

Town and Country Planning Act 1990

Appeal by Statkraft UK Limited

Land North of Little Cheveney Farm, Sheephurst Lane, Marden, Kent, TN12 9SD

Maidstone Borough Council Ref: 22/501335/FULL

PINS Reference: APP/U2235/W/23/3321094

**Statement of Case on behalf of the Local Planning Authority**

Martin Robeson Planning Practice

On behalf of

Maidstone Borough Council

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## **Introduction**

1. The Statement of Case has been prepared by Martin Robeson Planning Practice (MRPP) on behalf of Maidstone Borough Council ('the Council'), in respect of the Appeal ref. APP/U2235/W/23/3321094.

## **The Site**

2. The Appeal Site ('Site') is located at Land North of Little Cheveney Farm, Sheephurst Lane, Marden, Kent, TN12 9SD, approximately 850m west of Marden and 750m east of Claygate. The Site is approximately 74.5ha in area.
3. The Site is bounded to the north by a railway line, and to the east by the Lower Teise. The vast majority of the site lies in Flood Zone 3.
4. There is an area of Ancient Woodland to the west of the Site that would be bounded on three sides by the Site.
5. Two Public Rights of Way ('PRoWs') run through the Site: KM248 along the northern boundary and KM244 in the southeast corner. Three further PRoWs lie within the vicinity of the Site (KM246, KM254, and KM257).

## **The Proposed Development**

6. The application's description of development was as follows:

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

7. The proposal would generate up to 49.9 MW and is intended to be decommissioned after 37 years from first use. However, there is uncertainty over the length of additional periods i.e., between completion of the development and exporting energy to the grid and overall construction.

8. PRoW KM248/2 is to be diverted under the Proposed Development.
9. There was an amendment made at application stage, which included removal of the 'energy storage facility' from the proposal. This was explained in the letter uploaded to the Planning Portal on 1<sup>st</sup> September 2022, 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"*.

### **The Council's decision making**

10. The application was refused by the Council on 28<sup>th</sup> October 2022.
11. The Decision Notice gave the following Reasons for Refusal:
  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. By virtue of its scale and character, the proposed development would cause significant harm to the character and appearance of the countryside and does not adequately mitigate these impacts, contrary to the aims and objectives of the National Planning Policy Framework and policies SP17, DM1, DM24 and DM30 of the Maidstone Borough Local Plan 2017.
  3. The proposed development, by virtue of its scale, proximity and character results in less than substantial harm to the settings of Heritage Assets being Grade II listed buildings of Little Long End and Little Cheveney Farm as views from and to listed buildings close to the site would be possible. The harm to the significance of the heritage assets would be less than substantial. The application is

therefore contrary to policies DM4 and DM24 of the Maidstone Borough Local Plan 2017 and the NPPF.

4. The proposal would cause harm to biodiversity by detrimentally impacting on ecology and physical habitats including badger and skylark habitat and potential harm from new permissive footpaths to Ancient Woodland and the Lesser Teise and is thereby contrary to the NPPF and policies DM3 and DM24 of the Maidstone Borough Local Plan 2017.
5. The noise assessment does not include BS4142 assessments for all locations and therefore the applicant has failed to demonstrate that there will be no harm to residential amenity, contrary to policies DM1 and DM24 of the Maidstone Borough Local Plan 2017.

### **Position on the Appellant's Appeal Amendments**

12. The Appellant put forward amendments to the proposed development when submitting the Appeal ('the Appeal Amendments') together with a series of supporting assessments that were not before the Council when it made its determination in October 2022. They include some updated clarified and correcting supporting information. The Council considers that some of the new supporting assessments are of assistance in clarifying where there may be scope for negotiations on some of the reasons for refusal, specifically on noise and ecological mitigation.
13. However, the Council will assert that the Appeal Amendments in terms of the significant amendments to the number and extent of the PV arrays and associated planting in the scheme ought not to be accepted by the Inspector. The Council will submit that the Appeal Amendments would render the scheme substantially different from that which was submitted at the application stage. Accepting them may also be unfair to consultees who expressed views about the original proposals. In these circumstances, the Appeal Amendments would not comply with the 'Wheatcroft Principles' as refined by the approach set in the Holborn Studios Judgment.

14. The Council notes that the Inspector will hear submissions on the Amendments at the beginning of the Inquiry. Due to the uncertainty over whether the Amendments will be accepted, the Council will provide evidence as to the unacceptability of the proposed development as subject to the Council's decision and as amended by the revised submissions, assessments and drawings, i.e., the Appeal Amendments.

### **The Development Plan**

15. The development plan comprises the Maidstone Borough Local Plan (adopted October 2017) and the Kent Minerals and Waste Plan (adopted in 2020).
16. Section (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 applicant*
  - b. *any local financing considerations, as far as material to the application,*  
*and*
  - c. *any other material considerations."*
17. The local plan's adoption in 2017 took into account relevant policy in the 2012 NPPF. Thus, it recognised that *"The planning system should play an active role in guiding development to sustainable solutions"* (NPPF 2012, paragraph 8); and of the *"need to take local circumstances into account, so they respond to the different opportunities for achieving sustainable development in different areas"* (NPPF 2012, paragraph 10). These and other relevant matters were part of the requirement for plans to be *"consistent with national policy"* such that *"the plan should enable the delivery of sustainable development in accordance with the policies in the Framework"* (NPPF 2012, paragraph 182).
18. Since 2019 the Council has been engaged in preparing a Review of the Local Plan. 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 together with additional policies addressing new issues together with policies that could be maintained in their present form. The adopted policy is DM24 and the draft LPR policy is LPRINF3.

