

Proof of Evidence of Rebecca Caines

MA RTPI

**Land off Great Sike Road, Old Malton,
Malton**

Appellant: Harmony Energy

Planning Inspectorate No. Appeal:

APP/Y2736/W/24/3342002

North Yorkshire Council (Formerly Ryedale District
Council) Application No. 23/00046/MFULE

27 August 2024

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Declaration

The evidence which I have prepared and provide for this appeal, reference APP/Y2736/W/24/3342002 in this Proof of Evidence is true and has been prepared and is given in accordance with the guidance of my professional institution. I further confirm that the opinions expressed are my true and professional opinions, irrespective of whom I am instructed by.

1.0 **Qualifications and Experience**

Qualifications

- 1.1 My name is Rebecca Caines, I hold a Master of Arts Degree in Town Planning from Heriot-Watt University. I am a chartered member of the Royal Town Planning Institute [RTPI].

Experience

- 1.2 I have over 18 years of experience in planning work in the United Kingdom, in both private and public sectors. Since 2005 I have been employed as either a consultant or by a major regeneration developer.
- 1.3 Between 2005 and 2013 I worked for RPS Planning Consultancy working on a range of development proposals including large-scale residential and infrastructure projects. In 2013 I joined Nathaniel Lichfields & Partners [Lichfields] based in the London office where I worked on a range of residential, infrastructure, mixed use and leisure projects. This included working on the Greenwich Peninsula Masterplan [GPM] for Knight Dragon Developments which included 17,000 new homes, new transport interchange, two primary schools, health centre, public realm, design district and community uses.
- 1.4 In 2020, I joined Knight Dragon as Head of Planning to deliver the GPM. In 2022, I rejoined Lichfields as a Senior Director in the Manchester office and was elected to the Board in April 2024. I am currently part of the Lichfields Advanced Energy Business Development Group and work on a number of energy related projects including Battery Energy Storage Systems, Solar, and Anaerobic Digestion projects.

2.0 Scope and Structure of Evidence

Introduction

- 2.1 I give evidence to this Inquiry on behalf of Harmony Energy Ltd ('Harmony Energy') [the Appellant] in support of its appeal against the refusal of North Yorkshire Council [NYC/LPA] to grant planning permission for the installation and operation of a solar farm and battery energy storage system with associated infrastructure including substation, access tracks, pole mounted CCTV, fencing and landscaping for a period of 40 years [the proposed development] on Land off Great Sike Road, Old Malton, Malton [the Appeal Site].
- 2.2 Neither I, nor Lichfields were involved in the Planning Application prior to determination of the application by NYC. Lichfields were appointed by the Appellant to progress an Appeal following refusal of the application. I therefore rely on documents submitted during the course of the application that were prepared by others.
- 2.3 I have visited the Appeal Site and the surrounding area on numerous occasions both prior to and during the preparation of this evidence and I am familiar with the policies in the Development Plan.
- 2.4 The application (reference: 23/00046/MFULE) was validated by NYC on 25 January 2023. The application was refused at Planning Committee on 10 October 2023, contrary to the recommendation of officers. A total of four reasons for refusal were provided on the Decision Notice and these are set out within CD Ref. 3.3.
- 2.5 An appeal was lodged on 4 April 2024.

Matters being Addressed and Scope of Evidence

- 2.6 The main issues as set out within the Inspector's Post-Case Management Conference Note [CD Ref. 9.13] are as follows:

- 1 The acceptability of the principle of the proposed development in the location proposed having regard to i) flood risk ii) the loss of agricultural land for farming purposes inclusive of its grade;
 - 2 The impact of the proposed development on the existing rural business;
 - 3 The impact on nearby heritage assets;
 - 4 The acceptability of the resultant effects upon residential living conditions and local amenity; and
 - 5 The overall planning balance having regard to other material considerations any related planning policy, and any benefits of the proposed development.
- 2.7 My evidence considers the compliance of the proposed development with the Development Plan, National Planning Policy Framework [the NPPF], Planning Practice Guidance [PPG] and other material considerations relating to the proposed development.
- 2.8 My evidence will specifically focus on Reason for Refusal 1 (RfR1) which relates to whether there are reasonably available sites appropriate for the proposed development in areas at a lower risk of flooding.
- 2.9 I will also address any matters raised by interested parties, planning policy, the benefits of the proposed development and the overall planning balance.
- 2.10 My evidence should be read in conjunction with the Proofs of Evidence prepared by:
- 1 Mr John Ingham BA (Hons), Dip LA, CMLI (Stephenson-Halliday) who deals with landscape, visual and residential amenity relevant to RfR4 on the decision notice [CD Ref. 9.8].
 - 2 Mr Tony Kernon (Kernon Countryside Consultants) who deals with loss of agricultural land for farming purposes, the impact of development on rural businesses and impact on BMV relevant to RfR2 and 3 on the decision

notice [CD Ref:9.9]. Appended to Mr Kernon's Proof is a Viability Assessment prepared by Adam Barrass (Vickers & Barrass) which was shared with the Council and the Rule 6 Party on the 20 August 2024 [CD Ref. 9.10].

2.11 In addition to that evidence, I append to my evidence the following supporting documents:

- 1 A Built Heritage Technical Note prepared by Fiona Bage (ELG Heritage) (August 2024) (Appendix 1 and CD Ref. 9.17) to address the impact on nearby heritage assets raised by the Rule 6 Party. This Note confirms the agreed '*very low end of less than substantial harm*' to assets as agreed with the LPA. This will be addressed further through a roundtable discussion.
- 2 A Technical Note prepared by Gary Camplejohn (Harmony Energy) dated August 2024 (Appendix 2) to address Grid Connection raised by the Rule 6 Party.
- 3 Planning Phase Battery Safety Management Plan - Fire Strategy Report prepared by OWC (an ABL Group Company) dated August 2024 (Appendix 3) to address fire risk issues raised by Third Parties.

2.12 I have taken this evidence into account in the preparation of this Proof.

2.13 A Statement of Common Ground [SoCG] (CD Ref. 9.2) has been agreed between the Appellant and NYC dated 12 July 2024. I refer to this within my Proof of Evidence to avoid repetition of matters agreed.

2.14 I reserve the right to respond to any further matters raised by the Council, Rule 6 Party and Third Parties in due course.

Structure of Evidence

2.15 My evidence is structured as follows:

- Section 3.0 describes the appeal context, Appeal Site and surroundings and the relevant planning history;
- Section 4.0 describes the proposed development;
- Section 5.0 describes the Amendments to the Scheme and Reg 25;
- Section 6.0 considers the relevant Planning Policy Context;
- Section 7.0 considers the main planning considerations as per the reasons for refusal in accordance with the Development Plan.
- Section 8.0. considers other matters for consideration raised by Rule 6 and Third Parties;
- Section 9.0 sets out the planning benefits of the proposed development;
- Section 10.0 refers to the agreed conditions; and,
- Section 11.0 sets out my conclusion and the overall planning balance.

3.0 Appeal Context

Appeal Site and Surroundings

- 3.1 The full description of the Appeal Site and surrounding area is set out within the SoCG (CD Ref. 9.2). The Appeal Site Location Plan can be found at CD Ref. 1.6. As such, I do not consider it necessary to repeat this information for my evidence.

Planning History

- 3.2 An agreed Planning History position for the Appeal Site is set out in the SoCG agreed with the LPA (CD Ref. 9.2). Again, I do not consider it necessary to repeat this information in full in my evidence.

4.0 **Appeal Proposal**

4.1 The description of the proposed development as set out on the Decision Notice is as agreed with NYC and set out within the SoCG (CD Ref. 9.2).

4.2 The key elements of the proposed development include:

- 1 **Capacity:** The solar farm has the capacity to generate up to 30.4MW Alternating Current (AC) of electricity (39.26MW DC), whilst the battery energy storage system ('BESS') has a capacity of 12.63 MW (AC).
- 2 **Layout:** comprises of:

Land to north of Freehold Lane

- a Rows of solar panels arranged across the Appeal Site separated by around 5m, to allow for ease of movement around the panels for maintenance and to prevent shadowing.
- b 11 no. inverter-transformer stations (which are also known as inverter transformers) (elevations provided in Drawing PLO05b – MV Power Station [CD Ref: 1.10]).
- c A Customer Substation (intake substation) (Drawing PLO06 [CD Ref. 1.11]).
- d Other infrastructure includes: CCTV and a satellite dish [CD Ref. 1.12].

Land to the south of Freehold Lane

4.3 BESS facility [BESS] comprising of:

- a 12 no. battery containers (Drawing No. OM-EL-BAT-01) [CD Ref. 2.2] and 6 battery transformers (Drawing No. OM-EL-BTR-01 Rev o [CD Ref. 2.2]).
- b A Customer Switchroom (Drawing: OM ED(DNOLVAC) Rev o [CD Ref. 2.2]).

- c A DNO LVAC Transformer (Drawing OM_ED(DNOLVAC)_Rev o [CD Ref. 2.2].
- d A 66/33kV Substation within an enclosed compound (Drawing PSE2-CIV-1499-200 Rev OA [CD Ref. 2.2].

2 **Design:** The design of the proposed development includes:

- a anti-glare coating on the solar panels to minimise glint and glare.
- b Solar panels mounted on aluminium frames supported by upright poles driven into the ground to a depth of approximately 1m. The panel mounting system is provided in Drawing No. PLO01 [CD Ref. 1.9]. Maximum height above ground of the panels is 3.1m.
- c No piling and little excavation is required for the solar panel installation.
- d Inverter transformer stations raised on 1.4m platforms with railings providing a total height of 4.3m.
- e A Customer Substation (Intake substation) approx. 3.9m high by 10m long by 3.5m wide.
- f Battery containers with dimensions approx. 14.6m long by 1.45m wide by 3m high.
- g Battery transformers with dimensions 5.3m long, 2.9m wide and 3.1m high.
- h A Customer Switchroom with dimensions approx. 15m long, 3.3m wide and 3.6m high.
- i A DNO LVAC Transformer with dimensions approx..2.2m wide and 1.7m high
- j A 66/33kV Substation with an enclosed compound with dimensions 36m long, 15m wide and a max height of 5m for the equipment.

- k A 2.5m high fence surrounding the different parcels of development with gates.
 - l For security reasons, pole mounted CCTV cameras and a Satellite dish would be provided around the Appeal Site, each with a maximum height of 3m. Elevations for these elements are provided on drawing no. PL007 [CD Ref. 1.12].
- 3 **Access:** The proposed development would be accessed off Freehold Lane, providing access to the BESS facility to the south, and to the north to the main solar development. Internal access tracks are proposed throughout the Appeal Site in addition to those already in existence to ensure access for operation and maintenance.
- 4 **Landscaping:**
- a Retention where possible of the existing vegetation running between fields on the Appeal Site, notably the existing hedgerows and trees.
 - b Removal of one low quality tree and five sections of low-quality hedgerow to allow for access between fields and the installation of the electricity connection to the substation as detailed in the Arboricultural Impact Assessment (see Appendix D1 Arb Impact Assessment [CD Ref. 1.20]).
 - c The comprehensive landscaping scheme is shown on Landscape Mitigation Plan (Rev C) at CD Ref. 7.13, which includes new sections of hedgerows and trees planted to assist in screening the proposed development and increase biodiversity opportunities.
 - d The field in the southeast portion of the Appeal Site has been left partially undeveloped; planting of species rich grasses is proposed here to increase the biodiversity gain resulting from the proposed development.

