



Department for
Communities and
Local Government

Our Ref: APP/V4630/W/16/3148504

Mr Guy Maxfield
Indigo Planning Ltd
Lowry House
17 Marble Street
Manchester M2 3AW

1 February 2017

Dear Mr Maxfield,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY BLUE PLANET SOLAR
LAND LYING TO THE WEST OF COLLEGE FARM, BOSTY LANE, ALDRIDGE,
WALSALL
APPLICATION REF: 15/0628/FL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector Brendan Lyons BArch MA MRTPI IHBC, who received written representations and made a site visit on 3 August 2016 in relation to your client's appeal against the decision of Walsall Metropolitan Borough Council to refuse planning permission for the construction of a solar farm comprising ground-mounted solar panels for electricity production (3.6 megawatts) on land to continue to be used for agriculture, together with ancillary equipment, deer fencing, permeable stone access tracks and landscape and biodiversity enhancements, in accordance with application reference 15/0628/L dated 24 April 2015.
2. On 9 August 2016 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation, dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Secretary of State has noted the Inspector's remarks and actions at IR2-3.

Policy and statutory considerations

5. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the Black Country Core Strategy (BCCS) adopted in February 2011 and the saved policies of the Walsall Unitary Development Plan (UDP) adopted in March 2005. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR16-23.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) and associated planning guidance (the Guidance), as well as the Written Ministerial Statement of March 2015, which, among other matters, concerns solar energy and the protection of the local and global environments.

Main issues

7. The Secretary of State agrees with the Inspector that the main issues are those set out at IR91.

Inappropriate development in the Green Belt

8. The Secretary of State agrees with the Inspector at IR93 that, as accepted by the main parties, the appeal proposal is inappropriate development in the Green Belt. He has had regard to paragraph 87 of the Framework which states that inappropriate development is, by definition, harmful to the Green Belt and that it should not be approved except in very special circumstances. For the reasons given by the Inspector at IR93, the Secretary of State agrees that the proposal would not fall within any of the limited categories of development defined by paragraphs 89 and 90 of the Framework as not inappropriate in the Green Belt, therefore it must be classed as inappropriate development. This is consistent with the advice contained in paragraph 91 of the Framework which states that elements of many renewable energy projects in the Green Belt will comprise inappropriate development. In accordance with the guidance of the Framework paragraph 88, and as set out at IR94, the Secretary of State considers that substantial weight should be given to the harm by reason of inappropriateness. He agrees with the Inspector's analysis at IR95 and considers that BCCS Policy CSP2 and UDP Policy ENV2 can be afforded virtually full weight in the assessment of this aspect of the appeal.

Openness and purposes of the Green Belt

9. The Secretary of State has had regard to the Inspector's analysis at IR97-105. He agrees with the Inspector at IR99 that the footprint of the development would be extensive and that the change from undeveloped agricultural land would have a significant adverse effect. He also agrees with the Inspector at IR100 that the narrow width of the Green Belt in this location is highly characteristic and that the effect of loss of openness in this context would be potentially much more harmful than on a site of similar size in a location where the Green Belt was considerably wider. The Secretary of State agrees with the Inspector at IR101-102 that the proposal would be in conflict

with the purpose of safeguarding the countryside from encroachment, as the area of countryside occupied by the panels would be extensive. He further agrees with the Inspector at IR103 that the proposal would represent a form of urban sprawl.

10. The Secretary of State agrees with the Inspector at IR104 that, although the proposed installation can technically be described as temporary, the period of 25 years would be a significant length of time; a long period during which the harm to the Green Belt would persist. He agrees that the prospect of an eventual restoration of the site after this time does not provide adequate justification to discount the harm caused.
11. In conclusion, for the reasons given at IR97-105, the Secretary of State agrees with the Inspector that there would be significant harm to the openness and the purposes of the Green Belt, which would be only very moderately mitigated by the proposal's limited visual impact.

Landscape character and visual appearance

12. The Secretary of State agrees with the Inspector's analysis at IR106-108 that the introduction of the expanse of panels would affect landscape character. He agrees that visual impacts would be limited by topography and the site's high degree of containment by existing landscape features. Like the Inspector, the Secretary of State concludes that the generally minor level of harm should be added to the overall balance, with a limited degree of weight.

Benefits of the proposed development

13. The Secretary of State agrees with the Inspector at IR109 that, although the predicted output of 3.6 megawatts is not large by solar farm standards, the potential to supply over 1100 homes and reduce CO₂ emissions by 1800 tonnes annually would still be significant. He agrees with the Inspector that this is a matter of significant weight in support of the proposal.
14. The Secretary of State agrees with the Inspector at IR110 that College Farm would potentially benefit from the provision of a steady income stream over a 25 year period together with some potential return from the continued grazing of the land. He also agrees that there would be further economic benefits by providing jobs during construction, maintenance and decommissioning stages. The Secretary of State agrees with the Inspector that these benefits attract moderate weight.
15. The Secretary of State agrees with the Inspector at IR111 that, in the absence of any detail or commitment, very little weight should be given to the suggested community benefit of school visits.
16. The Secretary of State agrees with the Inspector at IR112 that the strengthening of hedgerows, principally required for screening, would also have positive ecological effects and that moderate weight can be given to these benefits.

Other matters

17. The Secretary of State has considered the Inspector's analysis of other matters set out at IR114-123.

18. The Secretary of State has considered the extent to which the proposal would fulfil the BSSC strategy (IR114-115). He agrees with the Inspector that, although the strategy promotes the expansion of environmental infrastructure, there is no policy imperative for a contribution to meeting local needs or national targets that would necessarily override other well-founded national objectives, such as the protection of the Green Belt.
19. The Secretary of State has considered whether or not there are any alternative suitable sites in Walsall outside the Green Belt (IR116-120). He notes that the Council offers no evidence that there are no suitable previously developed sites in Walsall outside of the Green Belt that are not allocated for other uses by the development plan. For the reasons set out by the Inspector at IR119, the Secretary of State agrees with the Inspector that, as justification for development in the Green Belt, the search evidence is not conclusive. He agrees with the Inspector at IR120 that only moderate weight should be attached to the evidence of non-availability of more suitable sites.
20. The Secretary of State has considered the Inspector's analysis of the claimed 'fall-back' position (IR121-122). He notes that the Council's Housing Land Supply document opens the possibility of Green Belt land, including the appeal site, being released if the Council were unable to demonstrate a five year housing land supply. However, the document states that the housing land supply is well in excess of five years. The Secretary of State agrees with the Inspector that there is no more than a theoretical possibility of the appeal site being released from the Green Belt. He considers that weight should not be afforded to the claimed fall-back position in carrying out a balance of considerations.

Planning conditions

21. The Secretary of State has given consideration to the Inspector's analysis at IR 135-146 and the schedule of conditions he recommends at Appendix A of his report. He is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing the appeal.

Planning balance and overall conclusion

22. Having had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, for the reasons given above, the Secretary of State considers that the appeal scheme would conflict with BCCS Policies CSP2, ENV2 and ENV7. He also considers that the proposal is not in accordance with UDP Policies ENV2 and ENV32. He therefore concludes that the proposal is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
23. The proposal is inappropriate development in the Green Belt and, in accordance with the Framework, this harm must be given substantial weight.
24. The Secretary of State considers that the harm to the openness and to the purposes of the Green Belt also attracts further substantial weight. He gives limited weight to the minor adverse effect on the landscape character and the visual appearance of the area.

