



Department for Levelling Up,
Housing & Communities

Paul Burrell
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Querns Business Centre
Whitworth Road
Cirencester
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Our ref: APP/Y1138/W/22/3293104
Your ref: 19/01679/MFUL

5 December 2022

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY JBM SOLAR PROJECTS 2 LTD
LAND EAST OF LANGFORD MILL AND TYE FARM, LANGFORD, DEVON
APPLICATION REF: 19/01679/MFUL**

This decision was made by Minister of State for Housing and Planning, the Rt Hon Lucy Frazer KC MP, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Phillip J G Ware BSc DipTP MRTPI, who held a public local inquiry commencing on 14 June 2022 into your client's appeal against the decision of Mid Devon District Council to refuse your client's application for planning permission for the construction of ground-mounted solar PV panels to generate up to 49.9MW (site area 60.78 ha) and battery storage facility together with all associated works, equipment and necessary infrastructure, in accordance with application Ref. 19/01679/MFUL, dated 2 October 2019.
2. On 18 May 2022, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to allow the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

5. A list of representations received by the Secretary of State since the close of the inquiry is at Annex A. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.
6. On 10 November 2022, the Secretary of State wrote to the main parties to afford them an opportunity to comment on and confirm the latest revision of the Proposed Layout Plan that was considered at inquiry. A list of representations received in response to this letter is at Annex A. The appellant confirmed in the representation dated 14 November 2022 that the latest revision of the Proposed Layout Plan is Rev K and provided a copy of the plan and provided detail of the difference between Rev J and Rev K of the plan. The representations were circulated to the main parties on 17 November 2022.
7. Further representations were received in response to the circulation of the representations from the appellant and Devon CPRE. The appellant, in their response of 18 November 2022, re-confirmed that the proposed site layout plan for approval is drawing number P18-1820 14 Rev K dated 16 June 2022 entitled 'Site Layout and Planting Proposals', which was submitted to the Inspector on the final day of the inquiry and explained to the inquiry in the appellant's Evidence in Chief on the final morning. Devon CPRE's response of 21 November 2022 made additional representations relating to a number of other plans that were considered at Inquiry, including reference to the withdrawal of drawing number JBM1035-101, Rev K (which was not the subject of the reference back to the main parties) and consider that no details now exist of the proposed Battery Storage facility (BESS). The two representations were circulated to all parties on 28 November 2022.
8. The Secretary of State is satisfied that the considerations in the IR are based on the latest revision of the proposed layout plan (drawing number P18-1820_14 Rev K). He further notes that the appellant confirmed in their letter of 14 November 2022 that JBM1035-101, Rev K is not a document which is for approval as it is inconsistent with later layout plans. This was also explained at the inquiry. With respect to the new issue raised by Devon CPRE regarding no details existing of the proposed BESS, this point is addressed in paragraph 19 below. The Secretary of State considers that the issues raised do not affect his decision. He is satisfied that no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
9. An application for a full award of costs was made by the JBM Solar Projects 2 Ltd (the appellant) against Mid Devon District Council (the Council) (IR8). This application is the subject of a separate decision letter.

Policy and statutory considerations

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the Mid Devon Local Plan 2013-2033 (2020) and the Cullompton Neighbourhood Plan 2020-2033 (2021) (CNP). The Secretary of State considers that relevant development plan policies include those set out at IR21.

12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those documents listed at IR23-24, IR26 and IR107.
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

14. Mid Devon District Council has begun a review of the current Mid Devon Local Plan adopted in 2020 with consultation on the 'Plan Mid Devon 2023-2043 Regulation 18 Issues Paper' taking place from January to March 2022.
15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given the early stage of the plan the Secretary of State has not afforded it any weight.

Main issues

Effect of the proposal on the character and appearance of the landscape

16. For the reasons given at IR112-126 and 155, the Secretary of State agrees with the Inspector that in landscape terms a solar farm of this size would have some adverse landscape character effect and further agrees that due to topography and screening this would be very limited and would be mitigated increasingly as planting matures (IR121). The Secretary of State agrees that the area is well endowed with extensive tree and hedge cover which limits views to short to medium range, and the opportunity for sequential views is limited (IR122). The Secretary of State agrees that the overall visual effect of the proposal would maintain the quality of these brief views, and any very limited adverse effect would be offset by new planting (IR123). For the reasons given, the Secretary of State agrees with the Inspector that overall the proposal would cause some very limited and highly localised visual effects, which would be progressively mitigated by additional planting (IR155). He further agrees that the development would therefore not conflict with Local Plan policies DM1, DM2 or S9, nor with the CNP or the Framework (IR126). For the reasons given, the Secretary of State agrees with the Inspector and affords the landscape and visual effects very limited weight against the proposal (IR155).

The effect on Langford Court – a designated heritage asset

17. For the reasons given at IR127-134, the Secretary of State agrees with the Inspector that given the degree of separation between the appeal site and Langford Court, and the nature of existing and proposed screening, the appeal site makes no contribution to the setting and significance of Langford Court (IR134). He further agrees the proposal would therefore accord with Local Plan policies S9, DM2, DM25, and with the Framework (IR134). The Secretary of State agrees with the Inspector and affords the effect on Langford Court neutral weight in the planning balance (IR154).

The effect on and potential loss of agricultural land

18. The Secretary of State notes that the Agricultural Land Classification of the site was disputed by Devon CPRE, although they did not put forward any technical evidence on land classification. He further notes that neither of the reports submitted by the appellant suggested that any of the appeal site was Best and Most Versatile (BMV) agricultural land. For the reasons given at IR135-139, the Secretary of State agrees with the Inspector that based on the unchallenged evidence of the appellant, the highest some parts of the site could aspire to is 3b, and it is most likely to be lower than that. He further agrees that the loss of this land, even if it were a permanent and total loss, would not receive policy protection (IR137). The Secretary of State agrees with the Inspector that there is nothing to demonstrate that sheep grazing would be unlikely to occur, and this approach forms part of the proposal in line with national guidance (IR138). For the reasons given, the Secretary of State agrees with the Inspector that the proposal would not result in a harmful loss of agricultural land and that it would not conflict with Local Plan policy DM2, S1 or S9, or with the Framework (IR139). The Secretary of State affords the effect on and potential loss of agricultural land neutral weight in the planning balance.

The safety of the Battery Storage facility (BESS)

19. For the reasons given at IR140-147, the Secretary of State agrees with the Inspector that there is nothing in relation to the safety of the BESS which should weigh against the proposal in the planning balance (IR147). He therefore agrees with the Inspector in affording the safety of the BESS neutral weight in the planning balance (IR154). In reaching this conclusion, he has taken account of Devon CPRE's representation of 21 November 2022, which raised concerns that, following withdrawal of drawing number JBM1035-101, Rev K by the appellant, no details exist of the proposed BESS. In respect of this point, the Secretary of State agrees with the Inspector's conclusions at IR145.

Other matters

20. For the reasons given at IR148-151, the Secretary of State agrees with the conclusions of the Inspector on the other matters raised by objectors.

The benefits of the proposal

21. For the reasons given at IR156, the Secretary of State agrees with the Inspector that the scheme is for a renewable energy proposal which is fully in accordance with the economic, social and environmental dimensions set out in the Framework and that the scheme has strong national and local policy support (IR156). The Secretary of State affords the production of electricity significant weight in favour of the proposal.

22. For the reasons given at IR157, the Secretary of State agrees with the Inspector that the financial investment and the direct and indirect jobs during the construction phase, with a smaller number of jobs when the development is operational, would be a benefit of the scheme. No evidence has been put forward of where the benefits of the financial investment would accrue, and the Secretary of State affords the economic benefits moderate weight in favour of the proposal.

23. For the reasons given at IR157, the Secretary of State notes that the Inspector considers that the acknowledged benefit of the additional planting, which would remain after the end of the limited period, should be afforded significant weight and that the unchallenged

Biodiversity Net Gain (BNG) is a further substantial benefit. The Secretary of State considers that the additional planting proposed would contribute to the overall BNG and therefore collectively affords the additional planting and BNG significant weight.

Planning conditions

24. The Secretary of State has given consideration to the Inspector's analysis at IR152-153, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of his decision. Following receipt of representations from the main parties on the latest revision of the Proposed Layout Plan that was considered at inquiry, the Secretary of State is satisfied that the recommended conditions set out at the end of the IR, in particular conditions 3 and 15, should refer to the 'Proposed Layout Plan, drawing number P18-1820_14, Rev K'.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.

26. Weighing in favour of the proposal is the production of electricity which is afforded significant weight; the economic benefits which are afforded moderate weight; and the additional planting and BNG, which are together afforded significant weight.

27. Weighing against the proposal are the very limited landscape and visual effects which together are afforded very limited weight.

28. Overall, the Secretary of State considers that the accordance with the development plan and the material considerations in this case indicate that permission should be granted.

29. The Secretary of State therefore concludes that the appeal be allowed, and planning permission granted subject to conditions.

Formal decision

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for the construction of ground-mounted solar PV panels to generate up to 49.9MW (site area 60.78 ha) and battery storage facility together with all associated works, equipment and necessary infrastructure, in accordance with application ref. 19/01679/MFUL, dated 2 October 2019.

31. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

32. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
33. A copy of this letter has been sent to Mid Devon District Council and Devon CPRE, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

MA Hale

Mike Hale
Decision officer

This decision was made by the Minister of State for Housing and Planning, the Rt Hon Lucy Frazer KC MP, on behalf of the Secretary of State, and signed on her behalf

Annex A Schedule of representations

SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
JBM Solar (the Appellant)	14 November 2022
Helen Hitt	29 November 2022
Ian & Kim Wood	30 November 2022
HB & PR Chattey	30 November 2022

Representations received in response to the Secretary of State's letter of 10 November 2022

Party	Date
Pegasus Group on behalf of the Appellant	14 November 2022
Devon CPRE	14 November 2022
Mid Devon District Council	16 November 2022
Pegasus Group on behalf of the Appellant	18 November 2022
Devon CPRE	21 November 2022

Annex B List of conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The permission hereby granted shall be limited to a period of 40 years (with the exception of the DNO Substation which is to be retained on the site in perpetuity) from the date when electricity is first exported from the solar panels to the electricity network (The First Export Date). Written notification of the First Export Date shall be given to the Local Planning Authority within 14 days of the event occurring.
3. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan, drawing number P18- 1820_18, Rev B, prepared by Pegasus Group.
 - Gantry Site Elevations, drawing number P2763-150-03, Rev O, prepared by G2 Energy.
 - DNO Substation Elevations, drawing number P2763-(01)-25-01-0, Rev 0, prepared by G2 Energy.
 - DNO Substation Plan, drawing number P2763(01)-25-01-0, Rev 0, prepared by G2 Energy.
 - Client Substation Elevations, drawing number P2763-(02)-25-01-0, Rev 0, prepared by G2 Energy.
 - Side Elevation Layout, drawing number JBM1035-201, Rev A, prepared by JBM Solar
 - Central Inverter Elevations, drawing number JBM1035-203, prepared by JBM Solar.
 - Control Room Elevations, drawing number JBM1035-209, prepared by JBM Solar.
 - Customer Cabin Elevations, drawing number JBM1035-210, prepared by JBM Solar.
 - Spare Parts Building Details, drawing number JBM1035-212, prepared by JBM Solar.
 - Client Substation (in 132kVa Compound and Site), drawing number JBM1035-222, prepared by JBM Solar.
 - 132kVa Compound, drawing number JBM1035-220, Rev A, prepared by JBM Solar.
 - Road Cross Section, drawing number JBM1035-216, prepared by JBM Solar.
 - Cable Trench Cross Section, drawing number JBM1035-215, prepared by JBM Solar.
 - Deer Fence Details, drawing number JBM1035-214, Rev A, prepared by JBM Solar.
 - CCTV Pole Details, drawing number JBM1035-213, prepared by JBM Solar.
 - Switchgear Elevations, drawing number JBM1035-204, prepared by JBM Solar.
 - PCS Inverter Elevations, drawing number P2763-(04)-25-01-0, Rev 0, prepared by G2 Energy.
 - Battery Container Elevations, drawing number P2763-(03)-25-01-0, Rev 0, prepared by G2 Energy.
 - Proposed Layout Plan, drawing number P18- 1820_14, Rev K, prepared by Pegasus Group.
 - P18-1820 Figure 2 Primary Site Access Visibility Splay (CTMP), prepared by Pegasus Group.
 - P18-1820 Figure 4 Swept Path Analysis B3181 to Main Site Access 15.4m Articulated HGV (CTMP), prepared by Pegasus Group.

- P18-1820 Figure 5 Swept Path Analysis Area A to Areas B & C 10m Rigid Vehicle (CTMP), prepared by Pegasus Group.
 - P18-1820 Figure 7 Swept Path Analysis Area A to Area C 15.4m Artic HGV (CTMP), prepared by Pegasus Group.
 - In general accordance with P18-1820 Figure 6 Area B Indicative Access Design (CTMP) and P18-1820 Figure 8 Area C Access Indicative Improvements Including Swept Path Analysis 15.4m Artic HGV (CTMP).
 - Additional Planting Inset Plan, drawing number P18-1820_24, dated 2nd February 2022.
4. If the solar farm hereby permitted ceases to operate for a continuous period of 12 months, then a scheme for the decommissioning and removal of the solar farm and ancillary equipment, except for the DNO Substation, shall be submitted within 6 months of the end of the cessation period to the local planning authority for its written approval. The scheme shall make provision for the removal of the solar panels and associated above ground works approved under this permission. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures.
 5. Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the first export date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, except for the DNO substation, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to and agreed in writing by the local planning authority.
 6. The solar farm and its ancillary equipment, except for the DNO substation, shall be dismantled and removed from the site and the land restored in accordance with the approved Scheme and, in any event shall be removed within a period of 40 years and 6 months following the first export date.
 7. The Solar PV Panels hereby permitted shall not be erected until samples of the materials to be used in the construction of the solar panel array have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved materials and retained as such thereafter.
 8. Prior to their erection on site details of the proposed 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. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.
 9. Prior to the commencement of the proposed development, the site access roads shall be formed in a sound bound material for the first 20.00m back from its junction with the public highway and drained to prevent no surface water onto the public highway. The site access roads shall be hardened, surfaced, drained and maintained thereafter hardened, surfaced, drained and maintained.