- e In total, biodiversity net gain of 110.56% (previously 117.37% at determination stage) in biodiversity habitat units, in addition to 42.67% gain in hedgerow units. It should be noted that these figures differ from those in the original submitted Planning Statement and ES documents and the application previously determined by NYC due to the minor amends made to the proposed development in July 2024 (as set out Section 5 below) [CD Ref. 7.11].

- 4.4 The proposed development has maximum lifespan of 40 years, after which time the equipment would be removed and the Appeal Site returned to its original state in accordance with draft planning condition 21 [CD Ref. 9.12].

Consideration of the Application

- 4.5 During the determination of the application, no objections were received from Statutory Consultees to the proposals. A number of amendments and responses were made by the Appellant during the course of the determination to respond to Officer comments. This included:

- 1 The Windmill at Windmill Farm was listed on the 25 May 2023. An Addendum to the Cultural Heritage Chapter 7 of the ES [CD Ref. 2.8] was submitted on the 31 May 2023. No objection from the Council's Conservation Officer or Historic England were received.
- 2 The Biodiversity Management Plan (ES Volume 3, Appendix 6.5) and mitigation/landscape plans were updated to allow for additional mitigation requested for Skylarks. Updated BNG calculations were submitted on the 21 June 2023 [CD Ref. 2.3].
- 3 A revised Flood Risk and Drainage Assessment was submitted on the 11 August 2023 [CD Ref. 2.6].
- 4 A Technical Note on Noise predictions was submitted in July 2023 (publicised by the Council on the 3rd July 2023) in order to assess noise impacts on the Eden Camp Modern History Museum [CD Ref. 2.11].

- 5 An updated BESS Site Plan was submitted on the 15 August 2023 in response to the consultation response from North Yorkshire Fire and Rescue Service. The updated Plan (drawing no. OM_BSP_REV H) was submitted [CD Ref. 2.2].

4.6 In terms of Flood Risk and the application of the Sequential Test and Viability the following should be noted:

- 1 The Application was accompanied by a Sequential Test (ST) (Scoped out Topics: Appendix C2 prepared by PWA Planning November 2022) [CD Ref. 1.20]. This document concluded that there were no sequentially preferable alternative sites for the proposed development within Ryedale District and in areas with a lower risk of flooding. The following points are of note in this document:
 - a The Appellant has obtained a valid grid offer (dated 14 October 2020) from Northern Powergrid (NPg) (Distribution Network Operator 'DNO') to connect into Malton Bulky Supply Point (BSP). This means Harmony Energy have an immediate connection date save for a standard 18-month lead time to procure the required electrical equipment.
 - b The Old Malton Substation is the only BSP in the former Ryedale District and is the only viable point of connection for the Development of this scale.
 - c This avoids NPg having to build a new substation on the Application Site at significant cost. However, due to technical constraints, NPg will only permit this connection configuration if the Appellant's own solar system intake substation is located within 300m of the existing Old Malton Substation. It is worth noting in this regard that paragraph 3.9 of the ST stated that "*Without this offer, the cost of connecting at Old Malton would not be commercially viable.*" (Paragraph 3.9).

- d A maximum 300m buffer from Old Malton Substation was therefore considered to be appropriate by the Appellant and PWA for the purposes of the ST.
- e The only land available outside of Flood Zones 2 and 3 and within the 300m buffer is to the south of the A64, but the amount of land available for the proposed development in this location is limited by the proximity of further land within Flood Zones 2 and 3 associated with the River Derwent.
- f There are also other constraints relating to landscape and visual impact and heritage which make the Site sequentially preferable to other land to the south of the A64.

- 2 In July 2023 the 'Sequential Test- Clarifications' prepared by PWA Planning [CD Ref. 2.9] was submitted in response to the Council with regards to the rationale for the 300m radius from the connection point as the basis for the sequential test.

4.7 The Application was reported to planning committee on the 10 October 2023 with a recommendation planning permission be granted subject to a number of conditions.

4.8 From the Report [CD Ref. 3.1] prepared by the Case Officer, I note the following:

- 1 The Principle of Development is supported by local Plan policy SP18, Para 157 and 163 of the NPPF and NPS EN1 and EN3. The Officer notes at Para 10.6 of the Report that the Local Plan does not identify 'suitable areas' for energy developments. This matter is addressed further in this Proof at Section 7.
- 2 In respect of heritage, the impact to the setting of Acomb House Farmhouse and the Windmill at Windmill Farm is at the very low end of less than substantial (Para 10.28). No other impacts in terms of heritage

have been identified. The Officer concludes that the proposed development would provide a significant public benefit that would outweigh the low level of harm identified by the Building Conservation Officer to the setting of Acomb House Farmhouse and the Windmill at Windmill Farm (Paragraph 10.31). This is agreed in the SoCG Paragraph 3.34- 3.36 [CD Ref. 9.2]. However, due to this matter being raised by the Rule 6 Party, this matter is addressed further in Section 8.

- 3 The Appeal Site lies within a low lying and broadly flat vale and does not lie within a national or local landscape designation. The harm to the landscape is minor as the significant impacts to the landscape are limited to the site and neighbouring lanes [Para. 10.104). RfR 4 relates only to visual effects and not landscape effects. This has been agreed in paragraph 3.26 of the SoCG.
- 4 The Officer states that whilst the proposed development would have a negative impact on the rural economy, weight must also be given “*to the economic benefit to the landowner as part of a rural diversification project and the fact that the proposal is in accordance with local policy SP9 The Land-Based and Rural Economy*” (paragraph 11.7). This matter is considered further in Mr Kernon’s proof of evidence and Section 7 of this Proof.
- 5 Viability was a key consideration for the Applicant in determining an appropriate area for the ST but no Viability Assessment was submitted. There was no clear evidence provided to support the search area for the ST to demonstrate there are no reasonably available sites with a lower risk of flooding or on lower grade agricultural land. This is a matter I will focus on in particular in Section 7 of this Proof.

4.9 The Officer goes on to state at Paragraph 11.14:

“the significant public benefit of the proposal is considered, on balance, to outweigh the policy conflicts identified in this report and the lack of viability evidence used to set the Sequential Test parameters. Having regard to the overall planning balance the development is found to be sustainable and in the public interest. Approval is recommended subject to conditions”.

4.10 The application was subsequently refused by Members at Planning Committee.

4.11 Reason for Refusal 1 specifically refers to *‘there is insufficient evidence to demonstrate that there are no reasonably available sites appropriate for the development proposed in areas at a lower risk of flooding and as such the sequential test is not met in conflict with Policy SP17 of the Ryedale Plan – Local Plan Strategy and paragraphs 161 and 162 of the NPPF. The need for the development in this location is not considered to outweigh this policy conflict.’*

4.12 It was on this basis that Lichfields prepared an Alternative Site Assessment [CD Ref. 7.1] and Updated Sequential Test Note [CD Ref. 7.2] dated 4 April 2024 which was submitted with the Appellants SOC [CD Ref. 9.3].

5.0 **Amendments to the proposed development and Regulation 25 Request**

5.1 No changes have been made to the description of proposed development since the application was refused. However, as discussed with the Inspector at the Case Management Conference meeting, a number of application drawings have been updated for consistency. In addition, minor amendments have been made to the proposed development following a site visit by Mr Ingham and myself to Windmill Farm and Acombe House on the 24 June 2024 (hereafter referred to as ‘the modified proposed development’).

5.2 The amendments include:

- Inclusion of 3 internal access tracks which are required for the construction and operation of the proposed development.
- Internal tracks which cross drainage channels will require culverts.
- The 5m landscaping belt along the northern boundary has been moved 11m to the south to accommodate a 3m off set from Acombs Croft Drain which was identified on the site visit. This has resulted in the removal of some solar panels but there is no change to the 30.4MW (AC) capacity due to the fact that the number of inverters remains unchanged.
- Removal of a CCTV camera on the northern boundary of the field immediately north of Windmill Farm.
- Inclusion of an access gate on the northern boundary of the field immediately north of Windmill Farm.
- Realignment of the proposed fence line from the eastern edge of the internal access track from Great Sike Road to the western edge of the hedge.

- 5.3 On this basis, amendments have been made to the following drawings and documents as listed within draft Condition 1.

Table 5.1 Update to Drawings and Documents (draft Condition 1)

Original Drawing/Document	Updated Drawing/Document
ES Figure 1.3 – Proposed Site Plan (Rev C)	Proposed Site Plan (Rev D) (Figure 1.3)
ES Figure 6.6 Biodiversity Management Plan dated 14.08.23	Biodiversity Management Plan (Figure 6.6) July 2024
ES Appendix 6.5: Biodiversity Management Plan V4 dated 11.08.23	Biodiversity Management Plan Update Note July 2024

- 5.4 In addition, the following documents and drawings have been prepared/updated:

Table 5.2 Additional Updated Documents

Original Drawing/Document	Additional/Updated Documents
Appendix 6.6: Outline Construction Environmental Management Plan	Outline Construction Environmental Management Plan (Update Note July 2024)
Appendix 6.4 Biodiversity Net Gain Assessment	Biodiversity Net Gain (BNG) Assessment July 2024
Appendix 6.2: Habitat and Species baseline and Figure 6.3 Habitat Plan	Habitat and Species Update Note and Updated Habitat Plan (Figure 6.3) July 2024

- 5.5 The updated drawings and documents have been addressed in the Regulation 25 submission and the re-consultation by the Council on the 24 July 2024. The updated drawings and documents can be found at CD Refs. 7.5 – 7.15.

Regulation 25 Request

- 5.6 As part of the appeal process, the Planning Inspectorate ('PINS'), pursuant to Regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) ('the EIA Regulations'), has requested further environmental information ('the Regulation 25 Request') with regards to:

- 1 Ecological surveys validity;
- 2 Waste arising from the development; and
- 3 A revised Non-Technical Summary.

5.7 This detail can be found within CD Refs. 7.5 and 7.6. In summary the following can be noted:

- 1 **Ecology:** further information provided to update the baseline data and methodology response to the updated Habitat Walkover (June 2024), and to update the protected species surveys assessing Otters and Water Voles. No changes to the baseline and no significant adverse effects were identified.
- An Update Note to the Outline Construction Environmental Management Plan to incorporate precautionary working methods relating to Otters and Water Voles during the construction and decommissioning stages of the Proposed Development was prepared. No further mitigation is proposed.
- 2 **Waste:** A section on waste was added into the ES Addendum. It concludes that there are no practices during the construction or decommissioning stages that would give rise to significant volumes of waste associated with the proposed development. No waste materials are expected to be generated during the operation of the proposed development. There are therefore no significant effects.
- 3 **Heritage and Soils Matters:** have been updated to respond only to the minor scheme updates and no significant effects are identified.

5.8 Overall, the ES Addendum concluded that no significant adverse effects in EIA terms are identified in relation to the modified proposed development when considering the proposed changes or the Further Environmental Information provided as set out in the Regulation 25 Request.

