



Department for
Communities and
Local Government

Our Ref: APP/A2525/W/15/3138266

Mrs Amy Williams
BE Renewables Ltd
Hesketh Mount
92-96 Lord Street
Southport
PR8 1JR

1 November 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY LITTLE EAU SOLAR LIMITED
LAND AT NEW FEN DIKE, SUTTON ST JAMES, SPALDING, LINCOLNSHIRE
APPLICATION REF: APP/A2525/W/15/3138266**

1. I am directed by the Secretary of State to say that consideration has been given to the report of B Hellier BA (Hons) MRTPI who held a hearing on 14 and 15 June 2016 into your client's appeal against the decision of South Holland District Council to refuse planning permission for the installation of ground-mounted photovoltaic solar arrays to provide 5MW generation capacity together with transformer stations, internal access track, electricity sub-station, landscaping, fencing, security measures, access gate and ancillary infrastructure in accordance with application ref: H20-0128-15 dated 27 January 2015.
2. On 26 January 2016 this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the Secretary of State notes there is a large-scale solar farm nearby, and he wishes to consider the cumulative impact of the proposed scheme.

Inspector's recommendation and summary of the decision

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

Policy considerations

4. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
5. In this case the development plan consists of saved policies of the South Holland Local Plan. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR15-17. The Secretary of State agrees that little weight can be given to the policies of the South East Lincolnshire Local Plan 2011-2036 for the reasons given by the Inspector at IR18.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Written Ministerial Statement of March 2015, which, amongst other matters, concerns solar energy and the protection of the local and global environment.
7. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

Main issues

8. The Secretary of State agrees with the Inspector that the main issues are those set out at IR70.

Character and appearance

9. The Secretary of State agrees with the Inspector's analysis at IR71-78 regarding the impacts on the character and appearance of the countryside. For the reasons given at IR72 he agrees that this is a landscape of considerable value and which would have moderate to high sensitivity to this type of development. For the reasons given at IR73 he agrees that the proposal would lead to a significant alteration to the inherent character of the landscape. He further agrees that visual screening of the development through hedging would foreshorten views and create a sense of enclosure which would also have a significant adverse effect on the open landscape character (IR74). For the reasons given at IR76 the Secretary of State agrees that the loss of openness would detract from the quality of views from locations including Smiths Farm, the road network, the Bad Gate bridleway and from south of the site.
10. The Secretary of State notes that the proposal would be seen in combination with Fendyke Farm solar farm. He agrees with the Inspector that the two sites in combination would have a substantial adverse effect on the openness of the landscape to the south of Sutton St James, resulting in considerable cumulative landscape harm (IR75). He further agrees, for the reasons given at IR76, that the development in combination to the Fendyke Farm site would also result in additional cumulative visual harm. However, for the reasons given at IR77 he agrees that there would not be a significant cumulative effect in relation to Horsemoor Drove solar farm, or to the two commercial wind farms which are visible in the distance.

11. As such he agrees with the Inspector (IR78) that there would be a substantial adverse effect on the character and appearance of the countryside between Sutton St James and Sutton St Edmunds and that the proposal would fail to protect or enhance a valued landscape, contrary to the objectives of the Framework.

Listed Buildings

12. The Secretary of State agrees with the Inspector's assessment at IR79 regarding the impact on the heritage significance of the nearby Grade II Listed Sandy Gate Farm House and Guanock House. He notes that it is not disputed that the proposals would have only a minor impact on their heritage significance. He agrees that the harm to the listed buildings would be less than substantial, should be weighed against the public benefit of the proposal and, in so doing, should be given special weight and considerable importance.

Agricultural Land

13. The Secretary of State agrees with the Inspector's assessment at IR80-81 regarding the use of Best and Most Versatile land (BMV) for the development. He agrees that the use of BMV land must count against the proposal, and would be contrary to the Framework. However, due to the small proportion of the site that is BMV land, the lack of other lower quality land in the area and the continued use of the land for grazing, the Secretary of State concludes that there would be only limited harm to agriculture.

Benefits

14. The Secretary of State agrees that the proposal would make a small but important contribution towards the Government's commitment to renewable energy generation and assist in tackling climate change (IR82). He further agrees (IR82) that there would be a small economic benefit in support of the viability of the landholding. He does not give any weight to the introduction of new hedgerows for the reasons given at IR83.

Other Matters

15. The Secretary of State agrees that the scheme would not result in significant harm to living conditions or conflict with Local Plan Policy SG17, for the reasons given at IR84.

Planning conditions

16. The Secretary of State has given consideration to the Inspector's analysis at IR85-87 of the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning balance and overall conclusion

17. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policy SG4 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

18. Weighing in favour of the proposal is the proposal's contribution towards achieving national targets for renewable energy generation, and the economic benefit in support of the viability of the landholding. The Secretary of State places significant weight on these benefits.
19. Weighing against the proposal is the limited harm from the use of BMV land. The minor impact on two nearby listed buildings also weighs against the proposal, and the Secretary of State attaches special weight and considerable importance to this harm. The Secretary of State finds substantial harm to the character and appearance of the countryside, both alone and cumulatively with the Fendyke Farm site, and attaches significant weight to this.
20. The Secretary of State concludes that the overall balance is against the proposal. For the reasons given above, the Secretary of State considers that the appeal scheme would not amount to sustainable development. He further concludes that neither the mitigation measures proposed nor the use of conditions could make the impact acceptable and that as such Framework paragraph 98 indicates that the proposal should be refused.

Formal decision

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the installation of ground-mounted photovoltaic solar arrays to provide 5MW generation capacity together with transformer stations, internal access track, electricity sub-station, landscaping, fencing, security measures, access gate and ancillary infrastructure in accordance with application ref: H20-0128-15 dated 27 January 2015.