25. The Framework states that inappropriate development in the Green Belt should not be approved except in very special circumstances. The Secretary of State has carefully considered whether the potential harm to the Green Belt, by virtue of inappropriate development, and any other harm, is clearly outweighed by other considerations which might constitute very special circumstances.
26. The Secretary of State gives significant weight to the contribution that the scheme would make to the renewable energy generation and greenhouse gas reduction. He gives moderate weight to the economic and biodiversity benefits. He gives very little weight to the suggested community benefit of school visits.
27. The Secretary of State considers that no additional weight can be added by any contribution to fulfilling the BCCS strategy and that only moderate weight can be given to the evidence of the lack of alternative sites. He considers that the claimed 'fall-back' position should not attract any additional weight.
28. The Secretary of State concludes that the considerations in favour of the proposal would not clearly outweigh the substantial harm to the Green Belt. He considers that the very special circumstances necessary to justify the proposal do not exist in this case.

Formal decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the construction of a solar farm comprising ground-mounted solar panels for electricity production (3.6 megawatts) on land to continue to be used for agriculture, together with ancillary equipment, deer fencing, permeable stone access tracks and landscape and biodiversity enhancements, in accordance with application reference 15/0628/L dated 24 April 2015.

Right to challenge the decision

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

Yours sincerely

Merita Lumley

Merita Lumley
Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Brendan Lyons BArch MA MRTPI IHBC

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

Date: 2 November 2016

TOWN AND COUNTRY PLANNING ACT 1990

WALSALL METROPOLITAN BOROUGH COUNCIL

**LAND LYING TO THE WEST OF COLLEGE FARM,
BOSTY LANE, ALDRIDGE, WALSALL**

APPEAL BY BLUE PLANET SOLAR

Site visit made on 3 August 2016

Land lying to the west of College Farm, Bosty Lane, Aldridge, Walsall

File Ref: APP/V4630/W/16/3148504

File Ref: APP/V4630/W/16/3148504

Land lying to the west of College Farm, Bosty Lane, Aldridge, Walsall

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Blue Planet Solar against the decision of Walsall Metropolitan Borough Council.
- The application Ref 15/0628/FL, dated 24 April 2015, was refused by notice dated 6 November 2015.
- The development proposed is described as the construction of a solar farm comprising ground-mounted solar panels for electricity production (3.6 megawatts) on land to continue to be used for agriculture, together with ancillary equipment, deer fencing, permeable stone access tracks and landscape and biodiversity enhancements.

Summary of Recommendation: That the appeal should be dismissed.

Procedural Matters

1. The appeal was recovered for the Secretary of State's own decision by letter dated 9 August 2016. The reason for the Secretary of State's direction is that the appeal involves proposals for significant development in the Green Belt.
2. The application was amended after submission and amended again prior to its refusal by Walsall Metropolitan Borough Council ('the Council') to reduce the extent of the proposed installation and consequently the predicted power output. The description of development set out in the heading above reflects the revised description used on the Council's decision notice and on the appeal form.
3. The amended application was illustrated by some revised plans¹ and supported by additional information², but other plans³ and supporting documents⁴ remained as originally submitted. This report's assessment of the appeal is based on the amended submission as finally presented to the Council.
4. The appeal proposal has been screened on behalf of the Secretary of State in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 and 2011 and found not to comprise EIA development.⁵
5. I carried out a visit to the site on 3 August 2016, accompanied by the landowner and by representatives of the appellant and of the Council. I then continued unaccompanied to view the immediate surroundings of the site and the wider area.

¹ Location Plan No.1447.04 Rev A; Site Plan No.15007001-06 dated 01.09.2015; Landscape and Biodiversity Management Plan No.1447.03 Rev. C

² Letter from Indigo Planning to the Council, dated 19 October 2015

³ Typical Transformer Stations No. 15007001-07; Substation WPD – Switchroom Design No.15007001-08

⁴ Including: Landscape and Visual Impact Appraisal (other than Appendix I –Landscape & Biodiversity Management Plan, which was updated as noted above); Ecology Report; Flood Risk Assessment; Heritage Statement; Planning Statement

⁵ Screening Decision dated 27 May 2016

The Site and Surroundings

6. College Farm is situated in an area of open land between the urban areas of Walsall, Aldridge and Rushall. The land forms part of the West Midlands Green Belt. The appeal site is made up of four fields to the north-west of the group of farm buildings, which comprise the farmhouse and a range of ancillary buildings, some of which have been converted to equestrian and business use. The site boundary has been drawn also to include the farm access road, which has separate branches for inward and outward vehicle movement.
7. The four fields, which are enclosed by hedgerows, have a combined area of 11.42 hectares and are currently used for grazing cattle and horses. Since the amendment of the application, no development is now proposed in the westernmost field, designated Field 4, which extends to the edge of the Daw End Branch Canal. The other fields are bordered to the north by the Daw End Railway Cutting, beyond which lies a local football club ground and an area of suburban housing; to the east by Bosty Lane, the classified road from which the farm gains access, and which forms the edge of an area of suburban housing and industrial estates; and to the south by other open fields next to the farm buildings. A public footpath (Ald 22) runs next to these fields, before turning to cross the Canal at Riddians Bridge, which is listed Grade II, and continuing south as footpath Wal 59.
8. The appeal site is not subject to any formal designation for nature conservation interest, but the deep-sided wooded Railway Cutting is designated as a Site of Special Scientific Interest ('SSSI'), the Branch Canal as a Site of Local Importance for Nature Conservation ('SLINC') and the Jack Holes former lime pits zone, which is largely surrounded by Fields 1, 3 and 4, as a Site of Importance for Nature Conservation ('SINC').

The Proposal

9. Permission is sought to cover much of Fields 1, 2 and 3 with photovoltaic ('PV') panels on metal frames. The rows of panels, aligned east-west in Fields 1 and 2 and parallel to the northern boundary of Field 3, would be tilted at an angle of 25 degrees and spaced 2.5m apart, with their top edge some 1.99m above ground level. The field boundaries would be lined by high-tensile deer fencing, some 2m high with a gap below to allow passage of small wildlife. A transformer station, measuring 5.1m by 2.9m by 3.1m high, would be located in the centre of each field, served by a gravel track off the existing farm access way. A DNO substation, built in rendered blockwork and measuring 5.4m by 4.9m and 4.65m high to the ridge, would be located close to Bosty Lane, next to the exit branch of the farm access road. A temporary compound would be formed in Field 3 during the construction period.
10. It is proposed that existing hedgerows would be retained and supplemented, to be managed at an increased height of 3m. A new hedgerow would be added inside the existing along the short Bosty Lane boundary of Field 2. Disturbed grassland would be replanted with a diverse seed mix and the area around the edges of the fields and among the panels maintained by light sheep grazing or infrequent mowing. Other biodiversity enhancements are proposed, including enhancements within the Jack Holes SINC, to be secured by approval and implementation of a Landscape and Biodiversity Management Plan.

11. The development is intended to be in place for a period of 25 years, after which it would be removed and the land restored.