6.0 Planning Policy Context

- 6.1 Sections 70(2) of the 1990 Act and 38[6] of the 2004 Act requires that the application be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.
- 6.2 As noted in Case law *R vs Rochdale Metropolitan Council ex p.Milne* 2000 and *City of Edinburgh Council v the Secretary of State for Scotland* [1997] [CD Ref. 6.20], the local planning authority should have regard to the provisions of the development plan as a whole, for the purposes of deciding whether a permission or refusal would be ‘in accordance with the plan’. It is not unusual for development plan policies to pull in different directions and therefore it is recognised that it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan.
- 6.3 The Development Plan for the Appeal Site comprises:
- The Ryedale Plan Local Plan Strategy (2013) [CD Ref. 4.1].
 - The Ryedale Plan Local Plan Sites Document (2019) [CD Ref. 4.2].
 - Overview of Ryedale Local Planning Authority and Malton and Norton Policies Map [CD Ref. 4.3].
 - The Minerals and Waste Joint Plan February 2022 (MWJP 2022) [CD Ref. 4.4].
- 6.4 The Helmsley Plan and the Yorkshire and Humber Plan Regional Strategy to 2026 are also part of the Development Plan but are not considered relevant to this planning application. This is agreed in the SoCG.
- 6.5 It is only policies within The Ryedale Local Plan Strategy (2013) and the NPPF that form reasons for refusal. Therefore, for the purposes of this Proof and in accordance with article 35(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [DMPO], which states that where planning permission is refused by the LPA, the decision notice must

state clearly and precisely the full reasons for refusal, specifying all policies and proposals in the development plan which are relevant to the decision; this Proof refers to those policies as set out further below.

Development Plan Policies

- 6.6 Ryedale Local Plan Strategy (adopted 2013) [CD Ref. 4.1] contains the strategic objectives and policies for the area covering the period to 2027.
- 6.7 The Appeal Site is not subject to any local plan designations and falls within the Open Countryside.
- 6.8 The reasons for refusal refers to the following Local Plan Strategy policies:
- SP17: Managing Air Quality, Land and Water Resources (RfR1 and 2)
 - SP9: The Land based and Rural Economy (RfR3)
 - SP20: Generic Development Management Issues (RfR4).
- 6.9 The Decision Notice does not allege that the proposed development conflicts with any other policies in the Local Plan Strategy.
- 6.10 The full wording of the policies are provided in the SoCG [CD Ref. 9.2].
- 6.11 With regards to BMV agricultural land (RfR2) considerations are addressed in Mr Kernon's Proof. However, the consideration of alternative sites is considered within my Proof (Section 7). I set out within Section 7 my assessment of the compliance with policy SP17 having regard to Mr Kernon's evidence.
- 6.12 Policy SP9 The Land Based Economy (RfR3) is a positively worded policy and states Ryedale's land-based economy will be sustained and diversified with support for:

'Appropriate farm and rural diversification activity including innovative approaches'.

- 6.13 The supporting text of this policy (Paragraph 5.35) supports new opportunities such as renewable schemes.
- 6.14 The Land Based and Rural Economy considerations are addressed in Mr Kernon's Proof. I have set out within Section 7 my assessment of the compliance with Policy SP9 having regard to that evidence.
- 6.15 Policy SP20 (Generis Development Management Issues) relates to RfR 4. The landscape, visual and residential visual amenity considerations are addressed in Mr Ingham's Proof. Again, I have set out in my assessment of the compliance with Policy SP20 having regard to that evidence within Section 7 of this Proof.
- 6.16 It is agreed in the SoCG that the following policies are also relevant to the determination of this appeal:
- Policy SP1: General Location of Development and Settlement Hierarchy
 - Policy SP10: Generic Development Management Issues
 - Policy SP12: Heritage
 - Policy SP13: Landscapes
 - Policy SP14: Biodiversity
 - Policy SP15: Green Infrastructure Networks
 - Policy SP16: Design
 - Policy SP18: Renewable and Low Carbon Energy
 - Policy SP19: Presumption in Favour of Sustainable Development

National Planning Policy

- 6.17 National Planning Policy for England is set out in the Government's National Planning Policy Framework (NPPF) [CD Ref.8.28] and Planning Practice Guidance (PPG).

6.18 The NPPF recognises that ‘National Policy Statements (NPS) form part of the overall framework of national planning policy and may be a material consideration in preparing plans and making decisions on planning applications’ [Para 5 NPPF]. It goes on to state that ‘other statements of government policy may be material when preparing plans or deciding applications, such as relevant Written Ministerial Statements’.

6.19 NPS for Energy EN-1 [CD Ref: 8.1] and the NPS for Renewable Energy Infrastructure EN-3 [CD Ref: 8.2] are relevant material considerations in the determination of this Appeal.

NPPF

6.20 The most recent NPPF is December 2023 [NPPF 2023] [CD Ref: 8.28]. The Decision Notice (dated October 2023) refers to the 2021 version of the NPPF [CD Ref. 8.31]. The NPPF 2023 does not change the content of the paragraphs referred to in the reasons for refusal, the numbering of the paragraphs have changed and the addition of text to footnote 62 is provided.

6.21 This is agreed in the SOCG [Paragraph 2.49 -2.54] and is summarised in Table 6.1.

Table 6.1 NPPF Paragraph References

Reason for Refusal	NPPF 2021 Paragraphs	NPPF Dec 2023 Paragraphs
1	Paragraph 161	Paragraph 167
	Paragraph 162	Paragraph 168
2	Paragraph 174	Paragraph 180
	Footnote 58	Footnote 62
4	Paragraph 130	Paragraph 135

6.22 The full wording of these paragraphs are set out in full in Paragraph 2.49-2.56 of the SoCG and therefore are not repeated here.

6.23 In addition to the above policies in the NPPF, the following are also of relevance.

- 1 Sustainable development is broadly defined in Paragraph 8 of the NPPF as having three overarching objectives, namely economic, social and environmental which are interdependent and need to be pursued in mutually supportive ways.
- 2 Paragraph 11 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development and that plans and decisions should apply a presumption in favour of sustainable development. This means approving development proposals that accord with an up to date development plan without delay.
- 3 Section 14 of the NPPF deals with the challenge of climate change, flooding and coastal change. With regards to low carbon and renewable energy, the NPPF states at Paragraph 157:

“The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure”

- 4 With specific regard to renewable energy, Paragraph 163 of the NPPF (2023) states that LPAs ‘when determining planning applications for renewable and low carbon development, LPA’s should a) not require applicants to demonstrate the overall need for renewable or low carbon energy’ and b) ‘they should look to approve the application if its impacts are (or can be made) acceptable’.

6.24 Paragraph 135 part ‘f’ of the NPPF is specifically referred to in the Council’s SoC which states:

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁵²; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.'

6.25 This is addressed further in Mr Ingham's proof of evidence [CD Ref: 9.8].

6.26 Section 16 of the NPPF relates to the conserving and enhancing the historic environment. Paragraphs 205-208 refer to the assessment of harm to designated assets. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits.

Consultation on updates to the NPPF (July 2024)

6.27 At the time of writing this proof, the new Labour Government is currently consulting on proposed reforms to the NPPF and other changes to the Planning System. The consultation commenced on 30 July and runs until the 24 September 2024 [CD Ref. 8.30]. Whilst still at consultation stage, I consider some weight should be given to the proposed amendments as we know renewable energy is at the forefront of the Government's agenda. I have noted below the current draft proposed changes to the NPPF, where relevant, to set out the direction of travel by the Government.

6.28 Those proposed changes most relevant to the proposed development are set out below (amendments are underlined or ~~struck through~~ below):

1 Paragraph 164:

~~'When determining applications~~ 'Local Planning authorities should support planning application for all forms of renewable and low carbon development'

2 Paragraph 164 (a) sets out that local planning authorities should "not require applicants to demonstrate the overall need for renewable or low

carbon energy and give significant weight to the proposal's contribution to renewable energy generation and a net zero future". This proposed amendment would formalise the weight to be applied to the benefits of renewable developments.

- 3 Removal of part of footnote 63 has been removed to state: "*Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. ~~The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development~~*". This proposed change removed reference to the need to consider food production in respect of developments on agricultural land.

Planning Practice Guidance

6.29 The sections that are relevant to the proposed development are:

- Flood Risk and Coastal Change (25 August 2022)
- Natural Land (14 February 2024)
- Renewable and Low Carbon Energy (14 August 2023)
- Historic Environment (23 July 2019)

National Policy Statements

Overarching National Policy Statement for Energy EN-1

6.30 The Revised Overarching National Policy Statement (NPS) for Energy (EN-1), came into effect in January 2024. NPS EN1 has a role in the wider planning system as '*it may be a material consideration in decision making for applications that fall under the Town and Country Planning Act 1990 (as amended)*' (paragraph 1.2.1). '*The extent to which the policies in the NPS may be material will be judged on a case-by-case basis and will depend upon the*

extent to which the matters are already covered by applicable planning policy’. (paragraph 1.2.2)

6.31 NPS EN-1 makes it clear that in order to produce the energy required for the UK and ensure it can be transported to where it is needed, a significant amount of infrastructure is needed at both local and national scale (paragraph 2.1.2). It continues, setting out that our supplies of energy need to remain secure, reliable and affordable (paragraph 2.5.1). Wind and solar are noted to be one of the lowest cost ways of generating electricity and it is likely that a secure, reliable, affordable, and net zero consistent system in 2050 will likely to be composed predominantly of wind and solar (paragraph 3.3.20).

NPS for Renewable Energy Infrastructure EN-3

6.32 NPS EN-3 (came into effect January 2024) also sets out national policy in respect of renewable energy and states ‘*there is an urgent need for new electricity generating capacity to meet our energy needs*’ (paragraph 2.1.1).

6.33 NPS-EN3 now covers solar, which it was previously silent on. Solar will now play a key part in the strategy for low-cost decarbonisation of the energy sector and will help deliver greater energy independence (paragraph 2.10.9). In line with the British Energy Security Strategy the government expects a five-fold increase in solar deployment by 2035 (up to 70GW) (paragraph 2.10.10).

6.34 It is noted as set out in a report¹ produced by the House of Commons, Environmental Audit Committee, that as of September 2022, 14.2 GW of solar capacity has been installed across the UK. The government is also supportive of solar that is co-located with other functions (for example, agriculture, onshore wind generation, or energy storage) to maximise the efficiency of land use (paragraph 2.10.10), particularly noting that land type should not be a predominating factor in determining the suitability of the site location for solar development (paragraph 2.10.29).

¹ Accelerating the transition from fossil fuels and securing energy supplies, Fourth Report 2022-2023

6.35 NSP-EN3 also sets out the importance of grid capacity for solar farms, stating that:

“Many solar farms are connected into the local distribution network. The capacity of the local grid network to accept the likely output from a proposed solar farm is critical to the technical and commercial feasibility of a development proposal.” (paragraph 2.10.22)

6.36 It also sets out that the availability of network capacity, and the distance from the solar farm to the existing network can have an effect on the feasibility of a development (para 2.10.14); and therefore, applicants may choose a site based on nearby available grid export capacity (para 2.10.25).

6.37 In terms of the location of renewable development Paragraph 2.3.9 of EN3 states:

‘As most renewable energy resources can only be developed where the resource exists and where economically feasible, and because there are no limits on the need established in Part 3 of EN-1, the Secretary of State should not use a sequential approach in the consideration of renewable energy projects (for example, by giving priority to the re-use of previously developed land for renewable technology developments).’

6.38 Relevant to the proposed development is paragraph 2.10.160 in relation to cultural heritage which states:

“Solar farms are generally consented on the basis that they will be time-limited in operation. The Secretary of State should therefore consider the length of time for which consent is sought when considering the impacts of any indirect effect on the historic environment, such as effects on the setting of designated heritage assets.”

Other Material Considerations

6.39 These are as listed paragraph 2.57 in the SoCG [CD Ref. 9.2].

Emerging Local Plan

6.40 Following the validation of the Appeal in April 2024, North Yorkshire Council have started to prepare their new Local Plan which will set out where development will take place across the County over the next 15 to 20 years. The Council is still at the early stages of preparing this new Local Plan with the Call for Sites ending on the 7 July 2024. On this basis, due to the early stage in the process, it is not considered relevant to the determination of this Appeal.

