



## Appeal Decision

Inquiry Held on 5 November 2024

Site visit made on 20 November 2024

by **SRG Baird BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13<sup>th</sup> January 2025

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### Appeal Ref: APP/V4630/W/24/3347424

### Land off Chapel Lane, Great Barr, Walsall

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Anesco Limited against Walsall Metropolitan Borough Council.
- The application Ref 23/1286 is dated 4 October 2023.
- The development proposed is the construction of a temporary 49.35MW battery energy storage facility, with security fencing, access and associated works.

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### Decision

1. The appeal is allowed, and planning permission is granted for a temporary 49.35MW battery energy storage facility, with security fencing, access and associated works on land off Chapel Lane, Great Barr, Walsall in accordance with the terms of the application, Ref 23/1286 dated 4 October 2023, and the plans submitted with it, subject to the Schedule of Conditions set out in Annex A.

### Preliminary Matters

2. The above description, taken from the application form, adequately describes the proposal.
3. Had the local planning authority (lpa) been in a position to decide the application, it would have been refused for 9 reasons (Annex C). The putative reasons for refusal (RfRs) refer to inappropriate development in and loss of openness to the Green Belt (GB), landscape and visual impact, heritage, highways, drainage/ecology, best and most versatile agricultural land (B&MV), noise and proximity to power lines.
4. Before the inquiry opened, the applicant requested that the application be decided based on amended plans. The amendments included, relocating the site access and changes to the internal access track, revised visibility splays, replacing the CCTV system and communications tower with beam security, the inclusion of a swale and fire water pond to align with the proposed drainage layout, rationalisation of the fencing, removing the existing stable blocks and changes to the Landscape Strategy Plan.
5. The applicant consulted those residents originally contacted, and the lpa consulted stakeholders on the proposed amendments. Having regard to the nature of the amendments and the extent of the consultations undertaken, I

concluded<sup>1</sup> that no party would be prejudiced by deciding the application on the basis of the amended plans. Whilst I indicated that I was minded to decide the application on that basis, I noted that to ensure consistency, minor changes may be required to other plans.

6. Subsequently, the applicant included, with the Revised Plans Bundle, an additional plan (C0002457-14 REV A - Indicative Site Section). The lpa reconsulted relevant stakeholders on this plan. This plan was not before me when I concluded on the acceptability of the amended plans. However, it would have been clear, given the site falls from the north-eastern boundary to the south-west, that to ensure a level platform some groundworks would be required. At the inquiry, the lpa, whilst noting that it would have been appropriate for this plan to have been submitted earlier, it was content to proceed on the basis of the additional plan. I confirmed that the application would proceed on the basis of the amended plans.
7. With the acceptance of amended plans, the submission of further information, consultation responses and reflecting on the appropriateness of RfR 7, the lpa did not pursue the putative RfRs relating to highways (RfR 4), drainage/ecology (RfR 6), and proximity to overhead power lines (RfR 7). Neither the applicant nor the lpa called witnesses on these matters.
8. Some of the RfRs contain reference to conflict with Unitary Development Plan (UDP) Policy ENV38 – Telecommunications Equipment. With the removal of the communications tower, this policy is no longer relevant. RfR 1 relating to the GB refers to Policy ENV7 of the Black Country Core Strategy (BCCS). This policy relates to the development of renewable energy sources. This application is for a freestanding battery energy storage system (BESS). Its purpose is to store electricity and release it when needed to match supply with demand. In this context, BCCS Policy ENV7 is not relevant.
9. During the inquiry it became clear that some plans continued to contain contradictory detail. For example, the amended site layout plan showed the battery storage compound being enclosed on all sides by acoustic fencing. However, the evidence, and the basis on which the proposal was considered, was that acoustic fencing was to be provided on 3 sides with standard fencing on the fourth side. These contradictions were corrected during the inquiry. No one would be prejudiced by accepting these corrections.
10. Drawing the above together, no party would be prejudiced by deciding the application on the basis of the amended/corrected plans. Accordingly, this appeal has been decided based on the following plans, Location & Block Plan, Drawing No. C0002457\_03 Rev. C, ESS Containers Plans and Elevations, Drawing No. C0002457\_04C, Customer Substation Plans and Elevations, Drawing No. C0002457\_08 Rev. B, Site Layout, Drawing No. C0002457\_02 Rev P, Visibility Splay, Drawing No. 2108013-06 Rev B, Substation Plan & Elevation, Drawing No. C0002457\_06 Rev D, and Tree Protection Plan, Drawing No. 404.064032.00001 Rev 04.
11. The site and other substantial tracts of land in the wider area are used for the grazing of horses. Albeit references were made to the land being used for horsiculture, grazing falls within the definition of agriculture. In deciding this application, it is not my role to determine what the lawful use of the site is. If

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<sup>1</sup> 7 October 2024.

the applicant or the landowner wishes to seek such a determination, an application should be made to the Ipa under S192 and S193 of the above Act. For the purposes of concluding on this issue, I have proceeded based on the agreed position in the Statement of Common Ground that the land is in agricultural use.

12. On the 8 October 2024, exercising the powers conferred by Regulations 14(1) and 7(5) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017), the Secretary of State determined that this development is not an Environmental Impact Assessment development. I have no reason to disagree with that conclusion.
13. On the final day of the inquiry, the representative of the Rule 6 party, the Staffordshire Gardens and Parks Trust (SG&PT), was unable to attend the inquiry. Closing submissions for the SG&PT were submitted in writing.
14. Applications for costs were made by, (1) Anesco Limited against Walsall Metropolitan Borough Council (WMBC) and (2) WMBC against Anesco Limited. These applications are the subject of separate decisions.
15. Following the completion of the parties' cases, the inquiry was adjourned to allow for the submission of suggested conditions. The inquiry was closed in writing on Tuesday 26 November 2024.
16. At the Case Management Conference held on the 29 August 2024, the parties agreed that, having regard to the contents of National Planning Policy Framework<sup>2</sup> paragraph 154 (Framework) extant at that time, the proposal comprised inappropriate development in the GB. As such, the Main Issues addressed at the inquiry did not include consideration as to whether the proposal represented inappropriate development in the GB. In December 2024, revisions to the Framework were published. Changes relevant to the determination of this case relate to Framework paragraph 155, which, introduced a further category of development regarded as not inappropriate in the GB. This change required the issue of whether the development is inappropriate development to be addressed. The parties were offered an opportunity to comment, and their responses have been considered.

### **Main Issues**

17. These are,
  1. whether the proposal would be inappropriate development in the GB having regard to the Framework and any relevant development plan policies,
  2. the effect on openness,
  3. the effect on the character and appearance of the area,
  4. the effect on heritage assets,
  5. the effect on the living conditions of residents with particular reference to noise,
  6. the effect on the supply of agricultural land, and

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<sup>2</sup> National Planning Policy Framework December 2023.

7. whether the harm by reason of inappropriateness, and any other harm would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

## Reasons

18. The development plan includes, saved policies of the Walsall Unitary Development Plan (UDP) 2005, the Black Country Core Strategy (BCCS) 2011 and the Walsall Site Allocation Document (WSAD) 2019. Statements of Common Ground (SoCG) on Planning, Landscape and Heritage list the relevant development plan policies.

### Issue 1 - Inappropriate Development

19. WSAD Policy GB1 refers to development in the GB being managed in accordance with policies in the Framework. Framework paragraph 155 indicates that,

*The development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where:*

- a. the development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining GB across the area of the plan,*
  - b. there is a demonstrable unmet need for the type of development proposed,*
  - c. the development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework, and*
  - d. where applicable the development proposed meets the "Golden Rules" requirements set out in Framework paragraphs 156 and 157.*
20. Criterion b and c above are subject to Footnotes 56 and 57 which do not apply to this development. The Glossary to the Framework defines Grey Belt as,  
*"...Grey Belt is defined as land in the GB comprising previously developed land (PDL) and/or<sup>3</sup> any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in Framework paragraph 143. Grey Belt excludes land where the application of the policies relating to the areas or assets in Footnote 7 (other than GB) would provide a strong reason for refusing or restricting development.*
  21. Footnote 7 refers to Framework policies, rather than those in development plans, relating to: habitats sites, and those sites listed in paragraph 194<sup>4</sup>, and/or designated as Sites of Special Scientific Interest; land designated as GB, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets and other heritage assets of archaeological interest referred to in Footnote 75; and areas at risk of flooding or coastal change.

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<sup>3</sup> My emphasis.

<sup>4</sup> There appears to be a typographical error in this Footnote. In the December 2023 edition of the Framework, Footnote 7 to paragraph 11 d (I) refers to, "...those sites listed in paragraph 187". Paragraph 187 refers to types of sites that should be given the same protection as habitat sites. In the December 2024 Framework, Footnote 7 refers to paragraph 189. However, Paragraph 189 refers to National Parks etc. The equivalent to the December 2023 paragraph 187 in the December 2024 Framework is paragraph 194.

22. As to whether the land is Grey Belt, the applicant accepts that the site is not PDL, and it is agreed that Purpose d - to preserve the setting and special character of historic towns, is not relevant. To determine whether the site falls to be considered as Grey Belt, the site has to pass the test of whether the land, does not strongly contribute to Purpose a - to check the unrestricted sprawl of large built-up areas and Purpose b - to prevent neighbouring towns merging into one another listed in Framework paragraph 143.

Purpose a - Sprawl

23. The evidence base for the BCCS review, included a GB study, which assessed how land within the GB contributes to the purposes of the GB. The site is located within Parcel B93, an area that covers some 1,768ha between Walsall, Sutton Coldfield and Birmingham. The study concluded that Parcel B93 made a strong contribution to Purposes a, b and c. The study assessed the harm of releasing a sub-parcel of B93, B93A, which covers an area of some 487ha, south of Sutton Road, west of Beacon Road down to Great Barr as being "Very High". Given that Parcel B93 fills the entire gap, between the settlements of Walsall, Sutton Coldfield and Birmingham and Parcel B93A is a substantial area, these conclusions are unsurprising and do not assist in assessing the effect of the development on GB purposes.
24. The Framework does not contain a definition of what might constitute sprawl. Concluding on whether the development would conflict with Purpose a, depends on the relationship of the site with the large built-up area. Here, although the site is located towards the southern tip of the GB, it is not immediately adjacent to the large built-up area. Rather it is separated from it by open fields, recreational land and the Great Barr Registered Park and Garden (RPG). As such, the development would be physically and visually discrete from the large built-up area. In this context, the site does not strongly contribute to Purpose a.