Right to challenge the decision

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

Yours faithfully

Philip Barber

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by B.Hellier BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 27 July 2016

TOWN AND COUNTRY PLANNING ACT 1990
SOUTH HOLLAND DISTRICT COUNCIL
APPEAL BY
LITTLE EAU SOLAR LIMITED

Hearing held on 14 and 15 June 2016

New Fen Dike, Sutton St James, Spalding, Lincolnshire

File Ref: APP/A2525/W/15/3138266

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New Fen Dike, Sutton St James, Spalding, Lincolnshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Little Eau Solar Limited against the decision of South Holland District Council.
- The application Ref H20-0218-15, dated 27 January 2015, was refused by notice dated 11 September 2015.
- The development proposed is installation of ground-mounted photovoltaic solar arrays to provide 5MW generation capacity together with transformer stations, internal access track, electricity sub-station, landscaping, fencing, security measures, access gate and ancillary infrastructure.

Summary of Recommendation: The appeal be dismissed

Procedural Matters

Recovery by the Secretary of State

1. The appeal was recovered for decision by the Secretary of State for Communities and Local Government by a letter dated 26 January 2016. The reason for this direction is because the Secretary of State notes there is a large-scale solar farm nearby and he wishes to consider the cumulative impact of the proposed scheme. The appeal is therefore being recovered because of the particular circumstances.

Costs application

2. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Report.

Reasons for refusal

3. Planning permission was refused for the following reason.

The proposal would result in a dominant and uncharacteristic form of development, which would introduce a series of utilitarian structures that are considered to be at odds with the immediate surroundings of the site, which is notable for its flat, open landscape with extensive vistas to level horizons. The visual impact would be particularly unacceptable when viewed from the south of the site approaching on Broad Gate. Furthermore, in association with the previously approved Fen Dike Farm solar farm scheme to the north of the site, it is considered that there would be an unacceptable cumulative impact upon the wider landscape setting.

Little Eau Opposition Group (LEOP)

4. Local residents established LEOP which was represented at the Hearing. LEOP supported the landscape and visual effects grounds of refusal set out in the refusal notice. It also objected on grounds of loss of agricultural land, heritage impact and the effect on residential amenity.
5. The decision to refuse was contrary to the recommendation of officers to the Planning Committee. The same officers attended the Hearing on behalf of the Council. They took a passive role in addressing the reason for refusal. In practice they relied on LEOP to put the case for the Council although it needs to be made clear that LEOP were not representing the Council in a formal sense.

The Site and Surroundings

6. The site has an area of some 11.75ha roughly in the shape of a diamond aligned north-south. It is currently three arable fields bounded on three sides by roads, New Fen Dike (south-west), Gooch Gate (north-west) and Sandy Gate (south-east). The land is essentially flat for miles around. The roads are about 2m above ordnance datum (AOD) and the land between 0.6 and 1.6m AOD. There are drainage ditches between Gooch Gate and the site, separating the fields and forming the north-east boundary. All the fields are unenclosed although there are a few trees on New Fen Dike and Gooch Gate. There is a larger group of trees surrounding a derelict building at the southern tip of the site¹.
7. The surroundings are reclaimed fenland. It is an arable landscape. At the time of my visit there was a mostly green mosaic of cereals and flowers, overlain by a geometric road network following the line of drainage ditches. There are open skies and extensive views into the distance. Interrupting these views are isolated dwellings usually partially hidden by associated tree planting. There is a dwelling under construction at Smiths Farms immediately to the south of the site and two existing dwellings on Broad Gate about 350m to the north-west. There are two nearby listed Grade II properties: Sandy Gate Farm, 800m to the north-east; and Guanock House, 950m to the south.
8. There are few hedgerows. Clusters of shelter belt planting break the horizon. This includes distinctive lines of poplars at Bardlings Drove associated with a deer farm which is no longer operational, at Hallgate Farm and at Coronation House. Some 2km to the north there are glimpses of the linear village of Sutton St James and a line of pylons on the skyline. In the distance is a commercial wind farm near Sutton Bridge about 8km to the north-east and another is visible to the south in Cambridgeshire, over 10km away.
9. Local traffic between Sutton St James and Sutton St Edmunds uses Broad Gate which at its nearest point passes some 100m to the west. Otherwise the roads are little used. On my site visit, in the middle distance, a team of a dozen or so workers were harvesting peonies. There are few off-road public rights of way. The setting is one of working farmland with a remote and tranquil feel to it.
10. The appellant has a planning permission² granted in 2014 for a 17.5MW solar farm (known as Felldyke Farm) on 19ha of land on Bardlings Drove adjacent to the deer park and about 550m to the west of the appeal site. Construction work has not yet commenced. There is a recently completed 10MW solar farm at Horsemoor Drove close to the built up area of Sutton St James.

The proposal

11. The solar farm would consist of panels erected on ground mounted frames fixed to pile-driven steel supports and arranged in rows running east-west. The submitted plans show a height of between 2.0m and 2.4m. At the hearing the appellant confirmed that they would not exceed a height of 2.0m above ground level. The associated infrastructure includes a sub-station with a footprint of 8.3m x 5.2m and a height of 3.9m situated on Gooch Gate at the north end of the site. It was confirmed that, as set out in the description of development,

¹ In a different ownership and outside the site boundary

² Council Ref H20-0764-14. Approved 8 December 2014

there would be a need for three transformers/marshalling cabinets. There are no plans of these but they would be about 2m in height.

12. The Environment Agency requires the sub-station and transformers to be located above the predicted flood level and no lower than 300mm above the existing floor levels. It is not clear what the predicted flood level is but the Council indicated that in practice it would have treated the figure of 300mm as the requirement.
13. The panel area would be surrounded by a 1.8m high security fence with four CCTV cameras on 3m poles. The electricity generated would be fed into a sub-station approximately 4km to the north. It is anticipated that this would be by underground cable making use of links created or to be created in the future by the Felldyke Farm and Horsemoor Drove solar farms. A new access point would be made close to the junction of New Fen Dike and Gooch Gate, being the closest point to the approach along Broad Gate.
14. Land under the solar panels would be grass seeded and utilised either for sheep grazing or for silage production. Mitigating landscaping is proposed in the form of a perimeter hedge planted around the whole site.