Planning History

12. An application to erect a 500kW wind turbine with a height to the blade tip of 67m was refused by the Council in 2011 and subsequently dismissed at appeal.⁶
13. Between 2002 and 2004, planning permission was granted by the Council for change of use of some farm buildings to use for equestrian livery and the manufacture of saddles, and also for the formation of a manege.⁷

Planning Policy

Development plan

14. For the purposes of this appeal, the development plan comprises the Black Country Core Strategy ('BCCS') adopted in February 2011 and the saved policies of the Walsall Unitary Development Plan ('UDP') adopted in March 2005.
15. The Sustainability Principles of the BCCS seek to achieve sustainable development, which is to include the sustainable management of material resources, such as the use of renewable and low carbon technologies.
16. The BCCS seeks to focus development and regeneration activity on a Growth Network of Strategic Centres and Regeneration Corridors. BCCS Policy CSP2 covers development outside the Growth Network, and among other objectives seeks a strong Green Belt to promote urban renaissance within the urban areas and provide easy access to the countryside for urban residents, where the landscape, nature conservation and agricultural land will be protected and enhanced where practical and possible. The policy states that Green Belt boundaries will be maintained and protected from inappropriate development.
17. BCCS Policy CSP3 states that development proposals will need to demonstrate that the strategic network of environmental infrastructure will be protected, enhanced and expanded at every opportunity. This network is to include renewable energy generation, among a long list of other positive environmental attributes.
18. BCCS Policy ENV2 requires development to protect and promote the special qualities, historic character and local distinctiveness of the Black Country in order to maintain its cultural identity and strong sense of place.
19. BCCS Policy ENV7 states that proposals involving the development of renewable energy sources will be permitted where the proposal accords with local, regional and national guidance and would not significantly harm the natural, historic or built environment or have a significant adverse effect on the amenity of those living or working nearby, in terms of visual, noise, odour, air pollution or other effects. The supporting text⁸ identifies PV panels as one of the sources of renewable energy that can be applied in the Black Country, in the context of seeking an increased proportion of energy consumption from renewable sources.

⁶ Appeal Ref APP/V4630/A/12/2175517

⁷ Appellant's Rebuttal Statement, para 2.8

⁸ Paras 6.35, 6.36

20. Other policies of the BCCS seek to safeguard nature conservation interest (Policy ENV1), minimise the risk of flooding (Policy ENV5), secure high quality design (ENV3) and seek safe highway access (Policy TRAN2).
21. The boundaries of the Green Belt are defined by UDP Policy ENV1. Development within the Green Belt is addressed by UDP Policy ENV2, which sets a presumption against the construction of new buildings except for certain specified purposes, and states that any engineering or other operation or the making of a material change of use of land is inappropriate if it conflicts with the openness and purposes of the Green Belt. UDP Policy ENV3 states that the detailed evaluation of proposals acceptable in principle in the Green Belt will be assessed in terms of factors including site layout, design, landscape, impact on views and cumulative physical effects.
22. UDP Policy ENV7 advocates a Countryside Character approach to the landscape assessment, conservation and enhancement, which is to be extended to the local level by the preparation of detailed guidance. UDP Policy ENV32 seeks to promote good design, stating that proposals which fail to properly take account of the context or surroundings will not be permitted, with particular application to locations, among others, within the Green Belt, agricultural or open land.
23. Other relevant policies of the UDP include ENV6, which seeks to protect and encourage agriculture, including farm diversification; ENV17 and ENV18, which respectively seek planting of new trees and hedges and protection of those existing; ENV23 and ENV24, which protect nature conservation and wildlife corridors; T4, which defines measures to limit transport impacts.

National policy and guidance

24. The parts of the National Planning Policy Framework ('NPPF') of greatest relevance to the appeal appear to be those dealing with: the achievement of sustainable development and the presumption in its favour (paras. 6-16); the core planning principles (para. 17); the support for a prosperous rural economy (para. 28); the requirement for good design (paras. 56-68); the protection of Green Belt land (paras. 79-92); meeting the challenge of climate change (paras. 93-98); conserving the natural environment (paras. 109-119).
25. Of the guidance on the application of national policy offered by the Planning Practice Guidance ('PPG'), the chapters of most direct relevance appear to be those entitled: Climate Change; Renewable and Low Carbon Energy; Design; Natural Environment. The Renewable and Low Carbon Energy chapter's specific guidance on the planning considerations that relate to large-scale ground-mounted solar photovoltaic farms is particularly relevant to the appeal.⁹

The Case for the Appellant

26. The appellant's case¹⁰ is that the appeal proposal complies with the policies set out in the Council's reason for refusal of the planning application, and complies in all other respects with local and national policy. There are very special circumstances that would outweigh any harm by reason of inappropriateness of

⁹ PPG para. 5-013

¹⁰ Taken principally from the appellant's Appeal Statement, April 2016, and application documents

development in the Green Belt and any other harm, and would justify the grant of planning permission. Since 2011, solar farms have become a common feature in the rural landscape and in the Green Belt, alongside other renewable energy development. There are now 88 solar farms in the Green Belt, which equates to 8.2% of the total number of 1073.

27. The Council's EIA Screening Opinion of March 2015 identified no likely significant adverse impacts. The application was drafted to take account of the previous wind turbine refusal and the concerns of Council officers, and in the light of the appellant's own public engagement with 295 local residents. The appellant was surprised to find that the application was to be recommended for refusal, without technical justification and with only 5 objections received from the Council's notification of 211 residents. Despite significant amendments to the application, including the omission of panels from Field 4, which reduced the power output from 4.4MW to 3.6MW, and the submission of further justification,¹¹ the application was ultimately refused.

Planning policy

28. The appeal proposal should benefit from the presumption in favour of sustainable development set by paragraph 14 of the NPPF, as it would produce economic, social and environmental benefits. The proposal's contribution to renewable energy generation would be consistent with the NPPF core principle in support of the transition to a low carbon future and the use of renewable resources.
29. The NPPF supports economic growth, and advocates a pro-active approach to land-use change where this would affect business viability and community benefits. The support for a strong rural economy reflects the government's productivity plan for rural areas¹².
30. The NPPF also supports the delivery of renewable and low carbon energy, which is seen as central to the three dimensions of sustainable development. In confirming that many renewable energy projects in the Green Belt will comprise inappropriate development, the NPPF advises that very special circumstances needed to justify approval may include the wider environmental benefits of renewable energy generation. Recent decisions¹³ by the Secretary of State agree that considerable weight should be afforded to the delivery of renewable energy infrastructure. The NPPF confirms that even small scale projects provide a valuable contribution.
31. The PPG advises that the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape. The submitted LVIA shows that the appeal proposal would not have a negative impact, but would be acceptable by virtue of its location adjacent to a settlement due to the boundary treatment and landscape mitigation proposed and the lack of public access.
32. The proposal would accord with the PPG on use of greenfield land for large-scale solar farms. The submitted Planning Statement shows that there are no potential

¹¹ Letter dated 19 October 2015 - Appeal Statement Appendix 9

¹² Towards a one nation economy: A 10-point plan for boosting productivity in rural areas, DEFRA August 2015 - Appeal Statement Appendix 10

¹³ Appeal Ref APP/B5480/W/15/3007618 - Appeal Statement Appendix 11
Appeal Ref APP/F0114/W/15/3103260 - Appeal Statement Appendix 12

alternative sites of lower quality land than the appeal site, which the submitted Agricultural Land Classification Assessment¹⁴ has confirmed as Grade 3b. The land would continue to be used for agriculture by allowing grazing around the panels. Because the BCCS places emphasis on the use of previously developed land for housing and employment, it is highly unlikely that brownfield land would be available for a solar farm. It is also unlikely that any buildings would be available locally suitable for a roof-mounted array of equivalent scale.

Assessment of the UDP Proposals Map and the emerging Site Allocations Document ('SAD') map shows that there are no suitable or available sites outside the Green Belt not allocated for other uses.