19. There are no Modifications being consulted on and no outstanding objections relating to this issue. Therefore, it will be submitted that Policy DM24 remains up-to-date and should be given full weight.
20. Policy DM24 : Renewable and low carbon energy schemes is the overarching development management policy in respect of the appeal. There are no Modifications being consulted on and no outstanding objections relating to this policy. Therefore, it will be submitted that Policy DM24 remains up-to-date and should be given full weight. The policy is in three parts. The first identifies six key “*impacts*” against which the design and development of the proposals “...*will be required...*” to be assessed. Each impact has, in turn, its own development plan assessment policy, or policies) which prescribe what would breach the policy i.e., be unacceptable. There is thus a network of rigorous and interdependent policies. DM24 is the lynchpin. It is therefore phrased as a mandatory policy - “...*projects will be required to demonstrate..*”. The Council will assert that, contrary to the Appellant’s submissions at paragraph 8.7 of its Statement of Case, the fact that the content of Policy DM24 has been carried over to become LPRINF3 (with no modifications from examination) demonstrates that the existing Policy DM24 is up to date and attracts full weight.
21. The Council will review (below) each of the relevant “*impacts*” raised by the reasons for refusal 2, 3, 4 and 5, how they have been assessed against other relevant development plan policies and any relevant standards and sets out why failures or breaches arise. Submissions will be made that relevant policies remain generally up-to-date including as demonstrated by the approach being taken to any redrafting within the Review.

22. With regard to the status of the Review as a whole, the Council will submit that this has at least moderate weight having regard to its progress towards adoption.

### **Site Selection and the Use of BMV Agricultural Land**

23. The first reason for refusal states that *“The site includes a significant proportion of the best and most versatile agricultural land which the NPPF requires to be avoided due to significant economic harm from not fully utilising food productive capacity of the land for a long period of time. 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.”*
24. Refusal arises out of the second limb of Policy DM24. This provides a mandatory preference (i.e., *“will be given”*) for three types of land or premises to be used to accommodate renewable energy projects over any other land. ‘Preference’ in this context relates to ‘precedence’ rather than ‘a greater liking’ (OED). In order to demonstrate compliance, these types of sites need to be identified and assessed, in terms of availability, suitability and viability. They comprise:
- existing commercial, and industrial premises:
  - previously developed land, or
  - agricultural land that is not classified as best and most versatile.
25. Smaller scale renewable energy projects can utilise the roofs and car parks of existing commercial and industrial premises. However, the Council accepts there may be efficiency considerations which limit their use. Previously developed land will frequently be the subject of interest for built development, in particular, for housing. A different set of preferences exist for the permanent use of such land over countryside. Agricultural land not classified as the best and most versatile (BMV) falls within grades 3b, 4 and 5 (Glossary to NPPF). This resource should be the focus of application’s Sequential Analysis Study (February 2022).

26. The Council will assert methodology adopted in the Study is not appropriate and lacks rigour. It adopts an overly limited study area without detailed assessment of potentially preferable sites. It accepts that there is no national or local guidance with regard to the definition of a study area and without justification, the local authority's administrative area is chosen. Whilst the Local Plan has a policy encouraging the use of renewable energy, it will demonstrate that there is no mandatory requirement, national or otherwise, placed on individual local authorities through the planning system to cause the generation of a given quantum of renewable energy from their individual areas or for such areas to contribute to national targets for solar energy generation.
27. Further stages are identified. First for the use of agricultural land is necessary and then that there is no poorer quality land available. The Council takes no issue with the first matter. On the second, the Study identifies that as it would be unreasonable to undertake soil sampling to obtain the 3a/3b split across potential alternative sites. This is not accepted as being reasonable. The study unreasonably rejects sites that are not of a similar scale.
28. Finally, a corridor with only a maximum width of 500m either side of a specific 132kV distribution grid line that transects the appeal site is applied to the search. Notwithstanding this approach, a single 54ha site is identified. 10.9ha of Grade 2 and 3 is disregarded as BMV land. The remaining 23.1ha is found to be significantly smaller than the proposed development site and would not be viable for a solar energy farm of a smaller scale [3.24].
29. The Council will assert that the Study is a self-serving exercise. It limits the search area and restricts connection opportunities for example, the Grid Connection Assessment (17 February 2022) confirms "*the Pembury 132kV substation offers better export capacity without the need to update the line*" [2.4] but that is in the neighbouring Tunbridge Wells administrative area.
30. A different approach can be adopted. For example, identifying substations across England and Wales where there is spare capacity at their adjacent transmission grid, followed by searches for the most suitable solar development land having regard to the point of connection (to address cable length efficacy

and cost). The promotor can then apply planning, environmental, heritage and topographical considerations to identify potentially suitable general locations before engaging with relevant landowners individually or in combination to secure potential interest. Land can then be assessed for assembly and configuration as a commercially viable solar scheme.