7.0 **Main Planning Considerations**

Introduction

7.1 The reasons given by the Council for refusing to grant planning permission for the proposed development subject to this appeal are set out on the decision notice dated 17 October 2023 [CD Ref: 3.3].

7.2 Section 4 of the SoCG agree the areas of dispute. These are:

- 1 Flood Risk Sequential Test – alternative sites available: addressed within my Proof.
- 2 BMV Agricultural Land: addressed in Mr Kernon's Proof.
- 3 Land Based Rural Economy: addressed in Mr Kernon's Proof.
- 4 Residential Visual Amenity; addressed in Mr Ingham's Proof.

7.3 I provide a summary of their evidence below and consider the matters in the planning balance.

7.4 At the CMC it was agreed that heritage is to be addressed as it has been raised by the Rule 6 Party. It was agreed that heritage matters are to be dealt with through a round table discussion. Fiona Bage has prepared a Built Heritage Technical Note on Heritage (Appendix 1 and CD Ref. 9.17). I consider this further in Section 8 of my Proof and consider this in the planning balance.

7.5 In addition, third parties [CD Ref. 9.6] have raised a number of issues with regards to landscape and visual impacts, loss of BMV, impact on food security, impact on the tenant farmer, location of development (site selection), noise pollution and fire risk.

7.6 In terms of my evidence, I firstly consider compliance with the Development Plan and other material considerations including the Framework in respect of the main planning issues. I then address other issues raised by Rule 6 Party/third parties. I then weigh up the benefits of the development and

provide an overall planning balance and conclusions to the proposed development.

Compliance with the Development Plan

Reason for Refusal 1: Location of Development in relation to Flood Risk

7.7 I consider that RFR1 has the following parts to it for consideration:

- a Whether there is sufficient evidence to demonstrate there are no reasonably available sites for the proposed development at lower risk of flooding.
- b Whether the sequential test has been met in accordance with Policy SP17 of the Ryedale Plan – Local Plan Strategy and Paragraphs 167 (formerly paragraph 161) and 168 (formerly paragraph 162) of the NPPF and if not;
- c Whether the need for the proposed development in this location outweighs and policy conflict.

7.8 On this basis, I assess the following in the assessment section:

- 1 The Need for the Sequential Test
- 2 What are the requirements of the Sequential Test
- 3 Whether there are reasonably available sites at a lower risk of flooding?
- 4 Has the Sequential Test been undertaken in compliance with the relevant guidance?
- 5 Overall assessment against policy and any other material considerations.

Assessment

1. Need for the Sequential Test

7.9 The Site lies within Flood Zone 2 (medium to low risk) and 3a (high risk) of flooding from rivers as confirmed in the Flood Risk and Drainage Assessment (FR&DA) [CD Ref.1.20].

7.10 Section 3.3.3 of the FR&DA:

'In accordance with the National Planning Policy Framework (NPPF), Flood Zone designations for the purposes of planning are to be interpreted on the basis of no flood defences present. The proposed development is defended from fluvial flood risk by flood defences to the south on the banks of the River Rye.'

7.11 According to the FR&DA, the Site is:

- At No Risk from Tidal/Coastal Flooding;
- Medium Risk Surface Water Flooding;
- Low Risk from Groundwater Flooding;
- No Risk from Flooding from Sewers/Drainage Systems; and
- No Risk from flooding from infrastructure failure/blockage.

7.12 On this basis I agree that a Sequential Test is required with regards to the high risk from fluvial flooding and medium risk from surface water flooding.

2. Requirements of the Sequential Test

7.13 Paragraph 168 of the NPPF states that:

The aim of the sequential test is steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.”

- 7.14 The PPG states (Para 024) [CD Ref: 8.19] that when undertaking a sequential test, the approach should be to locate development in areas at lowest risk of flooding, where this is not possible, the sequential test should go on to compare reasonably available sites within medium risk areas and then, only where there are no reasonably available sites in low and medium risk areas, within high-risk areas.

3. Reasonably Available Sites

- 7.15 There is therefore a need to understand how ‘reasonably available’ sites is defined. Paragraph 28 of the PPG [CD Ref. 8.19] states:

‘Reasonably available sites’ are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.

These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered ‘reasonably available’.

4. Have the Requirements of the Sequential Test been met?

- 7.16 As part of the application PWA prepared a Sequential Test (Nov 2022) [CD Ref. 1.20]. The Sequential Test considered sites within 300m of the point of connection (POC, Malton BSP substation).

7.17 The Appellant has secured a grid connection offer (with an ‘immediate connection date’ – subject to the grant of planning permission) with National Powergrid; and a stipulation of the offer’s electrical configuration is that the Appellant’s substation is required to be no more than 300m from the Malton BSP.

7.18 The Appellant subsequently supplied the Sequential Test Clarifications [CD Ref. 2.9] which identified 4 areas of alternative sites at lower risk of flooding than the appeal site in the immediate area.

7.19 The Sequential Test Clarifications document confirmed why these areas had been discounted, including:

- loss of a higher percentage of BMV land,
- greater impact on designated landscapes and heritage assets and
- degraded efficiency due to longer cable runs and the technical limitations on cabling length and practical considerations limiting the routes to connect the solar panels to the substation, including the need to obtain third party permissions to run cables through their land.

7.20 The Council’s planning committee report (CD Ref. 3.1), confirms that they agreed there were no sequentially preferable sites within the parameters of the applicant’s Sequential Test:

‘Within the parameters of the applicant’s Sequential Test it is considered that the proposal has satisfactorily demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.’ (Paragraph 10.52)

7.21 However, the Council went on to state that:

‘the reasoning used for setting the parameters of the area to be considered by the Sequential Test is not strongly evidenced and without viability evidence it is considered that the applicant has not clearly evidenced that there are no

reasonably available sites appropriate, and therefore viable, for the proposed development in areas with a lower risk of flooding. On that basis the requirement of the Sequential Test, to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding has not been met. This weighs against the proposal in the planning balance.” (Paragraph 10.53)

7.22 Although viability was raised by the Council as a key consideration for determining the robustness of the original Sequential Test, there is no standardised methodology to prepare or assess viability assessments for this type of project. However, as set out in the Planning Balance section of the Committee Report (paragraph 11.14), it confirmed:

“The significant public benefit of the proposal is considered, on balance, to outweigh the policy conflicts identified in this report and the lack of viability evidence used to set the Sequential Test parameters.”

7.23 Lichfields subsequently prepared a Sequential Test Update Note (April 2024) [Cd Ref.7.2] and Alternative Site Assessment (April 2024) [CD Ref.7.1] which were submitted with the Appellant’s SoC [CD Ref. 9.3].

7.24 The ASA gives consideration to whether alternative sites exist, which are demonstrably more suitable and capable of delivering a comparable solar farm and energy storage facility, able to provide comparable benefits and able to meet the same opportunity as the appeal scheme to connect to a particular point of connection where capacity exists within an identified search area. In addition to alternative sites, consideration is also given as to whether the proposed development could be accommodated on available roof space within the search area.

7.25 The methodology for the sequential approach has been informed by guidance within the NPPF Paragraph 168 and the accompanying PPG (Paragraph 28) (as set out above), as well as the Environment Agency and DEFRA guidance

‘Flood risk assessment: the sequential test for applicants’ (updated February 2017) [CD Ref: 8.3] and Policy SP17 of the Local Plan (in so far as it is consistent with NPPF and PPG which are more up to date).

7.26 The EA guidance highlights the following key stages to be undertaken in applying the Sequential Test to which Lichfields has undertaken in the Sequential Test Update Note. This includes:

- **Stage 1:** Identify the Area of Search;
- **Stage 2:** Identify Potential Alternative Sites, having regard to the nature of the proposed development;
- **Stage 3:** Assess Potential Alternative Sites, including potential capacity, based on available information; and
- **Stage 4:** Conclusion on Availability of Alternative Sites.

7.27 The Sequential Test Update Note [CD Ref. 7.2] and the Alternative Site Assessment (ASA) [CD Ref. 7.1] confirms that whilst it remains the Appellant’s contention that a 300m distance for their own intake substation from Malton BSP Substation is necessary to support the technical and operational function of the proposed development (see Technical Note – Grid Connection [CD Ref. 7.3]), the ASA considers alternative sites for the proposed development within a larger search area of 2.5km from the Point of Connection (PoC), taking into account operational considerations and environmental constraints.

7.28 As set out in PWA’s Sequential Test submitted with the application [CD Ref. 1.20], the Appellant’s intake substation is required to be located no further than 300m away from Malton BSP which places a locational constraint on the proposed development. This is a specific electrical design configuration specified by Northern Powergrid and should this not be met (i.e. a connection in excess of 300m), then an additional DNO substation would be required to be built at the site which would add significant cost and increase visual impact,

fundamentally changing the parameters of the proposed development. This would not therefore be strictly the same development, nor would this be a viable option to pursue for the Appellant. Further details on the cost are set out in the Harmony's Grid Connection Technical Note (Appendix 2) [CD Ref.7.3].

7.29 The area of search is primarily based upon the fact that capacity exists at a specific point of connection to the electricity grid (Malton BSP Substation). This is a common approach for renewables projects as this is an important constraint on the location.

7.30 There is only one BSP within Ryedale (Malton BSP Substation) and given the application was submitted in the former Ryedale area, it is considered appropriate to utilise this BSP. A location-specific opportunity is therefore available to make a significant contribution towards renewable energy generation from this point of connection.

7.31 In order to fulfil this opportunity and meet the same needs for increased renewable energy provision, which the proposed development would meet, it is reasonable and proportionate to only assess the availability of potential alternative sites that may be capable of exporting energy to the same point of connection.

7.32 No other POC have therefore been considered.

7.33 The 2.5km distance is a reasonable maximum distance over which a commercial scale solar farm of this size could expect to achieve a viable length of connection, ordinarily.

7.34 By way of comparison, in approving a solar farm of up to 49.9MW at a recent appeal [CD Ref. 6.14], which had a search area of 1.5km radius from the POC, the Inspector commented that:

“It was suggested that the area of search in the (Alternative Site) assessment could have been wider and that it should have considered more than just the

*Leeming Bar substation. However, given the proposal is seeking to use the spare grid capacity at this substation, and bearing in mind the limited opportunities that currently exist at other substations nationally, **I consider it is, in this case, justified to only consider sites within an area that could make use of this capacity, rather than capacity that may exist at other substations elsewhere.** In addition, from the technical considerations set out by the appellant at the hearing regarding how connections to substations need to be made, **I consider that the area of search utilised in the appellant's assessment as reasonable**". (my emphasis in bold).*

7.35 On this basis, this would suggest that a maximum 2.5km search area being used in the ASA, for a proposal with a lesser energy generating capacity, is a robust approach; and can therefore be considered suitable to inform the ASA and the Sequential Test.

7.36 The assessment of alternative sites considered within the ASA, and taken through in the Updated Sequential Test, has been undertaken to consider whether, if it were possible to locate the proposed development further away from the POC, whether there are any appropriate sites at lesser risk of flooding than the Appeal Site which are sequentially preferable.

7.37 The methodology for the search area included identifying previously developed/non-agricultural land, lower grade agricultural land, unconstrained land and white land. This led to a short list of potential alternative sites. Each alternative site was then considered against the following assessment criteria:

- Previously developed land;
- Physical development constraints;
- Visual impact;
- Operational constraints;
- Local constraints;

- Access; and
- Flood Risk.