33. The site selection process was outlined in the Planning Statement and in further submissions to the Council.¹⁵ The site has been carefully selected to meet a range of criteria including: good sunlight intensity levels; topography, as the gentle south-west facing slope would allow panels to follow the site contours and be sited close together; suitable landscape context; close proximity to an existing grid connection via an 11kV line with the necessary capacity, which has been reserved by the appellant; good road access; minimal environmental constraints.

Development plan

34. The proposal accords with BCCS Policy CSP2 as it would be energy infrastructure that cannot be accommodated within a settlement, but would serve the wider area of Walsall and the West Midlands. Renewable energy generation forms part of the environmental infrastructure that BCCS Policy CSP3 seeks to protect and expand. The proposal accords with BCCS Policy ENV7 which supports renewable energy generation in all parts of the Black Country, without restriction on Green Belt locations. The proposal's limited transport generation would comply with BCCS Policy TRAN2, while its proposed landscape and biodiversity improvements would be supported by BCCS Policies ENV1, ENV2 and ENV3.
35. UDP Policy ENV2 states that certain forms of development in the Green Belt will be allowed, not including renewable energy, and that others will normally be refused. However, this must be seen in the light of the more recent BCCS policies. The NPPF allows for the possibility of such development, if very special circumstances can be shown. The number of permitted schemes since 2011 indicates widespread acceptance of solar farms in the Green Belt, in rural landscapes.
36. UDP Policy ENV3 is not directly applicable, as it deals with development acceptable in principle in the Green Belt, but its criteria can be used to assess impact, including: layout; siting, design, height and scale; quality of landscape scheme; impact on significant views. The appeal proposal successfully addresses each of these factors.
37. The submitted LVIA and Landscape and Biodiversity Management plan show that the proposal would comply with the design objectives of UDP Policy ENV32, as well as with the approach to landscape assessment of Policy ENV7 and the aims

¹⁴ Appeal Statement Appendix 5

¹⁵ E-mail dated 20 August 2015 - Appeal Statement Appendix 13; letter dated 19 October 2015 - Appeal Statement Appendix 9

of Policies ENV17, ENV18, ENV23 and ENV24 for trees, hedges and nature conservation.

38. Farm diversification is one of the key motives for the proposal, in accordance with the support for agriculture of UDP Policy ENV6. The lack of adverse transport impacts, during construction and operation, would accord with UDP Policy T4.

Green Belt

39. The reason for refusal is centred on harm to the Green Belt. Reference is made to a 'sensitive location', but this is not a recognised term in the assessment of Green Belt impact. The Council's Screening Opinion¹⁶ confirmed that the site is not in a sensitive area in EIA terms. The appellant's submitted Ecology Report assessed the impact on ecological designations and was endorsed by the Council's specialist. The accompanying Landscape and Biodiversity Management Plan shows that there would be significant enhancement of habitats and of the Jack Holes SINC, in full compliance with BCCS Policy ENV1. The 'sensitive location' would be enhanced.
40. The location is referred to as a narrow section of Green Belt, but there are no nationally or locally set minimum distances between settlements. The Green Belt between Rushall and Aldridge spans circa 0.8km and between Walsall and Rushall circa 1.2km. From Bosty Lane, there is an appreciable sense of separation between the settlements of Rushall and Aldridge. There would be no actual or perceived coalescence as a result of the appeal proposal.
41. The proposal would not comprise urban sprawl as it would not expand the populated area and would be of an entirely different character to the surrounding residential development, not involving buildings or roads. It would not require amendment of the Green Belt boundary and would not compromise this purpose of the Green Belt.
42. The proposal would be environmental infrastructure, for which under BCCS Policy CSP3 there is a requirement to expand, in order to meet the spatial objectives and vision of the BCCS and to meet the challenge of climate change. There is a policy emphasis on areas outside the Growth Network, for which the proposed development is relevant in size, scale and design.
43. There would be only limited harm to the purpose of safeguarding the countryside from encroachment. The proposal would involve physical encroachment onto the site, but the site adjoins the urban area and has strong defensible boundaries, particularly the railway cutting to the north and the Jack Holes SINC to the west. The development would have very little visual impact owing to the thick screening from trees and hedges and the very short length of the boundary to Bosty Lane. There is no public access to the site, and the impact of views from public places has been accepted by the Secretary of State in a previous appeal¹⁷ as an important consideration in assessing impact on this purpose of the Green Belt. The appeal proposal is to be temporary in nature, with the site returned to its former condition at the end of the lifetime of the permission.

¹⁶ Appeal Statement Appendix 3

¹⁷ Appeal Ref APP/F0114/W/15/3103260 - Appeal Statement Appendix 12

Openness

44. Openness of the Green Belt is related to the absence of buildings. All development harms openness, but the degree of harm is relevant in weighing very special circumstances. The assessment in the Council's committee report was primarily based on visual impact rather than the effect on openness.
45. The Council state that the proposed solar farm and fencing would have an industrial appearance, but the fencing is designed for use in rural areas, and the development would be contained within existing hedgerow boundaries, reinforced by new planting where necessary.
46. The submitted LVIA analyses visual impact from a set of agreed locations, and considers the effect on openness as well as on landscape character. Having regard to the Inspector's views in dismissing the previous wind turbine appeal, the LVIA concludes that the proposed solar farm would be well screened and that the contribution made by the site to perceived openness between Walsall and Aldridge is limited. The enhanced screening offered by taller hedges would minimise such impact. The Council's report acknowledged the proposal's lack of public visibility and limited adverse effect on landscape and appearance, which would not warrant refusal of the application.

Benefits of proposed development

47. According to DECC statistics, as at 2015 there were no large scale renewable energy projects in the Walsall administrative area. The appeal proposal would be the first strategic scale infrastructure in the Borough. The low level of energy consumed in the West Midlands from renewable sources (1%) should count in favour of the proposal. BCCS Policy CSP3 requires development proposals to enhance and expand 'environmental infrastructure' at every opportunity, while BCCS Policy ENV7 supports renewable energy, subject to compliance with guidance and lack of harm. Neither policy precludes renewable energy projects in the Green Belt. Solar is listed as a source of renewable energy that can be applied in the Black Country.
48. The output from the site of 3.6MW of AC electricity would make a significant contribution to supply and to the national target of 15% renewable energy consumption by 2020. The output would equate to a saving of 1800 tonnes of CO₂ emissions per year and, based on OFGEM figures, would provide sufficient electricity for the needs of 1160 typical homes each year. The proposal's contribution to meeting national and local targets for renewable generation and greenhouse gas reduction should be afforded significant weight in its favour, as in previous appeals.¹⁸
49. The proposal would have economic benefits through job creation in the initial assembly, subsequent maintenance and eventual decommissioning of the installation, and by providing a farm diversification scheme for the landowner. The returns would provide a stable source of income, resilient to market fluctuations. The return would be greater than could be achieved by cropping land of this quality and without the need for capital investment by the farmer. Social benefits could include educational visits to the site from nearby schools.

¹⁸ Appeal Ref APP/F0114/W/15/3103260 - Appeal Statement Appendix 12

50. The submitted Landscape and Biodiversity Management Plan details a comprehensive scheme of landscape improvements and biodiversity enhancements, including tree and hedgerow planting, enhancements to Jack Holes SINC and the creation of owl foraging habitats within the development. The landscape is strengthened at a local level, such that the LVIA concludes a low/medium adverse effect on landscape character. Considerable weight should be given to the biodiversity benefits of the scheme as they would support the management objectives of a locally designated site.
51. The life of the solar farm is to be up to 25 years, after which the site would be restored to its present condition. The proposal does not threaten the permanence of the Green Belt. Continued agricultural use, albeit at a reduced level, would carry on by allowing sheep to graze around the panels.