10. Prior to the commencement of the proposed development, visibility splays shall be provided, laid out and maintained for that purpose at the primary site access where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 43.0 metres in a southern direction and as identified on the access plan in the other direction.
11. Visibility splays shall be provided, laid out and maintained for that purpose at the other site accesses in accordance where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 33.00 metres in on coming direction and 33.00 metres to the centre line in the offside direction.
12. No other part of the development hereby approved shall be commenced until the access, parking facilities, commercial vehicle loading/unloading area, visibility splays, turning area and access drainage have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times.
13. No development shall take place until off site highway condition surveys have been undertaken and the details submitted and approved in writing by the Local Planning Authority.
14. No development shall take place until:

EITHER

- i) A programme of archaeological work has been carried out in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority.

OR

- ii) A construction methodology for the development that avoids any below ground impact within the area of Archaeological sensitivity in the vicinity of the 7th/8th century iron furnace has been submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved scheme (under either part i) or part ii) or such other details as may be subsequently agreed in writing by the Local Planning Authority.

15. No development shall take place until a detailed scheme of ecological mitigation and enhancement measures, in accordance with the recommendations of the submitted documentation (below) has been submitted to and approved in writing by the Local Planning Authority:

- a) The Biodiversity Management Plan by avian ecology v4 (Dated 20/07/2020), has been submitted to and approved in writing by the Local Planning Authority.
- b) The Biodiversity Enhancement Note and Addendum Note Dated 3/12/2020)
- c) The updated Site Layout Plan (drawing number P18- 1820_14, Rev K)

Notwithstanding the details included in the above documentations, the details shall include the details to be submitted including planting plans, specification of species, sizes, planting centres, number and percentage mix and details of seeding or turfing.

Ecological mitigation and enhancement measures shall be implemented in accordance with the detailed scheme.

- 16. The Solar PV Panels hereby permitted shall not be erected until details, on a suitably scaled plan, of the soft landscape works have been submitted to, and approved in writing by, the local planning authority. The details to be submitted shall include planting plans, including specifications of species, sizes, planting centres, number and percentage mix, and details of seeding or turfing. The development shall not be carried out other than in accordance with the approved details.
- 17. All approved landscaping shall be carried out in the first planting and seeding season following the erection of the panels, and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards 8545: 2014 or any subsequent re-enactment.
- 18. The Solar PV Panels hereby permitted shall not be erected until the full details of the works to the hedges including species adjacent to the residential properties, as shown on Figures 11 and 12 of the Glint and Glare Study Page Power Ltd v 4 dated 16th August 2019, have been submitted and approved in writing by the Local Planning Authority. The works shall then be carried out in the first planting season after the written approval is received and thereafter retained and maintained.
- 19. The development hereby approved shall not be brought into use until the surface water drainage arrangements have been provided in full, in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall thereafter be retained for the life of the development.
- 20. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) report v5 prepared by Calibro, and issued on 30th November 2020, including the level for floodplain compensation outlined in paragraph 7.6.6 of the FRA. The mitigation measures shall be fully implemented in accordance with the timing/phasing arrangements detailed within the Flood Risk Assessment. The approved measures shall thereafter be retained for the life of the development.

21. No external lighting (other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits) shall be erected/used on site unless precise details of any lighting are first submitted to and approved in writing by the local planning authority. The lighting shall be installed and thereafter maintained in accordance with the approved details for the lifetime of the development.
22. Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority.

The CEMP shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise; vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development; manage Heavy/Large Goods Vehicle access to the site. It shall include details of the hours of operation and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways.

The following specific details should also be included in respect to highway safety:

- a) The timetable of the works;
- b) Daily hours of construction;
- c) Any road closure;
- d) Hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays; 9.00am to 1.00pm Saturdays, and no such vehicular movements shall take place on Sundays and Bank/Public Holidays unless agreed by the Local Planning Authority in advance;
- e) The number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
- f) The compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
- g) Areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
- h) The means of enclosure of the site during construction works;
- i) Details of wheel washing facilities and road sweeping measures with the respective obligations;
- j) The proposed route of all construction traffic exceeding 7.5 tonnes;

- k) Details of the amount and location of construction worker parking;
 - l) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.
23. No development shall take place until a Landscape and Ecological Management Plan (LEMP) is submitted and approved in writing by the Local Planning Authority. The LEMP shall provide details of the following:
- a) Retained Ecological and Landscape features;
 - b) Proposed Habitat Ecological and Landscape Features;
 - c) Habitats and Landscape Management Measures;
 - d) Monitoring and Review of Plan.
24. Development of the battery storage compound shall not commence until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP must prescribe for measures to facility safety during the construction, operation and decommissioning of the battery storage facility, including the transport of new, used and replacement battery cells both to and from the authorised development. The Local Planning Authority must consult with the Health and Safety Executive and the Devon Fire and Rescue Service before approving the BSMP. The BSMP must be implemented as approved.



Report to the Secretary of State for Levelling Up, Housing and Communities

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Date 5 September 2022

TOWN AND COUNTRY PLANNING ACT 1990

MID DEVON DISTRICT COUNCIL

APPEAL BY JBM SOLAR PROJECTS 2 LTD

Inquiry held on 14 – 17 June 2022

Land east of Langford Mill and Tye Farm, Langford, Devon

File Ref: APP/Y1138/W/22/3293104

File Ref: APP/Y1138/W/22/3293104

Land east of Langford Mill and Tye Farm, Langford, Devon

- 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 JBM Solar Projects 2 Ltd against the decision of Mid Devon District Council.
- The application Ref 19/01679/MFUL, dated 2 October 2019, was refused by notice dated 23 September 2021.
- The development proposed is the construction of ground-mounted solar PV panels to generate up to 49.9MW (site area 60.78 ha) and battery storage facility together with all associated works, equipment and necessary infrastructure.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Procedural matters

1. A Screening Opinion was obtained from the Council in January 2019 confirming that the proposal fell within category 3a of Schedule 2 as described in the Regulations. The Screening Opinion considered that, given the nature of the proposal, whilst there may be effects on the environment, none of these are considered to constitute significant effects which cannot be mitigated against by the proposed application. As such, the proposal is not EIA development. There is no reason to disagree with that Opinion.
2. The Council refused planning permission for the proposal in September 2021¹. The reasons for refusal related to landscape impact, the effect on a heritage asset and the loss of agricultural land². The description of the proposal on the planning application form did not refer specifically to the generating capacity, but this was obviously the subject of discussions and was referenced on the refusal notice (and is used above). All parties to the Inquiry dealt with the matter on that basis.
3. On 15 March 2022 Devon CPRE³ (CPRE) were given Rule 6 status.
4. By emails dated 31 March 2022⁴ and further clarified on 27 April 2022⁵, the Council confirmed that the authority was conceding the appeal on all grounds and would not be providing any evidence.
5. A virtual Case Management Conference (CMC) was held on 25 April 2022 to discuss arrangements for the Inquiry. The CMC was attended by the appellant, the Council and CPRE.
6. The appeal was recovered for decision by the Secretary of State on 18 May 2022. The reason for recovery was that the proposal was of major significance for the delivery of the Government's climate change programme and energy policies.

¹

² CD A51

³ Formerly The Campaign to Protect Rural England, now 'The Countryside Charity'

⁴ CD C14

⁵ CD C15

7. The Inquiry sat for three days, commencing on 14 June 2022. An accompanied visit was undertaken to properties adjoining the site on 17 June 2022, after which a further unaccompanied visit was undertaken to agreed viewpoints around the area.
8. At the Inquiry an application for costs was made by JBM Solar Projects 2 Ltd (the appellant) against Mid Devon District Council (the Council). This application is the subject of a separate Report.

The site and the surrounding area

9. The appeal site comprises two parcels totalling some 61 ha of agricultural land to the east and north-east of the village of Langford⁶. Within and around the appeal site are existing field boundaries, hedgerows and vegetation. The landscape is generally undulating, falling to the River Weaver, which runs from the north-east to the south-west across the site, although there are a few steep slopes within the site.
10. There is an unnamed road running in a north to south direction close to the western boundary of the appeal site.
11. The wider area is overwhelmingly rural and undulating in character, with sporadic housing and small settlements. It is open countryside in both policy terms and when viewed on the ground, and is not allocated for development. The area is not subject to any statutory designations related to landscape, ecology or historical value.
12. Langford Court lies to the south of the site. It is a Grade II* farmhouse dating from the early 16th-century. No party argued that there was any effect on the other heritage assets in the wider area⁷.

The proposal

13. The proposal is for the construction of solar photovoltaic panels laid out in rows on an east-west axis facing south. They would be orientated 15 degrees from the horizontal to maximise efficiency. The maximum height of the panels will not exceed 3m.
14. The application refers to the generation of "...up to 49.9MW for a temporary period of 40 years from the date of the first export of electricity".
15. Various plant and other equipment and access tracks will be located around the site, including inverter cabins. The battery storage facility (BESS) would be located in the south-eastern corner of the site. The BESS facility would largely comprise battery units within shipping containers, a storage container and an inverter cabin and a DNO substation.
16. The proposal includes a 2m high deer fence around the edge of the site. This would include badger/small mammal friendly access points. There would be 4m high pole mounted CCTV security cameras along the perimeter.

⁶ Location plan at LVIA Figure 1. CD A7.

⁷ Set out at CD A12B

17. Three access points are proposed – two into the southern side of the site and a third into the north-western area. There are no public footpaths within the appeal site.
18. The solar farm would be unmanned and remotely controlled. The appellant's position is that once constructed the solar farm would require infrequent visits for the purposes of maintenance or cleaning. Such work would typically amount to 10-20 visits per year.
19. At the end of the 40-year operational lifespan of the solar farm it is estimated that decommissioning would take around six months. The site would be restored back to full agricultural use with all equipment and below ground connections removed (with the exception of the Distribution Network Operator (DNO) substation). Landscape enhancement measures which form part of the appeal scheme would remain.

Planning policy

20. The development plan comprises the Mid Devon Local Plan 2013-2033 (2020) (LP)⁸ and the Cullompton Neighbourhood Plan 2020-2033 (2021) (CNP)⁹.
21. The LP policies referenced in the Council's decision notice were:
 - Policy S1 – which sets out broad Sustainable Development Priorities.
 - Policy S9 – which aims to sustain the distinctive quality, character and diversity of the area's environmental assets, whilst minimising the impact of development on climate change.
 - Policy S14 – which provides that, outside settlements, development should preserve and enhance the character of the countryside.
 - Policy DM1 – which requires high quality design.
 - Policy DM2 – deals with Renewable and Low Carbon Energy. It provides that the benefits of renewable and low carbon energy development will be weighed against its impact. Proposals will be permitted where they do not have significant adverse impacts on the character, amenity and visual quality of the area, including cumulative impacts. Proposals must demonstrate that impacts are or can be made acceptable in relation to landscape character and the character and setting of heritage assets.
 - Policy DM18 – which supports and deals with rural employment development.
 - Policy DM25 – which sets a presumption in favour of preserving or enhancing all designated heritage assets and their settings.
22. The CNP was not referenced in the Council's decision notice. The parties agree that it is supportive of the increased use of renewable energy, subject to controlling the visual impact of installations.

⁸ CD E1

⁹ The majority of the site falls within the area of the CNP

23. The Solar PV Developments in the Landscape SPD (May 2016) (SPD) was referenced in the Council's reasons for refusal¹⁰. The parties agree that it is a material consideration.
24. At the local level, the Mid Devon Landscape Character Assessment (2011) is a material consideration in the determination of the appeal¹¹.
25. In terms of national planning policy and guidance, the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) are material considerations.
26. A number of other national guidance and policy documents were referred to by the parties, all of which are agreed to be material considerations. In particular:
- National Policy Statement for Energy (EN-1) (2011). (A draft EN-1 was published in September 2021.)
 - National Policy Statement for Renewable Energy Infrastructure (EN-3) (2011). (A draft EN-3 was published in September 2021.)
 - UK Government Solar Strategy (2014).
 - Written Ministerial Statement on Solar Energy: protecting the local and global environment (2015).
 - Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (2021).
 - Managing Significance in Decision-Taking in the Historic Environment. Historic England Good Practice Advice (2015).
 - The Setting of Heritage Assets Historic England Good Practice Advice in Planning 3 (2017).

Agreed matters between the appellant and the Council

27. A Statement of Common Ground (SOCG) has been concluded between the appellant and the Council¹². Various background matters such as the characteristics of the appeal site and the surrounding area, and the policy position are set out. The following main matters are agreed (other matters are also set out in the SOCG):
- There are no previous relevant planning applications on the site.
 - The proposal was not considered to constitute EIA Development having regard to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. As such, an Environmental Statement was not required.
 - The site is in open countryside in policy terms, outside any settlement boundary.