Purpose b - Merging

25. The proposal would result in physical development in the gap formed by Parcel B93. Therefore, in the strict sense of this purpose, the proposal would not in itself lead to the merging of neighbouring towns. However, the countryside and open land between towns is always under pressure from development and it is rarely the case that a single development, on its own, would cause neighbouring towns to merge. However, such areas could be lost incrementally and, over time, lead to the merging of neighbouring towns.
26. Here, albeit temporarily, there would be a loss of GB land between the towns of Walsall, Birmingham and Sutton Coldfield. This would result in a minor, temporary reduction, in the gap between these towns. Therefore, the proposal would contribute to the possibility of these towns merging. That said significant open land would remain between the site and these towns. There is very limited visibility of the site, and the BESS would have no material impact on the perception of the gap. In this context and given the proposal would be temporary and would not lead directly to the merging of neighbouring towns, the site does not strongly contribute to Purpose b.

### Conclusion on Grey Belt Status

27. Based on these conclusions, the site falls to be considered as Grey Belt. However, for the proposal to be considered as not inappropriate development it must satisfy all of the criterion, a to d, listed in Framework paragraph 155.

#### Criterion A

28. This criterion requires that the development would not fundamentally undermine, the purposes, when taken together, of the remaining Green Belt across the area of the plan. I take this to mean an assessment of the proposal against all 5 of the purposes of the GB.
29. The impact on Purposes (a) and (b) is been considered above, concluding there would be no conflict. As to Purpose (c), encroachment, it is common ground that the BESS would result in harm to this purpose. Given the relative scale of the site and Parcel B93, the harm resulting from encroachment would be negligible. On Purpose (d), it is agreed that the site does not contribute to this purpose.
30. Regarding Purpose (e), this was assessed in Appendix 3 of the GB study. Here, a substantial number of individual parcels of land, excluding the site, were assessed. The study came to a global conclusion that all parcels make an equal and strong contribution to this purpose. The manner in which this part of the Study was undertaken does not assist in assessing the effect of this development on Purpose (e).
31. What is more useful, is the Alternative Sites Assessment (ASA) prepared by the applicant in September 2023 and updated for the appeal in October 2024. The development of a BESS has one key locational requirement. That is the availability of and proximity to a grid connection. Access to the local grid is the biggest constraint facing the alternative energy supply and associated infrastructure industries. Sites need to be located close to a point of connection (POC) to the grid, so as to minimise the loss of energy during transmission and the grid must have capacity to absorb the electricity discharged at times of peak demand. The intended point of connection to the grid is some 550m from the site and then by existing underground cable to the Bustleholme sub-station.
32. The ASA considered a search area of some 2km from the POC. In my experience, this is generally the maximum distance for a connection before its viability, both in terms of electricity transmission and cost, becomes questionable. Undertaking what I consider a robust assessment, the ASA concludes that there are no alternative sites suitable for this scheme. I have no reason to dispute that conclusion, and no one presented the inquiry with an alternative location for consideration. In the absence of an alternative site, there would be no conflict with Purpose e to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
33. Drawing all of the above together, I conclude that the development would not fundamentally undermine, the purposes when taken together of the remaining GB in the plan area. Criterion A of Framework paragraph 155 is met.

Criterion B

34. Here, a demonstrable unmet need for the development proposed is required. Although all forms of electricity storage<sup>5</sup> were removed<sup>6</sup> from the definition of nationally significant energy generating stations under the Planning Act 2008, National Policy Statement (NPS) EN-1<sup>7</sup> refers to the role of electricity storage. Whilst NPSs are national policy for energy projects that are defined as Nationally Significant Infrastructure Projects (NSIP) identified by the 2008 Act, NPS EN-1 indicates that it may be a material consideration in decision making on applications that fall under the Town and Country Planning Act (1990 (as amended)). Thus, whilst a BESS is not an NSIP and the specific provisions that NPSs make for them, they do provide a context to assist in the determination of a planning application.
35. NPS EN-1 indicates<sup>8</sup> that energy storage has a key role to play in achieving net zero and providing flexibility to the energy system, so that high volumes of low carbon power, heat and transport can be integrated. Storage is needed to reduce the costs of the electricity system and to increase reliability by storing surplus electricity in times of low demand to provide electricity when demand is higher. Storage can provide various benefits, locally and nationally. These include maximising the usable output from intermittent low carbon generation (e.g. solar and wind), reducing the total amount of generation capacity needed on the system; providing a range of balancing services to the National Electricity Transmission System Operator (NESO) and Distribution Network Operators (DNO) to help operate the system, reduce constraints on the networks and help to defer or avoid the need for costly network upgrades as demand increases.
36. NESO is a publicly owned energy body responsible for energy planning in Great Britain. When NPS EN-1 was published in November 2023 it noted that there was around 4GW of operational electricity storage in Great Britain, of which some 1GW is battery storage. NESO recently published Clean Power 2030 Advice on achieving clean power by 2030. The “clean power pathway”, sees a 4-to-fivefold increase in demand flexibility with, amongst other things, an increase in grid connected battery storage from 5GW to over 22GW. NESO predicts that unprecedented volumes of clean energy infrastructure projects are needed to meet the Government’s energy ambitions. Whilst the NESO report is not government policy or has the same status as the Framework, it does provide supporting context for decision making.
37. Framework paragraph 161 indicates that the planning system should support the transition to a low carbon future and support, amongst other things renewable and low carbon energy and associated infrastructure. Given the context provided by NPS EN-1 and the NESO research, it is not a huge leap to conclude that a BESS project represents much needed associated infrastructure.
38. One of the constraints to the early development of renewable and low carbon energy and associated infrastructure is the ability to access the local grid. In some places, notwithstanding the appetite to develop projects, grid

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<sup>5</sup> Other than pumped hydroelectric storage.

<sup>6</sup> The Infrastructure Planning (Electricity Storage Facilities) Order 2020.

<sup>7</sup> Overarching National Policy Statement for Energy.

<sup>8</sup> Paragraphs 3.3.25 to 3.3.27.

connections are not available until the mid to late 2030s. This project has a grid connection offer of 2028. Thus, given the imperative of mitigating climate change and achieving net-zero, this project has the ability to make an early and material contribution to the clean power pathway required to achieve net zero. Whilst the appellant has not provided "...*quantifiable evidence...*" of an unmet need, the above context provides reason to show that the requirement of criterion B of Framework paragraph 155 is met.

#### Criterion C

39. Criterion C requires that the development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of the Framework. Framework paragraph 110 indicates that significant development should be focussed on locations that are or can be made sustainable, through limiting the need to travel. This paragraph goes on to say that opportunities to maximise transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making. Framework paragraph 115 seeks to ensure amongst other things, that sustainable transport modes are prioritised taking account of the type of development and its location, safe access can be achieved and any significant impacts on the capacity of the highway network or highway safety can be acceptably mitigated.
40. The thrust of Framework paragraph 110 appears to relate to development that would generate significant level of vehicle movements, particularly by car. With this development there would be 2 phases, the construction phase and the operational phase. During the 40-week construction phase the development would lead to an increase in traffic on the road network of, on average, three, 2-way vehicle movements per day. During the operational phase, there would be one van accessing the site on 2 occasions per month. This level of traffic movement is not significant, nor would it have an unacceptable effect on highway capacity or safety. The Highway Authority has no objection on access or traffic generation grounds. Moreover, given the nature of the development, whether it was located in a rural or urban area, the scale of traffic generation could not be limited or changed to alternative transport modes. The requirement of criterion C of Framework paragraph 155 is met.

#### Criterion D

41. Criterion D, the "Golden Rules" does not apply here.

#### Conclusion on Issue 1

42. The relevant criteria contained in Framework paragraph 155 are met and this development does not fall to be considered as inappropriate development in the GB. As such there would be no conflict with WSAD Policy GB1.
43. The Courts have found that where a development is found not to be inappropriate development it should not be regarded as harmful either to the openness of the GB or to the purposes of including land in the GB. Notwithstanding my conclusion on Issue 1, for completeness the issue of GB openness is addressed below.



## Issue 2 - Green Belt Openness

44. Framework paragraph 142 says that one of the essential characteristics of GBs is, openness and permanence. Planning Practice Guidance<sup>9</sup> (PPG) indicates that openness is capable of having both spatial and visual impacts. PPG lists the factors involved when considering the effect on openness. These include, visual impact, volume, duration, the degree of activity generated and remediability i.e. any provisions to return land to its original, equivalent or improved state of openness.
45. The Ipa acknowledge that the visual envelope of the site is limited<sup>10</sup>. This area is contained by The Duckery, Chapel Lane, Pinfold Lane, a short stretch of Old Hall Lane and the western edge of the farmstead at Old Hall Farm. Within this tight visual envelope, public views are limited. Views obtained by walkers and drivers travelling north on Chapel Lane start immediately past The Duckery and end at the stables, with further glimpsed views at the access to the stables. Views for walkers and drivers travelling south on Chapel Lane are similarly limited. Existing planting on the road frontage is limited with 2 substantial lengths where open views across the field are available. Views from Pinfold Lane and Old Hall Lane are limited to one or 2 locations.
46. A public footpath runs north-east diagonally from the existing site entrance on Chapel Lane to Pinfold Lane. Given the absence of any planting along the north-eastern boundary of the site, views across the site to The Duckery are available. However, access to and from this path is blocked and it appears to have been blocked for some time. Spatially, the proposal would introduce a significant volume of development into a largely open field. The footprint of the whole compound and associated access tracks would occupy around 50% of the field and much of its length.
47. The proposal provides for, the removal of the stables and associated detritus, strengthening of the gappy hedgerow on Chapel Lane and a new hedgerow on the north-eastern boundary. Ensuring a level platform for the various components, particularly the DNO Substation, requires a cut and fill exercise. The soil would be retained and used for bunding along the north-eastern and north-western edges of the compound. These features and the acoustic fencing would limit views to the upper parts of the battery containers, the customer substation and the DNO substation<sup>11</sup>.
48. As the boundary planting matures, the visual and spatial impact of the proposal would be progressively mitigated. Post construction, the BESS would generate a limited amount of activity for maintenance purposes. Albeit 40 years is a long time, the BESS would be a temporary feature, after which, the site would be restored, and the mature boundary planting would be retained. In this context, it could not be said that the land would be completely restored to its original, equivalent or an improved state of openness. That said, it is an overarching landscape/biodiversity objective that existing hedgerows are retained, and new hedgerows planted. Moreover, there is nothing to prevent the landowner/occupier undertaking similar boundary planting.