Fall-back position

52. The Courts have ruled¹⁹ that a fall-back position, in order to attract weight in a decision, does not have to have a high probability of occurring, but only more than a merely theoretical prospect. The Council state that they can demonstrate an adequate supply of housing land for the entire BCCS period, but when sites without planning permission are deducted this would not be the case. The Council have indicated that they would consider releasing employment land and Green Belt land if they were unable to demonstrate a five-year supply.²⁰ Land at College Farm is identified as potential Green Belt releases, for up to 1221 dwellings.
53. Land in the Black Country is also likely to be required to meet Birmingham's severe shortage of housing land within its own boundary²¹. This will affect Walsall, and land within neighbouring authorities is already being identified for this purpose, to help meet a shortfall of 37,900 homes.
54. If the Council is unable to identify a five year supply and land is required in Walsall to meet Birmingham's needs, the release of Green Belt land would become a real possibility. Residential development of the scale outlined in the Council's Land Supply Update would be a worse form of inappropriate development in the Green Belt than the appeal proposal.

Balancing exercise

55. The NPPF directs that substantial weight should be given to harm to the Green Belt. But in this case the harm would be temporary and reversible. The proposal would not conflict with the purposes of including land in the Green Belt. There would be no urban sprawl, as there would no actual or perceived coalescence of settlements. There would be development in the countryside, but the harm would be limited as the site adjoins the settlement boundary and has strong defensible boundaries, and the installation would have little visible effect over its temporary lifespan. There are few places where any effect on openness would be appreciated, and the Council accepts that landscape and visual impact would be limited.

¹⁹ R o.a.o. Zurich Assurance Limited v North Lincolnshire Council [2012] EWHC 3708 (Admin) - Appeal Statement Appendix 18

²⁰ Walsall Housing Land Supply Update, August 2014 - Appeal Statement Appendix 19

²¹ Birmingham Development Plan 2031 Proposed Main Modifications - Appeal Statement Appendix 20

56. The BCCS does not presume against renewable energy development in the Green Belt. The proposal would accord with the objectives of BCCS Policy ENV7, which is the most relevant, and of both Policies CSP2 and CSP3 to encourage the development of renewable energy.
57. Against the limited harm to the Green Belt, weight should be given to the provision of renewable energy, which would count against national and local targets for greenhouse gas emission reduction, and which is identified by the NPPF as central to the three dimensions of sustainable development. The benefits of the proposed development would significantly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm. Very special circumstances have been demonstrated by the proposal's contribution to meeting the BCCS vision, and to meeting energy and emissions targets, by its economic and biodiversity benefits, by its temporary nature and by the fall-back position of residential development as a worse form of inappropriate development. Permission should therefore be granted.

The Case for the Council²²

58. The key objection to the appeal proposal is the potential impact that inappropriate development has on the character and openness of the Green Belt by encroachment and urban sprawl at this sensitive location at the edge of the urban area, and the lack of very special circumstances to outweigh the harm. The Council's concern in this regard was made clear from the earliest pre-application advice.

Green Belt

59. The proposals would introduce what is considered to be a significant industrial installation on this site within the Green Belt including ground mounted solar panels, perimeter fencing, transformer stations, compound areas and substation structures. The three fields cover an area of 7.5 hectares. This is a significant encroachment into the countryside. The urbanising effect of the industrial nature of the installation, which has been accepted in a previous appeal decision,²³ is considered to represent urban sprawl. There are other fields between the proposed installation and College Farm and on the opposite side of Bosty Lane that separate the open countryside from the urban area and nearby housing. Implementation of the appeal proposal would narrow the gap between the urban areas of Aldridge, Rushall and Walsall. This is a sensitive location because the site forms part of a narrow wedge that separates these areas and prevents them merging with each other.
60. Because of the encroachment, sprawl and the potential merging effect of neighbouring towns, the proposal would be contrary to three of the five purposes of the Green Belt, and would result in technical harm.
61. In an earlier solar farm appeal decision²⁴, the Secretary of State has stated that the PV panels would be an incongruous and intrusive addition to the rural

²² Taken principally from the Council's Statement, April 2016, and the Report to Planning Committee, 5 November 2015

²³ Appeal Ref APP/D3505/A/13/2204846 para. 37

²⁴ Appeal Ref APP/J3720/W/15/3029788 - Council's Statement Appendix 4.

- landscape. The Inspector's report highlighted that adverse impact on Green Belt openness did not depend on the visibility of the proposed PV installation.
62. The appeal proposals do not adjoin the existing settlement as there is currently no built development between the appeal site and the existing housing on Bosty Lane other than the farm and its access which are rural in character. The appeal proposals would be an incursion into the Green Belt harming its openness and character. In a previous appeal decision²⁵ the Secretary of State accepted that a proposed solar installation would have a significant adverse effect on the openness of the Green Belt and would adversely affect the countryside.
63. In that appeal, the Secretary of State did not give weight to the temporary nature of the proposed installation and did not take account of the proposal's reversibility, concluding that 25 years is a long period of time. This supports the limited weight given to this factor by the Council in the present case.
64. The appellant relies on the assessment of openness in the LVIA, but the LVIA itself acknowledges that openness in Green Belt planning terms is a different concept from openness in landscape terms. The High Court²⁶ has confirmed that openness and visual impact are different concepts, yet can nonetheless relate to each other. The appellant's reliance on the LVIA assessment of openness is flawed. The Council does not accept that its consideration of the proposal has been concerned primarily with visual impact. The issue is the technical harm to the purposes of including land in the Green Belt due to the extent of built form proposed.
65. With regard to visual impact, while the panels themselves might be low in height, the substation (4.65m) would be higher than the proposed maintained hedges, and the installation of buildings, panels and the surrounding deer fencing²⁷ would inevitably have some impact on the existing landscape and appearance of the site. However, the Council accepts that the omission of panels from Field 4 has addressed the potentially most harmful public views of the site from the Canal corridor. The proposal could not be refused on visual grounds alone.
66. It is accepted that the proposal would not give rise to objection on ecological grounds and that the proposed nature conservation enhancements would accord with PPG advice. The implementation of these through the Landscape and Biodiversity Management Plan could be secured by a planning condition or by an obligation where outside the site.
67. The PPG advises that large scale solar farms should be encouraged to locate on previously developed and non-agricultural land. The appellant refers to the consideration of numerous sites across the UK before selecting the appeal site, but no detailed evidence has been provided to support this. The submitted Planning Statement shows a site selection process focused on an area within a 6km radius of the appeal site, confined to Walsall Borough. The 8 sites considered are all within the Green Belt and many have nature conservation designations. The search does not go far enough and does not consider

²⁵ Appeal Ref APP/M2270/A/14/2226557 - Council's Statement Appendix 6

²⁶ Timmins & Anor. v Gedling Borough Council [2014] EWHC 654 (Admin)

²⁷ The Council's Statement incorrectly describes the proposed fencing as 3.0m high. As confirmed by the appellant, the figure of 2.0m used in the Committee Report is correct.

previously developed land. In a previous appeal decision²⁸ the Secretary of State had accepted the Inspector's view that little weight could be given to a claimed lack of available capacity or alternative sites, owing to the limited search area and lack of consideration of sites outside the Green Belt.

68. The appellant has also not provided evidence to support the claimed lack of availability of commercial buildings capable of receiving a roof-mounted PV installation. However, the Council accepts that the submitted assessment shows that the site comprises Class 3b land, and would therefore involve poorer quality land, in respect of the PPG advice.
69. There would be no adverse effect on living conditions at the farmhouse, which would be well screened from the site, or on outlook from the nearest houses in residential areas to the north and east of the site, from which views of the site would be screened by existing and proposed enhanced hedgerows and trees.