Planning policy

Development Plan

15. The development plan consists of the saved policies of the South Holland Local Plan (LP). Policy SG4 is concerned with development in the open countryside. It states:
Planning permission will only be granted for development in the open countryside which is essential in the proposed location and cannot reasonably be located within defined settlement limits. Development proposals that would result in an unacceptable impact upon the landscape character of an area, either individually or cumulatively, will only be permitted where:
 - i) the need for the development in that location outweighs its impact; and*
 - ii) no other site or solution exists to accommodate the proposed development.*
16. LP Policy SG17 seeks to protect residential amenity, including any overbearing or overshadowing effect on outlook. LP Policy SG18 expects new development to incorporate appropriate landscaping and biodiversity habitats. LP Policy EC4 supports farm diversification having regard to a number of considerations, including the impact of development on the surrounding environment.
17. I consider the first part of LP Policy SG4 is overly restrictive in the light of the presumption in favour of development as currently described in the National Planning Policy Framework (NPPF). The second part of this policy and the remaining LP policies are in line with national policy and should be given due weight accordingly.
18. Work is underway on a South East Lincolnshire Local Plan 2011-2036 which will replace the existing LP. It covers the districts of South Holland and Boston. It is anticipated that its public examination will take place in November 2016 with adoption in the early part of 2017. Little weight can be given to its policies at this stage.

National policy

19. The LP has no saved policy on renewable energy. Where the development plan is silent the NPPF³ states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole, or specific policies in the NPPF indicate development should be restricted.
20. Government policy is to support the development of renewable energy sources, including solar power, to help to ensure that the country has a secure energy supply and to reduce greenhouse gas emissions. Reflecting Government policy the NPPF advises that an application for renewable energy should normally be approved if its impacts are, or can be made, acceptable⁴. However it should be assessed against the NPPF objective of achieving sustainable development as a whole which includes the need to recognise the intrinsic character and beauty of the countryside. The NPPF also states that the planning system should protect and enhance valued landscapes⁵.
21. The NPPF indicates that local planning authorities should take into account the economic and other benefits of the best and most versatile (BMV) agricultural land⁶. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. A written ministerial statement (WMS) from the Secretary of State for Communities and Local Government in March 2015⁷ advises that use of BMV agricultural land would need to be justified by the most compelling evidence.
22. Current national web based Planning Practice Guidance (PPG) makes it clear that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities. It states that cumulative impacts require particular attention, especially the increasing impact of wind turbines and large scale solar farms on landscape and local amenity as the number of turbines and solar arrays in an area increases⁸.
23. The PPG also sets out particular considerations that relate to large scale solar farms⁹. They should preferably be on previously developed land, on non-agricultural land or on buildings. There is a need to justify any use of agricultural land.
24. When development may affect a heritage asset or its setting the NPPF requires the decision maker to: identify and assess its heritage significance; consider the impact of the proposed development on the significance; and finally establish whether this would result in harm to the significance. Any harm should require clear and convincing justification. Where there is less than substantial harm then this harm should be weighed against the public benefits of the proposal¹⁰.

³ Paragraph 14

⁴ NPPF Paragraph 98

⁵ NPPF Paragraph 109

⁶ NPPF paragraph 112

⁷ Planning Update: Written Statement HCWS488 by the Secretary of State for Communities and Local Government. 25 March 2015

⁸ Planning Practice Guidance: *Renewable and low carbon energy* Paragraph: 007 Reference ID: 5-007-20140306

⁹ PPG: Paragraph: 013 Reference ID: 5-013-20150527

¹⁰ NPPF Paragraph 134

Statutory duty

25. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 contains the following duty. *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*
26. A Court of Appeal judgement¹¹ found that a decision taker, having found harm to a heritage asset, must give that harm considerable importance and weight. This is the case even when the harm in NPPF terms is less than substantial.

Agreed matters

27. The Council and the appellant have signed a Statement of Common Ground. Other matters were agreed in the written statements or at the hearing. However, having regard to the objections from LEOP, overall agreement of the parties was limited to the matters set out below.
- a. The application is for temporary permission for a period of 25 years. At the end of this period the site would be cleared and restored to solely agricultural use.
 - b. The appellant carried out a site specific agricultural land classification assessment of the appeal site informed by a soil survey. This concludes that the land is Grade 3b (72.6%), Grade 3a (12.3%) and other uses, mainly drainage ditches (15.3%). The Grade 3a land is classed as BMV land.
 - c. The proposed development would make a significant contribution to meeting national climate change objectives and reducing carbon emissions. It would produce electricity equivalent to the usage of about 940 households and save approximately 2714 tonnes of CO₂ from being produced each year.
 - d. The site lies within National Character Area 46: *The Fens*. The most up to date regional landscape character assessment is the East Midlands Regional Landscape Character Assessment produced in April 2010. This shows the site within Landscape Character Type 2B *Planned and Drained Fens and Carrlands* (LCT 2B). The appellant used an older study¹² which includes the site within a *Peaty Fens* LCT. In practice the boundaries are similar to those of LCT 2B as are the descriptions of landscape character.
 - e. Subject to conditions there is no objection to the proposal on grounds of traffic generation, the effects of glint and glare or impact on biodiversity, drainage or archaeology.