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<sup>9</sup> Green Belt Paragraph: 001 Reference ID: 64-001-20190722.

<sup>10</sup> Appendix G Plan 2 Ipa Landscape & Visual Matters.

<sup>11</sup> Addendum Landscape of Common Ground.

49. Drawing this part of the assessment of Issue 2 together, given the utilitarian nature of the proposal it would have a harmful effect on the openness of the GB on a temporary, but long-term basis. With landscape mitigation, the harm would be localised, and the harm to openness would be Minor Adverse.

#### Issue 3 - Character and Appearance

50. UDP, BCCS and WSAD policies generally refer to the protection and, where appropriate, enhancement of landscape and countryside character. These policies also crossover into the other main issues relating to, agricultural land, the GB, historic character and local distinctiveness. Relevant landscape character documents include the Barr Beacon Countryside Area Profile (BBCAP), the Black Country Historic Landscape Characterisation (BCHLC) 2009 updated in 2019, the Black Country Landscape Sensitivity Assessment (BCLSA) 2019 and the Draft Great Barr Conservation Area Appraisal and Management Plan (CAAMP).
51. The aims of the BBCAP include, protecting and enhancing the appearance and quality of the landscape and encouraging the creation of landscape resources through, amongst other things, the enhancement of hedgerows. The BCHLC includes the site within the WL09 Barr Beacon and Aldridge Fields Character Area and is described as the most rural area in Walsall.
52. The BCLSA locates the site within the south-east corner of Landscape Area BL28, which appears to be contiguous with GB Parcel B93A. The appraisal of landscape sensitivity refers to, (1) the medium to small scale fields crossed by rural lanes enclosed by hedgerows that add to the small-scale character of the area and (2) the visually prominent pylon route and the presence of paddocks both of which has an urbanising effect on the landscape. Area BL28 is given a moderate to high sensitivity rating with the pylons and paddocks identified as, "anomalies" to the sensitivity rating.
53. The CAAMP locates the site within Character Area A – Historic Core of the Great Barr Estate and Sub-Area A6 - Chapel and Pinfold Lanes. Here, landscape sensitivity is identified as High and visual sensitivity as High/Medium. This sub-area is identified as having a high sensitivity to all types of energy development that would affect rural character.
54. For the purposes of Framework paragraph 187a, it is agreed that the landscape is not a valued landscape. In achieving the overarching objective of enhancing the natural environment, Framework paragraph 187b indicates that decisions should recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services, including amongst other things trees and woodland.
55. The lpa and applicant agree that the landscape and visual effects of the BESS would, be restricted to limited areas<sup>12</sup>. Similarly, there is significant agreement on the predicted effects on landscape and visual receptors<sup>13</sup>. Where there are differences of professional opinion these are minor. There is agreement, that during and immediately post-construction (Year 1) the effect depending on the nature of the receptor would be *Minor, Minor-Moderate or Moderate Adverse*. The same conclusions apply to visual receptors except for walkers using Chapel Lane, which forms part of the Beacon Way long distance

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<sup>12</sup> Lpa Landscape Evidence Appendix G.

<sup>13</sup> Landscape Statement of Common Ground & Addendum Landscape Statement of Common Ground.

footpath where the applicant assesses the Year 1 effect as *Moderate Adverse* and the lpa as *Major/Moderate Adverse*. Adverse effects in Year 1 are to be expected. The key test as to the effect, is in later years when mitigation starts to take effect and the duration of the effect, Year 15.

56. In terms of the effect on the landscape character of the site and its immediate vicinity, the applicant's Year 15 assessment is *Temporary Minor Adverse* and the lpa's is *Permanent Moderate Adverse*. For the BCLSA Landscape Area BL28, the respective assessments are *Temporary Negligible and Permanent Moderate/Minor Adverse*. For the BCHLC Barr Beacon and Aldridge Fields Character Area WL09, the respective assessments are *Temporary Negligible and Permanent Moderate/Minor Adverse*.
57. For drivers travelling either way on Chapel Lane, the applicant assesses the Year 15 visual effect as *Temporary Negligible Adverse* and the lpa as *Permanent Moderate Adverse*. For walkers passing on Chapel Lane (Beacon Way) the respective assessments are *Temporary Minor* and *Permanent Moderate Adverse*. For walkers on Old Hall Lane, the respective assessments are *Negligible Temporary Adverse* and *Minor Permanent Adverse*.
58. The lpa's assessment of landscape and visual effects is predicated on the basis that 40 years equates to a permanent effect. Whilst 40 years is a long time, it would be wrong, consider the development as permanent. An allowance has to be made for the fact that any beneficial effects, the new hedgerows, would be retained and any adverse effects from the introduction of a utilitarian structure, would be removed. On that basis, I consider the assessment of landscape and visual effects must be prefaced with the descriptor of temporary, with a recognition that mitigation that includes hedgerow and tree planting would, from Year 1 mature and continue to mature increasingly mitigating the Year 15 effects.
59. In terms of landscape effects, in relation to the site and its immediate vicinity, I consider the Year 1 effects would be *Temporary Moderate Adverse* and at Year 15 would be *Temporary Minor Adverse*. Given the scale of the BCLSA Landscape Area BL28 and the acknowledged limited landscape context envelope, the Year 1 effects would be *Temporary Minor Adverse* and by Year 15 *Temporary Negligible Adverse*. For the BCHLC Barr Beacon and Aldridge Fields Character Area WL09, for similar reasons the Year 1 effects would be *Temporary Negligible Adverse* and by Year 15, there would be no discernible landscape effect.
60. Chapel Lane, although it has the appearance of a country lane, is a well-used route for drivers from Birmingham and the M6 accessing Streetly and Sutton Coldfield avoiding the Walsall ring road and vice versa. The significant use of the road is evidenced by the introduction of traffic calming measures next to St Margaret's Church and The Duckery. In this context, whilst passengers would be able to take in the scene, drivers need to concentrate on the road and oncoming traffic rather than the surrounds. At Year 1, the visual effects would be *Temporary Moderate Adverse* and by Year 15 *Temporary Negligible Adverse*, when for both drivers and passengers' views would be limited to the briefest of glimpses through the maturing hedgerows and glimpses at the site access and the access to the stables where views of the substation, acoustic fencing and battery stores would be limited by bunding.

61. For walkers on Chapel Lane, Beacon Way, again because of the nature of the road they have to concentrate on the traffic. That said, I acknowledge that in Year 1 given their high sensitivity, the effect would be *Temporary Moderate/Major Adverse* and by Year 15 *Temporary Minor Adverse*. Notwithstanding this conclusion, I am aware that on the northern side of Chapel Lane running north-eastwards from just before the start of the site at The Duckery and finishing in the area where the boundary hedge on the site is at its thickest is a public footpath running between 2 dense mature hedges. Although signposted at its north-eastern end, the path is overgrown and currently unusable. Proper maintenance of this path would allow walkers safe passage along this part of Chapel Lane and as such any views would be completely obscured. For walkers on Old Hall Lane, the effects at Year 1 would be *Temporary Minor Adverse* and by Year 15 *Negligible*.
62. During the inquiry, a further view was identified by the SG&PT from steeply rising land in the north-east corner of the RPG. This a substantially overgrown area where access is limited to one or 2 narrow paths through the scrub. It is not in a location where casual walkers would seek to visit. From here views of the BESS would be limited to a relatively small area at the north-eastern corner of the battery compound. Given the view would be downwards to that part of the compound and would remain unscreened, the Year 1 and Year 15 effects would be *Temporary Moderate Adverse*.
63. Drawing the above together, on Issue 3 the BESS would, overall, result in *Moderate/Minor Adverse* landscape and visual effects contrary to the objectives of development plan policy. These effects would be temporary and with mitigation would, in the short term, be materially reduced. In the long term once the site had been restored, the mitigation planting would have beneficial landscape and visual effects.

#### Issue 4 - Heritage

64. The site is located within the Great Barr Conservation Area (CA), within which sits the Grade 2 listed Great Barr Hall RPG and other heritage assets (HA). The site sits outside and adjoins the RPG on its north-eastern boundary. Within the RPG are, the Grade 2 listed remains of Great Barr Hall and the Grade 2 listed St Margaret's Church. North-east of the site is the Grade 2 listed Old Hall Farmhouse and Grade 2 listed Old Hall Barn. It is accepted that the site lies with the settings of the RPG and listed buildings (LB).
65. The Heritage SoCG records agreement that there would be no harm to the significance of Great Barr Hall. As to the remaining HAs, the applicant and Ipa agree that there would be less than substantial harm to the CA, albeit there is disagreement of the scale of that harm. The Ipa finds less than substantial harm to the remaining HAs, whilst the applicant finds no harm. The SG&PT submit that the BESS would result in substantial harm to the significance of the RPG and the CA. The High Court has set out guidance on what is meant by substantial harm. Essentially, substantial harm is considered a high test, where a scheme would impact seriously on a key element of a HA's architectural or historic significance. Serious impact on the significance of an asset is such that it was destroyed altogether or very much reduced. The degree of harm is something I will return to later.
66. UDP Policies ENV27, ENV30, ENV32, BCCS Policies CSP3 and EN5 and WSAD Policy EN7 seek to protect CAs, LBs and the RPG from the adverse effects of

development. Framework paragraph 202 indicates that HAs are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

67. Where a scheme affects the setting of a LB, S66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to have special regard to the desirability of preserving its setting or any features of special architectural or historic interest it possesses. S72 (1) of the same Act, requires the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of a CA.