7.38 On this basis 8 alternative sites were considered in the search area. Of the 8 sites:

- three sites are in flood zone 1.
- five sites are in flood zone 2.

7.39 The majority of the northern part of the search area lies within Flood Zone 3 along with the land which follows the River Derwent in the southern part of the search area.

7.40 The majority of the land within Flood Zone 1 or 2 lie immediately to the north and south of the A64 and to the south west of Old Malton. The alternative sites therefore focused on these areas as the starting point to target land at the lowest risk of flooding (Flood Zone 1).

7.41 The Sequential Test concludes that whilst there are sites at lesser risk of flooding, there are no reasonably available sites which are equally as, or more, suitable and of lesser risk of flooding than the Appeal Site, which are sequentially preferable.

7.42 The assessment demonstrates that this is primarily due to the following factors:

- Proximity to the Howardian Hills AONB;
- Location within a designated Visually Important Undeveloped Area;
- Proximity to the SSSI and Special Area of Conservation;
- Distance from the Malton BSP Substation requiring more equipment and land take;
- Better quality agricultural land classification;
- Connection across railways, roads and river make it difficult; and

- The size of some alternative sites being too small and unable to house the proposed development.

Overall conclusion

- 7.43 Therefore, in accordance with Policy SP17 a risk based sequential approach in the consideration of development proposals to guide development to the lowest probability of flooding has been undertaken. The ASA [CD Ref. 7.1] and Sequential Test Update Note [Cd Ref. 7.2] robustly demonstrate that there are no sequentially preferable sites with a lower risk of flooding within a 2.5km radius of PoC.
- 7.44 The ASA provides evidence that there are no reasonable alternative sites to the Appeal Site.
- 7.45 It is on this basis that the requirements of Policy SP17 are met and the proposed development accords with Paragraph 167 and 168 of the NPPF.
- 7.46 In accordance with Paragraph 169 of the NPPF as it is not possible for the development to be located in areas with a lower risk of flooding, the exception test has been applied.
- 7.47 Paragraph 031 of the PPG [CD Ref. 8.19] provides guidance on the Exception Test:
- “The Exception Test requires two additional elements to be satisfied (as set out in paragraph 164 of the National Planning Policy Framework) before allowing development to be allocated or permitted in situations where suitable sites at lower risk of flooding are not available following application of the sequential test.*
- It should be demonstrated that:*

development that has to be in a flood risk area will provide wider sustainability benefits to the community that outweigh flood risk; and the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.”

7.48 An exceptions test is provided within the Flood Risk and Drainage Assessment [CD Ref. 2.6] and Sequential Test Update Note [CD Ref. 7.2] given the Appeal Site lies within Flood Zone 3a and is considered “essential infrastructure”. For the exception test to be passed it should be demonstrated that:

- 1 the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- 2 the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

7.49 The Flood Risk and Drainage Assessment and Sequential Test Update Note confirm that the exceptions test has been passed for the following reasons:

- 1 The primary function of the proposed development is to produce green energy for export to the National Grid and for nearby local infrastructure. Section 3 and 4 of Flood Risk Assessment [CD Ref. 2.6] have demonstrated that flood risk within the Appeal Site, and the potential risk of offsite flooding, will not increase as a result of the proposed development. Additionally, it is considered that the proposed development will provide significant wider sustainability benefits in terms of a supply of renewable energy to the National Grid.
- 2 Section 4.0 of CD Ref. 2.6 demonstrates that surface water runoff rates will be maintained at current levels for the lifetime of the proposed development, as climate change allowances have been factored into surface water runoff calculations.

- 3 Section 3 of CD Ref: 2.6 demonstrates that all elements of the design of the proposed development will be flood resilient for the lifetime of the proposed development.
- 4 An evacuation plan has been established for those accessing the Appeal Site in the event of a breach in flood defences to the north [CD Ref. 2.6]. The proposed development is classed as “Essential Infrastructure” in Table 2 of the Planning Practice Guidance, which is appropriate in a high risk Flood Zone 3a, in terms of flood risk vulnerability.

7.50 On this basis and as agreed by the Council in the Officer’s Report to Committee Paragraph 10.59 [CD Ref.3.1], the requirements for passing the Exceptions Test are met.

Reason for Refusal 2: BMV Agricultural Land.

7.51 As set out in the SoCG, RfR2 relates to:

- 1 the loss of BMV land for the proposed development;
- 2 it has not been demonstrated that there are no alternative sites which would avoid the loss of BMV; and
- 3 the need in this location does not outweigh the loss of BMV land and is in conflict with Policy SP17 of The Ryedale Plan - Local Plan Strategy and paragraph 174 and Footnote 58 of the NPPF 2021 (now paragraph 180 and Footnote 62 of the NPPF 2023).

7.52 These are matters that are addressed in the evidence of Mr Kernon [CD Ref.9.9]. However, I provide my assessment of that evidence and consider the conclusions reached in light of the policies contained within the Development Plan and Framework.

7.53 The evidence of Mr Kernon deals with whether there is a loss of BMV and whether there is a constraint on the use of BMV. It then goes on to consider whether poorer quality agricultural land exists that could or should be in

preference. I summarise these matters and deal with the related planning policy components below.

Assessment

Loss and use of BMV Land

- 7.54 Due to the way the equipment is installed, only 0.9ha Grade 2 and 0.3ha of Grade 3a land is affected by fixed equipment of which 0.7ha of this is for the BESS and substation. The evidence of Mr Kernon concludes that the loss of land is minimal and the loss of BMV land is negligible and therefore there is no significant loss of BMV.
- 7.55 Mr Kernon explains that the focus of the Council's reason for refusal is only the BMV land which comprises 29.5ha (56%) of the Appeal Site, it does not relate to the 44% (23.3ha) of non BMV land.
- 7.56 Mr Kernon confirms that there are 8 fields (including two parts of fields) for the solar and BESS development. Not one of the whole fields is of a single ALC grade but each field has at least three ALC grades which affects the practicalities of using the land. Overall Mr Kernon concludes that whilst the BMV land within the Appeal Site may yield better than the poorer quality land within the same field, the opportunities to farm that land differently are very limited. This is recognised by the Inspector in the Gayton Appeal (Ref: APP/W2845/W/23/3314266) where Grade 3a land is spread across two parcels of land and that '*it is not contiguous and cannot practicably be farmed separately to the lower grade*'. [CD Ref. 6.16]
- 7.57 Mr Kernon also looked at the ALC of the wider area (over 215 ha) which confirmed that the quality of the land of the wider area was generally higher and the Appeal Site does have the greatest proportion of poorer quality land when taken as a block.
- 7.58 Overall Mr Kernon concludes that there will be no significant loss of BMV land as only circa <1.3ha is affected and this effect can be reversed once the

proposed development is decommissioned, with the exception of the permanent loss of <0.1 ha of Grade 1 BMV which comprises proposed tree belt. In addition, there are no alternative sites nearby which would avoid the use of BMV and there is therefore no conflict with planning policy SP17 or NPPF (Paragraph 180).

Conclusion

7.59 Policy SP17 bullet two of Land Resources states that land resources will be protected and improved by:

‘Prioritising the use of previously developed land and protecting the best and most versatile agricultural land from irreversible loss. New land allocations will be planned to avoid and minimise the loss of the Best and Most Versatile Agricultural Land. Proposals for major development coming forward on sites that are not allocated for development which would result in the loss of Best and Most Versatile Agricultural Land will be resisted unless it can be demonstrated that the use proposed cannot be located elsewhere and that the need for the development outweighs the loss of the resource’

7.60 Paragraph 180 of the NPPF requires that the economic and other benefits of BMV to be recognised.

7.61 The NPPF confirms (Footnote 62) that the use of lower quality agricultural land is preferred to that of higher quality. Given the size of the solar farm it is inevitable that agricultural land will be used. NPS EN-3 states that *‘While land type should not be a predominating factor in determining the suitability of the site location applicants should, where possible, utilise suitable previously developed land, brown field land, contaminated land and industrial land’*.

7.62 Policy SP17 refers to *‘irreversible loss’*. As Mr Kernon notes, there is no definition of ‘loss’ in the Local Plan but ‘loss’ is defined in the IEMA Guide in terms of impact as a *‘permanent, irreversible loss... including permanent sealing or land quality downgrading’*. Therefore, in respect of the guidance,

the “loss” of agricultural land is where there is an irreversible loss of agricultural land or a downgrading of ALC value through permanent damage to soils.

7.63 I agree with the assessment of Mr Kernon that there will only be small areas (1.3ha of BMV) affected by the fixed infrastructure and those will be largely reversible at the end of the temporary period, with only 0.1ha of permanent loss.

7.64 Through Mr Kernon’s evidence he concludes there is ‘no significant loss’ and also notes there are various Appeal decisions which recognise that the majority of solar farm site land is not ‘lost’.

7.65 I conclude that whilst the site is partly BMV, that land and the BMV status will not be lost through the proposed development. In this context the resource remains and therefore the part of Policy SP17 which seeks to protect the resource rather than require its use is not harmed is complied with.

7.66 The second sentence of the policy is not relevant in this case as it is not a new site to allocated for development.

7.67 In terms of the third sentence of this policy, Mr Kernon assesses whether this is the poorest quality of land available and concludes that use of BMV within the local area is the poorest quality and BMV has been minimised.

7.68 Policy SP17 and National Planning Policy does not require an alternative sites assessment to be undertaken which has been agreed in a recent High Court Decision² [CD Ref. 6.17]. However, the consideration of alternative sites has been undertaken by the Appellant which has demonstrated that within the search area of 2.5km there are no areas of previously developed land to accommodate the scale of development proposed suitable for the proposed development.

² Bramley Solar Farm Residents Group vs SoS - [2023] EWHC 2842 (15 November 2023)

- 7.69 Whilst the ASA does identify Sites 3, 5, 6, 7 and 8 as sites which do perform better in terms of BMV than the Appeal Site, these sites are often closer to more heritage assets, have greater visibility from key roads and residential properties, are closer to AONB, SSSI or located on protected land or undeveloped land and are therefore not preferable to the Appeal Site.
- 7.70 In conclusion, the proposed development is temporary in nature. Only circa <1.3ha is affected and this effect can be reversed once the proposed development is decommissioned, with the exception of the permanent loss of <0.1 ha of Grade 1 BMV which comprises proposed tree belt. On this basis, I consider that whilst there is some loss of BMV as a result of the proposed development, this harm is minimal and there is no significant loss to the BMV. In any event the harm from the temporary and permanent loss must be weighed in the context of the public benefits as set out in Section 9 of this Proof. On this basis I consider this has a negligible effect in the overall planning balance.
- 7.71 The proposed development therefore complies with Policy SP17 (Bullet 2 of Land Resources) with regards to irreversible loss of BMV, demonstrating that the development cannot be located elsewhere. In terms of the *'need for the development outweighing the loss of the resource'* this is addressed through RfR3 below.

Reason for Refusal 3: Land Based Economy

- 7.72 As set out in the SoCG, RfR3 relates to the impact of the development on the local agricultural economy and rural business (in terms of the change from agricultural use to a solar farm) and the harm to the viability of Eden Farm with regards to policy SP9 of the Ryedale Local Plan Strategy.
- 7.73 These are matters that are addressed in the evidence of Mr Kernon. However, I provide my assessment of that evidence and consider the conclusions reached

in the light of the policies contained within the Development Plan and Framework.