The case for the appellant

The material points are:

Character and appearance

28. The submitted landscape and visual assessment (LVIA) was professionally carried out. It concludes that the development would have a moderate negative impact resulting from the loss of agricultural land and from the introduction of a new

¹¹ Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG [2014] EWCA Civ 137

¹² Strategic Landscape Capacity Study for South Holland. John Campion Associates. July 2003

- large scale engineered structure, a sub-station and perimeter fencing. With the proposed mitigation measures in place agriculture would be the only key landscape receptor where there would be a moderate negative change. However this is not a permanent change and the site would still partly retain its agricultural use through grazing sheep underneath the solar modules.
29. The landscape is of good/medium quality. It is not designated and it is not noted for its scenic quality. It has a flat topography, dominated by the horizon. The region around Sutton St James is physically remote and does not attract visitors. Arable farming dominates. Lines of poplars have introduced uncharacteristic, visually prominent vertical elements. There are instances where modern agricultural buildings, including glass houses and a piggery unit, have been introduced. It is an evolving landscape.
 30. The solar farm would consist of multiple rows of solar panels with associated metal infrastructure. The LVIA noted that this would introduce an industrial type land-use. Mr Ayres disassociated himself with this description pointing to the impact of modern agricultural buildings. In comparison to these the solar panels would be low-lying and would be in keeping with the horizontal character of the landscape.
 31. In addition any change to landscape character would only affect the immediate area of the solar park development which is located at the northern edge of the LCT. Subtle changes are typical of this area due to the merging of different landscape types. Hedgerows are a local feature of the *Peaty Fens* LCT. Within sight of the appeal site both the glass houses at Poplar Farm and the deer farm on Bardlings Drove are enclosed by high hedges and there is a roadside hedgerow between the site and Guanock House. The proposed hedge planting is likely to be viewed by the general public as a slightly beneficial landscape change. Indeed the Council has required hedge planting as a condition of approval for the two nearby solar farm sites. There are also grants available to encourage replanting hedgerows and the owner could plant hedges without the need for any consent.
 32. Six representative viewpoints were selected all within a 2km radius of the site. At the two closest on New Fen Dike and on Broad Gate approaching from the south there would be a moderately adverse effect on passing drivers. Poor weather precluded taking in views from the east and it is agreed that there would be a greater impact on occupiers of the new property at Smiths Farm and on any one travelling on horseback, on foot or cycling. However these are short distance views and although the land is flat there are minor variations in levels which would reduce the impact to a degree. Whilst there would be an initial harmful visual effect this would alter to a slight beneficial effect once the proposed hedge planting matures.
 33. There are two other solar farms in the vicinity. Grange Farm¹³ which is constructed is about 3.3km away and would not be seen either simultaneously or successively from the appeal site. At this distance one would need to travel several minutes on a contrived route to see both developments
 34. The Fendyke Farm development is yet to be constructed. There would be inter-visibility with the appeal site from the local road network. However the existing

¹³ Elsewhere referred to as Horsemoor Drove

views across the sites are constrained by slight variations in ground level and existing tree belts/vegetation. The provision of hedgerow screening that is provided by the consented Fendyke development and proposed for the appeal site will not permit any inter-visibility in the longer term. In any event it is the case for the appellant that neither scheme would have a significant harmful landscape or visual effect and that the combined effect would not be significant.

Listed Buildings

35. As Grade II listed buildings Sandy Gate Farm and Guanock House are considered to be a heritage asset of medium value. However there is no inter-visibility between these properties and the proposed development because of their shelter belts. The magnitude of change is therefore considered to be low. Nonetheless there would be a partial loss of the wider agricultural setting which is considered to have a minor adverse effect on the heritage significance of these properties.
36. The harm would be less than significant and in accordance with NPPF paragraph 134 would need to be weighed against the scheme benefits. The Conservation Officer concluded that the most strongly felt harm would be to the local distinctiveness of a surviving traditional fen landscape that includes two historic buildings as part of the immediate landscape setting. This is different in emphasis than making the case for the setting of the listed buildings themselves.
37. The S66 statutory duty is acknowledged. However English Heritage did not object and, having regard also to the views of the Conservation Officer, it is concluded that little weight should be given to the impact on the setting of the listed buildings.

Agricultural land

38. Only a relatively small part of the site is BMV land and that is Grade 3a. Most land in South Holland is shown on the regional ALC maps as Grade 1 and 2. This is therefore some of the lowest value land in the district. In his speech of 25 April 2013 Greg Barker, as Minister for Energy and Climate Change, stated that where solar farms are not on brownfield land you must be looking for lower grade agricultural land.
39. A sequential site selection exercise was undertaken. The initial step on a district by district basis was to identify suitable grid connection locations. The area around Sutton St James was one of the few such locations with existing spare capacity. Having identified a grid connection then there was high level sensitivity mapping of site constraints which had reasonable access. Included in these constraints was whether the site was brownfield/greenfield and, if greenfield, its agricultural land classification. The appeal site scored well on most counts. Whilst it includes some BMV land this is a small part of the total area. The land would still be used for agriculture even though not as intensively. After 25 years it would revert to farmland with a soil structure that may well have benefitted from a period of grazing.
40. The appellant was unable to identify any suitable brownfield sites. Whilst there was brownfield land it was in or adjacent to urban areas and has been earmarked for housing or other building uses. The land values are too high to allow for a viable solar farm. Roof top solar has great potential but its drawback is that owners are often not prepared to enter into a 25 year commitment and the

capacity of roof top installations is usually less than 500KW. There is a need for both brownfield and greenfield sites. There are no known roof top or brownfield sites available within the catchment of the Sutton St James grid connection.

41. In the above circumstances the use of a greenfield site which includes a small area of BMV should not count against the proposal.

Planning balance

42. The presumption in favour of sustainable development is a golden thread running through the NPPF and PP. Renewable energy is inherently sustainable and must benefit from this presumption. There has to be change. Those who have objected have failed to recognise that to achieve the national policy requirements there is a need for significant weight to be given to the support of renewable energy developments.
43. There would also be benefits to the landowner who lives in the village and from this base farms some 60ha of cereals. This is a relatively small amount of land and can only be maintained as a viable concern with other sources of income. These proposals would secure that. It is also hoped that the landscaping and landscaping maintenance would provide some local employment.
44. It is accepted that the site selected must be, or can be made to be, an acceptable one. In this case there is only moderate landscape and visual harm and after mitigation this would be negligible. The introduction of hedgerows would be environmentally beneficial. The temporary use of a small amount of BMV land which is at the lower end of the BMV scale and which will continue to be used for agriculture should not count against the proposal. Similarly the practical harm to the setting of the two affected listed buildings is very small. There would not be a significant effect on the new dwelling at Smiths Farm.
45. The balance in this case lies clearly in favour of the proposal.