31. The Council will assert that operation of the DM24 requirement to identify a preferable opportunity has not been met because of the substantial incursion onto BMV agricultural land. The BMV criterion is readily definable (subject to analysis as necessary of Grade 3 land). Planning policy should be transparent and readily comprehensible, allowing the public to have confidence in the operation of the planning system. Indeed the NPPF at 16(d) provides that *“Plans should contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”*. The inclusion within the proposal of 35.1ha of Grade 2 and 3a Land (i.e., 47% of the site) causes a breach of Policy DM24.2. The ‘precedence’ to be given to *“agricultural land that is not classified as BMV”* has not been satisfied.
32. The additions set out in the Appeal Amendments do not resolve the core issues, that there is a *“compelling case”* to resist the loss of BMV land.
33. The third arm of DM24 requires reinstatement to the previous use when the installations have ceased operation. Consideration will be given to the adverse issues arising from the timescale over which the site will be out of agricultural use in terms of the length of the temporary permission, together with time taken for construction and export of energy to the grid. These include issues concerning the loss of food production and the constraints on land use during that period. It would not be reasonable to impose a condition to require sheep to graze the land.
34. The Council will assert that the Appeal Amendments, if they were to be accepted, would not change the Council’s position in relation to this Reason for Refusal.

## **Landscape Character and Visual impact**

35. Reason for Refusal 2 states that *“By virtue of its scale and character, the proposed development would cause significant harm to the character and appearance of the countryside and does not adequately mitigate these impacts, contrary to the aims and objectives of the National Planning Policy Framework and policies SP17, DM1, DM24 and DM30 of the Maidstone Borough Local Plan 2017”*.
36. The Council relies upon policies SP17, DM1, DM3 and DM30 to assess the impact, as required by Policy DM24, and will also refer to relevant paragraphs from the NPPF as relevant.
37. Policy SP17 (1) states that *“Development proposals in the countryside will not be permitted unless they accord with other policies in this plan and they will not result in harm to the character and appearance of the area”*.
38. Policy DM1 sets out criteria in order that high quality design can be achieved in new development. In applying them account is to be taken of Character Area Assessments and the Maidstone Borough Landscape Character Guidelines SPD. These include that proposals should:
- ii. respond positively to, and where possible enhance, the local, natural or historic character of the area...;*
  - iv. Respect the amenities of occupiers neighbouring properties by ensuring development does not result in, or is exposed to...visual intrusion...;*
  - vi. Provide a high quality design which responds to areas of heritage, townscape and landscape value...”*
39. Policy DM3 requires that new development serves to *“Protect positive landscape character, areas of Ancient Woodland...and the existing public rights of way network from inappropriate development and avoid significant adverse impacts as a result of development.”*

40. Policy DM30 provides five criteria, all of which must be met for development proposals to be permitted in the countryside. These include: “*i. The type, siting, materials and design, mass and scale of development and the level of activity would maintain, or where possible, enhance local distinctiveness including landscape features*” and “*ii. Impacts on the appearance and character of the landscape would be appropriately mitigated. Suitability and required mitigation will be assessed through the submission of Landscape and Visual Impact Assessments to support development proposals in appropriate circumstances*”. The policy provides that “*Account should be taken of the Kent Downs AONB Management Plan and the Maidstone Borough Landscape Character Guidelines SPD.*”
41. The Council will rely upon material relating to National Character Area 121: Low Weald, Kent Landscape Character Areas: 19. Low Weald Fruit Belt and 27. Teise Valley, Borough-Wide Character Types Valleys and Low Weald; and Borough-Wide Character Areas: 39. Laddingford Low Weald and 57. Teise Valley. Laddingford Low Weald is described as having a moderate condition and sensitivity and Teise Valley is described as having a good condition and high sensitivity. A key characteristic of both character areas is large open arable fields and pasture, i.e., contributing to its status as “*open countryside*”.
42. Whilst the Council does not consider the site to form part of a “*valued landscape*” in the meaning of NPPF174(a), it will be demonstrate that the site nevertheless exhibits a number of valued attributes.
43. The Council relies on its Landscape Capacity Study: Sensitivity Assessment (2015). This explains that new development should conserve the largely undeveloped landscape with its scattered development pattern and isolated farmsteads and consider views towards any proposals across the Low Weald from the elevated Greensand Ridge, and the High Weald which rises to the southwest. It explains that extensive, large scale or visually intrusive development would be inappropriate in Laddingford Low Weald, and that in the Teise Valley, pressure for development to spread onto the visually sensitive

valley floor, notably at Marden, should be resisted to maintain the open character of the floodplain.