¹⁰ CD E5

¹¹ CD E7

¹² CD C9

- The application was recommended for approval, but was refused following a Members' site visit.
- LP policies S9 and DM2 allow for renewable energy development where there is an acceptable local impact, balanced with the wider sustainability benefits of such installations.
- The CNP is supportive of the increased use of renewable energy, subject to controlling the impact of such installations.
- The EN-1 and EN-3, together with the draft EN-1 and draft EN-3, are material considerations. These set out how the energy sector can help deliver the national climate change objectives.
- There is no requirement for the appellant to demonstrate need for the proposal.
- The proposal is a low carbon, renewable energy source that would contribute towards meeting national renewable energy targets.
- The proposal would provide no more than 49.9MW of electricity, which is equivalent to meeting approximately the annual needs of in excess of 10,000 houses.
- Substantial weight should be attached to the benefit of renewable energy production.
- The proposal would result in a substantial public benefit of £40,000,000 in financial investment, would support between 70 and 80 direct and indirect jobs during the construction phase, and a smaller number of jobs when the solar farm is operational.
- The officer's report acknowledged that the proposal would have a moderate/minor impact on the landscape. Existing tree growth, mature hedgerows and generally flat topography help to mitigate the development.
- In terms of general visual amenity, the opportunity to observe the proposal is very limited.
- There was no residential amenity reason for refusal.
- Historic England did not raise a formal objection to the proposal¹³.
- The Council has never offered evidence that the proposal would cause any harm to the significance of Langford Court. In any event, were there to be such less than substantial harm this would be outweighed by public benefits.
- In terms of operational safety the proposed installation can be suitably managed outside the planning process.
- The original Agricultural Land Classification Report (ALC)¹⁴ (dated October 2019) confirmed that the site constitutes a total of 15no. fields of Grade 3b, 1no. field of Grade 4 and 1no. field of Grade 5 Agricultural Land. The

¹³ CD B11

¹⁴ CD A9

updated ALC¹⁵ shows that the entirety of the site comprises Grade 4 agricultural land. It is agreed that the site comprises very poor quality agricultural land.

- The solar panels would be secured to the ground with steel piles with limited soil disturbance, which means that the panels can be removed in the future with no permanent loss of agricultural land quality.
- The grazing of animals between and under the panels would allow for continued agricultural use during the 40 year operation of the solar farm.

Agreed and disagreed matters between the appellant and CPRE

28. A separate SOCG has been concluded between the appellant and CPRE¹⁶. As well as agreeing various background matters similar to those agreed with the Council, this SOCG records agreement on the following main matters (other matters are set out in the SOCG):

- The site is in open countryside in policy terms.
- LP and CNP policy allow for renewable energy development where the local impact is acceptable.
- There is no requirement for need to be demonstrated.
- National energy policy is a material consideration.
- Trees and hedgerows, along with generally flat topography, help to mitigate the overall scale of the development.
- Historic England did not raise a formal objection to the proposal.
- Any harm to the setting of Langford Court must be seen in the context of the newer agricultural buildings.

29. The main matters which are in dispute between the appellant and CPRE are (other matters are in the SOCG):

- The level of harm on the landscape character and the extent of the visibility of the site.
- Whether sheep grazing will occur and whether maintenance of the panels will be necessary.
- Whether harm would occur to the setting of Langford Court.
- The adequacy of the ALC reports and the level of impact on agricultural land.
- Whether the BESS is properly described, and whether it is beneficial for this to be sited with the solar farm.
- Whether the BESS would give rise to risk of fire and explosion.

¹⁵ CD C7

¹⁶ CD C10

- How the annual reduction CO2 is calculated and whether a whole life carbon assessment is necessary.
- Whether there would be a considerable loss of food production.

The case for the appellant

30. This section is based substantially on the closing submissions¹⁷, together with the evidence at the Inquiry.

Background

31. Climate change is considered by many to be the greatest threat faced by humanity. The Government's 2021 Net Zero Strategy¹⁸ points to stark consequences already being felt and stresses the internationally agreed consensus that things could get much worse. At the local level, the Council declared a climate change emergency in 2019.
32. The existence of the climate change issue which is rarely contentious at planning appeals. But at the start of the Inquiry Dr Bratby (for Devon CPRE) stated that he does not accept that there is a climate change emergency, has not seen evidence to suggest that this is the case, and stated that he does not accept that the consequences of global warming will be negative. That position obviously influences the entirety of the CPRE evidence. Dr Bratby agreed that he is asking the Secretary of State to make a finding in conflict with Government policy and that he would do the same faced with any greenfield solar scheme in Devon. He has similar in principle objection to any BESS system.
33. In answer to questions from the appellant and the Inspector, Dr Bratby confirmed that his views do not reflect the approach of CPRE nationally, an organisation which describes itself as "a passionate advocate for climate action" that has "clearly stated our support for renewable energy"¹⁹. It was stated that Devon CPRE took a decision earlier in the year to reject the national CPRE position.

Landscape character and appearance

34. National and LP policies S9 and DM2 renewable energy policies adopt a supportive approach towards renewable energy, and provide that development will be approved where any harm would be outweighed by the benefits. Draft NPS EN-3 also makes it clear that any harm must be set in context of the time limited nature of solar schemes²⁰. However, although the Council accepts that there is support for renewable facilities in the open countryside and has confirmed that there is no in principle objection to the proposal in this location, it has not allocated any land for renewable energy developments²¹.
35. The proposal is a large solar farm on an unallocated greenfield site. It needs to be the size proposed in order to deliver its substantial energy benefits. The

¹⁷Doc 5

¹⁸ CD D17 page 14

¹⁹ CD C16 Appendix 1

²⁰ CD D4-B

²¹ CD C9 paragraph 8.5

appellant has always acknowledged there will be some landscape harm – but this does not mean that the scheme should be refused. The particular features of the appeal site and its surroundings, including its topography and enclosure, mean that the adverse landscape and visual impacts are limited and highly localised.

36. The only professional landscape evidence before the Inquiry was that of Mr Cook for the appellant²², which should be read together with the appellant's Landscape and Visual Impact Assessment²³. CPRE has provided no landscape evidence, other than to say that it upholds the Council's now conceded objection on landscape grounds – the only CPRE witness did not hold any landscape qualification and has not carried out any separate assessment.
37. The Devon Landscape Character Assessment (LCA)²⁴ identifies distinctive characteristics of this landscape and provides that the strategy should be to reinforce field patterns through restoration and management of characteristic hedgerows, and to manage and expand wet grasslands along watercourses to help prevent downstream flooding. It seeks the extension of species rich meadows and grasslands through appropriate grazing and traditional land management regimes. This is evidently achieved by this proposal.
38. There would be an inevitable adverse change in the existing land cover of the site. Aside from the presence of a 132kv overhead line and pylons the proposal would reduce the existing sense of openness and cause some landscape harm – although this would be fully reversed on decommissioning. There would be no physical effect on public rights of way, some notable positive landscape effects and a moderate beneficial effect on the tree resource. The existing tree cover would be retained and there would be new tree planting including a woodland copse. There would be a major beneficial effect on hedgerows with an additional 1.2 planted and a moderate beneficial effect on watercourses and waterbodies due to the incorporation of a sustainable urban drainage system with a series of small balancing basins and swales. Overall, there would be a beneficial effect on landscape elements within the site, and the effect on openness would be reversed after 40 years²⁵.
39. In terms of landscape character all parties accept that this is not a valued landscape in NPPF terms and that it is not designated for its landscape beauty²⁶. The National, East Devon, and Mid Devon Character Areas beyond the site would be unchanged with the proposed solar farm in place and the site would be fully restored (with the exception of the DNO substation)²⁷. The baseline value, sensitivity, and susceptibility of the land is dealt with by the appellant²⁸ and no other party has provided an alternative analysis.
40. CPRE relied on the Council's 'Solar PV Developments in the Landscape Supplementary Planning Document' (2016) ("SPD")²⁹, which refers to high

²² CD C11B

²³ CD A7

²⁴ CDE6-B

²⁵ CD C11-B para 4.12

²⁶ CD C10 6.10, CD C9 8.23

²⁷ CD C9 8. CD C10 6.11

²⁸ CD C11-B

²⁹ CD E5, CD C12 paras 11/12

sensitivity of the landscape to large scale solar development. But the SPD ascribes the same sensitivity to a very large area and includes the caveat against it being "*interpreted as a definitive statement of the suitability of a certain location for a particular development*"³⁰. It therefore provides a very limited understanding of any individual site. The appellant has assessed the features of this particular site against each of the criteria in the SPD. Using these criteria a medium value, susceptibility and sensitivity is ascribed and the landscape is described as "*quite unremarkable*" in landscape character terms³¹. There is a strong sense of visual enclosure as a result of hedges and tree cover, there is a modern field pattern, and the site accommodates pylons and overhead cables.

41. The appellant's assessment of the magnitude of change, which is the only one before the Inquiry, finds a medium magnitude of change to the site itself. But the general agricultural character of the fields would remain.
42. By combining medium sensitivity with medium magnitude of change, the uncontested evidence is that there would be a moderate adverse effect on the site for the life-time of the scheme and no change to the wider landscape.
43. In relation to visual impact, due to the low profile of the panels, the low level topography, and the existing tree and hedgerow cover, the visibility from the surrounding area would be very limited. The Council and CPRE agree that these factors mitigate visual impact³². The Council also agrees that view from surrounding Public Rights of Way is "*very limited*"³³ with only a very short section of a footpath to the south of the site from Langford Green where an appreciation of the scheme could be gained.
44. All other viewpoints are taken from highways locations – the network in the area comprises a number of narrow, hedgerow-lined unclassified roads. Viewpoints are generally not from the lanes themselves, but from gated accesses on the side of the road. One exception is the unclassified road between Plymtree and Langford which passes adjacent to the site. From a few short sections of that road, users could see some solar panels in adjacent fields, but even these views are limited by hedgerows.
45. The selection of the viewpoints is not controversial. Most of the viewpoints (six of the nine) will have a negligible visual effect, and the remaining three will have a minor-moderate or moderate effect (viewpoints 2, 5 and 7). These are the viewpoints for which photomontages have been prepared³⁴. Viewpoint 5 was a particular concern for CPRE – but though small elements of the solar farm would be distinguishable in the mid-ground amongst the tree and hedge cover, it would be largely obscured by intervening topography and vegetation, such that the magnitude of change is only low overall.
46. CPRE was initially concerned that the BESS had been left out of the photomontages. However the entire proposal - including the BESS, substation,

³⁰ CD E5

³¹ CD C11-B paras 5.15-5.16

³² CD C10 para 6.9, CD C9 para 8.20

³³ CD C9 para 8.26

³⁴ CD A7 and CD C11-B paras 6.14-6.48

and fencing has been modelled³⁵. This was explained in detail at the Inquiry and can be appreciated on site. In addition the viewpoints are from August 2019, and there has subsequently been notable growth of the existing vegetation.

47. Overall, the visual effect of the proposal would be minor and localised. There has never been a residential amenity objection although a number of private views would change. Given the position of the solar panels and the distances and intervening vegetation, this is acceptable.

Heritage – Langford Court

48. The only expert heritage assessment before the Inquiry was that from the appellant, which concludes that there would be no harm to Langford Court. The building is a 16th century farmhouse that was enlarged and remodelled in the 17th century and restored extensively after a fire in the 1990s. It is common ground that it has a range of heritage interests, in particular historic, architectural and archaeological, and that its primary significance is embodied in its physical form. The proposal would not touch the physical fabric or form of the building.
49. The setting contributes to the significance of the asset, but to a lesser degree than the physical fabric. The part of the setting from which the asset derives significance comprises the historically associated gardens, the modern eastern gardens and lake, and the areas of the historically associated contiguous landholding visible from the asset. The most important views are from the gardens and across the lake to the house. The proposal would not affect any of these features, areas or views.
50. Turning to the heritage significance of the wider setting, the first stage in the analysis must be to assess the contribution the appeal site currently makes to significance. While the appeal site may be visible from Langford Court, that is not the test. Visibility between an asset and a given area is not enough to engender a contribution to heritage significance. In the wider landscape, views that do not illustrate architectural or historic interest, and do not allow the significance of an asset to be appreciated, are merely incidental views that neither contribute nor detract from heritage significance. Support for this approach can be derived from the Court of Appeal in *Catesby Estates Ltd. v Steer* [2018] EWCA Civ 1697³⁶, which emphasised that if a proposal is to affect the setting of a listed building “*there must be a distinct visual relationship of some kind between the two which is more than remote or ephemeral, and which in some way bears on one’s experience of the listed building in its surrounding landscape or townscape.*”
51. In this case, the historic documentary evidence demonstrates that the appeal site was not part of the consolidated contiguous historic landholding experienced in conjunction with the asset in the mid 19th-century. There is a small amount of historic coincidence of ownership, but this was at some distance from the main landholding, and does not survive today. While there are also distant and partially screened views to Langford Court from the appeal site, the architectural and historic interest of the house cannot be readily understood in those views. The appeal site has only filtered intervisibility with the asset, with views largely

³⁵ CD C16 paras 3.4-3.7

³⁶ CD I1

screened by topography and vegetation. None of these views are of any particular significance, and they have experienced notable change already in the 20th century, including the construction of more modern buildings close to the Court.