#### Conservation Area

68. The CA was first designated in 1976 covering the RPG and the area encompassed by Chapel Lane, Pinfold Lane and Old Hall Lane. In 1996, the CA was extended to include a substantial area of countryside to the north, east and west. The extent of the CA is currently under review and a draft CAAMP has been published. The CAAMP divides the CA up into 4 distinct areas and for the purposes of this assessment the relevant sub-area is Character Area A, the historic core of the Great Barr Hall Estate. This area coincides with the boundaries of the 1976 CA and the CAAMP recommends that the CA boundary be revised to encompass only this area. Thus, even if the boundary of the CA is reduced, the CA would still include the site within it.
69. Historic interest stems from association with the Scott family who occupied the area from the 14<sup>th</sup> to 20<sup>th</sup> century and through associations with Humphry Repton, John Nash and George Gilbert Scott, all of whom worked on various phases of the development of the Great Barr Hall and Estate. Architectural interest relates to the various listed buildings largely located within the historic core and the design and layout of the RPG.
70. The lpa acknowledge that the BESS would not impact on the architectural or archaeological significance of the CA. The concern is whether the development would affect the ability to appreciate or understand the historic significance of the site within the historic core of the CA. The site lies outside the former landscaped parkland of Great Barr Hall and formed part of the agricultural land associated with the estate. Considerable debate took place as to whether the site formed part of a "borrowed landscape" for the parkland. This was on the basis that (a) the use of "borrowed landscapes" was a technique employed by landscape designers associated with the development of Great Barr Hall and (b) the boundary between the park and the site consists of a mound with the remnants of a wall below it, formed a "ha-ha". This feature would allow users of the parkland to look out over the agricultural land whilst preventing animals from entering the designed landscape of the hall. Whilst the design of a ha-ha can take many forms, there is no real evidence, other than conjecture that it was designed as such or that the site formed part of that view. Even if there was the intention of a designed view, little remnant of that long view exists today. The landscape beyond the park is cut off by mature dense woodland that extends The Duckery to the north-east. Views out from the park are extremely limited and are only obtained from largely inaccessible areas. I consider that in relation to these aspects the site does not contribute to the significance of the CA.

71. Notwithstanding the above, the applicant agrees with the lpa, that the site does contribute to the significance of the CA through views obtained from Chapel Lane to The Duckery and the more recent addition. To this, I would add views from Chapel Lane north-eastwards across the site to the farmstead at Old Hall Farm and views back from Old Hall Lane across the open land to The Duckery and views, albeit they are limited, along Chapel Lane to the spire of St Margarets Church, where the site is on the periphery. The CAAMP notes that the open spaces in this part of Character Area A includes the important agricultural land north of The Duckery and bounded by Chapel Lane, Pinfold Lane and Old Hall Lane, which is associated with Old Hall Farm. Albeit the character and appearance this area is heavily influenced by the prominent, twin row of pylons and overhead lines, here, the BESS would introduce a utilitarian and industrial structure reducing the open and agricultural form of this part of the area.
72. Both the applicant and the lpa agree that the BESS would result in less than substantial harm to the CA and given the conclusions above and the threshold for substantial harm, I agree. Where the applicant and lpa disagree is where, on the spectrum of less than substantial harm, the effect of the BESS would sit. The applicant places the degree of harm at the lower end and the lpa judges it to be low to medium. Given the heavy influence of the pylons/overhead lines, notwithstanding the importance the CAAMP attaches to the contribution of this area the CA, I conclude that the BESS would result in *low level of less than substantial harm* to the significance of the CA.

#### Old Hall Farmhouse and Barn

73. The historic significance of these HAs is founded in their medieval origins and association with the Scott family who occupied the farmstead prior to purchasing the manor of Great Barr and constructing Great Barr Hall. Subsequently, the farm was tenanted and the agricultural fields, particularly those to the west, including the site, have a historical agricultural association with the Great Barr Estate. The architectural significance of these buildings is founded in their architectural detail. Old Hall Farmhouses dates from the early 17<sup>th</sup> century and the barn from around the mid-19<sup>th</sup> century. The architectural detailing and construction methods are indicative of the local vernacular. The setting of these buildings includes the agricultural land to the west recognised by the CAAMP as important.
74. These HAs are located some 300m to the north-east of the site with twin rows of pylon and overhead lines in the foreground. Whilst there are open views across the site to the farmstead, dense and what appears to be evergreen planting around the farmstead means, that only a small part of the tiled roof of the barn is visible. I agree with the applicant that the site makes no contribution to the appreciation of the architectural significance of these HAs. Rather, the ability to appreciate their architectural significance is largely confined the courtyard, garden and yard. As to appreciating the historic significance of the site, there is no longer a functional relationship between the farmstead and the Scott family. Whilst that remains a matter of historical record, there is nothing on the ground that allows that association to be appreciated. Albeit the view across the site to the HAs is limited, the barn is recognisable as an agricultural building, it can be identified as an agricultural building and there is, in my view, a recognisable association between the agricultural use of the land and this HA. The BESS would introduce a

utilitarian and industrial structure reducing the open and agricultural form of this part of the area. In this context, the BESS would result in less than substantial harm at the lowest end of that spectrum.

#### St Margarets Church

75. The historic interest of the church is founded in ties to the history of Great Barr, the growth of agriculture and a religious presence on this site from early medieval times. The architectural significance of the church relates to its structure dating from the 17<sup>th</sup> century and the ability to recognise various phases of its construction and reconstruction. The extensive graveyard adds to the church's heritage interest. The site is set some 360m to the north-east of the church separated from it by the wooded graveyard and the dense woodland of The Duckery. There are no views of the church from site or vice versa. The heritage significance of the church is largely experienced from that part of Chapel Lane fronting the church and the graveyard. The church is set on high ground and its spire would have acted as a focal point for the agricultural population of the wider area. Approaching the church from the north along Chapel Lane there is a limited view of the upper part of the spire, where the historic link to the agricultural base of the area can be appreciated, albeit tenuously. The site falls within the periphery of that view, and the introduction of the BESS would result in some *less than substantial harm at the very lowest level* on that spectrum.

#### Registered Park and Garden

76. The significance of this HA is largely historic and architectural. The RPG represents the focus of a manorial estate of medieval origins with associations to the Scott family who occupied it from the 14<sup>th</sup> to the 20<sup>th</sup> century, the work of several renowned landscape designers namely William Shenstone in the mid-18<sup>th</sup> century, Humphry Repton and John Nash in the late 18<sup>th</sup> century and George Gilbert Scott during the mid-19<sup>th</sup> century. In the 18<sup>th</sup> century the Lunar Society, whose ideas are thought to have contributed to the advent of the Industrial Revolution, met at Great Barr Hall. In terms of architectural significance, the RPG retains examples of listed and vernacular buildings associated with the development of the estate, some of which like Great Barr Hall are derelict. Of architectural interest are the lakes and planting and woodland blocks designed to attract certain views or to deflect others. Whilst these features contribute to the RPG's significance, it has to be recognised that neglect has compromised many aspects of the park reducing its legibility as an 18<sup>th</sup>/19<sup>th</sup>-century designed landscape.
77. The CAAMP notes that historically the RPG's setting was dominated by farmland and has an agricultural character. The assessment goes on to note that Old Hall Farm sits to the north of the RPG and that the associated farmland makes a positive contribution to the rural character and their historic associations with the estate. The value of the site to the significance of the RPG largely depends on whether it is accepted that the site formed part of a designed "borrowed view" redolent of the landscape designers associated with the development of this once great estate. Unfortunately, none of the plans produced by these designers are available, and the OS Maps do not specifically notate the boundary between the RPG and the site as a ha-ha.
78. Importantly, the listing description, which has been updated several times contains no mention of a ha-ha. Given the association of famous landscape

designers with the development of the estate, had the presence of a ha-ha and the importance of the "borrowed view" been seen as a feature contributing the significance of the RPG, one would expect it would have been featured. Given the reputation of the various designers associated with Great Barr Hall, the absence of a reference to this as a feature does not fall under the headings of an oversight or that not every feature is covered in the listing. As indicated earlier, whilst the design of a ha-ha can take many forms, there is no real evidence, other than conjecture, that it was designed as such or that the site formed part of that "borrowed" view.

79. The applicant accepted that an area in the northern part of the RPG would be subject to increased noise levels. However, the envelope where noise would be experienced would be relatively small and largely comprise woodland that is, for the most part inaccessible to all but the most determined walker. Moreover, the threshold referred to, 50 to 55dB, which the WHO guidance equates to moderate annoyance relates to external garden areas where individuals would be concentrated and linger. In this part of the RPG, people would be walking through, rather than lingering to take in any particular landscape feature. Moreover, there is already a level of noise experienced from the nearby A34 and M6. The lpa in determining harm to the significance of the RPG, link noise to the ability of walkers in this area appreciating the potential significance of the "borrowed view". Given the conclusions above, the limited impact of noise on the RPG from the BESS would not add to the potential for harm to the significance of the asset. In this context, none of the elements set out above that go to the architectural or historic significance of the park would be harmed by the development of the BESS. As such there would be *no harm* to the RPG.
80. Drawing all of the above together, on Issue 4 there would be less than substantial harm to the CA at the low of that scale. There would less than substantial harm at the lowest end of that scale to Old Hall Farm House, Old Hall Barn and St Margarets Church and no harm to the RPG.

#### Issue 5 – Noise

81. UDP Policies GP2 -Environmental Protection and ENV 10 – Pollution, seek to prevent unacceptable adverse effects from, amongst other things, noise. Framework paragraph 198 indicates that decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise and avoid noise giving rise to significant adverse impacts on health and quality of life. Reference is made to the Noise Policy Statement for England (NPSE) - Explanatory Note<sup>14</sup>. The Note recognises that noise exposure can cause annoyance and sleep disturbance both of which impact on quality of life and can give rise to adverse health effects.
82. The NPSE identifies 3 concepts, the first 2 of which are also applied by the World Health Organisation (WHO). These are:
- NOEL – No Observed Effect Level, below which there is no detectable effect on health and quality of life due to the noise.
- LOAEL – Lowest Observed Adverse Effect Level, above which there would be adverse effects on health and quality of life detected.