The case for the Council

Character and appearance

46. The Council decision to refuse the application which was against the recommendation of officers was because Members felt that the visual/landscape impact and cumulative impact of the proposal overall could not be made acceptable. The Council had before it the advice of its consultant Landscape Officer who found the proposal acceptable and that of its consultant Conservation Officer who did not. It was not possible for the Conservation Officer to attend the Hearing.

Listed buildings

47. The Conservation Officer found harm to a historic landscape but did not conclude that there would be harm to the listed buildings or their setting. In her view the impact on the listed buildings should rely heavily on proximity and inter-visibility. She did not feel that proximity has much weight and there is no inter-visibility with Guanock House. Given that her conclusion is that little weight should be given to the setting of the listed buildings it is not considered there is justification to refuse the application in respect of this particular impact, under the provisions of NPPF paragraph 134.

Agricultural land

48. The appellant provided a sequential site selection report. It includes a number of alternative sites and the reasons for discounting them. The study area was limited to South Holland and relied heavily on the availability of a grid connection point. However there is no clear guidance as to the form that any sequential test should take and appeal decisions are an inconsistent guide. On balance the information submitted is considered adequate.
49. The Council has no reason to doubt that the submitted ALC survey is not sound. In South Holland much of the land is Grade 1 or 2. The land in question is predominantly not BMV and since its loss would be temporary there would be no significant or demonstrable adverse impacts in this respect that would counterbalance the presumption in favour of sustainable development. There would be no conflict with the relevant part of LP Policy SG4.

Planning balance

50. Government policy is to support the development of renewable energy sources, including solar power. However it is clear that environmental considerations must not be overridden or disregarded and that issues of landscape/visual amenity must be given significant weight. In this case it is considered that the harm from the landscape/visual effects of the proposal when considered cumulatively would significantly and demonstrably outweigh the benefits.

Case for Little Eau Opposition Group

Character and appearance

51. LEOP commissioned a review of the submitted LVIA. This concluded that:
- the assessment of landscape impacts does not follow the methodology set out in the submitted Environmental Report (ER) or in industry guidance;
 - the submitted photographs do not follow industry guidance;
 - the LVIA does not consider the impact of the development on the characteristics and qualities of the host landscape character area;
 - the baseline character assessment information is out of date; and
 - the impact of the proposed mitigation measures is not assessed.
52. One of the key landscape characteristics of LCT 2B is its strong sense of remoteness with a simple land use palette giving a strong sense of visual unity and sense of identity. Large scale expansive views are typical. These are all characteristics with the potential to be adversely affected by the development proposed. The strategy for this LCT includes protecting *the distinctive character of the landscape. New residential, commercial and industrial development should generally be encouraged within and around existing settlements, limiting widespread incremental development.* The forces for change for this LCT include *marked evidence of agricultural intensification and farm amalgamation, accompanied by a move towards arable production. Due to the flat, featureless topography of the area, specifically the lack of hedgerows, the implications of agricultural intensification is generally expressed in improvements to dykes and embankments*¹⁴.

¹⁴ See Document C1 Appendix B

53. LEOP considers the landscape to be of considerable value. Its unspoilt nature and sense of openness and remoteness is a rare combination. It would be highly sensitive to a large scale solar development. LEOP agrees with the views of the Conservation Officer that the development could not be successfully assimilated into this landscape. Its industrial character would have a significant impact which would extend well beyond its immediate environs when viewed from the south. Whichever way it was viewed, from far or near, it would be an incongruous feature which would detract significantly from the landscape as a whole.
54. Hedges are not a feature in the local landscape nor are they a typical feature of the LCT. Consequently the proposed mitigation would itself have an adverse effect on the open landscape character.
55. In terms of visual impact the LVIA considers that the development would appear similar to an electricity sub-station but this underestimates the extent of the site which in addition to the panels would include a sub-station, CCTV columns, transformers and perimeter fence. The LVIA assumes that visual receptors would be drivers whose attention is not focussed on the landscape. This does not take account of the many cyclists and horse riders who use the quiet road and bridleway network. The effect of near views of the development on these receptors has been seriously underplayed.
56. Whilst LEOP considers new screen hedgerows to be uncharacteristic it also points out that they would fail to act as an adequate screen for at least half the 25 year temporary period. Best practice is to assume planting will take 15 years to achieve its intended landscape impact.
57. Cumulatively there would be considerable inter-visibility with the approved Fendyke Farm solar farm. Sequentially the traveller would also see on, the outskirts of Sutton St James, the Horsemoor Drove solar farm, a wind turbine and, on the horizon, commercial wind farms to the north east and south. These and other modern agricultural and horticultural buildings are gradually eroding the character of the area.
58. LEOP therefore concludes that there would be considerable landscape and visual harm singly and cumulatively arising from the proposed development.

Listed buildings

59. Paragraph 132 of the NPPF notes that as heritage assets are irreplaceable then any harm or loss should require clear and convincing justification. The appellant has acknowledged that there would be a degree of harm to the setting of both Guanock House and Sandy Gate Farm House. LEOP accepts that the harm would be less than substantial and that therefore the proposal should be assessed in accordance with NPPF paragraph 134. However case law is now very clear that any degree of harm must be given considerable importance and weight.
60. In assessing impact on the setting there are many places where the listed buildings are seen in association with the appeal site, including views from the bridleway along Bad Gate. Whilst Sandy Gate Farm House is enclosed by trees it is possible to get glimpses of the appeal site within the open land to the south from gaps between the trees.