52. The easterly views in which the proposal would be visible do not appear to have been historically designed, as demonstrated by the former presence of a range of outbuildings (now removed). The landscape in this direction contains elements of modern infrastructure in the form of two lines of large pylons.
53. Turning to the position of CPRE, it is noted that the original comments from that organisation did not object on the basis of heritage harm. The only witness for CPRE had no heritage expertise and provided no heritage evidence. But CPRE continued to assert that there would be heritage harm to Langford Court. In particular the concern appeared to focus on the BESS – however the BESS area including the gantries would be obscured. As to visibility of the BESS in views to the asset, photomontage of viewpoint 7 demonstrates that the area will not be prominent, and the glimpsed view of Langford Court from that location where co-visibility is possible does not reveal historic significance.
54. Overall while the solar panels would be visible from some views, the appeal site does not contribute to the significance. CPRE implied that Historic England (HE) also found a level of harm, but that is not correct. HE identified the potential for harm, but deferred to the assessment of the Council's heritage consultee (who appears to have confused visibility and harm), and stated that HE need not be consulted again³⁷. HE did not visit the site, and does not appear to have had access to historic mapping that could allow an understanding of the historic connection (or rather lack of) between the asset and the appeal site.
55. The proposals cause no heritage harm, and as such are compliant with all relevant law, policy and guidance, including section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires special regard to be paid to the desirability of preserving listed buildings and their settings.

Agricultural land

56. An Agricultural Land Classification Report (ALC) (2019)³⁸ was submitted with the application and identified a range from grade 3b to 5 land). With rebuttal evidence (to CPRE) the appellant submitted an updated ALC (2022)³⁹. The appellant explained why this was done - partly because such reports had evolved significantly since the original report and the new report included improved accuracy, format, and detail⁴⁰.
57. The updated ALC found that that the appeal site comprises Grade 4 quality land. The Planning Practice Guidance defines Best and Most Versatile (BMV) agricultural land as Grades 1, 2 and 3a, and therefore the proposal would not result in the loss of any BMV land. This is agreed with the Council⁴¹.

³⁷ CD B11 and CD C9 para 8.32

³⁸ CD A9

³⁹ CD C7

⁴⁰ CD C16 Appendix 2

⁴¹ CD C9 paras 8.57-8.58

58. CPRE has not provided any alternative ALC or review of the methodology of either ALC. Their only aim was stated to be to “*cast doubt*” on the appellant’s assessment⁴².
59. The Council and appellant agree that the proposal complies with local and national policy⁴³. Although there would be inevitable change over the 40 year lifetime of the scheme, much of the site will remain in agricultural use as pasture throughout.
60. CPRE has raised concerns about the feasibility of sheep grazing during the operational period, suggesting that herbicide application and heavy machinery would still be required to manage the grass. In fact 95% of the site will remain accessible for vegetation growth and will be able to support wildlife and agricultural activity⁴⁴. This is in line with BRE Agricultural Good Practice Guidance for Solar Farms (2014)⁴⁵, which provides guidance and case studies (including successful sheep grazing at other Devon solar farms), and demonstrates that the sheltered area under the panels forms a microclimate which allows vegetation to establish successfully and which the sheep enjoy for shade and rain protection. The equipment required to maintain the panels is likely to be substantially lighter than the agricultural machinery that currently accesses the land.
61. There would be long term benefits of the scheme in terms of the quality of the soil, as shown in the Assessment of Impact on Agricultural Land and Soils Report⁴⁶. Once the scheme was operational, much of the soil would be under perennial cover with no ploughing and only non-intensive grazing. This would lead to a soil which would be less vulnerable to wind and water erosion.

Battery storage

62. The provision of the BESS was not a matter to which the Council objected when it was in overall opposition to the scheme. As was made clear at the Inquiry CPRE regard the provision of the BESS as a fundamental objection to the scheme – but this is not opposition to this specific BESS but to the principle of battery storage - which it considers to be a risk to local communities and to the environment generally. CPRE acknowledged that this position is not supported in national policy or guidance⁴⁷.
63. The point of the BESS is to provide flexibility and security for the energy system, storing off-peak energy and deploying it during peaks throughout the day⁴⁸. This should be given positive weight in the planning balance. Three recent policy statements explain national policy:
- The British Energy Security Strategy explains that the Government will encourage “*all forms of flexibility*” in the energy system and will develop

⁴² Dr Bratby in EIC and XX

⁴³ CD C9 paras 8.58 and 8.62

⁴⁴ CD C16 Appendix 2 and paras 2.13-2.15

⁴⁵ CD C16 Appendix 3

⁴⁶ CD C8

⁴⁷ Dr Bratby in xx

⁴⁸ CD C 11-D Figures 1 and 2

policy to enable investment in “sufficient large-scale, long-duration electricity storage”. It sets out support for solar that is co-located with other functions, including storage, to maximise land use efficiency⁴⁹.

- Draft NPS EN-1 highlights that storage has “a key role” to play in achieving net zero, and that it is needed to reduce costs and increase the reliability of the electricity system by storing surplus in times of low demand and supplying electricity when demand is higher⁵⁰.
- The Net Zero Strategy makes it clear that as we rapidly decarbonise energy systems, we must also provide flexibility in order to integrate renewables and balance their intermittency. Doing so will involve pursuing innovative solutions, including new storage technologies.⁵¹

64. With that background the appellant provided extensive technical evidence⁵². The benefits of BESS were set out and it was explained that this approach will be critical to reaching a secure low carbon energy system. The benefits include:

- Enabling the integration of intermittent renewables into the electricity system by creating a more balanced grid.
- Increasing efficiency (conventional generators can only supply power, whereas BESS can both charge and discharge).
- Replacing carbon-heavy generators and reducing fossil fuel pollutants.
- Ensuring security of supply and reducing blackout exposure, due to BESSs’ fast response to supply/demand gaps.
- Co-location, which was supported by the Examining Authority at Cleve Hill,⁵³ facilitates sharing of grid and generation infrastructure leading to significant construction and operation efficiencies, load shifting and reduced transmission.

65. In terms of safety the appellant has explained that BESS is not an inherently unsafe technology, that it operates in large scale installations up and down the country, and that their safety is controlled by a number of non-planning regulatory regimes. Conversely CPRE has only pointed to one utility-scale incident in the UK, a lithium ion battery fire in Liverpool in 2020⁵⁴. However CPRE accepted that all the national policy support for BESS was published after that incident and safety technology. Gas detection sensors which prevent thermal runaway by detecting faults early have moved on greatly since 2020.

66. The chemistry of the batteries in this scheme here has not yet been decided, and the final choice will depend on progress in technology. This is in line with the approach at Cleve Hill⁵⁵.

⁴⁹ CD D18

⁵⁰ CD D3-B paras 3.3.24-3.3.25

⁵¹ CD D17, para 43

⁵² CD C11-D and CD C16

⁵³ CD I4-A 5.6.1

⁵⁴ CDH4 and CD C11-D

⁵⁵ CD I4-A and CD I4-B para 4.172

Summary of benefits of the scheme and planning balance

67. The scheme is a renewable energy project with carbon savings – especially important in the light of the energy security crisis. There is a presumption that such schemes should be allowed where impacts can be made acceptable. This matter is of substantial weight, as was found in the decision at Halloughton⁵⁶. The following policies, along with the agreed lack of any requirement on the appellant to demonstrate need, are wholly supportive:

- The Energy White Paper (2020) sets out that achieving net zero rests on a “*decisive shift*” away from fossil fuels to clean energy and describes solar as a “*key building block*” of the future energy generation mix⁵⁷.
- The NPPF has a presumption in favour of renewables and states that the planning system should support the transition to a low carbon future in a changing climate, by supporting renewable and low carbon energy and associated infrastructure.
- Draft NPS EN-1 (2021) states that wind and solar are the lowest cost ways of generating energy and that a secure, reliable, net zero system in 2050 is likely to be composed “*predominantly*” of wind and solar⁵⁸.
- Draft NPS EN-3 (2021) describes solar as “*a key part*” of the government’s strategy for low-cost decarbonisation of the energy sector and renewables as an “*essential*” element of the transition to net zero⁵⁹.
- Net Zero Strategy establishes that the UK will be powered entirely by clean energy by 2035 (infrastructure needs to be deployed at an “*unprecedented scale*”), with the Government forecasting a 40-60% increase in demand over the same period⁶⁰.
- The British Energy Security Strategy (2022) anticipates a five-fold increase from the current 14GW of solar capacity in the UK by 2035⁶¹.
- LP policy S9 supports renewable energy generation development where the impacts are satisfactorily addressed⁶², and policy DM2 represents a further presumption in favour of renewable energy proposals, provided any adverse effects on character, amenity or the visual quality of the area are not significant⁶³. The CNP is supportive.

68. The proposed solar farm in this case would generate substantial savings of carbon dioxide emissions during its anticipated lifetime (approx. 25,321 tonnes of

⁵⁶CD I16

⁵⁷ CD D12 page 46

⁵⁸ CD D3-B paras 3.3.21

⁵⁹ CD D4-B paras 2.47.1 and 1.1.1

⁶⁰ CD D17 pages 98 and 102

⁶¹ CD D18

⁶² CD C9 para 8.6

⁶³ CD C9 para 8.7

CO₂ per annum will be avoided). It would power 10,369 typical Mid Devon homes annually with clean energy – this is a standard calculation derived from using government figures for carbon emissions and the energy capacity of the scheme⁶⁴.

69. The scheme has the further substantial benefit of providing a Biodiversity Net Gain of 179.25% in area derived units and 9.82% in linear derived units⁶⁵ - well beyond mitigation or any policy requirement. A gain of 73% was considered substantial in the Halloughton case. This includes more than 1km of planting of native species trees and hedgerow; the provision of bird, bat, and dormouse boxes; and the provision of hectares of species rich meadow and grassland⁶⁶.
70. The scheme would generate significant economic benefits in the form of around £40,000,000 in financial investment, between 70 and 80 jobs during the construction phase, and a smaller number of jobs when the solar farm is operational⁶⁷. The scheme would contribute up to £2,700,000 gross value added to the economy and business rates would be paid to the Council of around £190,000 p.a.
71. Overall the proposal accords with the development plan and is supported by further material considerations. There are no material considerations which indicate permission should be refused. Conflict with part of a policy does not necessarily mean conflict with the whole policy and should not automatically be considered a conflict with the development plan as a whole.
72. The LP includes a presumption in favour of renewable energy proposals where there is an acceptable local impact. The key question in terms of development plan is whether the impacts of the scheme are acceptable. In terms of landscape and visual effects, whilst there would be some adverse effect on landscape character and visual amenity, these would not be significant, would be localised, and would be reversible.
73. In heritage terms the proposed scheme will cause no harm to the significance of Langford Court through changes to its setting. Even if, contrary the expert evidence, a degree of less than substantial heritage harm was found, any limited harm would be substantially outweighed by the public benefits of the scheme, in accordance with NPPF and LP policies.
74. The site does not comprise BMV and though there would be some loss of general agricultural land during the operation of the scheme, with arable uses precluded during the lifetime of the scheme and approximately 5% of the overall site taken up with solar infrastructure, but pastoral uses could continue throughout, and a full return to farming is possible in 40 years. The loss would be minimal and reversible.
75. The scheme accords with development plan policies and the key renewable energy policy benefits far outweigh any adverse impact. Therefore, in accordance with the NPPF, planning permission should ordinarily be approved

⁶⁴ CD C16

⁶⁵ CD C6

⁶⁶ CD A18 – C and CD A27-C

⁶⁷ CD C9 para 8.13

without delay. There are also no material considerations that indicate that permission should be refused. The main objections by CPRE to the principle of solar and of BESS are not specific to this scheme and are unsupported by any policy.

76. Although not required, the detailed technical evidence supports the national approach and has demonstrated the clear benefits of both solar and BESS technology. No technology is ever risk free, but any risks can be appropriately mitigated, and a condition is proposed to do that in line with the NPPF.
77. Even if, contrary to the evidence, it was found that there were a conflict with the development plan, then it is clear that this is a case where the benefits are so substantial that material considerations indicate that permission should nonetheless be granted: they clearly and demonstrably outweigh any harm. There are also a number of neutral matters: setting of the heritage asset; residential amenity; highways and transport; and noise. All technical matters have been resolved: highways, drainage, and flood risk.

The case for CPRE

78. This is based in part on CPRE's closing submissions⁶⁸, but as this did not cover all aspects of the objection, parts related to heritage and landscape are also drawn from evidence.
79. It was CPRE Devon's position that there is no definition of a climate emergency and that no evidence has been produced to lead to the conclusion that there is a serious climate change issue. CPRE Devon referenced and agreed with the work of Sir David Mackay, which included the position that the idea of renewables powering the UK as an "appalling delusion"⁶⁹. The proposal for a solar farm and BESS would be unreliable, harmful to the stability of the grid and would lead to increasing electricity prices.

Lack of information

80. As the appellant accepts, the precise design of the solar farm is not known and the design and performance of the solar panels has not yet been specified. The proposal was based on documents which are now outdated, as is the principle of the BESS. But this is not an outline application. It is not acceptable that the Council and the public should be asked to give – in the words of CPRE national policy – 'carte blanche' to the appellant to construct a huge, complex and risk-sensitive installation such as this without providing any detailed information about what it will be made of or what its precise output will be.
81. The two solar cell and module manufacturers mentioned to date – Longi and Jinko – are both on the list of manufacturers identified as profiting from the Chinese government's forced labour programme⁷⁰. According to UK government policy (January 2021)⁷¹ it is the appellant's responsibility to ensure that no products of slavery appear in their supply chain.

⁶⁸ Doc 4

⁶⁹ CD C12 paras 3/4

⁷⁰ Sheffield Hallam University & the Helena Kennedy Centre for International Justice (not submitted)

⁷¹ Not amplified or submitted

82. The question of detailed design applies particularly to the BESS, because of the very real risks associated with large-scale lithium-ion battery arrays.