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<sup>14</sup> Department for Environment, Food & Rural Affairs, 2010.



SOAEL – Significant Observed Adverse Effect Level, above which there would be significant adverse effects on health and quality of life.

83. Through the effective management and control of noise within the context of Government policy on sustainable development, the NPSE has 3 aims. These are, (1) to avoid significant adverse impacts on health and quality of life, (2) to mitigate and minimise adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise. This refers to the situation where the impact lies somewhere between LOAEL and SOAEL requiring that all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life. This does not mean that such adverse effects cannot occur. The third aim is to where possible, contribute to the improvement of health and quality of life. This aim seeks, where possible, positively to improve health and quality of life through the pro-active management of noise, recognising that there will be opportunities for such measures to be taken and that they will deliver potential benefits to society. Achievement of these aims is sought within the context of Government policy on sustainable development.
84. PPG provides guidance on how planning decisions can manage potential noise impacts. The guidance includes a Noise Exposure Hierarchy Table (NEHT), which fleshes out the nature of the NOEL, LOAEL and SOAEL categories.
85. The NEHT describes the LOAEL as present and intrusive, where noise can be heard and causes small changes in behaviour, attitude or other physiological responses. In this category, there is potential for some reported sleep disturbance. Noise affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life. The action response is to mitigate and reduce to a minimum.
86. The SOAEL is described as present and disruptive, where noise causes a material change in behaviour, attitude or other physiological response. In this category, there is potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life is diminished due to change in the acoustic character of the area. The action response is to avoid.
87. I consider, after reviewing all the evidence, that the background noise levels set out in the August 2023 Noise Impact Assessment Report for the 3 nearest residential properties, Noise Sensitive Receptors (NSR) are a reasonable starting point. There are no issues between the parties regarding day-time noise, the concern relates to night time noise levels. The key concerns relate to, the predicted night-time sound levels after mitigation<sup>15</sup> based on, the absence of Acoustic Feature Corrections (AFC), and the application of a 15dB attenuation for a partially open window. The AFCs relate to intermittency and low frequency noise (LFN).
88. Paragraph BS 8233:2014<sup>16</sup> indicates that for steady external noise sources, the desirable indoor ambient noise levels for sleeping between 2300 to 0700 hours should not exceed 30 dB  $L_{Aeq,8hours}$  (Table 4). Table 4 relates to noise without character. Paragraph 7.7.1 notes that noise has a specific character if it contains features such as a distinguishable discrete and continuous tone, is

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<sup>15</sup> The provision of an acoustic barrier on 3 sides of the BESS compound.

<sup>16</sup> Guidance on Sound Insulation and Noise Reduction for Buildings, BSI Standards Publication

irregular enough to attract attention, or has strong low-frequency content in which case lower noise limits might be appropriate. Annex G, G.1 indicates that if partially open windows are relied upon for background ventilation, the insulation factor would be reduced to approximately 15 dB. This reference is subject to a footnote indicating that the level difference through a window partially open for ventilation can vary significantly depending on the window type and the frequency content of the external noise. If the specific details of the window and external noise are known, the value for insulation may be adjusted; either up or down. The World Health Organisation (WHO) Guidelines for Community Noise notes<sup>17</sup> that if negative effects on sleep are to be avoided the equivalent sound pressure level should not exceed 30 dBA indoors for continuous noise.

89. IT is recognised that LFN can disturb rest and sleep and a large proportion of low frequency components in noise may increase the adverse effects on health. Whilst I fully recognise the Ipa's concerns regarding LFN, the manufacturer's test evidence on the operation of BESS units does not appear to indicate the presence of a prominent or large proportion of LFN such that here it requires specific consideration or the use of a dB (C) weighting. I acknowledge, that the WHO guidelines recognises that the use of the C-weighting for the sound level of noise with low frequency components would give a better assessment of potential health effects. That said, WHO guidelines also indicate that the difference between dB (C) and dB(A) only gives crude information, and the evidence suggests that the use of an NR curve would be more appropriate. Moreover, as I understand it, NR curves defines limits at different frequencies that allows the character of the noise to be defined or controlled. Thus, I consider it is unnecessary to include an AFC to account for tonality. Moreover, to construct a planning condition containing A-weighted, C-weighted and NR curve limits would result in unnecessary duplication.
90. As to intermittency, in the applicant's noise assessment, an allowance of 3 dB (A) was included in the BS4142 assessment of day time and night time sound levels. However, after mitigation, comprising a 2.8m high acoustic barrier, the AFC was considered unnecessary. Given that the BS 8233 guidance is based on steady external noise sources, it appears to me that including an AFC of 3dB (A) with mitigation is a sensible approach. On this basis, the resultant external noise levels at NSR 1, NSR 2 and NSR 3 would be 8, 6 and 4 dB above background respectively. Using BS 4142, +8dB would fall almost midway between an adverse and significant adverse impact and +4 and +6 dB would be classed as an adverse impact. Unlike BS4142, the NEHT in PPG does not attach particular sound levels to the LOAEL and SOAEL categories. Rather as outlined above, it provided examples of outcomes. Thus, the BS 4142 descriptors cannot be read directly across to the NEHT. Looking at each of these descriptors, it is my judgement that these noise levels would fall within the LOAEL category where the guidance is to mitigate and reduce to a minimum.
91. I am conscious of the advice in BS8233 regarding the 15 dB ascribed to the attenuation achieved by a partially open window and the note relating to the potential variations relating to window type. I acknowledge that the applicant has not provided any detail regarding the nature of the windows at the NSRs; but neither has the Ipa. The 15 dB allowance is used universally in Noise

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<sup>17</sup> Page 28.

Assessments, and I have yet to come across an assessment that included adjustments for window type. Indeed, it would be almost impossible for an applicant or indeed a lpa to undertake that type of detailed assessment given, as here, the affected properties would mostly be private dwellings. As such, I consider that it is reasonable to use 15 dB as a benchmark for determining the potential impact on bedrooms.

92. On the above basis, only one dwelling, NSR 1, would potentially be subject to an internal noise level above the BS8233 guideline value of 30 dB  $L_{Aeq,8hours}$ . Here, the calculated level would be 31 dB  $L_{Aeq,8hours}$ . However, a 1 dB difference is generally regarded as imperceptible, and as such any adverse impact would be marginal resulting in limited harm to residential amenity. Such an approach would be consistent with the NSPE, whose policy vision is to enable decisions to be made regarding what is an acceptable noise burden to place on society. Moreover, a condition is suggested that would provide for final approval of the proposed acoustic fence before development could commence, which would allow for the potential for disturbance to be further mitigated. On this basis there would be limited conflict with UDP Policies GP2 and ENV 10.

#### Issue 6 - Agricultural Land

93. The site is B&MV<sup>18</sup> agricultural land which UDP Policies ENV6 and GP2 seek to prevent the loss of. Framework Paragraph 180b says that decisions should, amongst other things, recognise the economic and other benefits of B&MV land. The lpa refers to Framework paragraph 181 and Footnote 62. The footnote indicates that where significant development of agriculture is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The footnote goes on to say that the availability of agricultural land used for food production should be considered alongside other policies in the Framework, when deciding what sites are the most appropriate for development. Natural England, the government's statutory advisor, does not have to be consulted on proposals on agricultural land of less than 20ha. That is one indication of what might be regarded as significant.
94. Part of the site would be occupied by the BESS with the balance used to provide for Biodiversity Net Gain (BNG) and not grazing or arable use. The manner in which land is farmed is not subject to planning control. Thus, even if planning permission is refused, there is nothing that prevents the landowner from using the site for grazing or leaving it unused. Indeed, resting that part of the site used for grazing would have the benefit of improving the soil's health/structure for when the land would revert to agriculture at the end of the 40-year life of the BESS.
95. Framework paragraph 181 and Footnote 62 is directed at plan making and not decision making, and it is a moot point whether these references are relevant to a development application. That said, for completeness, the lpa's concerns regarding significant loss and harm to food security are addressed. What constitutes "significant development" for the purpose of considering the effect on B&MV land is not defined in either the development plan or the Framework and is a planning judgement.

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<sup>18</sup> Land in Grades 1,2 and 3a of the Agricultural Land Classification. Framework Annex 2 – Glossary.

96. The site is located at the southern end of an extensive wedge of land, stretching from Brownhills in the north to Great Barr in the south and Walsall in the west to Streetly in the east. This area extends to some 2,300ha and whilst not all is in agricultural use, the Agricultural Land Classification map shows it as mostly Grade 3. This is a substantial area and whilst 40 years is a long time, in the grand-scale of land-use change, the temporary loss of some 3.19ha from potential agricultural use cannot reasonably be regarded as "significant" either in terms of size or current use. Given this conclusion it is unnecessary to consider further whether it should have necessary to show that areas of poorer quality were considered.
97. World events and the adverse effects of climate change have brought food security into sharper focus. That said, at the end of 2022, DEFRA<sup>19</sup> identified that the UK's food supply chain remains highly resilient with the nation's high degree of food security being built on supplies from diverse sources. There is nothing to indicate that that conclusion has changed. The site is not used for food production and from comments made about former uses, it has not been used for food production for some considerable time. Whilst there is the potential for food production, with the BESS, that potential would not be permanently lost. Planning conditions relating to soil storage and restoration would ensure that the site would be potentially available for food production once the use ceased, and the site restored. In these circumstances, the temporary use of this site for non-agricultural purposes would not materially or adversely affect the nation's food security.
98. Drawing the above together, the proposal would result in the temporary loss of the potential to use a small area of B&MV land for food production. The site does not currently contribute to the nation's ability to maintain a secure food supply, and in light of the DEFRA conclusions above there is nothing to suggest that the temporary loss of the potential to use the site for food production would be material. The proposal would not conflict with Framework policy. On its face, UDP Policy ENV6 criterion (a) does not appear to allow for the loss or temporary loss of the land from agriculture to be balanced against other material considerations. In that context, the proposal would conflict with UDP Policy ENV 6 and by association UDP Policy GP 2.