Agricultural land

61. The fact that a relatively small portion of land is BMV land is immaterial. Government policy is clear that ground mounted solar arrays should not be located on BMV land and should be located on land of lesser value. The WMS of March 2015 and the subsequent amendments to the PPG reinforce this position. Furthermore the appellant has not provided satisfactory evidence that there are no better alternative sites having concentrated on only one grid connection point. A recent solar farm proposal in Mid-Devon was refused because of a similar inadequate assessment of sites¹⁵.
62. LEOP do not accept that the temporary nature of the proposal should be given weight. In a recent appeal decision¹⁶ the Secretary of State took the view that a proposed 30 years temporary period is a considerable period of time and the reversibility of the proposal is not a matter that should be taken into account.

Planning balance

63. There would be considerable landscape and visual harm added to which is the unjustified use of BMV land, the harm to the setting of the listed buildings and to the residential amenity of the house at Smiths Farm. This harm clearly outweighs the benefits associated with the solar farm and the appeal should be dismissed.

Other third party representations

The Rt.Hon.John Hayes MP

64. Shares the concerns of his constituents about the detrimental impact of the proposal on the fenland landscape. Refers to the particularity of the landscape, its openness, the droves, dikes and sparse settlement pattern reflecting the history of its drainage and reclamation for agriculture. The area around Sutton St James is suffering from creeping industrialisation which is harming its open, unspoilt character. There are already two solar farms. The cumulative effect of one more would be too much.
65. The site is good agricultural land. The proposal fails to show that there are not better located sites. Government policy clearly now favours use of previously developed land and buildings. The proposal is careless of the interests of the local community and their amenity.

Mr Coleman, Sutton St Edmonds Parish Council

66. Both Sutton St James and Sutton St Edmonds Parish Councils object. The Parish Council does not wish to put forward any technical arguments but would point out that the residents of Sutton St Edmonds make regular journeys to use the shops and facilities of Sutton St James. Cyclists, walkers and horse riders also pass through the village heading north. These journeys would take them past two solar farms which at their boundaries are less than 600m from one another. Once inside Sutton St James they will encounter a third solar farm very close to the centre of the village.

¹⁵ Ref 14/01949/MFUL Willand Road, Collumpton Road, Devon

¹⁶ Ref APP/M2270/A/14/2226557 Badsell Road, Five Oak Green, Tonbridge

67. This part of the fens is an ancient landscape that has changed little since Roman times. The introduction of large scale industrial hardware into this landscape is damaging to its character. Screening it with hedging will introduce another foreign element which is uncharacteristic and in any case will not provide effective cover for over half the working lifespan of the scheme.

Mr Cockerton, Sandy Gate Farm House

68. Submitted a statement and spoke in support of the LEOP case

Written Representations

69. At the application stage objections were received from occupiers of 17 properties and there were 35 letters of support on a standard pro-forma. At the appeal stage there were a similar number of objections although no additional letters in support. These written representations do not raise any additional planning matters that need to be addressed.

Conclusions

References are made, where appropriate, to sources of material in earlier parts of the report by indicating the relevant paragraph number thus: []

Main considerations

70. Having regard to the reason for refusal and representations from local people I consider the main issues are:
- the effect of the proposed development on the character and appearance of the surrounding countryside, both as a discrete development and cumulatively, in combination with other renewable energy developments;
 - the effect on the heritage significance of the setting of Guanock House and Sandy Gate Farm House;
 - the effect on agriculture; and
 - whether any harm identified would be such as to clearly outweigh the benefits of the proposal, including those associated with renewable energy production and the reduction of greenhouse gas.

Character and appearance

71. I find that the submitted LVIA should not be entirely relied on because it does not establish landscape value or the susceptibility of the landscape to a solar farm development so as to arrive at a measure of sensitivity. It then assesses the effect of the proposal on landscape elements but not on landscape character [51][28].
72. The landscape is not designated. It is very much a man-made landscape and one that is not notably scenic. Nonetheless my judgement is that it has considerable value. It is a traditional fen landscape characterised by openness and uninterrupted views to the horizon particularly, in this case, to the south. Its vast skies and strong sense of remoteness are well known and appreciated. The immediate surroundings are relatively unspoilt with few modern interventions. There are occasional isolated dwellings and farm buildings, including two listed buildings. I consider the clutter associated with the solar panels and associated infrastructure would be an alien feature in this open and large scale setting. I find that the landscape has a moderate to high sensitivity to such development.
73. The proposal would introduce a large engineered construction across three unenclosed fields in a particularly open location. It would be a low structure but nonetheless one that would sit above the level of the surrounding crops. The sub-station and transformers would be built up above flood level on plinths and would be separate vertical elements. The manufactured symmetry of the panel arrays and the strong outline of the rear and side elevations of the structure would be at odds with the subtle colours, movement and variety of crops in the surrounding fields. There would be a significant alteration to the inherent character of the landscape.
74. In accordance with the advice in the PPG mitigation is proposed by planting a perimeter hedge. This would take time to grow but eventually it should provide a visual screen to the development. However this is a part of the fens where hedges are not typical features and I found no evidence to support the assertion by the appellant that they are [31] [54]. The hedges would foreshorten views

and create a sense of enclosure that would itself have a significant adverse effect on the open landscape character.

75. The site lies close to the larger approved Fendyke Farm solar farm and would be seen in combination with it [34][57]. The combined area of the two sites is in excess of 30ha. The Fendyke Farm site is partially screened being immediately north of trees around the deer farm. The appeal proposal would extend solar development into countryside that is more open. The two sites in combination would have a substantial adverse effect on the openness of the landscape to the south of the village of Sutton St James resulting in considerable cumulative landscape harm.
76. In terms of visual impact the appeal site is open and exposed from all sides. On my site visit I found that from a radius of about a kilometre the development would be prominent and intrusive when viewed from locations which include the property at Smiths Farm, the road network and the Bad Gate bridleway. From the south the panel arrays would be likely to appear on the skyline. Even after the new hedgerows mature the loss of openness would detract from the quality of these views. From Broad Gate the Fendyke Farm site would be seen to the north-west and would result in additional cumulative visual harm.
77. Further north where the Horsemoor Drove solar farm is situated the landscape is more settled and less open. Road users travelling north from the appeal site would be aware that they are moving into a different setting. I am not persuaded that they would experience a significant sequential cumulative effect. The two commercial wind farms which are visible are far away in the distance and detract little from the enjoyment of the appeal site setting [33][57].
78. This is a relatively unspoiled part of the fens distinguished by its openness and its extensive vistas. I conclude that the proposal when considered cumulatively with the nearby Fendyke Farm solar farm, would result in considerable detriment to landscape character and cause significant local visual harm. Overall there would be a substantial adverse effect on the character and appearance of the countryside between Sutton St James and Sutton St Edmunds and the proposal would fail to protect or enhance what is clearly a valued landscape contrary to the objectives of the NPPF.