44. The Council's case is that there are important views into the site from PROW KM244 which crosses the SE corner of the site. The view looking north, with the Greensand Ridge in the background, would be obstructed in the short to medium term by the PV arrays and in the longer term by the new landscape screening. The perimeter security fence and PV panels would be within a few metres of that PROW.
45. It will also be demonstrated that views from sections of KM244 outside the site, would be adversely impacted.
46. The Council will demonstrate the existence of significant views into the site from KM248, which runs through the site parallel to the railway for a distance of 750m, providing long open views across arable fields. There will be significant adverse impacts caused by the PV arrays in the short term mitigated only in the medium to longer term by new hedging, which the Council will demonstrate will have an adverse impact in itself. In addition, there would be adverse impacts on views from KM248 approaching the site from Turkey Farmhouse, as well as a potential for impacts on views from other PROWs in the surrounding area.
47. The Council will explain that the new permissive paths, and the diverted section of KM248, would have a poor outlook as long sections would be between 2.4m high security fencing and the site boundaries.
48. The potential for adverse visual impacts on nearby residential properties (as identified at paragraph 6.28 of the Officer's Report) will be highlighted in evidence.
49. In addition to the solar arrays themselves, the Council will refer to the industrialising impact of the HV compound and of the new gated accesses onto public roads, which will be out of character compared to traditional farm entrances.

50. There is the potential for harmful visual and landscape impact due to the 3m high bunds of stored topsoil which are proposed to accommodate in excess of 10,000m<sup>3</sup>. The documentation provides no information relating to these elements. The Council will assert that these matters are too fundamental to be dealt with by condition.
51. The Council will submit that the landscape strategy to essentially 'hide' the substantial array of solar panels and other infrastructure would itself amount to a source of harm and would therefore be inappropriate. It would restrict public views across the currently open fields that give the countryside much of its intrinsic character. It would also introduce hedgerows that will reduce the legibility of the existing field pattern. As such, it is considered in the circumstances of this proposal, that the proposed screening does not negate harm to the intrinsic qualities of the countryside or make otherwise harmful development acceptable. The proposed solar PV development would introduce a significant impact on the existing open countryside to its substantial detriment.
52. Removal of the new planting to resecure the open character of the site, as part of the restoration works, would be seen as inappropriate and damaging to ecological interests that would likely have become established. The proposed harmful change to the landscape structure of the site must therefore be regarded as permanent.
53. The Council will submit, notwithstanding the above, that whilst screening would provide some mitigation within say a 10-15 period, the deciduous species mix is considered unlikely to provide year-round cover. The Council notes that the visualizations submitted as part of the LVIA do not show the development in winter conditions.
54. The Council will submit that, whilst evergreen planting would provide year-round cover, this type of planting would not be characteristic of the area, and would itself cause harm to the character and appearance of the countryside.

55. The Council will therefore assert that it is not possible to satisfactorily mitigate development of this scale and character in this location.
56. The development would be locally significant in scale and would adversely change the character of the site, which carries with it an important intrinsic quality as open countryside. The Council will assert that the site would cease to be open, either visually or in terms of a relative absence of built development.
57. The Council will refer to the Pagehurst Farm appeal decision. This relates to a smaller solar generating station also located within the Low Weald Character Area. The Inspector refers to “...*the introduction of new landscape features such as high hedges to ‘hide’ the substantial 20 hectare array of solar panels and to restrict public views across the currently vast and open topography. These wide open vistas currently give the local landscape its particular intrinsic character and qualities. The result would be to fundamentally alter the landscape in a contrived way to seek to accommodate the solar panels.*” He found that “*Screening development from view does not negate harm to the intrinsic qualities of the landscape or make otherwise harmful development acceptable*” (APP/U2235/W/16/3146969).
58. The Council will assert that the Appeal Amendments, if they were to be accepted, would not change the Council’s position in relation to this Reason for Refusal. While the Amendments would slightly reduce the scale of the proposed development, and would change the specific impacts on some close-range views, the Council remain of the position that the proposal would continue to cause significant harm to the character and appearance of the area.
59. The visual material submitted in support of the LVIA/Addendum has been subject to expert review, which will form part of the Council’s evidence. The review identifies a number of reservations about the reliability of this material, which the Council maintains should be borne in mind when forming judgments about the landscape/visual effects .

## Heritage

60. Reason for Refusal 3 states that *“The proposed development, by virtue of its scale, proximity and character results in less than substantial harm to the settings of Heritage Assets being Grade II listed buildings of Little Long End and Little Cheveney Farm as views from and to listed buildings close to the site would be possible. The harm to the significance of the heritage assets would be less than substantial but nevertheless, weighs against the proposal in the overall balance, even when taking account of the public benefits. The application is therefore contrary to policies DM4 and DM24 of the Maidstone Borough Local Plan 2017 and the NPPF”*.
61. Local Plan Policy DM4 (1) states that *“Applicants will be expected to ensure that new development affecting a heritage asset incorporates measures to conserve, and where possible enhance, the significance of the heritage asset and, where appropriate, its setting”*.
62. Policy DM4 (4) also confirms that *“The Council will apply the relevant tests and assessment factors specified in the National Planning Policy Framework when determining applications for development which would result in the loss of, or harm to, the significance of a heritage asset and/or its setting”*.
63. The Council has duly considered Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which states *“In considering whether to grant planning permission [or permission in principle] for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”*. The Council will rely upon relevant guidance on the historic environment and proposals affecting heritage assets as set out at Chapter 16 of the National Planning Policy Framework (NPPF).
64. The Council will have full regard to paragraph 195 of the NPPF which states that *“Local planning authorities should identify and assess the particular*

*significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal".*

65. The Council will note that paragraph 199 of the NPPF confirms that *"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance"*.
66. Given the local planning authority's assessment of the severity of the harm, paragraph 202 is of relevance: *"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use"*.
67. The Council will identify the listed building heritage assets affected by way of development in their settings. The heritage assets affected by the proposal are Little Long End, Little Cheveney Farm and nearby Oasthouses, Great Sheephurst Farmhouse and Oasthouse, Turkey Farm House, and Longends Farmhouse (all Grade II). The Council will identify that the proposed development would cause harm to the significance of Little Long End and the group at Little Cheveney Farm. For clarity, the Council agrees with the Appellant that proposals would not cause harm to the significance of any heritage assets other than those mentioned above. The harm relates to their settings and thus their significance.
68. The Council notes that 'setting' is defined within the NPPF Glossary as *"The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting*

*may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral”.*

69. In assessing the harm to the settings of the assets, the Council notes that the views to and from the assets and the site would be limited, but submits that views are only one part of setting and with the rural character of the landscape having remained undeveloped, this allows for a better appreciation of the listed buildings.
70. The Council accepts that the proposed development would not harm the settings of Great Sheephurst Farmhouse and Oasthouse, Turkey Farmhouse, and Longends Farmhouse.
71. However, the Council will submit that the rural setting of Little Long End contributes to its significance, and that this would be adversely reduced by the proposed development. This constitutes an identification of harm to the asset.
72. The Council will argue that the visual, functional and historic connections in the appreciation of relevant buildings at Little Cheveney Farm and its oasts are significantly informed by the rural setting in which they lie, and that this setting would be impacted by the introduction of the panels in views of these assets. This harmful impact to their setting results in harm the significance of these assets.
73. The Council will submit that the severity of the harms identified would be ‘less than substantial’ such that the balancing exercise at paragraph 202 of the NPPF is engaged. However, the Council will argue that the public benefits of the proposal do not outweigh that harm, bearing in mind the great weight that needs to be given to an asset’s conservation and the special regard to paid to preserving heritage assets and their settings.
74. The Council will assert that the Appeal Amendments, if they were to be accepted, would not change the Council’s position in relation to this Reason for

Refusal. Whilst the Amendments would reduce the scale of the proposed development there would be harm to its setting from the industrialisation of its arable context. The proposed mitigation planting would not change the Council's position in relation to this Reason for Refusal.

75. The public benefits of a renewable energy scheme are accepted but could be obtained by sites that are less constrained by the proximity of Grade II listed buildings. When weighing up the public benefits of the proposed scheme the development fails to meet the guidance set out in the NPPF regarding whether demonstrable harm which would fail to outweigh the benefit and is also contrary to Policy DM 4 of the Local Plan. Given this harm, permission should be refused.

### **Ecology and Biodiversity**

76. The fourth reason for refusal states *“Notwithstanding benefits of a proposed high level of Biodiversity Net Gain, the proposal would cause harm by detrimentally impacting on ecology and physical habitats including badger and skylark habitat and potential harm from new permissive footpaths to Ancient Woodland and the Lesser Teise. The proposal is thereby contrary to the NPPF and policies DM3 and DM24 of the Maidstone Borough Local Plan 2017.”*
77. Policy DM3 provides that new development should serve to *“Protect positive land character, areas of Ancient Woodland, veteran trees, trees with significant amenity value, important hedgerows, features of biological or ecological interest and the extent of public rights of way network from inappropriate development and avoid significant adverse impacts as a result of development.”*
78. Policy DM3 also provides for *“...consideration of alternative sites...”* to accommodate proposed development where *“...significant harm cannot be avoided”*.
79. The NPPF at paragraph 180 sets out principles that should be applied in the determination of planning applications affecting habitats. They include that:

- a) *if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused” and,*
- c) *development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists.”*

- 80. The Council will explain the specific concerns arising from harm to existing biodiversity, in particular impact on the habitat of skylarks.
- 81. The Council acknowledge that the advance creation of skylark plots within the surrounding area might mitigate impact on skylark habitat. However, no such mitigation was proposed within the application. The Council acknowledges that the applicant is now proposing to implement off site mitigation for skylarks. However the applicant does not control any land outside of the redline boundary and therefore there is no certainty that appropriate skylark mitigation can be implemented.
- 82. The boundary fence regime creates a risk to the movement of badgers. A condition will be agreed to ensure that fencing must incorporate badger gates and/or tunnels, with details required to be submitted to and approved by the Local Planning Authority, should the appeal be allowed.
- 83. Whilst the Council will acknowledge that the existing Ancient Woodland is not directly impacted, a perimeter fence will be erected 15m away at its closest point with the gap becoming a new permissive footpath. In the event that the appeal were allowed, a condition would need to be imposed to ensure that the proposed permissive footpath does not impact on the Ancient Woodland, with details required to be submitted to and approved by the Local Planning Authority.
- 84. The Council recognises the importance of the Environment Agency’s objection relating to the significant risk to the Lesser Teise by increasing disturbance, risk

of plastic waste entering the water course and the modification of naturally occurring riparian habitats and species. A condition would need to be imposed to ensure that there is no adverse impact on the Lesser Teise, should the appeal be allowed.

85. The Council accepts there is a Biodiversity Net Gain (BNG) arising from the proposals. However, the Council's case is that this BNG does not outweigh or compensate for risks to existing species and thus biodiversity harm.
86. The Council will assert that the Appeal Amendments, if they were to be accepted, would not change the Council's position in relation to refusal on ecology grounds. While a number of the issues could be addressed, the Council will remain of the position that the proposal would cause significant harm to the skylark population.

