribution to moving towards a low carbon economy; the economic benefits in the creation and ongoing jobs; and also the wider benefits to the economy in powering homes, schools and hospitals; and the provision of biodiversity gains and improvement in soils. There would also be no harm arising to the setting of nearby heritage assets. 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.
69. Set against these positive benefits (and some neutral effects) is the extremely limited harm to landscape, visual impacts, character and appearance. This harm would be time limited; although I recognise that a period of 40 years is not a short one. Overall, as a matter of planning judgment, the positive weight which attaches to the proposal clearly outweighs the harm identified. Furthermore, the proposal accords with the most important policies of the development plan when read as a whole, and also accords with the objectives of national policy and advice.

²¹ Paragraph 11.15 in the Report

²² Including: 3140774, 3012014, 3013863, 3304561, and 3299953; and planning decisions DC/21/00060 (BDC Decision Notice on larger site), DC/19/05927, and s62A/2022/0011

Mitigation measures and conditions

70. An ES has been submitted, which means that the proposal should be **considered as 'EIA development'**. As permission is to be granted in this case there is a need to consider mitigation measures. These are considered within this section of the decision together with the imposition of planning conditions.
71. I have taken into account the list of agreed conditions supplied by the main parties as part of their agreed SOCG, in line with Paragraphs 55 and 56 of the Framework and the national Planning Practice Guidance and the use of planning conditions. I also note that the Appellant has given written consent, under s100ZA(5) of the TCPA to the imposition of pre-commencement conditions.
72. Conditions providing a time limit for implementation and controlling the longevity of the permission, the removal of the development at the end of the 40 year period, and to be carried out in accordance with the submitted drawings are necessary in the interests of accurately defining the permission.
73. Conditions requiring details and implementation of a Skylark Mitigation Strategy, details of a Construction Environmental Management Plan (CEMP: Biodiversity), and that the development is carried out in accordance with the Landscape and Ecology Management Plan are necessary and precise to ensure that the aims to achieve biodiversity gains are secured.
74. In order to protect the living conditions of nearby residents, the appearance of the area and visitors to it, conditions requiring a noise levels survey, any external lighting, glare, hours of construction, the submission of a Construction Management Statement, landscaping, surface water drainage strategy, an Arboricultural Method Statement, and a Construction Traffic Management Plan, are necessary and reasonable.
75. In order to provide safe access to and from the site, a condition relating to the details of the permissive bridleway and a Public Rights of Way Improvement and Management Plan is necessary. For similar reasons conditions relating to the provision and retention of access splays and access into and from the site are necessary and reasonable. A condition requiring details of information boards is reasonable in order to provide public information about the energy and nature benefits of the proposal.
76. The submission and approval of an emergency response plan, given the presence onsite of BESS equipment, is both necessary and relevant to planning and to the development to be permitted. Conditions relating to archaeological evaluation and works, including post excavation works, are necessary to ensure the protection of any such remains.

Conclusion

77. The proposal would accord with the adopted development plan, when considered as a whole, and there are no material considerations which indicate a decision otherwise than in accordance with it. For the reasons given above, and subject to the imposition of conditions set out, I conclude that the appeal should be allowed.

C Parker

INSPECTOR

Appendix A – list of conditions imposed 3319970

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the drawings/documents hereby approved:
 - **Site Plan 2002-014_SK01 Access Somersham** - Received 05/01/2021
 - **Elevations** - Proposed BR6.0 REV2 Fence and Gate - Received 11/08/2022
 - **Site Plan BD1-01-P15 Boundary Plan** - Received 14/10/2022
 - **BD1-01-P20 Skylark Mitigation** - Received 08/12/2022
 - **BD-01-P18 ALC Agricultural Land** - Received 17/10/2022
 - **Defined Red Line Plan BD1-01-P01** - Received 11/08/2022
 - **Proposed Site Plan BD1-01-P02 REV 01** - Received 11/08/2022
 - **Elevations** - Proposed BD1-01-P03 PV - Received 11/08/2022
 - **Site Plan BD1-01-P15 Boundary** - Received 11/08/2022
 - **BR4.0 Inverter Transformer** - Received 11/08/2022
 - **BR5.0 Internal Access Road** - Received 11/08/2022
 - **BR7.0 Weather Station Detail** - Received 11/08/2022
 - **Elevations** - Proposed BR8.0 Substation - Received 11/08/2022
 - **Elevations** - Proposed BR9.0 Control Room - Received 11/08/2022
 - **BR10.0 Auxiliary Transformer** - Received 11/08/2022
 - **Elevations** - Proposed BR11.0 CCTV - Received 11/08/2022
 - **Elevations** - Proposed BR12.0 Battery Container - Received 11/08/2022
 - **Elevations** - Proposed BR13.0 Storage Container - Received 11/08/2022
 - **7530_005_D REV E LEEP Landscape/Ecology** - Received 11/08/2022
- 3) The Local Planning Authority shall be notified, in writing within one calendar month, of the date the development hereby permitted is first commercially operated for the storage or supply of electricity. This permission shall expire 40 years and 6 calendar months after the date of first commercial operation, or within 12 months of the date the site was last operated, if the site does not supply electrical energy for a continuous period of 12 months, whichever is the sooner.