Listed buildings

79. The appeal site is part of the wider setting of Sandy Gate Farm House and Guanock House but it would not affect their immediate setting. Both properties are well screened by encircling vegetation which cuts them off from the surrounding countryside. There is no dispute that there would be only a minor impact on their heritage significance [35][59]. Thus the harm would be less than substantial and in accordance with NPPF paragraph 134 it should be weighed against the public benefit of the proposal. In undertaking this balance considerable weight and importance should be given to the identified harm.

Agricultural land

80. The starting point of the search by the appellant for a site was to identify viable grid connection points in the South Holland district area. This is reasonable although no evidence was produced to show where those points were and whether the focus on the Sutton St James area was justified. Having discounted

brownfield and rooftop sites there was then a search for lower value agricultural land. The Council could not suggest any available brownfield sites and, subject to a sequential approach, there is no policy constraint on the use of greenfield land [39][40]. Notwithstanding the concentration of the search effort in the Sutton St James area [61] I consider the appellant has carried out an adequate sequential assessment of sites.

81. Agricultural land in South Holland is almost all Grade 1 and 2. To find a site that is for the most part Grade 3b and not BMV land is very much in its favour [38][49]. LEOP submits evidence that the site is capable of producing a good cereal crop but this is not evidence of the intrinsic quality of the land provided by the borehole survey and analysis. The use of BMV land must count against the proposal and would be contrary to NPPF Paragraph 212 [61]. However, taking account of the small proportion of the land that is BMV, the lack of other lower quality land in the district and the continued use for sheep grazing during the operational period I find that there would be only limited harm to agriculture.

Benefits of the scheme

82. There is no dispute that the development would produce energy from a renewable source and by doing so assist in tackling climate change [27]. As a result of EU Directive 2009/28/EC, the UK is committed to a legally binding target to achieve 15% of all energy generated from renewable resources by 2020. The 2006 Energy Review has an aspiration of 20% of electricity from renewable resources by 2020. The 2009 UK Renewable Energy Strategy and the UK Low Carbon Transition Plan has as a lead scenario that this figure should increase to 30% although this is not a commitment. None of these documents sets a ceiling and there is an on-going need for renewable energy projects. Meeting the electricity needs of the equivalent of some 940 people and the saving of the associated CO₂ emissions would make a small but important contribution to this objective. There would also be a small economic benefit in support of the viability of the landholding [43]. These benefits attract significant weight.
83. The appellant claims a positive landscape gain from the introduction of new hedgerows. However, as noted above hedgerows are not characteristic of the landscape and would be inappropriate features.

Other matters

84. LEOP and the owner of the house under construction at Smiths Farm express concern over the effect on the outlook from this property. It would have direct views of the back two thirds (approximately 140m) of the total length (approximately 212m) of the Sandy Gate edge of the development. This would be a partial view and take up a small part of the total outlook. There is no right to a view and the impact would not be overly oppressive. In any case a perimeter hedge is proposed to a height of 3m which would effectively screen the site from the property. There would therefore not be any significant harm to living conditions or conflict with LP Policy SG17.

Conditions

85. I have considered what conditions would be necessary should the Secretary of State decide to allow the appeal. They are based on those suggested by the

Council¹⁷, further discussion at the Hearing, and the tests set out at NPPF paragraph 206.

86. There would be a need for a standard commencement condition and for one listing the approved plans. However, since the submitted details are generic, further scheme specific details of the panels, associated structures, internal tracks and cable runs would be needed. It was agreed that, as the development would be time limited, a reinstatement condition would be necessary. Further details of landscaping and ecological works and their maintenance would be required. The agreed flood risk mitigation measures should also be secured by condition.
87. The highway authority reasonably seeks improvements to Fen Dike Road, the provision of off-road parking and unloading, and access arrangements that avoid using Sandy Gate or Gooch Gate. To protect residential amenity hours of working, noise emissions and a protocol for dealing with complaints of glint and glare should be conditioned.

Planning balance and conclusions

88. I conclude that, having regard to the effect of the proposal both alone and cumulatively with the Fendyke Farm site, there would locally be substantial harm to the character and appearance of the countryside which in this case would clearly and demonstrably outweigh the benefits. There would be additional limited harm from the use of BMV land and a minor impact on two nearby listed buildings which should be given special weight and considerable importance in the planning balance. However these latter two considerations alone would not have outweighed the benefits if the landscape and visual impacts had been acceptable.
89. As the overall balance is against the proposal it would not be sustainable development as described in paragraph 14 of the NPPF and the countryside harm would be contrary to LP Policy SG4. Neither the mitigation measures proposed nor the use of conditions would make the impact acceptable and NPPF paragraph 98 would indicate that the proposal should be refused.

Recommendation

90. I recommend that the appeal for installation of ground-mounted photovoltaic solar arrays to provide 5MW generation capacity together with transformer stations, internal access tack, electricity sub-station, landscaping, fencing, security measures, access gate and ancillary infrastructure be dismissed. In the event that the Secretary of State disagrees with me, I recommend that any permission be made subject to the conditions in the Appendix below.