#### **Noise and Residential Amenity**

87. The fifth reason for refusal states: *"The noise assessment does not include BS4142 assessments for all locations and therefore the applicant has failed to demonstrate that there will be no harm to residential amenity, contrary to policies DM1 and DM24 of the Maidstone Borough Local Plan 2017."*
88. Policy DM1 requires that *"...development does not result in...excessive noise, vibration...activity or vehicular movements...[for] the occupiers of nearby properties"*.
89. The Council will contend that the Appellant's original noise study was not correctly carried out since the methodology used was not appropriate for the character of noise involved. As such there is a potential breach of Policy DM1 with regard to residential amenity.
90. Following the receipt of Supplementary Noise Impact Assessment dated April 2023 (which made corrections to errors in the original Noise Impact Assessment March 2022 considered with the application), the Appellant and the Council have undertaken negotiations regarding RfR 5 relating to noise, and it is anticipated that this will be resolved by way of a condition in advance

of the Inquiry in regard of the appeal proposal on which the LPA's determination was made.

91. At this point in time, a suggested condition in regard of the noise impact of the Appeal Amendments has not been accepted by the appellant.

### **Other Relevant Material Considerations**

92. The Council accepts that the provision of renewable energy from the proposal has significant weight. It draws support from content within national renewable energy policy including:
- National Policy Statement for Energy (EN-1) (2011).
  - National Policy Statement for Renewable Energy Infrastructure (EN-3) (2011)
  - The UK Renewable Energy Road Map (2011) and subsequent updates in 2012 and 2013
  - The UK Solar PV Strategy Part 1 (2013) and Part 2 (2014)
  - Clean Growth Strategy 2017
  - UK 25 Year Environment Plan
  - Climate Change Act 2008 (2050 Target Amendment) Order 2019
93. The draft revisions to NPSs EN-1 and EN-3 (September 2021) have yet to be formally designated and published by government and, accordingly, are not yet material planning considerations.
94. The Council will assert that, given the above submissions relating to 'Site Selection and the Use of BMV Agricultural Land', the threshold of the "*most compelling evidence*" to justify the use of BMV land for such a proposal, as set out within the 2015 Written Ministerial Statement, has not been reached. This constitutes an 'Other Material Consideration' which weighs against the granting of planning permission.
95. The Council will identify relevant inefficiencies inherent in the proposal. These include the site's lack of provision of Battery Storage. The Council will assert that this may reduce the positive weight which can be afforded to the renewable energy generation.

96. There is no documentation confirming the terms of the grid connection agreement, which the Council will assert may reduce the positive weight which can be afforded to the renewable energy generation.

### **Outcome of the Planning Balance and Conclusions**

97. The Council will conclude that the site selection process and its criteria were overly restrictive, and thus that the proposal would not comply with the mandatory preference for 'agricultural land that is not classified as best and most versatile' within Policy DM24.
98. The Council will conclude that the proposal would cause harm to the landscape character of the area, both in respect of the intrinsic value of the 'open' countryside and in respect of adverse impacts to views from PROWs. The Council will conclude that the landscape strategy put forward to 'hide' the Development would fail to mitigate the impact of the Development, and would itself cause further harm.
99. The Council will conclude that the Proposed Development would cause harm to the settings of Little Long End and the Little Cheveney Farm group, the severity of which would be less than substantial and would not be outweighed by the public benefits of the proposal.
100. The Council will conclude that the Proposed Development would harm the habitats of skylarks, and that no acceptable mitigation has been put forward.
101. The Council will assert that the Appeal Amendments put forward should not be accepted by the Inspector. Notwithstanding this evidence, if the Amendments were accepted, this would not alter the conclusions above or the outcome of the planning balance below.
102. The Council therefore considers that the Proposed Development would breach the following development plan policies: DM1, DM3, DM4, DM24, DM30 and SP17.
103. The Council will therefore assert that there is non-compliance with the development plan taken as a whole.

104. The Council will assert that the other material considerations above do not indicate that a decision ought to be taken otherwise than in accordance with the development plan.
105. The appeal should therefore be dismissed.

**Appendix 1 – List of Conditions to which the Council would agree**

**APP/U2235/W/23/3321094 – LIST OF CONDITIONS TO WHICH THE COUNCIL  
WOULD AGREE**

1. For the event the appeal is allowed, the following conditions are proposed:
  1. The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
  2. The development hereby permitted shall be carried out in all respects in accordance with the following plans/drawings:

[to be inserted depending on whether the ‘Appeal Amendments’ are accepted]
  3. Prior to their erection on site, details of the proposed layout, materials and finish including colour of all solar panels, frames, ancillary buildings, equipment and enclosures shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.
  4. The planning permission hereby granted is for a period of 37 years from the date of first export of electricity from the development to the grid (First Export Date), after which the development hereby permitted shall be removed. Written notification of the first export date shall be given to the Local Planning Authority no later than 14 days after the event.
  5. Not less than 12 months before the expiry of this permission, a Decommissioning Method Statement (DMS) shall be submitted for the approval in writing by the Local Planning Authority. The DMS shall include details of the removal of the arrays, cables, fencing, tracks and buildings together with the repair of damage that may have occurred, restoration of the site, protection of biodiversity during removal and the management of traffic during the decommissioning process and a decommissioning timetable. The development shall be decommissioned in accordance with the approved DMS.
  6. Within 3 months of the development, or part thereof, ceasing to generate electricity for a period of 12 months prior to the 37 year period, a statement of decommissioning works (“the Early Decommissioning Method Statement”) shall be submitted for the approval in writing by the Local Planning Authority. The EDMS shall include details of the removal of the arrays, cables, fencing, tracks and buildings together with the repair of damage that may have occurred, restoration of the site, protection of biodiversity during removal and the management of traffic during the

decommissioning process and a decommissioning timetable. The development shall be decommissioned in accordance with the EDMS.

7. No works associated with the development in operation shall take place at the site and no vehicles associated with the development shall enter or leave the site on Sundays or Public or Bank Holidays or outside of the following hours: between 0730 and 1800 Monday to Friday and 0800 and 1300 on Saturdays.
8. No development shall take place until a scheme of measures to minimise the risk of crime that shall include details of the location and design of CCTV cameras has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is first brought in to use and thereafter retained and maintained for the lifetime of the development.
9. No development shall commence at the site until a fully detailed scheme of landscaping proposals including a timetable for the implementation of all landscaping works and a programme for its management and maintenance for the lifetime of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details during the planting season (October to March) and completed prior to the first export of electricity from the development to the grid.
10. Prior to the commencement of development details of a specification and written timetable for archaeological and geo-archaeological field evaluation works shall have been submitted to and approved in writing by the Local Planning Authority. Should the results of the evaluation require further archaeological, geo-archaeological and Palaeolithic investigation, recording and reporting, a specification and timetable shall be submitted to and approved in writing by the Local Planning Authority prior to such investigation, and a programme for the post excavation assessment and its publication shall have been submitted to and approved in writing by the Local Planning Authority.
11. If during works of construction contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority (LPA)) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the LPA. The remediation strategy shall be implemented as approved.
12. No development shall commence until a scheme detailing the protection of kingfishers (a protected species under The Wildlife and Countryside Act

1981 (as amended)) and their associated habitat has been submitted to and approved by the LPA. The plan must consider the whole duration of the development, from the construction phase through to development completion. Any change to operational responsibilities, including management, shall be submitted to and approved in writing by the LPA. The kingfisher protection plan shall be carried out in accordance with a timetable for implementation as approved.

The scheme shall include the following elements:

1. Details of annual nesting bird surveys
  2. Sufficient buffer zones around any suspected nest sites
  3. Any works within 10m of known nesting sites must be overseen by a suitable qualified and experienced Ecological Clerk of Works (ECoW)
  4. A long-term monitoring program of the nesting birds utilising the site
13. Development shall not commence until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall be based upon the Outline Surface Water Drainage Strategy Final Report prepared by JBA Consulting dated February 2022 and the Flood Risk Assessment Final Report prepared by JBA Consulting dated March 2022 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

The drainage scheme shall demonstrate (with reference to published guidance):

1. that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
2. appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

14. Prior to the First Export Date a Verification Report, pertaining to the surface water management provision together with an operation and maintenance manual for the sustainable drainage scheme as constructed, prepared by a suitably competent person, shall be submitted to and approved by the Local Planning Authority. The Report shall contain information and evidence (including photographs) of surface water management features including details and locations of the landscape buffers within the development. .
15. Prior to the erection of any fencing, details shall be submitted to and approved by the Local Planning Authority. The details shall show the incorporation of badger gates and/or tunnels aligned with the main and outlier setts as detailed in the Ecological Impact Assessment by Riverdale Ecology dated April 2023. The fencing shall be installed as approved and all badger gates and/or tunnels retained during the operation of the development.
16. Notwithstanding the layout hereby approved, the proposed permissive path on the western boundary shall be a marked or mown route only (not a sealed or otherwise engineered surface) and shall be aligned at least 15m from the boundary with the Ancient Woodland. Prior to commencement of development, details of the alignment of the permissive path and a landscape scheme for a 2m wide planting buffer on the edge of the Ancient Woodland shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a planting specification, a programme of implementation and a 5 year management plan. The use of the permissive footpath shall not commence until all planting specified in the approved Ancient Woodland planting buffer has been completed. All such landscaping shall be carried out during the planting season (October to February). Any plants which, within five years from the first use by the public of the permissive path, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation.
17. No development shall take place until a scheme for the provision and management of a river buffer zone alongside the watercourse and in-channel river restoration methods has been submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved scheme unless revised details are approved. Buffer zones must be free from built development including formal landscaping and community orchards. The scheme shall include:

1. plans showing the extent and layout of the buffer zone which shall be at least 8m in width
  2. details of any proposed native planting scheme
  3. details demonstrating how the buffer zone will be protected during development and managed over the longer term including adequate financial provision and named body responsible for management plus production of a detailed management plan
  4. details of any proposed footpaths, fencing, lighting, etc
  5. details of the timings of any proposed works within the buffer zone, including the development of the footpath and any future landscaping/management
  6. details of how any of the identified sensitive ecological features will be protected during and after works.
18. Prior to commencement of development, details of a mitigation scheme and post installation sound level assessments shall be submitted to and approved by the local planning authority. The scheme shall be based upon the recommendations of dBc Consultation Ltd Report project ref 10253 dated 25<sup>th</sup> April 2023 and shall be installed as approved before first use of the Solar Energy Generating Station.
- Within 1 month of the First Export Date, post installation sound level assessments shall be undertaken and the results submitted to the local planning authority.
- If the results of the post installation sound level assessments show the specified sound levels at the specified receptors of the dBc Consultation Ltd Report are exceeded, further mitigation details and a timetable of implementation shall be submitted for the approval of the Local Planning Authority within 2 months of the First Export. The approved further mitigation details shall be installed to the approved timetable and retained thereafter.
19. There shall be no storage of any materials including soil or raising of ground levels within that part of the site liable to flood as shown on Figure 4-2 within the Flood Risk Assessment (March 2022).
20. A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the First Export Date. The content of the LEMP shall include the following.

1. Description and evaluation of features to be managed;
2. Ecological trends and constraints on site that might influence management
3. Aims and objectives of management;
4. Appropriate management options for achieving aims and objectives;
5. Prescriptions for management actions,
6. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
7. Details of the body or organisation responsible for implementation of the plan;
8. Details of annual habitat and species monitoring.
9. Details of how the monitoring will inform updates of the management plan.

The LEMP shall also include details of the mechanism(s) by which the long-term implementation of the plan will be secured by the developer. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

21. No development shall take place until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include that:

1. Prior to commencement of the development and prior to the First Export Date, highway condition surveys for highway access routes should be undertaken and submitted to the Local Planning and Highway Authorities.
2. Details of the routing of construction traffic to the site and any traffic management measures.

3. Mitigation measures in respect of noise, dust, vibration and disturbance during the construction phases.
4. Provision of construction vehicle loading/unloading and turning facilities prior to commencement of work on site and for the duration of construction;
5. Provision of parking facilities for site personnel and visitors prior to commencement of work on site and for the duration of construction.
6. Provision of measures to prevent the discharge of surface water onto the highway.
7. Provision of wheel washing facilities prior to commencement of work on site and for the duration of construction.

The approved CEMP will be implemented in accordance with the approved details.

22. Prior to the commencement of the development, the access shown on the submitted plans drawing no. 21-0354 SP01 rev B shall be completed and thereafter maintained for the lifetime of the development.
23. No development shall take place until the access point and visibility splays hereby permitted have been provided in accordance with drawing SK01 Rev A titled 'Sheephurst Lane Primary Site Access and the visibility splays shall be retained free of all obstruction to visibility above 0.9 metres thereafter.
24. Prior to the commencement of the development, details including an implementation timetable of how the development will enhance biodiversity shall have been submitted to and approved in writing by the Local Planning Authority.
25. No development shall take place (including any ground works, site or vegetation clearance) until a Method Statement for ecological mitigation and enhancement has been submitted to and approved in writing by the local planning authority which shall accord with verification/update ecological surveys carried out within 3 years prior to commencement of development, presently being AW0143-PL-002 Proposed Mitigation, Landscape & Ecology Enhancements, the Biodiversity Net Gain Report Feb 2022, Ecological Impact Assessment Feb 2022. The content of the Method Statement shall specially set out the following:
  1. Purpose and objectives for the proposed works;

2. Detailed design(s) and/or working method(s) necessary to achieve stated objectives;
3. Extent and location of proposed works, shown on appropriate scale maps and plans;
4. Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
5. Persons responsible for implementing the works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works;
6. Use of protective fences, exclusion barriers and warning signs;
7. Initial aftercare and long-term maintenance (where relevant);
8. Disposal of any wastes for implementing work.
9. Enhancement measures shall include the installation of log piles, bug hotels, bat boxes and bird nesting boxes, wildlife friendly gullies, fencing designed to enable wildlife movement, along with provision of generous native planting including suitable for pollinators.

The approved Statement will be implemented and thereafter retained.

26. No development shall take place until a lighting design scheme including details of operation for the whole site has been submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall include identification of those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory. This scheme shall take note of and refer to the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2021 (and any subsequent revisions) and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The colour temperature of the lighting shall be at the red end of the spectrum.

All external lighting shall be installed in accordance with the specifications and locations set out in the plan and will be maintained thereafter.

27. All existing trees and hedges on, and immediately adjoining, the site, shall be retained, unless identified on the approved plans as being removed, except if the Local Planning Authority gives prior written consent to any variation. All trees and hedges shall be protected from damage in accordance with the current edition of BS5837. Any trees or hedges removed, damaged or pruned such that their long term amenity value has been adversely affected shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions to mitigate the loss as agreed in writing with the Local Planning Authority.
28. No development including site clearance and demolition shall take place until an Arboricultural Method Statement (AMS) in accordance with the current edition of BS 5837 has been submitted to and approved in writing by the local planning authority. The AMS should detail implementation of any aspect of the development that has the potential to result in the loss of, or damage to trees, including their roots and, for example, take account of site access, demolition and construction activities, foundations, service runs and level changes. It should also detail any tree works necessary to implement the approved scheme and include a tree protection plan.