All equipment, infrastructure, hard surfaces and other parts of the development shall be removed on the expiry of this permission and the land shall be reinstated to its former condition in accordance with a scheme of reinstatement, which shall have previously been submitted to and approved in writing by the Local Planning Authority.

The reinstatement scheme shall include a biodiversity assessment and mitigation and details of any landscape planting to be retained.

- 4) Prior to the commencement of development a Skylark Mitigation Strategy shall be submitted to and approved in writing by the Local Planning Authority.

The Skylark Mitigation Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed measures;
- b) Detailed Methodology for measures to be delivered;
- c) Location of the proposed measures by appropriate maps and/or plans; and
- d) Mechanism for implementation & Monitoring of delivery.

The Skylark Mitigation Strategy shall be implemented in the first nesting season following commencement of the development and in accordance with the approved details, or any amendment as may be approved by the Local Planning Authority in writing pursuant to this condition, and all features shall be retained delivered for a minimum period of 40 years.

- 5) Final details of the proposed permissive bridleway, as shown on Drawing BD1-01-P02 Rev 01 and detailed within the Permissive Bridleway and Public Rights of Way Improvement and Management Plan (July 2022), shall be submitted for approval by the Local Planning Authority prior to the commencement of development. The permissive bridleway shall thereafter be provided in accordance with the approved details. Thereafter, they shall be retained for the duration of the planning permission.
- 6) Prior to the first operation of the development, an information board strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall set out details of the location, content and timing of delivery of boards with information on the principles of renewable energy generation and nature conservation that relate to the development. The information board strategy shall be implemented in accordance with the approved details.
- 7) Prior to the development hereby permitted coming into beneficial use, a competent person shall have ensured that the rating level of noise emitted from all mechanical equipment and inverter sets on site, when running at full capacity does not exceed the sound levels predicted at facades of noise-sensitive premises within the Acoustic Noise Impact Assessment report: R011 dated July 2022. The assessment shall have been made in accordance with the current version of British Standard 4142, or any subsequent replacement or updated equivalent standard, and confirmation of the findings of the assessment shall have been submitted to the Local Planning Authority and agreed prior to the condition being discharged. For any measured exceedances of the predicted daytime and/or night-time noise levels measured, a scheme of mitigation shall be submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be adhered to thereafter during the lifetime of the development.
- 8) Prior to the erection/installation of any floodlighting or other means of external lighting at the site, details to include position, height, aiming points, lighting levels and a polar luminance diagram shall be submitted to and approved, in writing, by the Local Planning Authority. The lighting shall be carried out and retained as approved. There shall be no other means of external lighting installed and/or operated on/at the site.
- 9) Prior to the first operation of development a method for reporting glare complaints and a programme for mitigation to reduce any complaints of glare

that are substantiated shall be submitted to and approved in writing by the Local Planning Authority. Glare complaints shall be responded to in accordance with the strategy as agreed.

- 10) Any construction and/or ground works to the site shall be limited to within the following hours: Monday to Friday between 08:00 hrs and 18:00 hrs Saturday between 09:00 hrs and 13:00 hrs. No such work to be undertaken on a Sunday, Bank, or Public Holiday.
- 11) No development shall commence until a Construction Management Statement (CMS), to cover both site clearance and construction phases of the development, has been submitted to and approved in writing by the Local Planning Authority. The CMS shall be undertaken in accordance with best practice guidelines and BS: 5228:2009 + A1:2014 (and any revisions thereof).