#### Other Matters

99. The applicant lists under the heading of benefits several factors. These are contributing to energy security and mitigating climate change, a confirmed grid connection, BNG, hedgerow planting, an absence of alternative sites and economic benefits. These are, a mixture of measurable benefits and material considerations. Of those listed above, I consider contributing to climate change/energy security, BNG, hedgerows and economic matters would fall to be considered as public benefits of the development. The remainder are material considerations to be weighed in the heritage and GB balance.
100. In paragraphs 34 to 38 matters relating to climate change/energy security and at paragraphs 31 and 32 matters relating to alternative sites have been covered and are not repeated here. However, I consider the weight that to be attached to these matters. The imperative of mitigating climate change, achieving net-zero, and the ability of this project to make an early

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<sup>19</sup> Department for Environment, Food and Rural Affairs.

contribution to the clean power pathway are significant public benefits and attracts **great** weight.

101. There is no requirement either in Framework policy or the development plan for a developer to undertake an alternative or sequential site assessment. The Courts have held, that the task of a decision maker is to consider the planning merits any particular planning application and as such planning law does not require the decision maker to consider whether the proposed development would be more appropriately located at an alternative site. That said, the Courts have held that there may be exceptional circumstances such that a potential alternative is a material consideration which the decision maker either must have regard to, or may have regard to, in the exercise of planning judgment. Although the site is within GB, a CA and within the settings of 4 listed HAs, this location is not, on its own or cumulatively, a bar to development. However, whilst the location of the site does not represent an exceptional circumstance, an ASA has been submitted and it is a material consideration that attracts **significant** weight.
102. Given the hedgerow/tree planting elements are included to screen the proposal and to mitigate the landscape and visual impact of the BESS, I have considered it together with BNG. This is not an application where the statutory 10% BNG is required. The predicted BNG gains<sup>20</sup> are a 42% increase in habitat units and a 638% gain in hedgerow units. Whilst the BESS is a temporary feature, the habitat gains particular the hedgerow gains and the contribution they would make in terms of providing new and enhanced wildlife corridors is a benefit that attracts **significant** weight. It is agreed that there would be some economic benefits that would flow from employment during construction, operation and decommissioning of the BESS that attract **limited** weight. Given the benefits are unquantified, I have no reason to conclude otherwise.
103. Concern was expressed that during the construction and decommissioning phase, additional traffic on Chapel Lane would have an adverse impact on the condition of the road and nearby HAs through ground-borne vibration (GBV). The impact of additional construction on the state of the highway is a matter than could be dealt with by way of conditions that require the developer to undertake pre and post construction surveys of road conditions, and, where necessary, implement an agreed programme of reinstatement.
104. Referring to a BS standard code of practice<sup>21</sup> and a research study on traffic induced vibrations<sup>22</sup>, the applicant provided a written statement on the potential effects of GBV. This report notes that minor or major damage might only occur at very high values of GBV, and a building of historical value should not, unless it is structurally unsound, be assumed to be more sensitive. TRRL 246 notes that case studies of heritage buildings of varying age and type of construction exposed to relatively high levels of traffic vibration showed no evidence that traffic vibration had caused the observed damage. Moreover, wider search did not show evidence of damage caused by exposure to traffic vibration. Accordingly, there is no evidence to support the assertion that here traffic vibration could result in significant damage to buildings.

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<sup>20</sup> Percentages are rounded up or down to the nearest whole number.

<sup>21</sup> BS 5228-2:2009+A1:2014: Code of Practice for Noise and Vibration Control on Construction and Open Sites – Part 2: Vibration.

<sup>22</sup> Traffic Induced Vibrations in Buildings, Transport & Road Research Laboratory Research Report 246 (TRRL 246).

105. Construction traffic would use the A34 Birmingham Road/Chapel Lane junction to access the site. Vehicles approaching from Junction 7 of the M6 use a dedicated right-turn lane into Chapel Lane. For traffic approaching from the Walsall direction, the carriageway is 3 lanes wide, 2 for general traffic going forward and turning left and an inner lane solely for bus use. The junction is traffic light controlled to avoid conflict between vehicles turning right or left into Chapel Lane. All traffic leaving Chapel Lane has to turn left. In the absence of an objection from the Highway Authority, I have no reason to conclude that use of the A34/Chapel Lane junction by construction traffic would have unacceptable effect on highway safety.
106. Following a fire at a BESS site in Liverpool in September 2020<sup>23</sup>, concern was expressed that the BESS would represent an unacceptable safety risk. The application was accompanied by a Fire Safety Strategy and the West Midlands Fire and Rescue Authority has no objection. To address these concerns, the applicant submitted a Battery Safety Technical Note relating to fire mitigation, emergency response and clean-up measures.
107. At the Liverpool BESS, the type of battery used was nickel manganese cobalt, a type prone to “thermal runaway” where internal overheating leads to a fire or explosion. The note highlights that battery technology has moved on and the key difference here is that the BESS would use lithium iron phosphate batteries. This type of battery is more stable at high temperatures and far less prone or susceptible to thermal runaway and have a longer cycle life. In formulating its response, the Fire Service would have been aware of the Liverpool incident and taken it into account. The inquiry was provided with details of Health and Safety Guidance for Grid Scale Electrical Energy Storage Systems March 2024 prepared by the Department for Energy and Net Zero. The provision of an updated Fire Safety Strategy is a matter that could be dealt with by condition. There is nothing in the submissions that leads me to conclude that the development and operation of the BESS would be unsafe.
108. I have noted the concerns expressed regarding the effect of the proposal on local wildlife and horses kept within the wider area. The application was accompanied by an Ecological Impact Assessment. There is nothing before me to suggest that the proposal would have a material adverse impact of local fauna and the lpa have no objection to the BESS on ecology or biodiversity grounds. Mitigation would include, fauna enhancement measures, and enhanced monitoring. Appropriate mitigation works could be the subject to conditions requiring the submission of details relating to construction, environmental, landscape and ecological management plans. There is nothing before me to suggest that the BESS would have an unacceptable effect on local fauna. Indeed, the replanting of the balance of the site as grassland would provide an enhanced habitat for local wildlife.
109. The keeping and exercising of horses in the area is already subject to existing and traffic and road noise. In terms of noise, the nothing before me to support the assertion that potential noise from the BESS would have a material effect on the welfare of the local horse population. Whilst there would be an increase in traffic using Chapel Lane during the construction and decommissioning phases, this would largely use the lane between the site and

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<sup>23</sup> The only reported BESS major fire in the UK.

the A34. I saw that for the most part the areas used for the grazing of horses were mainly to the north.

### **Heritage Balance**

110. On heritage matters, the nature of the Framework requires that before carrying out a Planning Balance or the Green Belt Balance<sup>24</sup> a Heritage Balancing exercise is to be undertaken. Framework paragraph 212 advises that when considering the impact of a development on the significance of a designated HA, great weight should be given to its conservation and the more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Framework paragraph 215 indicates that where a development proposal would lead to less than substantial harm to the significance of a HA, this harm should be weighed against the public benefits of the proposal.
111. Great weight is accorded to the potential harm to the 4 HAs, the CA, the listed buildings at Old Hall Farm and St Margaret's Church. Balanced against this, the early contribution the BESS would make to the acknowledged need for battery storage to assist in mitigating the effects of climate change and maintaining energy security attracts great weight. The absence of alternative sites and BNG attract significant weight and the economic benefits attract limited weight. Given their scale and nature, these public benefits outweigh the low level of less than substantial harm to HAs. The less than substantial harm to the HAs does not provide a clear reason for refusing the BESS.

### **CONCLUSIONS**

#### **Conclusion in a scenario where the development accords with Framework paragraph 155.**

112. This proposal would utilise Grey Belt land and having regard to the provisions of Framework paragraph 155, the development would not comprise inappropriate development in the GB.
113. The great weight attached to the contribution to mitigating climate change and to energy security, albeit temporary, the significant weight to the absence of alternative sites and the potential for permanent BNG and the limited weight the temporary economic benefits generated by the proposal outweighs the temporary Moderate/Minor adverse landscape and visual effects, the less than substantial harm to HAs and the limited harm to residential amenity through noise. Subject to the imposition of conditions, the proposal would not conflict with the development plan when read as a whole or the Framework.
114. For the above reasons and taking all other matters into account, the appeal is allowed, and planning permission granted.

#### **Conclusion in the scenario where the development would be inappropriate development in the Green Belt – Issue 7.**

115. Framework paragraph 153 requires the decision maker to give substantial weight is given to any harm to the GB, including harm to its openness. Inappropriate development is, by definition, harmful to the GB and should not

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<sup>24</sup> A conclusion as to whether Very Special Circumstances exist.

be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

116. The great weight attached to the contribution to mitigating climate change and to energy security, albeit temporary, the significant weight attached to the absence of alternative sites and to the potential for permanent BNG and the limited weight the temporary economic benefits generated by the proposal clearly outweighs the temporary Moderate/Minor adverse landscape and visual effects, the less than substantial harm to HAs and the limited harm to residential amenity through noise. Accordingly, taking the case as a whole, very special circumstances exist which justify the development.
117. I conclude that the benefits of this proposal, clearly outweigh the harm to the Green Belt and the other harms identified such that very special circumstances exist to justify this proposal. Subject to the imposition of conditions, the proposal would not conflict with the development plan when read as a whole or the Framework.
118. For the above reasons and taking all other matters into account, the appeal is allowed, and planning permission granted.

### **Conditions**

119. The lpa has provided a list of suggested conditions that have been assessed in light of PPG advice and comments submitted by the applicant. The suggested conditions contain several pre-commencement conditions, which that applicant has confirmed in writing are acceptable.
120. In the interests of certainty, a condition listing the approved plans is imposed (2). In the interests of clarity, a condition relating to site security (28) is necessary.
121. The BESS is required for a period of 40 years. Conditions are necessary to confirm the extent of the temporary period, to provide for removal of the BESS when the permission expires or if it ceases to operate (3 ,4 & 5).
122. In the interests of highway safety, conditions relating to the access (7), visibility (8) and the condition and reinstatement of the carriageway (9, 10 & 11) are reasonable and necessary.
123. In the interests of the appearance of the area, conditions relating to, site levels (6), the finish of the storage containers (25), details of tree and hedgerow planting (15), boundary treatments (22), implementation of landscape mitigation (23), and external lighting (27) are reasonable and necessary.
124. In the interests of protecting living conditions, conditions relating to construction management (11), noise (13 & 14) Fire Safety (24), and lighting (27) are reasonable and necessary. On noise, I consider it unnecessary to include within the condition a dB (c) criterion. As discussed above, its inclusion would duplicate the effect of imposing a NR Curve element. Similarly, I consider the lps's suggestion of a 40 dB limit and a NR curve of 35 to be unreasonable. In the interests of flood prevention, conditions relating to drainage are reasonable and necessary (17 & 18). In the interests of ecology,



conditions relating to landscape and ecological management (18, 19 & 20) and construction environment management (21) are reasonable and necessary.