7.74 The evidence and assessment of Mr Kernon concludes the following:

a **The proportion of land of Eden Farm involved**

7.75 Eden Farm is a mostly arable farm of about 116ha. The agricultural land involved in the Appeal Site extends to 47.2ha (40.7%) which is a large part of the farmland. Therefore I agree with the first part of the RfR that a large part of the farm business will be affected.

b **The Weight to be afforded to Personal Matters**

7.76 The effect of a solar development on a sitting tenant was recently considered by Inspector Parker in APP/E3355/W/24/3337226 at Washford, decided on 28th May 2024. [CD Ref. 6.13].

7.77 The Inspector explains, in paragraphs 47 to 49, that whilst the planning system acts in the wider public interest, and that personal circumstances do not typically outweigh these, these personal matters can be material.

7.78 In that case the Inspector concluded, as set out in paragraph 53, that these considerations did not outweigh the benefits or warrant dismissal of the Appeal.

c **the effect of the proposed development on the farm**

7.79 The proposed development will lead to a reduction of farmed land area resulting in a reduction of the overall farm income.

7.80 The Appellant has therefore offered the following compensation package as of August 2024 which remains an open offer:

- 1 Statutory compensation (as provided for under the AHA1986) alongside;
- 2 Voluntary compensation comprising:
 - a a payment of £20,000 on the surrender date; and

- b a payment of £23,500 per annum (index-linked) for the duration of the proposed development (up to 40 years).

7.81 If accepted, Mr Kernon concludes that the tenants will be in a better position than they are now and therefore will not be adversely affected.

d **the effect of this on the wider local agricultural economy**

7.82 Mr Kernon confirms that if the solar farm was moved from the BMV land to poorer quality land the impact on the UK's production of wheat would be insignificant and the impact on the Yorkshire and Humber Region would be negligible.

Conclusion

7.83 The preamble to policy SP9 states:

'This Strategy is intended to support and be flexible to the needs of those who rely on the land-based economy. It also supports new opportunities that may arise from future changes. These range from alternative cropping to renewable energy schemes.' (Paragraph 5.35)

7.84 It is not exactly clear which parts of Policy SP9 the LPA consider the proposed development to be in conflict with. I consider the relevant part of the policy to be bullet 8 which is referred to in the Officer's Report to Committee [CD Ref. 3.1]:

"Ryedale's land-based economy will be sustained and diversified with support for (inter alia)...

- *Appropriate new uses for land including flood management and energy production related research and education in this field'.*

7.85 I consider there to be three stages in considering the economic impact.

- 1 The proposed development will affect the immediate Eden Farm business which are personal matters which the Inspector will need to consider. Notwithstanding this, I acknowledge that there will be some harm given the loss of land for farming and associated income. However, the Appellant has offered a considerable compensation package, providing a financial benefit to the farm. The effect therefore I consider to be of limited weight given the proposed compensation package.
- 2 The proposed development will reduce the amount of land farmed to the Eden Farm business and therefore the land-based economy will be affected as a consequence of reduced agricultural activity. This will have a negative impact on the rural economy and weighs against the development in the planning balance. However, I consider this to be of limited weight due to the size of the proposed development which comprises a small percentage of agricultural land in the context of other agricultural land in the wider area, and would therefore be an insignificant reduction in terms of the UK's agricultural production.
- 3 The reduction in the existing tenant farmers business enterprise will be replaced by a solar farm enterprise which brings other economic benefits which I give significant weight, such as:
 - The proposed development could supply the average annual electricity needs of 38% of households in Ryedale District Council, resulting in carbon savings of just over 12,500 tonnes per year.
 - The Appellant has secured a grid connection with Northern Powergrid which means the development can be brought forward.
 - The support for renewable energy within NPS EN-1 and NPS EN-3.

7.86 Therefore, the overall economic impacts need to be considered in the round which I consider to weigh in favour of the proposed development as the effect on the economy overall is considered to be positive.

7.87 On this basis I conclude that as Policy SP9 as a whole supports diversification the proposed development is not in conflict with this policy.

Reason for Refusal 4: Residential Visual Amenity

7.88 As set out in the SoCG, RfR4 relates to the character and context of the immediate locality and the impact on the residential amenity of the occupiers of Eden Farm, Acomb House and Windmill Farm in regard to Policy SP20 of the Ryedale Local Plan Strategy and Paragraph 135 (former paragraph 130) of the NPPF.

7.89 These are matters that are addressed in the evidence of Mr Ingham. However, I provide my assessment of that evidence and consider the conclusions reached in the light of the policies contained within the Development Plan and Framework.

7.90 The evidence of Mr Ingham deals with landscape and visual effects of the proposed development with particular focus on the visual effects at three residential properties (Eden Farm, Acomb House and Windmill Farm). With regards to RfR4, he specifically considers whether the visual effects of the development would result in unacceptable harm to the residential amenity of the occupiers of Eden Farm, Acomb House and Windmill Farm.

7.91 In terms of the landscape and wider visual effects, these are matters raised by Third Parties and are therefore also addressed. I summarise these matters and deal with the related planning policy components below.

Assessment

7.92 The relevant policies which need to be considered include Policy SP20 of the Ryedale Local Plan Strategy and Paragraph 135 of the NPPF.

7.93 As noted in Mr Ingham’s Proof of Evidence at paragraph 5.3.2, I agree that the policy wording of SP20 is lengthy and the relevant part of the policy where there is considered to be conflict (as paragraph 5.8 of the Council’s SoC) is:

‘Amenity and Safety

New development will not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity to neighbouring land uses. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or be an overbearing presence.’

7.94 There is no suggestion by the Council that there is any conflict with any other sections of the policy such as character and design which is consistent with the SoCG (Paragraphs 3.22-3.31) [CD Ref.9.2].

7.95 Residential Visual Amenity is defined in the Landscape Institute Technical Guidance Note 2/19: Residential Visual Amenity Assessment (TGN 2/19) [CD Ref: 8.16] and states:

“Changes in views and visual amenity are considered in the planning process. In respect of private views and visual amenity, it is widely known that, no one has ‘a right to a view’. This includes situations where a residential property’s outlook/visual amenity is judged to be ‘significantly’ affected by a proposed development [...]” (paragraph 1.5); and

“It is not uncommon for significant adverse effects on views and visual amenity to be experienced by people at their place of residence as a result of introducing a new development into the landscape. In itself this does not necessarily cause particular planning concern. However, there are situations where the effect on the outlook / visual amenity of a residential property is so

great that it is not generally considered to be in the public interest to permit such conditions to occur where they did not exist before.” (paragraph 1.6)

7.96 TGN 2/19 also explains that:

“The purpose of carrying out a Residential Visual Amenity Assessment (RVAA) is to form a judgement, to assist decision makers, on whether a proposed development is likely to change the visual amenity of a residential property to such an extent that it becomes a matter of ‘Residential Amenity.’” (paragraph 5.1)

Residential Visual Amenity

7.97 The Residential Visual Amenity Assessment (RVAA) (Scoped out Topics A4) [CD Ref. 1.20] which Mr Ingham prepared and accompanied the original planning application considered all three properties named in RfR4.

7.98 Eden Farm was scoped out of the assessment noting the likely visual effects from this property were ‘minor’.

7.99 The RVAA concluded that the visual effects for both Windmill Farm and Acomb House would not *‘be of such a nature and/or magnitude that they would potentially affect living conditions at any property to the point it becomes an unattractive place to live, when judged objectively in the round’*.

7.100 During the course of the Appeal, Mr Ingham was given permission by the occupiers of Eden Farm, Windmill Farm and Acomb House to access their properties to consider the visual effects further. Mr Ingham considers the findings in his Proof and therefore I do not intend to repeat here.

7.101 Mr Ingham confirms that the conclusions of the RVAA remain as those reported in the submitted LVA (CD Ref: 1.20). He has also considered their individual visual relationships with the Proposed Development and concludes the following:

- 1 **Eden Farm:** There would initially be a minor adverse effect on the private view, but this would reduce to minor/negligible once mitigation has matured. The proposed development would not have an overbearing effect on the visual amenity experienced from the property and in his opinion the dwelling would continue to be a pleasant and attractive rural place to live.
- 2 **Windmill Farm and Acomb House:** there would initially be a major/moderate adverse effect, but this would reduce to moderate once mitigation matured. The proposed development would not have an overbearing effect on visual amenity experienced by residents of the property.

7.102 In Mr Ingham's judgement, the magnitude of change to the visual amenity experienced at each of the three properties would not be sufficiently harmful to render the development overbearing or dominating that would make any of them an unpleasant or unattractive place to live. They would all remain desirable properties located in a predominantly rural landscape notwithstanding the introduction of new energy infrastructure into the wider setting of the landscape.

Wider Landscape Character and Visual Impacts (note not a reason for refusal)

7.103 In this respect, I again, refer to the evidence of Mr Ingham [CD Ref.9.8]

7.104 In terms of landscape effects, it is agreed in the SoCG [CD Ref. 9.2] that:

- the Appeal Site does not fall within an area covered by a national or local landscape designation and any effect on the North Yorkshire Moors National Park and the Howardian Hills AONB would be negligible.
- Once mitigation measures have established, any effects on landscape fabric would be negligible.

- Following the establishment of mitigation planting there would be an adverse residual effect of only minor significance on the landscape character between Ryton Riggs to the north, Edenhouse Road to the east, Freehold Lane to the south and Cheapside to the west.

7.105 Prior to any planting the proposed development will provide a large scale change the landscape character within the Appeal Site and up to 200m from the boundaries of the site in a northerly and westerly direction; a medium change between 200m – 750m from the application boundary in the northerly and westerly direction where there are clear views of the development. In other directions (east and south) and beyond 750m in northerly and westerly direction the change in the landscape would be small. Mr Ingham concludes that prior to mitigation planting the effects would be moderate/minor significance on the landscape character.

7.106 Following the mitigation measures the scale of the change on the landscape character would reduce to negligible beyond the boundaries of the Appeal Site. In terms of visual effects there would initially be adverse effects of moderate significance on visual amenity experienced along the public right of way network immediately adjoining the site, including short sections of Great Sike Road, Freehold Lane and Borough Mere Lane. However, Mr Ingham confirms this would reduce to minor significance as mitigation establishes. In the wider landscape adverse visual effects would range from minor to negligible significance.

7.107 Mr Ingham concludes that the effects of the modified proposed development on both landscape character and public visual amenity would be limited, localised and can be successfully mitigated.

Conclusion

7.108 On this basis, and having visited the three properties with Mr Ingham, I agree with the assessment of Mr Ingham and conclude that there will be some harm

on the residential amenity of the residents of Eden Farm, Windmill Farm and Acomb House, however following the implementation of mitigation this would not be materially adverse and I give this limited weight.

7.109 In respect of effects on landscape and visual impact there will be some harm but with mitigation the level of harm varies from moderate to moderate/minor reducing to negligible to minor following the proposed mitigation. I therefore consider this has limited weight.

7.110 When considering Policy SP20 as a whole which sets out that “*New development will not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity to neighbouring land uses. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or be an overbearing presence*”, I consider that the landscape and visual impacts are acceptable in the round (taking into account residential amenity and landscape and visual impacts). The proposed development raises no significant issues with regards to landscape and visual effects, and therefore in this regard the proposed development complies with Policy SP20 and Paragraph 135 of the NPPF.