Bern Hellier

INSPECTOR

¹⁷ Document B1

APPENDIX

SUGGESTED CONDITIONS IF PLANNING PERMISSION IS GRANTED

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing 1495.j/D001 (indicative site plan) and Appendix 2 (site location plan).
3. This permission shall expire after 25 years following the date that the development is first connected to the electricity grid. The local planning authority shall be notified of such date in writing not later than one month from the event taking place. Within 6 months of the end of the 25 year period, or if the solar array ceases to be operational for a continuous period of 6 months at any time prior to this, the solar array and its associated infrastructure shall be removed from the site and the land reinstated to a condition that has been first agreed in writing by the local planning authority.
4. Development shall not commence until details of the position, layout, scale and external appearance of the solar panel arrays, sub-station, transformers, marshall cabinets and CCTV poles, including a schedule of external materials, has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
5. Notwithstanding the submitted typical details the height of the panel arrays shall not exceed 2.0m
6. Development shall not commence until construction details of the internal access roads have been submitted to and approved in writing by the local planning authority. The access roads shall be constructed in accordance with the approved details
7. Development shall not commence until details of the method of installing all cabling has been submitted to and approved in writing by the local planning authority. All cabling shall be installed in accordance with the approved details.
8. Notwithstanding the submitted landscape mitigation development shall not commence until a detailed scheme for hedge planting and boundary treatment including access gates, fences, and fence openings for wildlife protection has been submitted to and approved in writing by the local planning authority. The scheme shall include a hedgerow on all sides of the site and shall specify species, density, planting size and layout. The scheme shall include a timetable for implementation and shall be carried out as approved.
9. The new hedge planting shall be allowed to reach a height of at least 3 metres and shall thereafter be retained at that height. It shall be maintained by the owner(s) of the land and in the event that plants die, are removed or become seriously damaged or diseased others of the same species and size shall be planted in the same place in the next planting season.
10. Development shall not commence until a biodiversity management plan including long term design objectives, management responsibilities, maintenance schedules for the ground cover and details of habitat enhancement and protection, including a monitoring programme, has been submitted to and approved in writing by the local planning authority. The plan shall be implemented as approved.
11. Development shall not commence until the section of New Fen Dike between the Junction with Broad Gate and the site entrance has been improved in accordance with details

which shall first have been submitted to and approved in writing by the local planning authority.

12. Development shall not commence until details of the site access and a construction parking and off-loading area have been submitted to and approved in writing by the local planning authority. The works shall be carried out prior to construction commencing and all parking and off-loading associated with the development shall be contained and carried out within the site.
13. There shall be no use of Gooch Gate or Sandy Gate by vehicles associated with the installation of the development hereby permitted. Temporary signs shall be erected to advise drivers of this requirement and temporary directional signage shall also be erected on the agreed route for the delivery vehicles.
14. The development hereby permitted shall be carried out in accordance with the submitted Traffic and Construction Management Plan outlined in Section Q of the Environmental Report. For the avoidance of doubt no machinery shall be operated, no processes shall be carried out and no deliveries shall be taken at, or despatched from the site outside the hours of 08:00 and 17:00 Mondays to Fridays inclusive, 08:00 and 13:00 on Saturdays, and not at any time on Sundays and Bank or Public Holidays. Furthermore there shall be no HGV movements to or from the site outside the hours of 10:00 and 14:30 Mondays to Fridays inclusive.
15. The development shall be carried out in accordance with the flood risk assessment contained within the Environmental Report and in particular the following flood risk mitigation measures detailed within:
 - all sensitive equipment shall be located above the predicted flood level and no lower than 300mm above existing ground levels;
 - permeable materials and methods shall be used for the construction of all roadways;
 - the topography of the post-development site shall not be altered from that of the pre-development site; and
 - the run off from the sub-station and control rooms shall filter into a sustainable drainage system.These mitigation measures shall be fully implemented prior to the development being first connected to the grid.
16. Noise from fixed plant and machinery shall not exceed the background noise level by more than 5dB(A) when measured as a 15 minute LA(eq) at any residential boundary.
17. There shall be no external lighting on the site at any time once the development is operational.
18. Within 28 days of the receipt of a request from the local planning authority following a complaint to it concerning glint/glare the solar farm operator shall submit details of proposed mitigation measures and a timescale for their implementation. These measures shall be approved in writing by the local planning authority and shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Mr R Ayres	Managing Director, BE Renewables
Ms N Claxton	BE renewables

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Fidler	Development Manager
Mr P Norman	Principal Planning Officer

INTERESTED PERSONS:

Rt Hon John Hayes	Member of Parliament
Mr R Barfoot	Planning Consultant for LEOP
Mr M Coleman	Sutton St Edmunds Parish Council
Mr R Cockerton	Sandy Gate Farm House

Other residents were present and participated

DOCUMENTS

A. Submitted with Statement of Case for the appellant

- A1 Original Planning Application documents Appendices 1 to 23
- A2 Planning Statement
- A3 Design and Access Statement
- A4 Statement of Community Involvement
- A5 Environmental Report (revised 9 April 2015)
- A6 Indicative site plan 1495.j/D001 dated 27 May 2015
- A7 Response to public comments letter dated 23 April 2015
- A8 Other pre determination correspondence between the appellant and the Council

B. Submitted with the Statement of Case for the Council

- B1 Draft planning conditions

C. Submitted with the Statement of Case for LEOP

- C1 Objection response from LEOP (August 2015)
- C2 Additional response from LEOP (also dated August 2015)

D. Other documents

- D1 Statement of Common Ground
- D2 South Holland Local Plan Policies SG4, SG17, SG18 and EC4
- D3 Third party representations on the appeal
- D4 Third party representations on the application

E. Documents submitted at the Hearing

- E1 Written statement by Mr Coleman, Sutton St Edmunds Parish Council
- E2 Written statement by Mr and Mrs Cockerton
- E3 Photograph of site with wheat crop
- E4 Peer review of submitted ALC report from Hyder Consulting
- E5 Secretary of State appeal decision letter Ref APP/D0840/A/14/2229290



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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