The plan shall include the following details:

- a) scheduled timing/phasing of development for the overall construction period.
- b) loading and unloading of plant and materials.
- c) location and management of wheel washing facilities.
- d) external lighting.
- e) location and nature of compounds and storage areas (including maximum storage heights).
- f) location and nature of temporary buildings and boundary treatments.
- g) dust management.
- h) noise management (both in terms of workers and local residents, and to include noise limit at the nearest sensitive residential property, or agreed representative accessible monitoring point).
- i) waste/litter management during the construction phases of the development.
- j) confirmation that no materials produced as a result of the site development or clearance shall be burned on site.

Thereafter, the approved construction plan shall be fully implemented and adhered to during the construction phases of the development hereby approved.

- 12) No development shall commence until details of the strategy for the disposal of surface water on the site have been submitted to and approved in writing by the Local Planning Authority. The strategy shall include details of the implementation, maintenance, and management surface water drainage systems on the site. The strategy shall be implemented and thereafter managed and maintained in accordance with the approved details.
- 13) No development shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard, soft and boundary treatment landscaping works for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained.
- 14) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out in full during

the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use or first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species.

- 15) Prior to the commencement of development an Arboricultural Method Statement shall be submitted to and approved in writing by the local planning authority. The statement shall include details of the following:
- Measures for the protection of those trees and hedges on the application site that are to be retained.
 - Details of all construction measures within the 'Root Protection Area' (defined by a radius of $dbh \times 12$ where dbh is the diameter of the trunk measured at a height of 1.5m above ground level) of those trees on the application site which are to be retained specifying the position, depth, and method of construction/installation/excavation of service trenches, building foundations, hardstandings, roads and footpaths.
 - A schedule of proposed surgery works to be undertaken to those trees and hedges on the application site which are to be retained.

The development shall be carried out and completed in accordance with the statement as may be approved.

- 16) Prior to the commencement of development a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the local planning authority. The CTMP shall include:
- Measures to minimise delivery of construction materials on the A14 at peak periods.
 - Agreement on travel routes to and from the A14 to the proposed development site(s).
 - Details of how mud and other debris will be prevented from reaching the A14.
 - Details of how the construction workforce will get to and from the site, with the aim of minimising any congestion on the A14.

The development shall be carried out in accordance with the CTMP as approved.

- 17) Prior to the commencement of development a construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
- a) Risk assessment of potentially damaging construction activities.
 - b) Identification of "biodiversity protection zones".

- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 18) Prior to the commencement of development details of the proposed access (including the position of any gates to be erected and visibility splays provided) shall be submitted to and approved, in writing, by the Local Planning Authority.
- 19) The approved access shall be laid out and constructed in its entirety prior to development commencing. The access shall be retained thereafter in its approved form.
- 20) Before the access is first used visibility splays shall be provided as shown on approved drawings and thereafter retained and maintained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.
- 21) Prior to the installation of any electrical equipment or battery unit an emergency response plan shall be submitted to and agreed in writing by the Local Planning Authority. The emergency response plan should include details of the hazards associated with lithium-ion batteries, isolation of electrical sources to enable firefighting activities, measures to extinguish or cool batteries involved in fire, management of toxic or flammable gases, minimise the environmental impact of a loss of control incident, containment of fire water run-off, handling and responsibility for disposal of damaged batteries, and establishment of regular onsite training exercises. The development shall be completed and operated in all respects in accordance with the emergency response plan as may be approved.

22) PART 1 - ACTION REQUIRED PRIOR TO THE COMMENCEMENT OF DEVELOPMENT - ARCHAEOLOGICAL EVALUATION

No development shall take place until a scheme of archaeological evaluation of the site has been submitted to and approved in writing by the Local Planning Authority (including any demolition or clearance of land needing to be carried out as necessary in order to carry out the evaluation). The evaluation shall be carried out in its entirety as agreed by the Local Planning Authority.

23) PART 2 - ACTION REQUIRED PRIOR TO THE COMMENCEMENT OF DEVELOPMENT - ARCHAEOLOGICAL WRITTEN INVESTIGATION

No development shall take place until a written report on the results of the archaeology evaluation of the site has been submitted to the Local Planning Authority and that confirmation by the Local Planning Authority in writing has been provided that no further investigation work is required.