7.111 On this basis, I consider there to be a neutral effect on the overall planning balance.

8.0 **Other Matters**

Rule 6 and other Third Party Matters

- 8.1 In this section, I seek to address the points raised by third party objections [CD Ref. 9.6] and Rule 6 Party [CD Ref.9.5] during the course of the determination of the application and also those submitted to the Planning Inspectorate since the appeal was lodged.
- 8.2 While I note that the Committee Report [CD Ref. 3.1] considers the objectors to the application raised some 13 issues, I have sought to distil this into a number of key points that were most frequently raised.
- 8.3 From a review of responses received, I consider that the key issues raised by the Rule 6 Party and third parties are:
- Landscape and Visual Impacts of the proposed development;
 - Loss of BMV Land;
 - Impacts on Food Security;
 - Impact on Tenant Farmer;
 - Site Selection;
 - Impact on Heritage Assets;
 - Solar farms should be located on the roofs of industrial buildings or brownfield sites;
 - Noise pollution; and,
 - Fire Risk.
- 8.4 I consider these points in turn below.

Wider Landscape and Visual Impacts

- 8.5 Respondents considered that the proposed development will industrialise the open countryside and will have an adverse impact on the surrounding PROWs and enjoyment of the area.
- 8.6 These comments reflect RfR4 and in this regard, the evidence of Mr Ingham that I have referenced in this proof responds to this matter.
- 8.7 On this basis, I conclude that the proposed development will not have a material adverse impact on amenity with regards to landscape and visual effects, and therefore there is no conflict with Policy SP20, SP13 and Paragraph 135 of the NPPF.

Loss of BMV Land

- 8.8 A number of responses considered that the solar farm should not be located on good agricultural land. These comments reflect RfR2 and in this regard, the evidence of Mr Kernon that I have referenced in this proof responds to this matter.
- 8.9 On this basis, I conclude that the proposed development would not lead to the permanent loss of BMV and therefore complies with Policy SP17 (Bullet 2 of Land Resources) and Paragraph 180 of the NPPF.

Impacts on Food Security

- 8.10 Respondents considered that the proposed development would impact on the country's food security. I consider that this reflects RfR 2, and in this regard, the evidence of Mr Kernon that I have referenced in my evidence responds to this matter. On this basis I conclude that the proposed development will have a negligible impact on food security for its 40-year duration. In addition, the land will be able to be successfully reinstated to its former use at the end of this period.

Impact on Tenant Farmer

- 8.11 Respondents noted the impact on the tenant farmer in respect of low offers of compensation and their ability to continue to farm the land in line with their tenancy agreement.
- 8.12 As set out in response to RfR3 above, it is not debated that the modified proposed development will reduce the amount of land farmed at Eden Farm. However, the Appellant has made an offer well in excess of the statutory compensation package (which is still on the table); and if accepted, Mr Kernon concludes that the tenants will be in a better position than they are now in that income levels will be higher and the farm will not be adversely affected. We note that the Appellant and Rule 6 Party agreed to an early exchange of viability evidence on the 20 August 2024, however the Rule 6 Party requested that this information remains private & confidential [CD Ref. 9.10 and 9.11]. This information has not changed my conclusion that the Appellant's offer will mitigate any financial loss. It is considered that there is no conflict with Policy SP9.

Site Selection

- 8.13 Responses in relation to site selection related to questioning the need to be located close to a grid connection, the fact it is not a suitable site and commentary on other potential sites.
- 8.14 As set out in my response to RfR1, an Alternative Sites Assessment [CD Ref 7.1] has been provided to provide evidence to the Inspector beyond doubt that there are no reasonable alternative sites to the Appeal Site. The area of search is primarily based upon the fact that capacity exists at a specific point of connection to the electricity grid (Malton BSP Substation). This is a common approach for renewables projects as this is an important constraint on the location. The search area within the ASA has been based on the maximum distance of 2.5km from the POC which has been accepted for other schemes of this size and scale. The ASA concludes that there are no reasonable

alternatives that are sequentially preferable to the Appeal Site in the area of search.

8.15 In addition, I note a recent appeal decision³ and a high court⁴ [CD Ref. 6.12 and CD Ref. 6.17] which states that “*the Courts have set out that the PPG does not mandate the consideration of alternatives and still less does not require a sequential test to be adopted*”. A further high court decision⁵ makes reference to the consideration of alternative sites being relevant in “*exceptional circumstances*”. Furthermore, NPS Policy EN-3 [CD Ref. 8.2] does not mandate a sequential search for alternatives as it states that “*land type should not be a predominating factor in determining the suitability of the site locations*” and “*Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of “Best and Most Versatile” agricultural land, where possible.*” There is no reference to the requirement to consider alternative sites, rather applicants should explain their choice (paragraph 2.10.31 of NPS EN-3).

8.16 As set out in my evidence in section 7.0 of this Proof, I conclude that the requirements of Policy SP17 and national policy are therefore met and the modified proposed development accords with Paragraph 167 and 168 of the NPPF and NPS EN-3.

Impact on Heritage Assets

8.17 Respondents pointed to the potential for harm to the setting of two Grade II Listed Buildings (the Windmill at Windmill Farm and Acomb House Farmhouse) as a result of the modified proposed development. In addition, in the response from Eden Camp they note that consideration should be given to Eden Camp itself in respect of its local cultural and historic interest and as considered a non-designated heritage asset).

3 Application Ref: S62A/22/0006 -Land at Berden Hall Farm (dated 18 July 2024)

4 *Bramley Solar Farm Residents Group v Secretary of State* 2023 EWHC 2842 Admin (Paragraph 179)

5 *Lullington Solar Park v Secretary of State and South Derbyshire District Council* EWHC 295 (Paragraph 33)

8.18 The LPA did not refuse the application on heritage grounds. During the course of the application the Councils' conservation officer provided comments in respect of the impacts of the development on heritage assets raising no objection (CD Ref. 3.1).

8.19 The LPA confirm in the agreed Statement of Common Ground [CD Ref. 9.2] the following:

It is agreed that harm at the very low end of less than substantial has been identified on the Grade II listed windmill at Windmill Farm and the Grade II listed Acomb House Farmhouse. No other impacts in terms of heritage have been identified. It is agreed that the proposed development would provide significant public benefit that would outweigh the very low end of less than substantial harm to the setting of Acomb House Farmhouse and the Windmill at Windmill Farm. It is agreed that a planning condition should be applied to secure archaeological recording, in accordance with Policy SP12 and paragraphs 206 and 208 of the NPPF (2023).

8.20 In my response, I refer to the Built Heritage Technical Note prepared by Ms Bage, as set out in Appendix 1 [and CD Ref. 9.17] of this Proof who confirms that the proposed development does give rise to some heritage harm due to the visual change of the current undeveloped fields but that this is at the very low end of less than substantial harm, which I consider should be given some weight.

8.21 In this context, I consider that my evidence (as set out in Section 9) has demonstrated that the significant public and environmental benefits of the proposed development ensures that the heritage planning policy (Policy SP12 of The Ryedale Plan – Local Plan Strategy and NPPF Paragraph 207) which allows for harm to be justified is satisfied even if heritage harm is given more than limited weight.

Solar farms should be located on the roofs of industrial buildings or brownfield sites

- 8.22 A number of respondents suggested that solar farms should be located on the roofs of industrial buildings or on brownfield land. As set out within my evidence when considering alternative sites, the roofs of industrial buildings and previously developed land was considered. The Alternative Site Assessments (Paragraph 3.13-3.15) [CD Ref. 7.1] confirms that there are no areas of previously developed land within the search area that are available and large enough to accommodate a solar and battery development comparable to that proposed.
- 8.23 In respect of roof areas, to accommodate a 30MW solar farm approximately 177,000 sqm of roof space (based on the 52.86ha land required for the footprint of the solar panels and associated apparatus) would be required.
- 8.24 The roof areas of industrial buildings at Eden Business Park, the Industrial Estate at Showfield Lane and Norton Grove Industrial Estate (as show on Drawing GIS\LF\68206\01-13 in Appendix 5 of the ASA [CD Ref: 7.1] have been estimated to cover an area of around 91,786 sqm/9.1ha. However, these buildings are likely to be in multiple ownerships and tenant leases and not, therefore, readily available for the installation of solar panels on a commercial scale to supply energy into the grid. In addition, it is a requirement under the Electricity Act 1989 to obtain consent from owners before a connection offer is made by the DNO. This would require unanimous authorisation across all premises to deliver substantial power by the DNO.
- 8.25 Furthermore, certain areas of the roofs will be required for external plant equipment and access, whilst some roofs are pitched at an angle that will make them unsuitable (or compromise their efficiency) for solar panels. Some roof areas are overshadowed by higher roof areas and there is no certainty that the roofs are structurally cable of bearing the loads of solar panels.

- 8.26 In this context, I consider that there are no roof space or brownfield land within the search area capable of accommodating a solar farm of this size.

Noise pollution

- 8.27 A representation noted the potential noise impacts of the proposed development on the Eden Camp Business. It is acknowledged that the BESS and plant compound in the southeastern part of the site will generate some low level noise. The BESS facility is located approximately 43 metres to the west of the Eden Camp Museum outdoor events space.
- 8.28 A Noise Impact Assessment was not submitted with the application nor, as I understand, was it requested by the Council during the determination of the application. As noted in the Officer's Committee Report (Paragraph 10.113) [CD Ref. 3.1], the site is subjected to high ambient noise levels from the road traffic on the nearby A64 and A169 which pass the site to the south and east and on this basis a Noise Impact Assessment was not considered necessary. The Council's Environmental Health Officer was satisfied with the noise emitted and requested for a condition to be imposed on the decision notice. This is addressed by draft Condition 8 (see section 10 of this Proof for further details).
- 8.29 Nonetheless, during the course of the planning application, in direct response to concerns raised by the operators of the Eden Camp Museum to the east of the BESS element of the modified proposed development in relation to noise, this part of the Appeal Site was reconfigured to increase the separation distance between the BESS and the museum. A summary of the predicted noise levels for Eden Camp Museum were set out in a Technical Note (March 2023) [CD Ref. 2.11] which confirmed that the noise impacts are not significant.

8.30 In this context I consider the proposed development complies with Local plan Policy SP20 and raises no significant issues with respect to noise including on Eden Camp.

Fire Risk

8.31 The perceived Fire Risk in associated with the BESS element of the proposed development has been noted by a number of third parties including the potential risk for visitors at Eden Camp. As noted in the SoCG, North Yorkshire Fire and Rescue were consulted during the determination of the application. Amendments were subsequently made to the proposed development to address access comments made to ensure that requirements in terms of access to the batteries in a fire emergency could be met.

8.32 In addition the above, and to allay concerns in this respect, the Appellant has commissioned a Fire Strategy Report, found at Appendix 3 of this Proof. This report identifies how fire safety mitigation is embedded into both the design of the batteries and the modified proposed development itself; and how any potential risk will be managed.

8.33 To confirm the above, the Appellant has agreed with the Council an appropriate condition to address this matter (draft Condition 16) [CD Ref. 9.12]. I therefore conclude that there are no significant concerns with respect to fire risk.

Conclusion

8.34 I therefore conclude that, whilst there were a number of objections to the proposed development, these do not represent sound planning reasons to dismiss the appeal.

8.35 In addition, it should be noted that letters of support were received with regards to the proposed development. These broadly focussed on the benefits of green electricity generation which outweighed the loss of BMV land, the

requirement for the proposed development to be located on the Appeal Site, minimal noise/amenity and landscape and visual impacts and biodiversity benefits.