*George Baird*

Inspector

## **ANNEX A - SCHEDULE OF CONDITIONS**

### **Implementation**

1. The development hereby permitted shall be begun not later than the expiration of 3 years from the date of this permission.

### **Plans**

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location & Block Plan, drawing no. C0002457\_03 Rev. C, ESS Containers Plans and Elevations, drawing no. C0002457\_04C, Customer Substation Plans and Elevations, drawing no. C0002457\_08 Rev. B, Site Layout, drawing no. C0002457\_02 Rev P, Visibility Splay, drawing no. 2108013-06 Rev B, Substation Plan & Elevation, drawing no. C0002457\_06 Rev D, and Tree Protection Plan, drawing no. 404.064032.00001 Rev 04.

### **Temporary period**

3. Planning permission is granted for a temporary period only and shall cease to have effect 40 years following the date of receipt of the Final Operational Notification (FON) from the District Network Operator (DNO) (or equivalent organisation). The FON shall be submitted to the local planning authority within 14 working days of the date of its receipt from the DNO.
4. In the event the development ceases to export electricity to the grid for a continuous period of 12 months, a scheme of restoration for the removal of the Battery Energy Storage Facility and any associated equipment, shall be submitted to and approved in writing by the local planning authority within 3 months from the end of the 12-month period. The restoration scheme shall include details of the retention of any approved boundary treatment(s) and planting. The approved scheme of restoration shall then be fully implemented within 6 months of written approval being given.

### **Decommissioning**

5. Eighteen months before the end of the 40-year period taken from the FON date submitted under condition 3, a scheme of restoration shall be submitted to and approved in writing by the local planning authority including:
  1. details of the retention of any approved boundary treatment(s) and planting, a restoration scheme to be used at the end of the operational lifespan of the development.
  2. a written scheme of restoration for returning the site to a pasture field on cessation of energy storage at the site.The approved scheme of restoration shall be implemented and completed within 12 months of the end of the 40-year period taken from the date submitted under condition 3.

### **Site Levels**

6. No development shall take place, until a plan showing existing and finished site levels in general conformity with Indicative Site Section Plan No. C0002457\_14 Rev B, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

### **Access & Visibility Splay**

8. No development shall take place until details for the construction and design of the access entrance and internal access road, including land profiles, associated signage and cross sections and construction materials has been submitted to and approved in writing by the local planning authority. The access shall be provided in accordance with the approved plans prior to the commencement of any other works and thereafter retained. Surface water from the access entrance and access road path shall not run on to the public highway or into any highway drain at any time.
9. The visibility splays as shown on Plan No. 2108013-06 Rev B shall be kept free of all structures and vegetation between 600mm and 1050mm above carriageway level at all times. The visibility splays shall be implemented before the first use of the access hereby approved and thereafter retained in the approved form.

### **Highways Condition Survey**

9. No development shall take place and no construction traffic shall enter the site until a Highways Method Statement setting out the details for pre-development and post-construction highway dilapidation surveys, along the section of Chapel Lane from the Borough boundary at the Coronation Road junction to the proposed site access has been submitted to and approved in writing by the local planning authority.
10. No development shall take place and no construction traffic shall enter the site until a pre-development highway dilapidation survey undertaken in accordance with the approved Highways Method Statement has been submitted to and approved in writing by the local planning authority.
11. Within one month of the FON referred to in condition 3, a post-construction highway dilapidation survey shall be undertaken in accordance with the approved Highways Method Statement and a scheme of mitigation works including a timetable for their implementation shall be submitted to and approved in writing by the local planning authority. The scheme of mitigation works shall be carried out in accordance with the approved timetable for implementation.

### **Construction Environmental Management Statement**

12. No development shall take place, until a Construction Environmental Management Statement (CEMS) has been submitted to and approved in writing by the local planning authority. The CEMS shall include details of:
  1. construction working hours,
  2. parking and turning facilities for vehicles of site operatives and visitors,
  3. loading and unloading of materials,
  4. storage of plant and materials used in constructing the development,
  5. a scheme for recycling/disposing of waste resulting from construction works,
  6. temporary portacabins and welfare facilities for site operatives,
  7. site security arrangements,
  8. wheel washing facilities and/or other measures to prevent mud or other material emanating from the application site reaching the highway,
  9. measures to prevent flying debris,

10. dust mitigation measures,
11. measures to prevent site drag-out (including need for wheel cleaning and use of a road-sweeper),
12. noise and vibration (if piling and/or ground stabilisation is to be conducted) mitigation measures.

The approved CEMS shall be adhered to throughout the construction period.

### **Noise**

13. No development shall take place until a detailed specification of acoustic boundary treatment in general conformity with Typical Acoustic Fence Details Plan No. C0002457-09 Rev A has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained for the lifetime of the development.
14. The development shall meet the following external acoustic criteria at any occupied premises used for residential purposes, determined by measurements, calculations and/or procedures agreed in writing by the local planning authority.

Between the hours 23.00 and 07.00 at a position 1 metre from any façade, excluding corrections for facade reflection effects -

- $L_{Aeq,15 \text{ minutes}}$  45 dB
- Noise Rating NR 40 over any 15-minute period

Within 4 months of the development being brought into operational use, compliance with the stated criteria shall be verified to the local planning authority in writing and compliance shall be maintained thereafter.

### **Tree Protection Measures**

15. No development shall take place until the tree protection measures as set out in the Arboricultural Report (SLR 23 November 2023) 404.P64032.00001, and as shown on Tree Protection Plan 404.064032.00001 Rev 04, shall be implemented. The tree protection fencing shall be erected in accordance with BS 5837: 2012 and retained throughout the construction phase until completion of the development.

### **Drainage**

16. No development shall take place until a Construction Surface Water Management Plan (CSWMP) has been submitted to and approved in writing by the local planning authority. The CSWMP shall show how flood risks will be managed prior to the completion of an approved drainage strategy. The approved measures for the control of surface water shall be implemented as part of any temporary works associated with the permanent development to ensure that flood risk is not increased.
17. No development shall take place, including any site clearance, preparatory, groundworks or any breaking ground, until a detailed surface water drainage design in general conformity with Preliminary Surface Water Drainage Layout

Plan no. 402.065384.00001\_PDL\_01-P06 has been submitted to and approved in writing by the local planning authority. The design shall include:

- i. Drainage Method - A detailed drainage plan including infiltration testing results where necessary in accordance with BRE Digest 365, cover levels, invert levels and proposed SuDS. Existing and proposed discharge rate calculations shall be submitted with the discharge rate restricted to greenfield run off rates as mentioned in S2 & S3 of the technical standards for SuDS.
- ii. Hydraulic Calculations - Full background calculations (Micro Drainage or similar) to demonstrate the performance of the surface water drainage system for a range of return periods and storm durations. To include as a minimum the 1:1, 1:2, 1:30, 1:100 and 1:100+40%CC return periods.
- iii. Water Quality - Supporting information to demonstrate that sufficient water quality measures have been incorporated into the design for all sources of runoff in accordance with the CIRIA SuDS Manual Simple Index Approach and SuDS treatment design criteria.
- iv. Management & Maintenance - A Management and Maintenance Plan for surface water drainage to demonstrate that surface water drainage systems will be maintained and managed for the lifetime of the development. This shall include a schedule of activities including the frequencies of each activity to be undertaken. Provide the name, contact details and address of the party/parties responsible for the maintenance.
- v. Exceedance - Exceedance plans illustrating flooded areas and flow paths of all hardstanding and soft landscaping in the event of exceedance of the drainage system including drainage levels.

### **Landscape and Ecological Management Plan**

18. No development shall take place until, a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by, the local planning authority. The content of the LEMP shall be in general conformity with the Draft Ecological Impact Assessment and Biodiversity Net Gain metric (SLR 21 October 2024) 424.064816.00001 V2 and shall include the following.
  1. description and evaluation of features to be managed,
  2. ecological trends and constraints on site that might influence management,
  3. aims and objectives of management,
  4. appropriate management options for achieving aims and objectives,
  5. prescriptions for management actions,
  6. preparation of a work schedule,
  7. details of the body or organisation responsible for implementation of the plan,
  8. ongoing monitoring and remedial measures,
  9. the locations and installation of 3 bat boxes, 3 pole-mounted bird boxes and one pole-mounted barn owl box,

10. details of an invasive species strategy to remove Himalayan Balsam.

The LEMP shall include details by which the long-term implementation of the plan will be secured for the operational life span of the development by the developer with the details of management body(ies) responsible for its delivery. The development shall be carried out in accordance with the approved details.

19. Biannual monitoring inspections shall be undertaken by a suitably qualified ecologist for the lifetime of the development following the date of the FON specified in condition 3 and shall correspond with the Ecological Impact Assessment and Biodiversity Net Gain metric (SLR 21 October 2024) 424.064816.00001 V2. Inspections shall include the following:
1. inspection and, where required, cleaning of the pole mounted bat and bird boxes.
  2. inspection of hedgerow survival, establishment and management.
  3. assessment of the establishment and management of areas of grassland.
20. A monitoring report shall be submitted to and agreed in writing by the local planning authority in years 1, 2, 5, 10, 15, 20, 25, 30, 35 and 40 and shall include details of ongoing management protocols to meet targets.