Safety of the BESS

83. The appellant acknowledges the theoretical risk of thermal runaway leading to explosion or severe fire, but does not acknowledge the actual risk, stating simply that no-one would invest millions of pounds in a technology that was dangerous, and that anyway the as-yet-unspecified safety systems which would be in place would snuff out any potential conflagration in the short interval between initial failure and the onset of thermal runaway. That approach is not good enough.
84. Other BESS operators– who have presumably thought that they had adequate safety systems and a protected investment – have experienced severe failures in their BESS systems⁷². Yet no detailed design has been produced, no provision for on-site cooling water has been specified, and no discussions have been held with the Devon & Somerset Fire & Rescue Service regarding these very real risks.

Carbon emissions

85. Another area in which information is lacking is in the assessment of the proposed array's effect on carbon emissions. The appellant has produced some formulaic figures regarding the emissions from other electricity generating sources which would be theoretically obviated by this array. But there is no analysis of the carbon emissions of the manufacture, construction and whole-life operation of the array. This would be needed to present an accurate net benefit assessment of carbon emissions.

Landscape effect

86. There is also a significant discrepancy between the appellant's LVIA and that produced by the independent local consultancy David Wilson Partnership, which concluded a major adverse impact on the landscape.
87. The Council's Solar PV Developments in the Landscape Supplementary Planning Document' (2016) (SPD)⁷³ identifies the site in Landscape Character Area DCA12 (Clyst Lowland Farmlands) and in Landscape Character Type LCT3E (Lowland Plains). This has a high sensitivity to very large solar farms.
88. The proposal would be a major development that would result in the introduction of uncharacteristic elements into the rural, farmed landscape. It is inevitable that there would be substantial landscape and visual effects as a result.
89. Field 13 would include 21 arrays of solar panels and the 100m by 40m battery storage facility consisting of 13 industrial containers containing the batteries, six inverters, one spare parts container, one customer container, one control room, one client substation, one DNO substation and an array of gantries 25m by 10m and up to 10m in height. This would have a major adverse impact on the landscape. The photomontage shows arrays of solar panels, but the industrial facilities forming the battery facility at the south end of field 13 are not shown.

⁷² CD C12 Para 42 onwards

⁷³ CD E5, CD C12 paras 11/12

90. It is concluded that the adverse impact on the landscape is a valid reason for refusal and should be given great weight in the planning balance.

The effect on Langford Court

91. The appellant's Heritage Statement concludes that there will be no harm to any heritage assets, including the Grade II* Langford Court. Historic England disagreed with this conclusion and requested that the Council's heritage specialist made an independent assessment of the setting of Langford Court, to judge the level of potential harm that might be caused to its setting and whether that harm could be avoided or minimised to an acceptable level⁷⁴.

92. The Council's Conservation Officer was critical of the appellant's Heritage Statement, highlighted some of its shortcomings and considered the impact that all of the industrial infrastructure in the battery storage area would have on the views into and out from Langford Court and its setting. He concluded that "The heritage assessment of the Grade II* building has failed to take into account the long views of the building which relate to the experience of the asset. The proposal would result in registerable harm to the significance and setting of Langford Court which must be given considerable weight and importance by statute and be contrary to the NPPF and Policy DM27."

93. The adverse impact on the Grade II* Langford Court must be given great weight in the planning balance.

Loss of agricultural land

94. Much importance is placed by the appellant on the lack of BMV on the site. But there is no independent report, and a discrepancy in the appellant's studies.

95. The appellant's 'Agricultural Land Classification' report by Davis Meade (October 2019), parcelled the land into three sites consisting of 17 enclosures. The result of that study was that 14 enclosures were grade 3b, two were grade 4 and one was grade 5. The report was not detailed and the findings were not independently verified before permission was refused. The appellant subsequently submitted a report by Amet Property (February 2022) – the purpose of this report (which concluded that all of the site was grade 4) is not known.

96. There is a clear difference between the appellant's two assessments. And neither Davis Meade nor Amet Property have significant expertise in Agricultural Land Classification. Davis Meade describes itself as a "specialist in property and land sales" and Amet Property is a real estate agency. The reports by Davis Meade and Amet Property are unreliable. In view of the fact that the site has been used for both grazing and arable CPRE believe that much of the land is grade 3a. Independent verification should have been carried out.

97. The site may not all be BMV, but it is the sort of land which, coupled with Devon's mild climate and high rainfall, produces high quality grass and fodder, which in turn results in the production of the finest quality meat and dairy products in the world.

⁷⁴ CD B11

98. The appellant claims that the land may continue to be grazed by sheep with the solar panels in place. It is the experience of CPRE members that this does not happen - grass grown in the shade is poor quality and difficult to manage. The grass would need mowing at least twice a year, with the application of herbicides. The solar panels would need cleaning, also probably twice a year. Heavy machinery is required to carry out these maintenance activities, resulting in soil compaction. After 40 years of these maintenance activities and following decommissioning, the soil would be in a very poor condition.
99. Devon CPRE and CPRE nationally are committed to opposing large-scale solar sites on valuable and productive farmland which should be used to meet urgent food production needs at a time of rising food insecurity, as well as fulfilling its role as potentially the foremost means of sequestering carbon.

The case for residents appearing at the Inquiry

100. Mrs J Jones read her email/statement on the appeal. Public opinion has been side-lined by the process – in particular she drew attention to the fact that permission had been refused by the Council on a 7:3 vote, and this should not have been overturned. There are already two solar farms in the area, and there should not be another.
101. Ms C Winteson expressed her opposition to the proposal, and in particular did not agree with the appellant's statement that there was a need for the development.
102. Mr R Smith has objected to the proposal on a number of occasions. The development would not generate power when it was needed and would take land out of agricultural production. Solar generation should take place on the roofs of commercial buildings. The BESS element of the proposal was a fire risk, exacerbated by the lack of water on site.

Written representations

103. A number of objections were lodged to the proposal at the application⁷⁵ and appeal stages. In addition to the main issues considered in this report, a number of other concerns were raised. These include a loss of trees, harm to wildlife, the loss of prime agricultural/grazing land, harm to human health as a result of radiation, harm to highway safety, noise nuisance during construction and during operation, noise and disturbance, flood risk and surface water run-off.

Conditions

104. A discussion was held at the Inquiry between the appellant and the Council regarding potential conditions if planning permission were to be granted. CPRE took part in these discussions on a without prejudice basis. These conditions are discussed below.

⁷⁵ CD A47A

Inspector's conclusions

[Numbers in square brackets denote source paragraphs]

Policy and guidance context

105. The development plan comprises the Mid Devon Local Plan 2013-2033 (2020) (LP) and the Cullompton Neighbourhood Plan 2020-2033 (2021) (CNP) [20,21, 22]. No party has suggested that these plans are out of date, and both deal with the considerations raised by this appeal.
106. The relevant policies are largely raised in the Council's former reasons for refusal, prior to its decision not to contest the appeal and are set out above [4].
107. The NPPF and National Planning Practice Guidance (NPPG) are clearly material considerations, as accepted by the parties. The parties agreed that a range of other national policy and guidance documents are material considerations. In particular the parties made reference to the National Policy Statements (NPS) for the delivery of major energy infrastructure, and to the emerging updates [27, 28].

Agreed matters

108. There are two Statements of Common Ground (SOCG) which have been concluded respectively between the appellant and the Council [27], following its decision not to contest the appeal, and between the appellant and Devon CPRE [28]. These provide useful background to the main considerations in this case.
109. The key agreed matters are as follows (where CPRE have not agreed this is indicated):
- The site is in open countryside in policy terms, outside any settlement boundary.
 - LP policies S9 and DM2 allow for renewable energy development where there is an acceptable local impact, balanced with the wider sustainability benefits of renewable energy.
 - The CNP is supportive of the increased use of renewable energy, subject to controlling the impact of such installations.
 - National energy policy is a material consideration.
 - There is no requirement for the appellant to demonstrate need for the proposal.
 - Trees and hedgerows, along with generally flat topography, would help to mitigate the overall scale of the development.
 - The proposal is a low carbon, renewable energy project that would contribute towards meeting national renewable energy targets. (This is not agreed by CPRE.)

- Substantial weight should be attached to the benefit of renewable energy production. (This is not agreed by CPRE.)
- In terms of operational safety the installation could be suitably managed outside the planning process. (This is not agreed by CPRE.)
- The site comprises poor quality agricultural land. (This is not agreed by CPRE.)

Main considerations

110. Based on the evidence, policy, and the areas of dis/agreement, the main considerations in this case are:

- The effect of the proposal on the character and appearance of the landscape
- The effect on Langford Court - a designated heritage asset
- The effect on and potential loss of agricultural land
- The safety of the Battery Storage facility (BESS)

111. It should be additionally noted that Devon CPRE made it clear that they do not agree with the existence of a climate emergency or that climate change is a proven problem [79]. Particularly given the agreed national and local policy context, this matter is dealt with briefly below.

The effect of the proposal on the character and appearance of the landscape

112. It is important to note that the only expert evidence on landscape matters presented to the Inquiry was that from the appellant, and no contrary expert evidence was given.

113. Bearing in mind the extent of the site and the coverage of the proposal (though not necessarily its general height above ground) it is inevitable that a large scale solar farm such as this is likely to cause a degree of landscape harm. With that background, and given the policy support for solar energy, both national and local policy take a positive approach in principle towards solar development, providing that schemes will be approved where the harm would be outweighed by the benefits of a development. The extent of any harm to the landscape must therefore be assessed.

114. National policy, whilst recognising the intrinsic character and beauty of the countryside, does not seek to protect all countryside from development. The focus is more on the protection of valued landscapes. However this term is not precisely defined in the NPPF, although reference is made to statutory status or identification in the development plan. In this case the parties agree that the site does not form part of a valued landscape and there is no reason to disagree.

115. Turning to the existing character of the area, the Devon Landscape Character Assessment sets out distinctive characteristics of the area's landscape [37]. The strategy is to reinforce field patterns through the restoration and management of characteristic hedgerows, and to the management and

expansion of wet grasslands along watercourses. It looks to extend species rich meadows and grasslands through appropriate grazing and traditional land management regimes.

116. From the evidence to the Inquiry – almost exclusively from the appellant – and from the extensive site visit, the key elements of the existing landscape are the rolling topography, rural land use, the presence of trees and boundary hedgerows and small watercourses. Taking these elements together the site and the surrounding area has no more than a medium landscape value and medium sensitivity to change.
117. In coming to that view it is noted that the Solar PV Developments in the Landscape SPD [23, 40, 87] locates the site in Landscape Character Area DCA12 (Clyst Lowland Farmlands) and in Landscape Character Type LCT3E (Lowland Plains). This is stated to have a high sensitivity to very large solar farms. However, as will be explained below, this wide designation is of limited assistance in assessing the effect of this specific proposal in this location.
118. All parties agree that the proposal would have no significant harmful effect on the wider surrounding landscape. Any effect would therefore be very localised.
119. The BESS and related facilities, along with fencing and CCTV installations, would certainly have an effect on the landscape. More so than the solar panels themselves which, even allowing for their wide coverage, have a limited height and relatively slender design. There would be no change to the characteristic rolling topography arising from the scheme.
120. About a hundred metres of hedge would be removed to provide access, and this would obviously diminish this important element of the landscape. But this would be more than compensated for by filling gaps with indigenous shrubs and hedgerow planting. The appellant's uncontested estimate is that there would be a net gain of some 1.2kms [38] and this would mitigate the landscape effect of the proposal and would be a significant benefit. The effect on watercourses would also be slightly beneficial.
121. Overall in landscape terms, it is self-evident that a solar farm of this size would have some adverse landscape character effect. However, due to topography and screening this would be very limited and would be mitigated increasingly as the planting matures. After decommissioning there would be no residual adverse landscape effects, but rather the remaining benefit of the landscape mitigation.
122. Turning to visual effects, it is relevant to note that no particularly important or protected views have been suggested by the Council at any stage. All the agreed viewpoints were visited, as well as a number of others around the site, and the visual effects of the development would be very limited. The area is well endowed with extensive tree and hedge cover which limits views to short or medium range, and the opportunity for sequential views is limited.
123. The views which can be achieved are only snapshots. Many of the lanes and footpaths in area are enclosed by hedges and/or banks, and in most cases an observer would have to divert from the road/path to obtain a fleeting view from a field gate. The overall visual effect of the proposal would maintain the quality

of these brief views, and any very limited adverse effect would be offset by new planting.

124. It is noteworthy that, in terms of residential visual amenity, no party has contended that any properties close to the proposal would be so affected such that the properties would be rendered unattractive places in which to live.

125. Two matters are of note before concluding on this matter.

- Firstly CPRE alleged in writing that the viewpoints and photomontages produced by the appellants had deliberately omitted the BESS and related facilities [89]. But the detail of the photomontages was explained and put to the CPRE witness at the Inquiry, who accepted that they were accurate. The relevant views were observed on site, and it is clear that the photomontages are comprehensive.
- Secondly the Council's Solar PV Developments in the Landscape SPD, which CPRE emphasised [87], is of limited assistance in considering a particular proposal. The document identifies a very wide area as being highly sensitive to large scale solar proposals, without differentiating between geographical areas. The document importantly includes a caveat against it being "*interpreted as a definitive statement of the suitability of a certain location for a particular development*". In line with this caution it would be inappropriate to place too much reliance on the SPD in relation to this particular site, and the detailed analysis which has been put forward by the appellant is to be preferred.

126. Overall, the proposal would cause some very limited landscape and visual effects, but this would be mitigated by the additional planting which is integral to the proposal. The development would therefore not conflict with LP policies DM1, DM2 or S9, nor with the CNP or the NPPF.