Should the Local Planning Authority require further investigation and works, no development shall take place on site until the implementation of a full programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
- b. The programme for post investigation assessment.
- c. Details of the provision to be made for analysis of the site investigation and recording.
- d. Details of the provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e. Details of the provision to be made for archive deposition of the analysis and records of the site investigation; and
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the WSI.

The written scheme of investigation shall be carried out in its entirety prior to any other development taking place, or in such other phased arrangement including a phasing plan, as may be previously approved in writing by the Local Planning Authority.

24) PART 3 - ACTION REQUIRED PRIOR TO THE FIRST OCCUPATION OF DEVELOPMENT - ARCHAEOLOGICAL WORKS

The site shall not be commercially operated until the archaeology evaluation, and if required the Written Scheme of Investigation (WSI), have been completed, submitted to and approved, in writing, by the Local Planning Authority. Furthermore, the commercial operation of the development shall not occur until analysis, publication and dissemination of results and archive deposition from the archaeology investigations as agreed under the WSI has taken place, unless an alternative agreed timetable or phasing for the provision of results is agreed in writing by the Local Planning Authority.

- 25) The development shall be carried out in full accordance with the details outlined within the submitted 'Landscape and Ecology Management Plan' (LEMP) (as prepared by LDS - July 2022) and the Landscape and Ecological Management plan Drawing number 5030_005_D rev E (prepared by LDA - dated 23.06.22).

The biodiversity enhancement works outlined within the document shall be implemented in accordance with the approved details prior to the operational phase of the development and shall be retained in that manner thereafter.

End of conditions

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Tom Cosgrove, KC

He called:

Steven Stroud, BA(Hons), LLB(Hons), MA, MRes, MRTPI	Strategic and Professional Lead for Development Management and Heritage (MSDC)
Bron Curtis, BA(Hons), MA, MRTPI	Principal Planning Officer (MSDC)
Matthew Baker, BA(Hons), MA	Senior Archaeological Officer, Sussex County Council

FOR THE APPELLANT:

Thea Osmund-Smith
Sioned Davies

Counsel

She called:

Nigel Cussen, BSc(Hons), DipTRP, MRTPI	Pegasus Group, Planning
Tony Kernon, BSc(Hons), MRICS, FBIAC	Kernon Countryside Consultants Limited, Agricultural land
Alister Kratt, BA(Hons), FLI	LDA Design Consulting, Landscape
Gail Stoten, BA(Hons), MIfA, FSA	Pegasus Group, Heritage
Dr Roger Buisson, CEnv, MCIWEM	BSG Ecology Ltd, Ecology
Jim Tough, MSc, BSc(Hons) CEnv, CSci	Abbott Risk Consulting Ltd
Evidence was submitted, though not called by:	
Robert Roughan, MCIHT, MSc Transport Planning, BSc(Hons) Human Geography	TPA, Highways

INTERESTED PERSONS:

Nick Carter	Vice-Chairman, Flowton Parish Meeting
Samantha Main	Representative of former Rule 6 Party
Tony Ballard	Retired Solicitor and local resident
Pernilla Vizard	Local resident
Gary Page	Local resident
Judith Ewing	Local resident
Councillor Adrienne Marriott	District Councillor – MSDC, Blakenham Ward
Rob Clements	Local resident
Ben Kajtazi	Local resident
Councillor Dave Busby	District Councillor at Babergh District Council

Documents submitted at the Inquiry

- 1 Erratum Note relating to factual errors in two **of the Appellant's** proofs of evidence
- 2 Opening statement on behalf of the Appellant
- 3 Opening submissions on behalf of Mid Suffolk District Council
- 4 Written version of oral evidence of Judith Ewing
- 5 Written version of oral evidence of Gary Page
- 6 Written version of oral evidence of Samantha Main on behalf of former Rule 6 Party
- 7 Written version of oral evidence of Tony Ballard
- 8 Written version of oral evidence of Pernilla Vizard
- 9 Written version of oral evidence of Nick Carter
- 10 Suggested wording for soil management plan planning condition
- 11 Costs Application on behalf of Appellant by Thea Osmund-Smith and Sioned Davies, No5 Chambers, dated 15 August 2023. (Including Appendix, copy of Secretary of State Decision reference 3293104, dated 5 December 2022)
- 12 Decision Notice of Babergh District Council ref DC/21/00060 dated 17 February 2023. Granting permission for larger part of appeal site.