Fall-back position

70. There are no grounds to support a 'fall-back' position that the site might be liable to development for housing in the event of the appeal proposal not going ahead.²⁹ The BCCS (adopted 2011) confirms the existing boundaries of the Green Belt in the four Black Country authority areas and does not envisage any changes. The Council has recently consulted on the emerging SAD, which has reached publication stage and proposes to maintain the existing extent of the Green Belt. Limited weight can be attached to this document while representations, none of which has referred to the appeal site, are considered. Review of the BCCS is due to start this year, and is to take account of future development needs and strategic issues, including any necessity for Green Belt boundary review. The aim would be to adopt the revised BCCS by 2019. Planning for future housing need will be a complex matter, including any requirement to accommodate additional need from Birmingham, which would affect two Housing Market Areas covering a very wide area. It is too early at this stage to forecast the possible implications for Green Belt review in the Black Country, and certainly for any individual site.

Balancing exercise

71. The Council does not dispute that the provision of renewable energy sources and economic sustainable growth and farm diversification are supported by both national and local policy but consider this does not clearly outweigh the harm to the Green Belt in this instance. The support for renewable energy proposals stated by NPPF paragraph 98 is subject to other material considerations, which here comprise the adverse impact on the Green Belt. The supporting text to BCCS Policy ENV7 confirms that proposals will be assessed on their merits in accordance with policy. The Council did so in this case, taking into account national and local policy on development in the Green Belt.
72. The proposal would be contrary to BCCS Policies CSP2, ENV2 and ENV7, and to UDP Policies ENV2, ENV3 and ENV32. Whilst BCCS Policy CSP3 requires that 'the strategic network of environmental infrastructure' is protected, enhanced and

²⁸ Appeal Ref APP/H1840/W/15/3136031 - Council's Statement Appendix 5

²⁹ 'Possible Future Green Belt Review' - Council's Statement Appendix 8

expanded, it does not override the protection of the Green Belt under Policy CSP2. The Green Belt, agricultural land and open countryside are not included in the list of land and designations that comprise the environmental infrastructure network under Policy CSP3, which expects expansion of the network to be in growth and regeneration areas.

73. In summary, the Council considers that the appellant has failed to demonstrate that there are considerations sufficient to clearly outweigh the harm the appeal proposals would cause to the openness and character of the Green Belt and the significant functions that this part of the Green Belt provides in this sensitive location. This is a rural setting (undeveloped by built form) and the introduction of significant industrial development would harm the openness of the Green Belt, and the purposes of including land within it.

Response by the appellant³⁰

74. The proposed enhanced hedgerows would screen the proposed panels and deer fencing from external view. Deer fencing is commonly used in agricultural areas and does not require permission. The largest structure proposed would be the substation, at 4.6m to its highest point, but this would be located adjoining taller mature trees on the boundary of Field 2, which will serve to obscure it from view.
75. Other uses previously permitted at College Farm would not normally be considered appropriate in the Green Belt and show that the principle of farm diversification is established and acceptable. The appeal proposal would add further diversification benefits, which should weigh in its favour.
76. The Council has provided no evidence to show why this location is sensitive or any more sensitive than other areas of the West Midlands Green Belt. There is nothing in policy to differentiate between particular areas of the Green Belt. The appeal proposal would be completely different in character to nearby development and would not represent urban sprawl. Renewable energy development is a feature of an adapting modern countryside that serves the purpose of energy generation as well as food production.
77. The proposal would not be industrial in character: it would not be audible outside the site; farming would carry on; it would generate no traffic once in operation; there would be no moving parts or industrial processes. Solar panels are commonplace in residential environments and are easily recognisable as renewable energy installations and not industrial.
78. There would be minimal encroachment into the countryside as the area of ground disturbance would be minimal owing to the panel frames being pile driven into the ground. The overall footprint of development would be minimal and the boundaries of the Green Belt would not alter. For the temporary duration of the installation, it would prevent nearby settlements from merging.
79. The appeal referred to by the Council³¹ is different because the Inspector was assessing the effect on significant views from public footpaths. The conclusion that the panels would be an incongruous addition to the rural landscape was the Inspector's, not the Secretary of State's. The PPG advises that the visual impact

³⁰ Taken mainly from the Rebuttal Statement, June 2016

³¹ Appeal Ref APP/J3720/W/15/3029788 - Council's Statement Appendix 4

of a well-planned and well-screened solar farm can be properly addressed within the landscape.

80. The appellant's site search was rigorously based on the stated criteria. There is no previously developed land available not allocated for other purposes. The appeal decision in which the area of search was found to be inadequate³² involved a 2km radius, which is an area of 12.5 sq km. In the present case, the search has covered the entire area of Walsall Borough, or 104 sq km, so that there is no comparison between the appeals. The proximity and capacity of the grid connection, which has been secured at considerable risk and investment, is a very important consideration.
81. The ecological enhancements would all be on land owned by the site owner, and could be secured by a Grampian condition.
82. In the appeal where the Secretary of State did not give weight to the reversibility of the installation,³³ there were also other significant causes of harm, which tipped the balance. In the present case the issue is harm to the Green Belt, whose permanence would not be affected. Reversibility is therefore relevant to the balancing exercise.
83. The Council does not acknowledge the considerable support for renewable energy by the BCCS, which has statutory force as an adopted plan, but seeks to rely more on the NPPF which is a material consideration.
84. The Council is better placed to indicate commercial building potentially suitable for a roof-mounted installation, but a roof with an area of approximately 2.2 hectares would be required. The appellant is not aware of any.
85. The Council has not challenged the view that the weakness of the Council's housing land supply, together with the case for Birmingham's need to be met, make the potential development of the appeal site a possibility.
86. The Council has incorrectly assessed the proposal and overstated the impacts, while failing to give proper weight to the benefits and to the significant BCCS policy support.

Written Representations

87. There were no written representations received from interested parties at the appeal stage.
88. At the application stage, the Council received a total of seven letters of objection from interested parties, and two representations raising no objection, one of which praises the landowner's commitment to nature conservation. The concerns raised in the letters of objection relate to: loss of open green land; adverse visual impact, as the height of the panels would be taller than existing hedgerows, and would not be mitigated by grazing of sheep around the panels; unsuitability of the site for the proposed installation, just as the rejected wind turbine proposal; the land should remain in rural agricultural / livestock rearing use; adverse impact on wildlife, including barn owls and buzzards; adverse impact on views

³² Appeal Ref APP/H1840/W/15/3136031 - Council's Statement Appendix 5

³³ Appeal Ref APP/M2270/A/14/2226557 - Council's Statement Appendix 6

from residential property; loss of value of residential property; traffic impact and noise during construction and maintenance; difficulty in monitoring conditions; risk of land becoming 'brownfield' after 10 years, and open to permanent development.

89. External consultees raise no objection subject to the imposition of conditions. Natural England confirm that the proposal would not affect the interest of the adjoining Daw End Railway Cutting SSSI, but otherwise welcome the proposed ecological enhancements. Network Rail state that their holding objection relates only to a slight overlap of ownership within the red line of the application boundary.