The effect on Langford Court

127. Two matters are of note before considering this topic.

- Firstly the only expert evidence on heritage matters presented to the Inquiry was that from the appellant, and no alternative evidence was given. The original objection from CPRE did not include any allegation of heritage harm, and the only witness for CPRE at the Inquiry did not have any heritage expertise and/or qualification. Their approach seemed to focus on the effect of the BESS, although it was accepted by CPRE at the Inquiry that the BESS area would not be visible.
- Secondly, contrary to the statement from CPRE, Historic England did not raise a formal objection to the proposal [27]. Rather they identified the potential for harm, albeit without a site visit or access to historic mapping. It is true that the Council's Conservation Officer considered that there would be intervisibility between Langford Court and the appeal proposal, and therefore harm. But even if a view exists this does not equate to harm to significance. All this is in the context that the overall recommendation of Council officers was to grant permission, and that the subsequent refusal is no longer defended.

128. Langford Court is a 16th century farmhouse that was enlarged and remodelled in the 17th century and restored extensively after a fire in the 1990s. It is Listed Grade II*. The parties agree that the asset has a range of heritage interests, particularly historic, architectural and archaeological, but that its main significance is embodied in its physical form. All the evidence to the Inquiry and from the site visit emphasised the importance of the physical form of the building itself [48, 49]. The proposal is set some way from the building and its immediate surroundings and would not touch its physical fabric or form, so any potential for harm would be indirect.
129. The setting of an asset is the surroundings in which it is experienced and, although often expressed with reference to visual considerations, the way in which an asset is experienced in its setting is also influenced by an understanding of the historic relationship between places.
130. In this case the contribution made by elements of the setting to its significance comprise the historically associated gardens, the modern eastern gardens and lake, and the areas of the historically contiguous landholdings visible from the asset. The most important views are from the gardens and across the lake to the house, as these are the least harmed by the modern agricultural buildings nearby on the farm. Further afield the undulating topography and vegetation reduce the contribution made by setting to the significance.
131. The appellant's detailed historic evidence clearly demonstrates that the appeal site was not part of the consolidated contiguous landholding which might have been experienced in conjunction with the asset in the mid 19th-century or earlier. There was a small amount of historic coincidence of ownership, but at a distance from the main landholding, and this does not survive today [51].
132. The proposal would not affect any features or views. Looking further afield there are few, if any, views of Langford Court and its more immediate surroundings from the solar farm site. Any fleeting glimpses that might be obtained are limited by topography or are heavily obscured by existing woodland and hedgerow. The architectural and historic interest of the house cannot be readily understood in those views. The appeal site has only filtered intervisibility with the asset, with views largely screened by topography and vegetation. None of these views are of any particular significance, and they have experienced notable change already in the 20th century with the construction of modern buildings.
133. While the appeal site might be just visible from Langford Court, that is not the test and does not equate to a contribution to heritage significance. A view that does not illustrate architectural or historic interest and does not allow the significance of an asset to be appreciated is merely an incidental view that neither contributes to nor detracts from heritage significance.
134. In conclusion, given the degree of separation between the appeal site and the asset and the nature of existing and proposed screening, the appeal site makes no contribution to the setting and significance of Langford Court. The proposal would therefore accord with LP policies S9, DM2, and DM25, and with the NPPF.

The effect on agricultural land

135. National policy in the NPPF states that decisions should recognise the economic and other benefits of Best and Most Versatile (BMV) agricultural land. This is defined as grades 1, 2 and 3a of the Agricultural Land Classification. LP policy DM2 adopts the same approach towards the protection of BMV land. The Planning Practice Guidance also considers whether the use of agricultural land is necessary and whether a proposal allows for continued agricultural use.
136. With this background the main area of dispute between the appellant and CPRE is the classification of the appeal site. The appellant's original 2019 Land Classification Report identified a mix of Grades 3b, 4 and 5, whilst the updated report shows the entirety of the site as comprising Grade 4 agricultural land. In terms of national and local policies it is of little consequence which report was more accurate in that neither suggested that any of the appeal site was BMV. The appellant convincingly explained why the update had been considered necessary [56, 95].
137. The position of CPRE was that the reports should have been independently verified – although the Council considered that the first report had been undertaken by a suitably qualified professional. The view of CPRE, who did not put forward any technical evidence on land classification, was that both the appellant's reports were unreliable and that neither of the report's authors had significant expertise in land classification [96]. However the appellant convincingly explained the background of the reports' authors. CPRE maintained (without evidence) that much of the land is grade 3a [96]. Based on the unchallenged evidence of the appellant, it is clear that the highest some parts of the site could aspire to is 3b – and it is most likely to be lower than that. On that basis, the loss of this land, even if it were a permanent and total loss, would not receive policy protection.
138. CPRE also argued that even were the land not considered to be BMV it could produce high quality grass and fodder. But it is agreed between the appellant and the Council that the majority of the land would continue in agricultural use for sheep grazing during the operation of the solar farm [27]. In addition, at the end of the limited period, the majority of the site would revert to potential agricultural use. CPRE stated, without evidence, that sheep grazing below and between solar panels does not happen and that the grass beneath is poor quality and compacted [98]. Overall, there is nothing to demonstrate that sheep grazing would be unlikely to occur, and this approach forms part of the proposal in line with national guidance [60].
139. Overall the proposal would not result in a harmful loss of agricultural land. It would not conflict with LP policy DM2, S1 or S9, or with the NPPF.

The safety of the proposed BESS

140. The issue of the safety of the proposed BESS was never a matter which was of concern to the Council in its planning considerations. For that reason it was not a reason for refusal even before the authority changed its stance.
141. The safety of the BESS was raised by CPRE in its evidence as a major source of concern [83, 84]. It became clear from that the evidence and from answers in cross-examination the CPRE's concern was founded on opposition to battery

storage systems in general, which they consider to be a risk to local communities and to the environment generally, and was only related to this proposal to a limited extent. CPRE acknowledged at the Inquiry that their approach is not supported by policy or guidance at any level.

142. The appellant submitted extensive evidence on this matter, including that from an expert in the field, who explained the benefits and operation of BESS systems [64]. The rationale for a BESS system is to provide flexibility for the grid, storing off-peak energy and deploying it during peaks. Co-location with the solar farm is sensible in terms of economies of scale and minimising land take. The convincing evidence, supported by numerous policy references, was that BESS is a critical element in reaching a secure low carbon energy situation. This position is wholly in line with national policy.
143. CPRE was particularly concerned with the safety of such a system, and pointed in particular to two instances of catastrophic failure of such systems [84]. However the appellant correctly pointed out that these events, one of which was in the UK, were some time ago, and gave uncontested evidence to the effect that BESS technology and safety measures had moved on since those events [65]. Perhaps most tellingly, it is clear that national policy and guidance supporting that technology was produced subsequently – no doubt in full awareness of the incidents. This was accepted by CPRE.
144. From the evidence it is clear that this is not untested technology and although the detail of the systems is doubtless still evolving, there is very little to suggest that there is a substantial risk of thermal runaway leading to explosion or fire.
145. There was criticism from CPRE that no detail of the BESS has been fixed at this stage and the chemistry of the batteries has not yet been decided [80-82]. However in the context of evolving technology, this is not an unreasonable approach, and the proposal considered at the Inquiry is for solar panels to generate up to 49.9MW and a battery storage facility. It is reasonable that the final choice of technology will be fixed later.
146. Underlying all these matters is the fact that other regimes operate in this field to regulate the safe operation of such installations. National policy is clear that the focus of planning decisions should be on whether a proposal is an acceptable use of land, rather than the control of processes where these are subject to separate regimes. Planning decisions should assume that these regimes will operate effectively.
147. For the above reasons there is nothing in relation to the safety of the BESS which should weigh against the proposal in the planning balance.

Other matters raised by objectors

148. CPRE contested the appellant's approach to the effect of the scheme on emissions and suggested that a whole life carbon assessment is necessary [85]. However the appellant has produced evidence regarding the emissions from other electricity generating sources which could be obviated by this proposal [64]. This, coupled with the national policy approach, is sufficient to lend support to the sustainability credentials of the proposal.
149. As referenced above, Devon CPRE made it clear that they do not agree with the existence of a climate emergency or that climate change is a proven problem.

At the Inquiry it was made clear that this was a local decision of Devon CPRE and did not reflect national CPRE policy. No evidence was submitted regarding the reasons for Devon CPRE's position, and it was stated that the local branch would not be producing its own policy. The Council declared a climate change emergency locally in 2019 and it is Government policy that the UK will need to be entirely powered by clean energy by 2035. Devon CPRE is therefore at odds with the local and national position. In any event, decisions on land use planning matters must be taken in the light of the development plan and other material considerations including national policy.

150. Devon CPRE stated that the solar cell manufacturers mentioned to date are on a list of companies profiting from the Chinese government's forced labour programme [81]. This list was not submitted nor was the government policy to which CPRE referred. In any event, even if this were a land use planning matter, this level of detail is not part of the appeal proposal.
151. Local residents also raised concerns on a number of grounds, most of which relate to the main considerations above. In addition, there was concern that the solar panels would not generate power when it was needed. However that would be addressed by the BESS. Other matters, particularly suggested traffic and disturbance during the construction phase, could be addressed by conditions.

Conditions

152. Before and during the Inquiry the appellant, the Council and Devon CPRE cooperated (without prejudice) in a discussion of potential conditions to be considered if permission were granted.
153. These agreed conditions (including those with pre-commencement requirements), with only minor typographical alterations, are appended to this report. For simplicity the reason for each condition is included beneath the condition.

Planning balance

154. Three of the main considerations discussed above are neutral in the overall planning balance, for reasons already explained. These are the heritage issue, the effect on agricultural land and the safety of the BESS.
155. The only matter potentially causing an element of harm is the effect on the landscape, which is unsurprising given that national and local policy recognise that large scale solar farms may result in some landscape and visual harm. But in this instance the topography, existing screening and landscape mitigation lead to very limited and highly localised landscape and visual effects, and these would be progressively mitigated by additional planting. These factors lead to the conclusion that the proposal would not conflict with local or national policy.
156. The scheme is for a renewable energy proposal which is fully in accordance with the economic, social and environmental dimensions of sustainable development set out in the NPPF. In addition EN-1 and subsequent draft policies state that the Government is committed to cutting greenhouse gas emissions and need for a move away from fossil fuel and towards renewable sources of energy production is supported. The scheme therefore has strong national and local policy support. This matter weighs very heavily in favour of the proposal.

157. Added to this is the unchallenged substantial benefit of £40,000,000 in financial investment, and the provision of between 70 and 80 direct and indirect jobs during the construction phase, with a smaller number of jobs when the development is operational. In addition the acknowledged benefit of the additional planting, which would remain after the end of the limited period, should be accorded significant weight. The unchallenged Biodiversity Net Gain is a further substantial benefit [69].
158. In dealing with this appeal the time limited nature of the proposal is a material consideration. Obviously 40 years is a long time and longer than some references to the life of a solar farm in national and industry guidance. However in this case the factors weighing in favour clearly outweigh the very limited negative factors, and consideration of the potential benefit of a limited period is unnecessary.
159. Overall, the conclusion that the appeal is in accordance with policy and that planning permission should be granted.
160. However, it might be considered by the decision maker that the very limited landscape effect of the proposal is not mitigated by the positive landscape factors, and that there is a conflict with some elements of policy. Under these circumstances it is considered that the importance of addressing climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh any very limited harm.

Recommendation

161. It is recommended that the appeal be allowed and planning permission be granted subject to conditions.

P. J. G. Ware
Inspector

Recommended Conditions and Reasons

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: As required by statute.

2. The permission hereby granted shall be limited to a period of 40 years (with the exception of the DNO Substation which is to be retained on the site in perpetuity) from the date when electricity is first exported from the solar panels to the electricity network (The First Export Date). Written notification of the First Export Date shall be given to the Local Planning Authority within 14 days of the event occurring.

Reason: As sought by the application.

3. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan, drawing number P18- 1820_18, Rev B, prepared by Pegasus Group.
 - Gantry Site Elevations, drawing number P2763-150-03, Rev O, prepared by G2 Energy.
 - DNO Substation Elevations, drawing number P2763-(01)-25-01-0, Rev 0, prepared by G2 Energy.
 - DNO Substation Plan, drawing number P2763(01)-25-01-0, Rev 0, prepared by G2 Energy.
 - Client Substation Elevations, drawing number P2763-(02)-25-01-0, Rev 0, prepared by G2 Energy.
 - Side Elevation Layout, drawing number JBM1035-201, Rev A, prepared by JBM Solar
 - Central Inverter Elevations, drawing number JBM1035-203, prepared by JBM Solar.
 - Control Room Elevations, drawing number JBM1035-209, prepared by JBM Solar.
 - Customer Cabin Elevations, drawing number JBM1035-210, prepared by JBM Solar.
 - Spare Parts Building Details, drawing number JBM1035-212, prepared by JBM Solar.
 - Client Substation (in 132kVa Compound and Site), drawing number JBM1035-222, prepared by JBM Solar.
 - 132kVa Compound, drawing number JBM1035-220, Rev A, prepared by JBM Solar.
 - Road Cross Section, drawing number JBM1035-216, prepared by JBM Solar.
 - Cable Trench Cross Section, drawing number JBM1035-215, prepared by JBM Solar.
 - Deer Fence Details, drawing number JBM1035-214, Rev A, prepared by JBM Solar.
 - CCTV Pole Details, drawing number JBM1035-213, prepared by JBM Solar.