9.0 **Planning Benefits**

9.1 Paragraph 8 of the NPPF (2023) sets out the three overarching objectives for achieving sustainable development, including:

- an economic objective – to help build a strong, responsive and competitive economy, by supporting growth, innovation and improved productivity and by identifying and coordinating the provision of infrastructure;
- a social objective – to support strong, vibrant and healthy communities; and
- an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

9.2 I consider there be a number of planning benefits in this context associated with the proposed development. I set these out below.

Net Zero/Climate Change

9.3 The Government has recognised there is a climate emergency and The Climate Change Act 2008, as amended sets a legally binding target to reduce net greenhouse gas emissions from their 1990 level to net zero by 2050 and reducing emissions by 78% compared with 1998 levels, by 2035. North Yorkshire County Council declared a climate change emergency in July 2022 which rolled over to the new North Yorkshire Council from April 2023, making a commitment to actions to achieve net zero emissions across North Yorkshire by 2050 and a local ambition to be the first carbon negative region by 2040 [CD Ref. 8.18]. In particular a target by North Yorkshire is to install an additional 2,500MW of capacity from solar, onshore wind and hydropower by 2038.

- 9.4 NPS EN-1 and EN-3 identify the approach to delivering nationally strategic level energy schemes. EN-3 now recognises that solar will now play a key part in the strategy for low-cost decarbonisation of the energy sector and will help deliver greater energy independence (paragraph 2.10.9). In line with the British Energy Security Strategy (2022) [CD Ref. 8.17] the government expects a five-fold increase in solar deployment by 2035 (up to 70GW) (paragraph 2.10.10).
- 9.5 The proposed development would generate up to 30.4 MW (AC) of solar energy with the BESS element having a capacity of 12.63MW. As set out in the PWA Planning Statement (Paragraph 3.2) [CD Ref. 1.4], to generate the equivalent amount of energy through non-renewable sources would produce approximately 12,500 tonnes of CO₂ per annum, and therefore, the reduction in carbon emission resulting from the proposed development is the equivalent of meeting the energy needs of over 8,660 homes per year, and carbon dioxide savings amounting to just over 12,500 tonnes per year. This means the scheme could supply the average annual electricity needs of 38% of the households in Ryedale District Council, based on the number of households totalling 22,500.
- 9.6 There are no physical constraints limiting early development of the Appeal Site and the Appellant already have a grid connection offer in place. The Appellant has secured a grid connection with Northern Powergrid to connect into Malton BSP substation, which has an immediate connection date, should the appeal be allowed. The proposed development could therefore make an early and significant contribution of achieving the statutory net target set by 2050 and reducing emissions by 78% compared with 1990 levels by 2035.
- 9.7 There are therefore clear associated social benefits of generating renewable energy including helping to mitigate climate change impacts e.g. on human health as a result of the proposed development which should be given **significant weight** in this appeal.

Surplus Energy

- 9.8 In terms of its operation, another benefit of the proposed development which should carry moderate weight in the planning balance is the co-location with the BESS element alongside the solar panels to maximise the efficiency of the project. This allows surplus energy generated to be stored on the Appeal Site until it is needed which improved the efficiency of the proposed development and reduces any energy waste. This is in accordance with paragraph 2.10.32 of NPS EN-3 [CD Ref.8.2] which states that “*Where sited on agricultural land, consideration may be given as to whether the proposal allows for continued agricultural use and/or can be co-located with other functions (for example, onshore wind generation, storage, hydrogen electrolyzers) to maximise the efficiency of land use.*”

Grid Connection

- 9.9 A key benefit of the proposed development which should be afforded significant weight, is that the Appellant has secured a grid connection with Northern Powergrid to connect into Malton BSP substation, which has an immediate connection date, should the appeal be allowed. This is particularly important given the well-documented connection issues, that are being experienced across the UK, with long lead in times and connection dates unavailable until the 2030's, slowing progress of numerous renewable energy schemes. This also addresses a key issue in the Council's Climate Change Strategy [CD Ref. 8.18] which sets out (in Section 7(d)) that “*developing large scale renewable energy generation is a particular challenge in our rural area due to the lack of capacity of the national electrical grid infrastructure and competing demands for land use...*”.
- 9.10 Malton BSP also is the only BSP in the former Ryedale District Council area (which extends to an area of c. 150,000 ha). The BSP is the network operators' substation that is of sufficient voltage and size to host utility-scale energy

infrastructure such as the proposed development. As such it is the only point of connection in the area, it has available grid capacity and existing grid assets to utilise, therefore it is considered suitable for the proposed development.

BNG

9.11 The proposed development results in a biodiversity net gain of 117.37% in habitat units and 42.67% in hedgerow units. The following biodiversity enhancements are also being proposed throughout the Appeal Site:

- 1 3 no. beetle banks to provide suitable and attractive habitat for beetles;
- 2 2 no. additional 'bug hotels' to provide a suitable and attractive habitat for insects;
- 3 2 no. habitat scrapes to introduce aquatic habitats, floral diversification, bare ground for invertebrates and also provide a mini-run off retention area; and
- 4 Winter bird seed mix strip to provide habitat for wintering birds and invertebrates.

9.12 I consider that the provision of BNG, significantly above the required 10%, should carry significant weight in its favour.

Local Economy

9.13 An increase in jobs available during the construction period and some jobs during the operational period would result from the proposed development. In addition, there will be associated supply chain, taxation and business rates which will benefit the local economy.

9.14 These are both direct and indirect benefits of the proposed development and represent an increase on the existing position which should be given moderate weight in the determination of this appeal.

Temporary Nature

- 9.15 Unlike most other forms of development, solar farms, such as the proposed development, are temporary structures that are removed when they are no longer required, in this instance the proposed development will be in place for a temporary period of 40 years. Only small areas are affected with fixed infrastructure and those are also reversible. After this time, the Appeal Site will be returned back to its current agricultural use. is, therefore, considered that any impact of the proposed development will be temporary and reversible, thus avoiding any long-term impact.

Community Benefit Fund

- 9.16 Whilst reference has been made in the Statement of Community Involvement submitted with the Planning Application [CD Ref. 1.5], I do not consider any weight can be given to this given this is not guaranteed at this stage.
- 9.17 However, the Appellant is still committed to contributing to local projects through a Community Benefit fund of £10,000 per year for the lifetime of the proposed development.

10.0 Planning Conditions

- 10.1 The Appellant and the Council have been working together to agree a set of planning conditions should the Appeal be allowed. These have been agreed between the two parties and are provided in Appendix 4.

11.0 **Planning Balance and Conclusions**

- 11.1 This Appeal relates to a proposal by Harmony Energy Ltd for the installation and operation of a solar farm and battery energy storage system with associated infrastructure including substation, access tracks, pole mounted CCTV, fencing and landscaping for a period of 40 years on Land off Great Sike Road, Old Malton, Malton.
- 11.2 The application was reported to the Council's Strategic Planning Committee on the 10 October 2023 with a recommendation for approval. Members resolved to refuse the Application, contrary to the recommendation of officers. A Decision Notice [CD Ref. 3.3] was issued on the 17 October 2023 which contains four reasons for refusal.
- 11.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the provisions of the statutory development plan, unless material considerations indicate otherwise. The scope of my evidence therefore considers the compliance of the proposed development with the Development Plan and NPPF and whether there are any other relevant material considerations.
- 11.4 The Development Plan comprises:
- The Ryedale Plan Local Plan Strategy (2013) [CD Ref. 4.1].
 - The Ryedale Plan Local Plan Sites Document (2019) [CD Ref. 4.2].
 - Overview of Ryedale Local Planning Authority and Malton and Norton Policies Map [CD Ref. 4.3].
 - The Minerals and Waste Joint Plan February 2022 (MWJP 2022) [CD Ref. 4.4].
- 11.5 In addition, a number of National Planning Policy Statements are relevant to the appeal proposals, in particular (but not limited to) NPS EN-1 [CD Ref. 8.1]

and EN-3 [CD Ref.8.2] which came into effect in January 2024. I also consider the consultation version of the NPPF (July 2024) to carry some weight, which alongside a recent speech by Ed Miliband [CD Ref. 8.20] where he states “*the biggest threat to nature and food security and to our rural communities is not solar panels or onshore wind; it is the climate crisis which threatens our farmland, food production and livelihoods of farmers*” shows the current Government’ direction of travel in support of renewable projects generally and its renewed support of ground-mounted solar.

11.6 The issues of flood risk sequential test, BMV agricultural land, land based rural economy and residential visual amenity were specific in the reasons for refusal. The key policies relevant to this appeal to which the proposed development is to be considered against include Policies SP17, SP9 and SP20 of the Ryedale Local Plan.

11.7 As per the SoCG [CD Ref. 9.2] the areas of dispute with the Council and the approach to this inquiry, are on the basis that the proposed development is contrary to a number of planning policies within the Development Plan. These include: Policy SP17, SP9 and SP20 of the Ryedale Local Plan Strategy and Paragraphs 135, 167, 168, 180, Footnote 62 of the NPPF (2023).

11.8 The proposed development accords with a number of the key aims of the Development Plan, including:

- 1 The principle of development is in accordance with policy SP1 General Location of Development Hierarchy and Settlement Hierarchy which includes appropriate renewable production.
- 2 Responding to climate change and supporting Renewable and Low Carbon Energy developments which generate renewable and/or local carbon sources of energy (Policy SP18).

- 11.9 I have set out in Section 7 a summary of the assessment on flood risk sequential test, BMV agricultural land, land based rural economy and residential visual amenity matters. These matters have been considered in the evidence of Mr Kernon and Mr Ingham as well as my evidence. I have considered that evidence and conclude that the proposed development is consistent with the policies in the Development Plan and NPPF.
- 11.10 Notwithstanding this, I consider the main issues in terms of the potential adverse impacts and benefits of the proposed development that might weigh into the planning balance bearing in mind the Appeal Site characteristics and context.
- 11.11 I have considered within Section 8 other material considerations which have been raised by the Rule 6 Party and Third Parties.
- 11.12 I do not identify any significant adverse effects that weigh into the planning balance.
- 11.13 Section 9 of my assessment considers the benefits of the proposed development. The National Planning Policy Framework (NPPF) 2023 outlines three key objectives for sustainable development: economic, social, and environmental. The proposed solar energy development aligns with these by contributing to climate change mitigation, supporting community health, and enhancing the environment.
- 11.14 The key benefits include:
- 1 **Net Zero/Climate Change:** The proposed development will generate 30.4 MW of solar energy, significantly reducing CO2 emissions. It supports national and local targets for carbon reduction, contributing to the UK's net-zero goals.
 - 2 **Surplus Energy:** The proposed development includes a Battery Energy Storage System (BESS) to store surplus energy, improving efficiency and reducing waste.

- 3 **Grid Connection:** The proposed development has secured a critical grid connection, which is crucial given the challenges with grid capacity in the area.
- 4 **Biodiversity Net Gain (BNG):** The proposed development will result in substantial biodiversity improvements, including habitat creation and enhancement.
- 5 **Local Economy:** The proposed development will create jobs and benefit the local economy through the supply chain, taxation, and business rates.
- 6 **Temporary Nature:** The solar farm is a temporary structure with a lifespan of 40 years, after which the land can revert to agricultural use, minimising long-term impact.

11.15 On this basis I consider that the planning balance is firmly in favour of the proposed development, and I consider that the appeal should be allowed.

Appendix 1 Built Heritage Technical Note

Appendix 2 Grid Connection Technical Note

Appendix 3 Planning Phase Battery Safety Management Plan - Fire Strategy Report prepared by OWC

Appendix 4 Agreed Conditions

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