Inspector's Appraisal

90. The following appraisal is based on the written evidence summarised above and on my inspection of the site and its surroundings. Numbers in square brackets [#] refer to earlier paragraphs in the report from which the matters and conclusions are drawn.
91. Having regard to the Secretary of State's reason for recovery of the appeal and to the Council's reason for refusal of the application, the main considerations on which the appeal decision should be based are, in my view:
- i. Whether the proposal would be inappropriate development in the Green Belt having regard to the NPPF and the development plan;
 - ii. The proposal's effect on the openness and purposes of the Green Belt;
 - iii. The proposal's effect on the landscape character and visual appearance of the area;
 - iv. The benefits of the proposed development;
 - v. The weight to be given to other matters;
 - vi. Whether the potential harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

Inappropriate development in the Green Belt

92. National policy set out in the NPPF explains that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of the Green Belt are its openness and permanence. The NPPF states that inappropriate development, by definition harmful to the Green Belt, should not be approved except in very special circumstances.
93. In this case both main parties to the appeal agree that the proposal would constitute inappropriate development. I endorse that judgement. The proposal would involve the erection of PV panels and frames, 2m high fencing, transformer stations and a sub-station, all of which would be defined for planning purposes as the construction of new buildings, resulting in the change of use of agricultural land to include electricity generation. The proposal would not fall within any of the limited categories of development defined by paragraphs 89 and 90 of the NPPF as not inappropriate in the Green Belt. Therefore, it must be classed as

inappropriate development. This is consistent with the advice of paragraph 91 of the NPPF that elements of many renewable energy projects in the Green Belt will comprise inappropriate development. [26, 30, 36, 57, 58]

94. In accordance with the guidance of NPPF paragraph 88, I consider that substantial weight should be given to the harm by reason of inappropriateness.
95. In seeking to maintain a strong Green Belt, protected from inappropriate development, BCCS Policy CSP2 is consistent with the NPPF approach. The categories of development identified by UDP Policy ENV2 as inappropriate in the Green Belt are based on the earlier national guidance of the then PPG2. Although they do not entirely reflect the up-to-date position of the NPPF, for the most part they remain consistent. The policy justification that such development would 'normally' be refused and the reference to the guidance of PPG2 can be taken as an acknowledgement that very special circumstances could justify some otherwise inappropriate development. I consider that these policies can be afforded virtually full weight in the assessment of this aspect of the appeal. [16, 21, 35]

Openness and purposes of the Green Belt

96. The appellant acknowledges that openness of the Green Belt is characterised by an absence of built development, and that the appeal proposal would therefore harm the openness of the Green Belt, but argues that the degree of harm should contribute to the balancing against other considerations. In particular, the appellant relies on the limited effect on the perception of openness of this part of the Green Belt identified by the LVIA, because the installation would be well screened by existing and enhanced landscape features. [44, 45, 46, 58, 62, 74]
97. The issue of the contribution of visual impact to the assessment of openness of the Green Belt has recently been considered by the Court of Appeal³⁴, where it was held that visual impact is implicitly part of the concept of openness, and that the earlier judgment to which the Council refers³⁵ had gone too far in stating a clear conceptual distinction between the two issues. The Court confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on openness. [64]
98. The Council accepts that the proposal would have limited visual impact from public viewpoints, particularly since the omission of panels from Field 4. The appellant's LVIA has not been revised to reflect that change, but its assessment of the impact of the installation in Fields 1, 2 and 3 remains valid. The study acknowledges that there would be close-range glimpses of the installation from the short length of Bosty Lane adjoining Fields 2 and 3, and views of the top of the panels in Field 1 from public footpaths Ald 22 and Wal 59. The impact would be significantly mitigated once the strengthened perimeter hedges had matured to the full managed height of 3m, leaving an overall visual effect assessed as Minor Adverse in each case. The LVIA also concludes Minor Adverse long-term effects on residential receptors on Bosty Lane and at the edge of the Stencills

³⁴ John Turner v Secretary of State for Communities and Local Government and East Dorset Council [2016] EWCA Civ 466

³⁵ Timmins & Anor. v Gedling Borough Council [2014] EWHC 654 (Admin)

Estate. Therefore, even if absolute reliance were to be placed on the visual dimension, these judgements, which are reasonable in my view, confirm that there would be some minor impact on the perception of openness. This is a separate matter from the effect on the character and visual appearance of the area, to which I return below. [31, 37, 43, 65]

99. The LVIA also seeks to assess openness in the context of landscape character, and concludes that there would be a Minor/Moderate Adverse effect. I agree with the Council that this is a different measure from the assessment of openness in Green Belt policy terms, which is fundamentally based on the presence or absence of built development. In this case, the footprint of the development would be extensive, with the proposed array covering most of the area of the three fields. The enclosure by a considerable length of perimeter fence would also impact on openness to a lesser extent. The proposed cabins and substation would be small in terms of volume, and would have a modest additional effect. The change from undeveloped agricultural land would have a significant adverse effect. [44, 45, 46, 64]
100. The characteristic of the location is also relevant in assessing the effect on openness. The narrow width of the Green Belt in this location is highly characteristic. The prevention of neighbouring towns merging is one of the five purposes of the Green Belt. The appellant is correct to say that there are no prescribed minimum distances between settlements, but it is clear that the dimensions here are already at the very low end of the scale for Green Belt separation. The proposal would not result in coalescence of settlements, but it would erode the gap between Aldridge, Rushall and Walsall. The effect of loss of openness in this context would be potentially much more harmful than on a site of similar size in a location where the Green Belt was considerably wider. The Council's use of the term 'sensitive location' is not unreasonable. [39, 40, 59, 73, 76]
101. The appellant acknowledges that there would be conflict with the purpose of safeguarding the countryside from encroachment, but seeks to downplay the extent of the harm caused, by reference to the site's enclosure by strong boundaries, the lack of public access and the nature of the proposed development. The railway cutting provides a very strong edge along the site's northern boundary, and the Jack Holes area forms a partial buffer to the west, but the other two sides are formed by open fields separating it from the farm buildings and nearby housing. The stronger landscape features, which are of a type that might commonly be found in other places in the Green Belt, do not provide a clear justification to support this piece of land being given over to development. Again, this is not only a visual issue, but relates to the role of the land as open countryside between settlements. [43, 59, 78]
102. Because of the staked design of the panel frames and the small size of the other structures, ground disturbance on the site would be limited, which would facilitate its later restoration. However this would not equate to a minimal footprint in terms of countryside encroachment, as claimed by the appellant. The area of countryside occupied by the panels would be extensive. I consider that the proposal would be harmful to this purpose of the Green Belt. [59, 78]
103. The term 'urban sprawl' is not closely defined in national guidance. I am not convinced that the concept necessarily implies an increased population with

occupied buildings and infrastructure, as interpreted by the appellant. Any unwarranted expansion of an urban land use into the countryside could be seen as urban sprawl, even if the new use were different in character from the adjoining urban uses. The PPG's advice that solar farms should be located on previously developed and non-agricultural land, and the warning that deployment can have a negative effect on the rural environment, suggests that the use should be seen as urban rather than rural. Although the installation would not have moving parts, the generation of electricity at the scale proposed can with some justification be described as an industrial process. The character of the installation, with its very hard lines and surfaces, regimented layout and utilitarian ancillary structures, would have a quasi-industrial nature, very different in character from individual installations applied to a domestic building. The appellant points out that solar farms have only become common in the UK since 2011. Therefore, although many have now been installed in rural locations, they cannot yet in my view be considered an accepted element of the rural scene. I consider that the introduction of the proposed use would represent a form of urban sprawl. [26, 41, 55, 59, 76, 77]

104. The proposed installation can technically be described as temporary, but the period of 25 years would be a significant length of time. Whether or not there would be other adverse impacts, as in the other appeal referred to by the appellant, this would be a long period during which the harm to the Green Belt would persist. The prospect of an eventual restoration of the site after this time does not provide adequate justification to discount the harm caused. [43, 55, 63, 78]

105. In summary, I consider that there would be significant harm to the openness and purposes of the Green Belt, which would be only very moderately mitigated by the proposal's limited visual impact. In accordance with NPPF policy guidance, this harm should be given substantial weight.