### **Construction Environment Management Plan (CEMP)**

21. No development shall take place until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include:
1. practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts to ecology during construction (may be provided as a set of method statements),
  2. precautionary working practices in respect to badgers, bats, great crested newts, nesting birds and white-clawed crayfish,
  3. details of any planned vegetation removal outside bird nesting season (Sept to Feb),
  4. sensitive construction lighting scheme to avoid light spill to protect bats, detailing the provision of lighting across the site, in accordance with guidance outlined in Note 08/18 bats and artificial lighting in the UK, Bats and the Built Environment Series, BCT, 2018,
  5. responsible persons and line of communication,
  6. protective measures to create a buffer zone from the Duckery Site of Importance for Nature Conservation (SINC),
  7. the times during construction when specialist ecologists need to be present onsite to oversee works,
  8. the role and responsibilities onsite of an ecological clerk of works (ECoW) or similarly competent person; and
  9. use of protective fences, exclusion barriers and warning signs.

The development shall be carried out in accordance with the approved CEMP and the approved CEMP shall be adhered to and implemented throughout the construction period.

### **Boundary treatments**

22. No development shall take place until details of all internal site treatments and site boundary treatments, including heights, positions and extent, materials and finishes of all walls, fences, gates or other means of enclosure

including hedgerows in general conformity with the details shown on Site Layout plan no. C0002457\_02 Rev P have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and the site boundary treatments shall thereafter be retained. All gates shall be designed and installed so they cannot open outwards onto a highway.

### **Landscape and Planting Plan**

23. No development shall take place until, a Landscape Maintenance and Management Plan (LM&MP) including details of both hard and soft landscape works and earthworks which follows the principles of the approved Landscape Strategy Plan no. 35146 LN-LP-06 Rev G has been submitted to and approved in writing by the local planning authority. The LM&MP shall include:
- a) a plant schedule to comprise species, plant sizes, proposed numbers and density,
  - b) planting specification,
  - c) details of tree pits,
  - d) hedge restoration details and formation methods,
  - e) Tree and hedgerow protection measures to prevent damage from domestic and wild animals.

The soft landscape proposals shall be implemented in the first planting season after construction. If within a period of 10 years from the date of the planting of any tree, shrub or plant, that tree, shrub or plant, or any tree shrub or plant planted in replacement for it, is removed, uprooted, destroyed or dies and/or becomes seriously damaged or diseased in that period, another tree, shrub or plant of the same species and size as that originally planted shall be planted at the same place in accordance with the agreed LM&MP.

### **Updated Fire Safety Report**

24. No development shall take place until a revised Fire Safety report has been submitted to and agreed in writing by the local planning authority. Before the FON date set by condition 3, the measures contained within the updated Fire Safety Report shall be implemented and thereafter retained for the lifetime of the development.

### **Soil Management**

25. No development shall take place until a Soil Management Plan, which demonstrates how soils will be protected and where necessary, stored and managed on the site during construction, and during the life of the development has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

### **Details of battery unit finish and colour**

26. Before the installation of the battery storage units and associated equipment, details of the RAL colour of the exterior finish proposed shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development.

### **External lighting and security**

27. No external lighting shall be installed on the site unless details of the lighting including the intensity of illumination and predicted lighting contours have first been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
28. Before the installation of the low-level beam security system, details of the low-level beam security measures, as shown on Site Layout drawing no. C0002457\_02 Rev P, shall be submitted to and approved in writing by the local planning authority. The development shall not be carried out other in accordance with the approved details and thereafter retained for the lifetime of the development.



## **Annex B - APPEARANCES**

### **FOR THE APPLICANT**

Stephanie Hall, Counsel instructed by Stantec.

She called.

Nick Pleasant BA (Hons), Dip TP, MRTPI  
Planning Director, Stantec.

David Webster CMLI, MA, MSc, BSc.  
Landscape Planning Associate Director, Stantec

Chris Morley BA MPhil, MCIfA.  
Head of Cultural Heritage, ERM.

Mike Barrett BSc (Hons), PGDipIOA, MIOA.  
Associate Director, Acoustics.

### **FOR THE LOCAL PLANNING AUTHORITY**

Dr Ashley Bowes, Counsel instructed by Alison Sargent, Legal & Democratic Services, Walsall Metropolitan Borough Council.

He Called.

Stuart Ryder BA (Hons), Dip LA (Dist), CMLI.  
Director, Ryder Landscape Consultants Limited.

John Grant CEng, CSci, MSc, MIOA, FRSPH, MIEnvSC.  
Environmental Protection Manager, Walsall Metropolitan Borough Council.

Devinder Matharu MA, Dip TP, BA (Hons).  
Conservation Officer, Walsall Metropolitan Borough Council.

Mike Brereton AdDip, MA, ILM.  
Head of Planning and Building Control, Walsall Metropolitan Borough Council

### **FOR THE STAFFORDSHIRE GARDENS & PARKS TRUST**

Alan Taylor MA, Dip TP, IHBC (Ret).  
Chair of the Staffordshire Gardens and Parks Trust.

### **Interested Persons**

D Coxon  
P Simon  
M Smith  
Y Chohan  
D Randal  
M Shepherd  
J MacNamara for Wendy Morton MP for Aldridge Brownhills  
R Winkle Chair Beacon Action Group  
C Hatfield  
H Salter  
J Hume  
S Lambert

J McCarthy  
J Bench Director, Matrix Academy Trust  
Dame M Brennan Matrix Academy Trust

## **ANNEX C - PUTATIVE REASONS FOR REFUSAL**

1. The proposal is inappropriate development in the Green Belt for which no very special circumstances are advanced which outweigh the harm to the Green Belt and any other harm. The proposal is therefore contrary to NPPF paragraphs 152, 153 and 156, BCCS policy CSP2 and ENV7, SAD policy GB1 and UDP saved policies GP2, ENV6 and ENV7.
2. The proposed development, by virtue of its loss of a sensitive area of open land would result in significant harm to the character and appearance of this valuable rural area and would fail to respect the intrinsic qualities or beauty of this area of countryside. The proposal is therefore contrary to NPPF paragraph 180(b), BCCS policies CSP3 and ENV2, SAD policies GB1 and EN5 and saved UDP policies GP2, ENV6, ENV7 and ENV30 and Designing Walsall SPD.
3. The replacement of an open agricultural field with this development and associated infrastructure (including but not limited to the multitude of fencing types and other paraphernalia such as the 15 m high telecom mast, substation, control kiosks and CCTV cameras on 4 metres high posts) would significantly reduce the contribution the site makes to the character and appearance of the Conservation Area. Moreover, the development would reduce the contribution the site makes to the significance of the Great Barr Hall Registered Park and Garden listed buildings contrary to BCCS policies CSP3 and ENV2, SAD policies GB1 and EN5 and saved UDP policies GP2, ENV6, ENV7 and ENV30 policy and s.66 and 72 Planning (LB & CA) Act 1990.
4. The planning application fails to demonstrate that the visibility splays are shown to the kerb line and that the existing hedgerow obstruction has been addressed on the submitted plans to ensure adequate visibility at the proposed new site access. The proposal would be contrary to BCCS policy TRAN2 and SAD policy T4.
5. The proposed development would result in the loss potential use of agricultural land classified as Best and Most Versatile agricultural land for a period of 40 years which could potentially support future food security. Furthermore, historic mapping illustrates this land was originally utilised for agricultural purposes. This proposal is considered unacceptable and would be contrary to NPPF paragraph 180(b) and saved UDP policies GP2 (xi) and ENV6.
6. The proposal fails assess risks to groundwater and the water environment, and ensure robust mitigation is in place for containment of fire-fighting water in the event of a fire nor includes details of multiple 'layers of protection' to prevent the source-pathway-receptor pollution route occurring. Contaminated surface water run-off and ground water could have a potentially significant detrimental impact on the Duckery SINC, Holbrook stream (formerly known as Hall Brook) and protected species White Clawed Crayfish during a fire incident. In addition, to the fire incident itself causing the breakup of equipment which could introduce loose particles of heavy metals to the ground and bare surface, which during rainfall could be leached into the soil and ground water resulting in significant harm to the natural environment. The application fails to demonstrate engagement with local Fire Rescue Service to develop a comprehensive risk management process leading to the creation of robust Emergency Response Plans to consider water supply and drainage in emergency situations. The

proposal fails to accord with the aims and objectives of BCCS policy ENV1, SAD policy EN1, saved UDP policies GP2, ENV10 and ENV23, Conserving Walsall's Natural Environment SPD and the Management and Enhancement and Wildlife and Countryside Act 1981.

7. Saved UDP policy ENV13 states that development for uses other than industry or warehousing will not normally be permitted in close proximity to high voltage electricity transmission lines, substations or transformers. As the proposed use is not for industry or warehousing this proposal fails to meet the requirements of this policy, which also requires the appropriate operational safe clearances to be met. The policy justification text sets out a required zone of separation of at least 50 metres from pylons and overhead cables. The Site is within the 50m zone of separation as the power lines run through the middle of it and the compounds for the battery storage units and substation are directly adjacent to the power lines and the proposal is contrary to saved UDP policy ENV13.
8. The proposed BESS site together with the 15m high mast, acoustic fencing, palisade fencing, deer fencing, and other fencing, CCTV posts and cameras would be harmful to the significance of Great Barr Hall Registered Park and Garden, Old Hall Farmhouse, and the Barn approximately 20 metres north of Old Hall Farmhouse and the Church of St Margaret. It would introduce incongruous modern alien industrial dominant features into their setting, that are utilitarian in appearance, into the rural agricultural and historical landscape, that would be visually dominant and detrimental, and which would alter the rural character of the site effecting the way in which we experience and appreciate these heritage assets thereby causing less than substantial harm. Furthermore, the development would tower above existing boundary treatments and would be seen as modern alien industrial dominant features from views from within the conservation area, failing to enhance and preserve the character and appearance of Great Barr Conservation Area, thereby causing less than substantial harm. The proposal is contrary to the National Planning Policy Framework, paragraphs 206 and 208, Saved UDP Policies GP2, ENV27, ENV30, ENV32, ENV38, Policy ENV2 of the BCCS, Policies EN5 and EN7 of the SAD, and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
9. The Noise Impact Assessment is inadequate for determining the suitability of the planning proposal and does not sufficiently evaluate the significance of likely impacts and does not support safeguarding of amenity for neighbouring noise sensitive development. The proposal would be contrary to saved UDP policies GP2 and ENV10