- Switchgear Elevations, drawing number JBM1035-204, prepared by JBM Solar.
- PCS Inverter Elevations, drawing number P2763-(04)-25-01-0, Rev 0, prepared by G2 Energy.
- Battery Container Elevations, drawing number P2763-(03)-25-01-0, Rev 0, prepared by G2 Energy.
- Proposed Layout Plan, drawing number P18- 1820_14, Rev K, prepared by Pegasus Group.
- P18-1820 Figure 2 Primary Site Access Visibility Splay (CTMP), prepared by Pegasus Group.
- P18-1820 Figure 4 Swept Path Analysis B3181 to Main Site Access 15.4m Articulated HGV (CTMP), prepared by Pegasus Group.
- P18-1820 Figure 5 Swept Path Analysis Area A to Areas B & C 10m Rigid Vehicle (CTMP), prepared by Pegasus Group.
- P18-1820 Figure 7 Swept Path Analysis Area A to Area C 15.4m Artic HGV (CTMP), prepared by Pegasus Group.
- In general accordance with P18-1820 Figure 6 Area B Indicative Access Design (CTMP) and P18-1820 Figure 8 Area C Access Indicative Improvements Including Swept Path Analysis 15.4m Artic HGV (CTMP).
- Additional Planting Inset Plan, drawing number P18-1820_24, dated 2nd February 2022.

Reason: In the interests of clarity.

4. If the solar farm hereby permitted ceases to operate for a continuous period of 12 months, then a scheme for the decommissioning and removal of the solar farm and ancillary equipment, except for the DNO Substation, shall be submitted within 6 months of the end of the cessation period to the local planning authority for its written approval. The scheme shall make provision for the removal of the solar panels and associated above ground works approved under this permission. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures.

Reason: To ensure the removal of the equipment and decommissioning in the interests of the character of the area.

5. Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the first export date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, except for the DNO substation, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to and agreed in writing by the local planning authority.

Reason: To ensure the removal of the equipment and decommissioning in the interests of the character of the area.

6. The solar farm and its ancillary equipment, except for the DNO substation, shall be dismantled and removed from the site and the land restored in accordance with the approved Scheme and, in any event shall be removed within a period of 40 years and 6 months following the first export date.

Reason: To ensure the removal of the equipment and decommissioning in the interests of the character of the area.

7. The Solar PV Panels hereby permitted shall not be erected until samples of the materials to be used in the construction of the solar panel array have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved materials and retained as such thereafter.

Reason: To control the appearance of the development in the interests of the character of the area.

8. Prior to their erection on site details of the proposed 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. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.

Reason: To control the appearance of the development in the interests of the character of the area.

9. Prior to the commencement of the proposed development, the site access roads shall be formed in a sound bound material for the first 20.00m back from its junction with the public highway and drained to prevent no surface water onto the public highway. The site access roads shall be hardened, surfaced, drained and maintained thereafter hardened, surfaced, drained and maintained.

Reason: In the interests of highway safety.

10. Prior to the commencement of the proposed development, visibility splays shall be provided, laid out and maintained for that purpose at the primary site access where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 43.0 metres in a southern direction and as identified on the access plan in the other direction.

Reason: In the interests of highway safety.

11. Visibility splays shall be provided, laid out and maintained for that purpose at the other site accesses in accordance where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of

the public highway (identified as Y) shall be 33.00 metres in on coming direction and 33.00 metres to the centre line in the offside direction.

Reason: In the interests of highway safety.

12. No other part of the development hereby approved shall be commenced until the access, parking facilities, commercial vehicle loading/unloading area, visibility splays, turning area and access drainage have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times.

Reason: In the interests of highway safety.

13. No development shall take place until off site highway condition surveys have been undertaken and the details submitted and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

14. No development shall take place until:

EITHER

i) A programme of archaeological work has been carried out in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority.

OR

ii) A construction methodology for the development that avoids any below ground impact within the area of Archaeological sensitivity in the vicinity of the 7th/8th century iron furnace has been submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved scheme (under either part i) or part ii) or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure that any potential archaeology is investigated and that no damage is caused to any archaeological interests.

15. No development shall take place until a detailed scheme of ecological mitigation and enhancement measures, in accordance with the recommendations of the submitted documentation (below) has been submitted to and approved in writing by the Local Planning Authority:

(a) The Biodiversity Management Plan by avian ecology v4 (Dated 20/07/2020), has been submitted to and approved in writing by the Local Planning Authority.

(b) The Biodiversity Enhancement Note and Addendum Note Dated 3/12/2020)

(c) The updated Site Layout Plan (drawing number P18- 1820_14, Rev K)

Notwithstanding the details included in the above documentations, the details shall include the details to be submitted including planting plans, specification of species, sizes, planting centres, number and percentage mix and details of seeding or turfing.

Ecological mitigation and enhancement measures shall be implemented in accordance with the detailed scheme.

Reason: In the interests of biodiversity in the area and to ensure that enhancements forming part of the proposal are approved and implemented.

16. The Solar PV Panels hereby permitted shall not be erected until details, on a suitably scaled plan, of the soft landscape works have been submitted to, and approved in writing by, the local planning authority. The details to be submitted shall include planting plans, including specifications of species, sizes, planting centres, number and percentage mix, and details of seeding or turfing. The development shall not be carried out other than in accordance with the approved details.

Reason: In the interests of the character of the area and to ensure that the planting which forms part of the scheme is carried out.

17. All approved landscaping shall be carried out in the first planting and seeding season following the erection of the panels, and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards 8545: 2014 or any subsequent re-enactment.

Reason: In the interests of the character of the area and to ensure that the planting which forms part of the scheme is carried out and maintained.

18. The Solar PV Panels hereby permitted shall not be erected until the full details of the works to the hedges including species adjacent to the residential properties, as shown on Figures 11 and 12 of the Glint and Glare Study Page Power Ltd v 4 dated 16th August 2019, have been submitted and approved in writing by the Local Planning Authority. The works shall then be carried out in the first planting season after the written approval is received and thereafter retained and maintained.

Reason: In the interests of the character of the area.

19. The development hereby approved shall not be brought into use until the surface water drainage arrangements have been provided in full, in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall thereafter be retained for the life of the development.

Reason: To ensure that the scheme is properly drained.

20. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) report v5 prepared by Calibro, and issued on 30th November 2020, including the level for floodplain compensation outlined in paragraph 7.6.6 of the FRA. The mitigation measures shall be fully implemented in accordance with the timing/phasing arrangements detailed within the Flood Risk Assessment. The approved measures shall thereafter be retained for the life of the development.

Reason: To avoid flood risk.

21. No external lighting (other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits) shall be erected/used on site unless precise details of any lighting are first submitted to and approved in writing by the local planning authority. The lighting shall be installed and thereafter maintained in accordance with the approved details for the lifetime of the development.

Reason: To avoid excessive lighting in the interests of the rural character of the area.

22. Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority.

The CEMP shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise; vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development; manage Heavy/Large Goods Vehicle access to the site. It shall include details of the hours of operation and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways.

The following specific details should also be included in respect to highway safety:

- (a) The timetable of the works;
- (b) Daily hours of construction;
- (c) Any road closure;

(d) Hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays; 9.00am to 1.00pm Saturdays, and no such vehicular movements shall take place on Sundays and Bank/Public Holidays unless agreed by the Local Planning Authority in advance;

(e) The number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;

(f) The compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;

(g) Areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;

(h) The means of enclosure of the site during construction works;

(i) Details of wheel washing facilities and road sweeping measures with the respective obligations;

(j) The proposed route of all construction traffic exceeding 7.5 tonnes;

(k) Details of the amount and location of construction worker parking;

(l) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.

Reason: To minimise all forms of pollution in the surrounding area.

23. No development shall take place until a Landscape and Ecological Management Plan (LEMP) is submitted and approved in writing by the Local Planning Authority. The LEMP shall provide details of the following:

a) Retained Ecological and Landscape features;

b) Proposed Habitat Ecological and Landscape Features;

c) Habitats and Landscape Management Measures;

d) Monitoring and Review of Plan.

Reason: In the interests of the appearance and ecology of the area.

24. Development of the battery storage compound shall not commence until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP must prescribe for measures to facility safety during the construction, operation and decommissioning of the battery storage facility, including the transport of new, used and replacement

battery cells both to and from the authorised development. The Local Planning Authority must consult with the Health and Safety Executive and the Devon Fire and Rescue Service before approving the BSMP. The BSMP must be implemented as approved.

Reason: To ensure that the battery storage compound is constructed and operated in a safe manner.

_____End of conditions_____

APPEARANCES**JBM SOLAR PROJECTS 2 LTD**

Thea Osmund-Smith of Counsel, instructed by Paul Burrell, assisted by Odette Chalaby
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She called:

Gail Stoten BA(Hons) MCIFA FSA	Heritage Executive Director, Pegasus Planning Group
Greg Triantafyllidis MSc MIET	Technical Director, JBM Solar
Andy Cook BA(Hons) MLD CMLI MIEMA CENV	Joint Head of the Environmental Planning Division, Pegasus Group
Paul Burrell BSc(Soc Sci) Hons DipUP MRTPI	Executive Director, Pegasus Group

DEVON CPRE and RESIDENTS GROUP (Rule 6 party)

Dr Philip Bratby BSc PhD ARCS M Nuc I	Trustee and energy spokesman Devon CPRE
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MID DEVON DISTRICT COUNCIL (Conditions session only)

Angharad Williams BSc(Hons), MSc, MRTPI	Development Management Manager
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INTERESTED PERSONS

Jan Jones	Local resident
Roland Smith	Local resident
Cora Winterson	Local resident

INQUIRY DOCUMENTS

Doc 1	Appellant's opening statement
Doc 2	Photos of solar farm (CPRE)
Doc 3	Viewpoint 7 photomontages (Appellant)
Doc 4	CPRE's closing statement
Doc 5	Appellant's closing statement

CORE DOCUMENTS

Core Documents are available at:

https://www.dropbox.com/sh/bujdo61by2mg5k5/AABkT_B8VmKEI7jimCvnKPD3a?dl=0

A – Planning Application		
A1		Application Form, including Ownership Certificates
A2	A	Covering Letter, prepared by Pegasus Group, dated 2 nd October 2019
	B	Covering Letter, prepared by Pegasus Group, dated 7th December 2020
A3		Planning Statement, prepared by Pegasus Group, dated October 2019
A4		Design and Access Statement, prepared by Pegasus Group, dated October 2019
A5		Statement of Community Involvement, prepared by Pegasus Group, dated October 2019
A6		Construction Traffic Management Plan, prepared by Pegasus Group, dated October 2019
A7		Landscape and Visual Impact Assessment (LVIA), prepared by Pegasus Group, dated August 2019
A8		Arboricultural Impact Assessment, prepared by Barton Hyett Associates, dated August 2019
A9		Agricultural Land Classification Report, prepared by Davis Meade, dated October 2019
A10		Geophysical Survey Report, prepared by Magnitude Surveys, dated October 2019
A11		Glint and Glare Assessment, prepared by PagerPower, dated August 2019
A12	A	Heritage Statement, prepared by Pegasus Group, dated December 2019
	B	Heritage Statement Addendum, prepared by Pegasus Group, dated December 2019 and accompanying Covering Email from Simon Chamberlayne
A13		Interim Report on the Results of an Archaeological Trench Evaluation, prepared by AC Archaeology, dated November 2019
A14	A	Flood Risk Assessment and Drainage Strategy, prepared by Calibro, dated 21 st July 2019
	B	Flood Risk Assessment Revision 04, prepared by Calibro, dated October 2019
	C	Flood Risk Assessment Revision 05, prepared by Calibro Consulting, dated November 2020
A15		Letter Responding to Environment Agency, prepared by Calibro, dated 2nd December 2019
A16		Technical Note – Response to DCC Objection: Langford Solar Farm

		(Rev01), prepared by Calibro, dated 2nd February 2021
A17		Ecological Impact Assessment, prepared by Grassroots Ecology, dated October 2019
A18	A	Biodiversity Management Plan (v2), prepared by Avian Ecology, dated January 2020
	B	Biodiversity Management Plan (v3), prepared by Avian Ecology, dated March 2020
	C	Biodiversity Management Plan (v4), prepared by Avian Ecology, dated July 2020
A19	A	Technical Note: Ecology – Response to Council Comments, dated 9th January 2020
	B	Technical Note 2: Ecology – Updated Response to Council Comments, dated 11 th March 2020
A20		Addendum Note: Biodiversity Enhancements – New Scrape Enhancements, prepared by Avian Ecology, dated 3rd December 2020
A21		Breeding Bird Survey Report, prepared by Avian Ecology, dated July 2020
A22		Email from Simon Chamberlayne, Pegasus Group, dated 14th April 2020 including Officer Report Examples where solar farms have been approved within Flood Zones 3: <ul style="list-style-type: none"> • Stroud Local Planning Authority (Planning Ref. 14/1800/FUL) • Bristol City Council (Planning Ref. 15/00502/F) • Newark and Sherwood Council (Planning Ref. 19/01408/FULM)
A23		Site Selection Note, dated 1 st March 2021
A24		Alternatives to Langford Solar Farm Site, dated 3rd March 2021
A25		Leaflet Distributed to Planning Committee by Applicant, dated March 2021
Drawings		
A26		Site Location Plan, drawing number P18- 1820_18, Rev B, prepared by Pegasus Group
A27	A	Proposed Layout Plan, drawing number P18- 1820_14, Rev E, prepared by Pegasus Group
	B	Proposed Site Layout Plan, drawing number P18-1820_14, Rev J
	C	Proposed Site Layout Plan, drawing number P18-1820_14, Rev J – With Field Numbers (no other changes)
A28		PV Layout, drawing number JBM1035-101, Rev J, prepared by JBM Solar
A28	A	PV Layout, drawing number JBM1035-101, Rev K, prepared by JBM Solar
A29		Side Elevation Layout, drawing number JBM1035-201, Rev A, prepared by JBM Solar
A30		Control Room Elevations, drawing number JBM1035-209, prepared

		by JBM Solar
A31		Customer Cabin Elevations, drawing number JBM1035-210, prepared by JBM Solar
A32		Central Inverter Elevations, drawing number JBM1035-203, prepared by JBM Solar
A33		Switchgear Elevations, drawing number JBM1035-204, prepared by JBM Solar
A34		Spare Parts Building Details, drawing number JBM1035-212, prepared by JBM Solar
A35		CCTV Pole Details, drawing number JBM1035-213, prepared by JBM Solar
A36		Deer Fence Details, drawing number JBM1035-214, Rev A, prepared by JBM Solar
A37		Road Cross Section, drawing number JBM1035-216, prepared by JBM Solar
A38		Cable Trench Cross Section, drawing number JBM1035-215, prepared by JBM Solar
A39		132kVa Compound, drawing number JBM1035-220, prepared by JBM Solar
A39	A	132kVa Compound, drawing number JBM1035-220, Rev A, prepared by JBM Solar
A40		Client Substation (in 132kVa Compound and Site), drawing number JBM1035-222, prepared by JBM Solar
A41		Client Substation Elevations, drawing number P2763-(02)-25-01-0, Rev 0, prepared by G2 Energy
A42		Battery Container Elevations, drawing number P2763-(03)-25-01-0, Rev 0, prepared by G2 Energy
A43		DNO Substation Elevations, drawing number P2763-(01)-25-01-0, Rev 0, prepared by G2 Energy
A44		DNO Substation Plan, drawing number P2763(01)-25-01-0, Rev 0, prepared by G2 Energy
A45		PCS Inverter Elevations, drawing number P2763-(04)-25-01-0, Rev 0, prepared by G2 Energy
A46		Langford Battery Park (Gantry Site Elevations), drawing number P2763-150-03, Rev 0, prepared by G2 Energy
Committee Reports		
A47	A	Committee Report 31 st March 2021
	B	Committee Report Updates 31 st March 2021
A48	A	Committee Report 14 th July 2021
	B	Committee Report Updates 14 th July 2021
A49		Committee Report 18 th August 2021
A50	A	Committee Report 22 nd September 2021
	B	Committee Report Updates 22 nd September 2021

Decision Notice	
A51	Decision Notice, dated 23 rd September 2021
B – Application Consultation Responses	
B1	Blackdown Hills AONB, dated 5 th November 2019
B2	A Brandich Town Council, dated 21 st October 2019
	B Brandich Town Council, dated 30 th July 2020
B3	Clyst Hydon Parish Council, dated 14 th November 2019
B4	A Conservation Officer, dated 18 th November 2019
	B Conservation Officer, dated 21 st January 2020
B5	A Cullompton Town Council, dated 25 th October 2019
	B Cullompton Town Council, dated 17 th July 2020
B6	Devon County Council Flood Risk Management, dated 4 th February 2021
B7	A Environment Agency, dated 30 th October 2019
	B Environment Agency, dated 31 st January 2020
	C Environment Agency, dated 21 st December 2020
	D Environment Agency, dated 22 nd December 2020
B8	Exeter Airport, dated 21 st October 2019
B9	Flood and Coastal Risk Engineer, dated 29 th January 2021
B10	Highway Authority, dated 25 th October 2019
B11	Historic England, dated 4 th November 2019
B12	A Historic Environment, dated 18 th February 2021
	B Historic Environment Team, dated 17 th October 2019
	C Historic Environment Team, dated 16 th December 2019
B13	Kentisbeare Parish Council, dated 16 th October 2019
B14	A Lead Local Flood Authority, dated 23 rd October 2019
	B Lead Local Flood Authority, dated 30 th October 2020
B15	Natural England, dated 18 th October 2019
B16	Plymtree Parish Council, dated 7 th November 2019
B17	Public Health, dated 10 th October 2019.
B18	RSPB, dated 15 th October 2019
B19	Willand Parish Council, dated 18 th November 2019
B20	A CPRE, dated 28 th October 2019
	B CPRE, dated 14 th November 2019
	C CPRE, dated 7 th January 2020
	D CPRE, dated 21 st May 2020
	E CPRE, dated 10 th May 2021
	F CPRE, email dated 24 th May 2021
B21	David Wilson Partnership, dated November 2019

C – Planning Appeal		
C1		Planning Appeal Form dated 17 th February 2022.
Statements of Case		
C2		Appellant
C3	A	CPRE
	B	CPRE Addendum
C4		LPA Statement of Case
C4 – A		LPA Statement of Case, updated 12 th May 2022
Additional Documents Submitted as part of Appeal		
C5		Additional Planting Inset Plan, drawing number P18-1820_24, dated 2nd February 2022.
C6		Biodiversity Net Gain Metric 3.0 Report and Calculation Tool Spreadsheet, prepared by Avian Ecology, dated 9th February 2022
C7		Updated Agricultural Land Classification Report, prepared by Amet Property, dated February 2022
C8		Assessment of Impact on Agricultural Land and Soils, prepared by Amet Property, dated February 2022
Statements of Common Ground		
C9		Statement of Common Ground with LPA
C10		Statement of Common Ground with CPRE.
Proofs of Evidence		
C11	A	Appellant Planning Proof of Evidence
	B	Appellant Landscape Proof of Evidence
	C	Appellant Heritage Proof of Evidence
	D	Appellant Technical Proof of Evidence
C12		CPRE Proof
Conditions		
C13		Draft List of Conditions
Correspondence		
C14		Email from Angharad Williams, dated 31 st March 2022, confirming that the LPA concede reasons for refusal
C15		Email from Angharad Williams, dated 27 th April 2022 on the Council's changing position
Rebuttals		
C16		Appellant's Rebuttal to CPRE
D - National Planning Policy, Guidance and Legislation		
D1		National Planning Policy Framework (July 2021)
D2		National Planning Practice Guide (<i>Electronic Version only</i>)
D3	A	Overarching National Policy Statement for Energy (EN-1) (July 2011)
	B	Draft National Policy Statement for Energy (EN-1) (September 2021)
D4	A	National Policy Statement for Renewable Energy Infrastructure (EN-3) (July 2011)
	B	Draft National Policy Statement for Renewable Energy Infrastructure

		(EN-3)
D5		UK Government Solar Strategy 2014
D6		Written Ministerial Statement on Solar Energy: protecting the local and global environment made on 25 March 2015
D7		Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (February 2021)
D8		Climate Change Act 2008
D9		Climate Change Act (2050 target amendment) Order 2019
D10		Clean Growth Strategy published by the Department for Business, Energy and Industrial Strategy (BEIS) in October 2017
D11		UK Parliament declaration of an Environmental and Climate Change Emergency in May 2019
D12		Energy White Paper: Powering our Net Zero Future published in December 2020
D13		UK Government press release of acceleration of carbon reduction to 2035, dated April 2021
D14		The latest version of the 'Digest of United Kingdom Energy Statistics', July 2021
D15		UK Energy Statistics Press Release published by the Department for Business, Energy & Industrial Strategy, June 2020
D16		'Achieving Net Zero' published by the National Audit Office in December 2020
<u>D17</u>		Net Zero Strategy: Build Back Greener, dated October 2021.
<u>D18</u>		British Energy Security Strategy, updated 7th April 2022
<u>D19</u>		2021 UK Greenhouse Gas Emissions, Provisional Figures, published by Department for Business, Energy and Industrial Strategy, dated 31 st March 2022
<u>D20</u>		Subnational Electricity Consumption, Great Britain, 2005-2020, published by the Department for Business, Energy & Industrial Strategy, dated 22 nd January 2013
E – Local Planning Policy, Guidance and Documents		
E1		Mid Devon Local Plan 2013-2033
E2		Cullompton Neighbourhood Plan 2020-2033
E3		Mid Devon District Council's decision to become part of the Devon Climate Emergency Response Group, and reference to Devon County Council's declaration of a climate change emergency in May 2019.
E4		An Assessment of the Landscape Sensitivity to Onshore Wind Energy and Large Scale Photovoltaic Development in Mid Devon District, dated October 2013
E5		Landscape Sensitivity for solar PV development SPD supplementary planning document (2016)
E6	A	Devon Landscape Character Assessment – Mid Devon Character Areas
	B	Devon Landscape Character Assessment – East Devon Character

	Areas
E7	Mid Devon Landscape Character Assessment (October 2011)
F – Landscape	
F1	Guidelines for Landscape and Visual Impact Assessment 3rd Edition
F2	Landscape Institute guidance on representative viewpoints and visualisations
F3	National Character Area Profile: 148 Devon Redlands (2013)
G – Heritage	
G1	<u>Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment</u>
G2	<u>Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (Second Edition)</u>
G3	<u>Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment</u>
G4	<u>Statements of Heritage Significance, Analysing Significance in Heritage Assets, Historic England Advice Note 12</u>
H – Technical Information & Other Solar Schemes	
H1	McMicken Battery Energy Storage System Event. Technical Analysis and Recommendations. Arizona Public Service, dated July 2020.
H2	Hambleton District Council. Scruton Solar. Agricultural Land Classification, dated November 2021
H3	Amet Property. Agricultural Land Classification. Land at Leeming Bar, dated December 2020
H4	Merseyside Fire & Rescue Service. Incident Investigation Team, dated September 2020
H5	Merseyside Fire & Rescue Service. Significant Incident Report, dated September 2020
H6	Hazardous Substances Potentially Generated in "loss of control" accidents in Li-on Battery Energy Storage Systems (BESS). Euring Dr Edmund Fordham MA PhD CPhys CEng FInstP, Professor Sir David Melville CBE CPhys FInstP, dated March 2022
H7	Safety of Grid Scale Lithium-ion Battery Energy Storage Systems. Euring Dr Edmund Fordham, Fellow of Institute of Physics, Dr Wade Allison MA DPhil Professor of Physics Fellow of Keble College, Oxford, Professor Sir David Melville CBE FInstP Professor of Physics Former Vice Chancellor University of Kent, dated June 2021
H8	Life Prediction Model for Grid Connected Li-on Battery Energy Storage Kandler Smith, Aron Saxon, Matthew Keyser & Blake Lundstrom National Renewable Energy Laboratory. Ziwei Cao and Albert Roc SunPower Corp, dated May 2017
H9	Solar Energy UK Briefing, Everything Under the Sun, The Facts About Solar Energy, dated March 2022
H10	The evidence is clear: the time for action is now, article published by the IPCC, dated 4th April 2022
H11	Combined Capacity Register
H12	Practical Guide to Realising the Biodiversity Potential of Solar Farms, prepared by Wychwood Biodiversity and Naturesave Insurance, dated April 2022.

H13		The Natural Capital Value of Solar (2019) Solar Trade Association
H14		Opportunities to Enhance Pollinator Biodiversity in Solar Parks, prepared by A Armstrong, dated 2021
H15		Natural Capital Best Practice Guidance, prepared by Solar Energy UK
I – Relevant Decisions, Legal Judgements and Officer Reports		
I1		<u>Catesby Estates Ltd v. Steer, EWCA Civ 1697, 2018</u>
I2		Bedford Council v Secretary of State and Nuon Ltd [2013] EWHC 2847 (Admin)
I3		Palmer v Herefordshire Council Anr, EWCA Civ 1061 [2016].
I4	A	Examining Authority's Report of Findings and Conclusions – Cleve Hill Solar Park (reference: EN010085)
	B	Application for the Cleve Hill Solar Park Order – Decision Letter (reference: EN010085)
I5		R. (on the application of William Corbett) v The Cornwall Council [2020] EWCA Civ 508.
I6		Land North of Halloughton, Southwell, Nottinghamshire (Appeal Reference: APP/B3030/W/21/3279533)
I7		Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council, English Heritage, Natural Trust, Secretary of State [2014] EWCA Civ 137
I8		Forge Field Society v Sevenoaks District Council [2014] EWHC 1895 (Admin)
I9		Mordue v Secretary of State and South Northamptonshire Council [2015] EWCA Civ 1243.
I10		S/19/1097 – Corner Copse, Swindon Borough, 49.9 MW Collocated Solar and Storage Site
I11		19/04321/STPLF – Scurf Dyke, East Riding of Yorkshire, 49.9 MW Collocated Solar and Storage Site
I12		TWC/2020/0851 – Myttons, Telford & Wrekin / Shropshire, 49.9 MW Collocated Solar and Storage Site
I13		21/00552/FUL – Bunker's Hill, Hart District Council, 49.9 MW Collocated Solar and Storage Site
I14		21/00259/FUL – Claydon, Tewkesbury Borough, 49.9 MW Collocated Solar and Storage Site
I15		20/06840/FUL – Wick Farm, Wiltshire, 49.9 MW Collocated Solar and Storage Site
I16		21/02448/FUL – Eastfields, Stratford-on-Avon DC, 25 MW Collocated Solar and Storage Site
I17		21/0465/FUL – Moreton Lane, Stroud Borough Council, 49.9 MW Collocated Solar and Storage Site
I18		20/03528/FUL – Minety, Wiltshire, 49.9 MW Collocated Solar and Storage Site
I19		21/01363/FUL – Doverdale, Wychavon District, 49.9 MW Collocated Solar and Storage Site
I20		Appeal Decision: APP/Z5630/W/18/3205282 Land opposite Chessington Sub-station, Fair Oak Lane, Chessington



Department for Levelling Up, Housing & Communities

www.gov.uk/dluhc

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.