Landscape character and visual appearance

106. The reason for refusal refers to adverse effect on the 'character... of the Green Belt'. However, the reference appears to be in the context of rural character and openness. The Council accepts that the effect on the character of the landscape and the appearance of the area would be only moderately harmful, and would not in itself have amounted to a reason for refusal of the application. [65]

107. As outlined above, I agree that the omission of panels from Field 4 has addressed the proposal's most intrusive impacts, and I find the remaining conclusions of the appellant's LVIA to be reasonable. Despite the retention of most of the grass surface of the fields, the introduction of the expanse of panels would affect landscape character, but other elements, particularly trees and hedgerows, would be retained and strengthened. The overall assessment of Minor/Moderate Adverse effect on character would reflect the landscape's ability to absorb the installation. Visual impacts would be limited by topography and the site's high degree of containment by existing landscape features. The proposed increased height of hedges would introduce a slightly higher degree of enclosure to the landscape, but would not harm any valued views. [31, 65, 79]

108. I agree that these effects would in themselves be unlikely to trigger rejection of the proposal. However, the generally minor level of harm should be added to the overall balance, with a limited degree of weight.

Benefits of proposed development

109. The proposal's primary benefit would be the contribution made by its output to meeting national targets on renewable energy generation and greenhouse gas reduction. Although the predicted output of 3.6MW would not be large by solar farm standards, and has been reduced from the original application, the NPPF advises that even small-scale projects can make a valuable contribution. In this case, the appellant's estimate of a potential supply for over 1100 homes and 1800 tonnes of CO₂ emissions reduced annually would still be significant. The proposal would raise the proportion of renewable energy usage in the West Midlands region. These figures are not challenged by the Council, who acknowledge the support offered by national policy. This is a matter of significant weight in support of the proposal. [48, 57, 71]
110. The Council also acknowledge the national and local support for farm diversification, which is reflected in the history of change at College Farm. Little detail has been provided of the precise effect on the continued operation of the farm, but the likely beneficial impact of a steady income stream over a 25 year period is not disputed, and there would be some potential return from the continued grazing of the land. Further economic benefits would be provided by the jobs provided in initial construction and later maintenance and decommissioning. These benefits attract moderate weight. [38, 49, 51, 75]
111. In the absence of any detail or commitment, very little weight should be given to the suggested community benefit of school visits. [49]
112. The strengthening of hedgerows would principally be required to provide the necessary screening of the development, but would also have positive ecological effects. These and other biodiversity enhancements, including those to the Jack Holes SINC could be secured by the final approval of a Landscape and Biodiversity Management Plan. Moderate weight can be given to these benefits. [32, 50, 66]

Other matters

113. There are a number of other matters, which the appellant regards as weighing in favour of the proposal, but are disputed by the parties.
114. The first of these is the extent to which the proposal would fulfil the BCCS strategy. BCCS Policy CSP3 seeks the active expansion of the strategic network of 'environmental infrastructure' at every opportunity, including the provision of renewable energy. The policy does not expressly rule out renewable energy development in the Green Belt, but states that expansion of the network is to be achieved 'in a manner appropriate to the character and needs of the area'. The terms of the preceding Policy CSP2 include protection of the Green Belt on an equal footing with achievement of environmental infrastructure in areas outside the Growth Network. There is nothing to suggest that Policy CSP3 would override the long-standing policy context for development in the Green Belt, expressed locally by the UDP. Similarly, the lack of any express restriction on the support for renewable energy by BCCS Policy ENV7 cannot be read as positive backing for development in the Green Belt. [14, 15, 16, 17, 19, 21, 42, 47, 56, 72]
115. It is stated that the appeal proposal would be the first strategic-scale renewable installation in the borough, and would therefore make a welcome

contribution to meeting local needs. However, there is no policy imperative for a contribution to meeting local needs or national targets that would necessarily overrule other well-founded national objectives, such as the protection of the Green Belt.

116. This is also relevant to the second issue, which relates to the testing of alternative sites. The PPG encourages the use of previously developed and non-agricultural land for solar farms. Whilst this does not amount to a requirement for a sequential test, the availability of such land is a factor of relevance in justifying any proposal for a location on greenfield agricultural land. If the need for greenfield land is established, the agricultural quality of the land then becomes relevant, in accordance with the guidance.
117. The appellant's submissions offer some evidence of the process of site search. The final Committee report did not raise specific concern on this matter and accepted that the issue of agricultural land quality had been satisfactorily addressed. The Council now challenges the adequacy of the search, both in terms of potential use of previously developed land and buildings, and of lower grade agricultural land. [67, 68]
118. The Council offers no evidence to challenge the appellant's assessment that there are no suitable previously developed sites in Walsall outside the Green Belt that are not allocated for other uses by the development plan. I have no reason to doubt the assessment. Similarly, in the absence of any evidence to the contrary, I accept that it is unlikely that a building with a roof large enough to house an equivalent installation would be found, and the Council has not referred to any strategy by which smaller areas of roof-mounted arrays could be delivered. [32, 67, 68, 80]
119. However, as justification for development in the Green Belt, the search evidence is not conclusive. The search area is said to cover the entire borough which is a reasonably extensive area, but heavily constrained by Green Belt and other designations. A more extensive search might reveal other less constrained options, including potential availability of other grid connections, which is clearly a highly significant factor in site selection. The search conclusions are also weakened by a lack of detailed consideration of potential previously developed sites, whose allocation for development is taken as a blanket assumption about their availability. In making such assumptions, it is not clear why allocation for employment, for example, should be given greater priority than allocation as Green Belt. If greenfield land is shown to be necessary, a wider search might also reveal other poorer quality agricultural land[32, 67,68, 80]
120. For these reasons, I consider that only moderate weight should be attached to the evidence of non-availability of more suitable sites.
121. The third issue relates to the claimed fall-back position. The Housing Land Supply document quoted by the appellant does open the possibility of employment and Green Belt land being released if the Council were unable to demonstrate a five-year supply. However, the document goes on to confirm that the supply is well in excess of five years. The appellant does not provide sufficient evidence to challenge this conclusion. Land at College Farm is identified in the document as one of a long list of Green Belt sites potentially open for consideration for release, but the need for very special circumstances is also

flagged up. At present, this evidence does not offer more than a theoretical possibility of the appeal site being affected. [52, 54, 85]

122. The Council's detailed submission sets out the circumstances in which the need to accommodate unmet housing need from Birmingham could result in a Green Belt review in Walsall that would affect the appeal site. The timescales and the number of authorities and areas of land potentially involved would be extensive. The evidence suggests that a potential consequence for the appeal site can currently be regarded as no more than a theoretical possibility. For these reasons, I consider that weight should not be afforded to the claimed fall-back position in carrying out a balance of considerations.[53, 54, 70, 85]

123. There is no dispute that other matters such as flooding, highway safety and noise could be satisfactorily addressed by compliance with conditions. Notwithstanding the concerns raised by some residents, views from upper floors of a small number of houses on Bosty Lane would be only obliquely affected. The effect on living conditions at the houses would be slight. Adverse impacts on residents during the construction phase would be short-lived and could be adequately controlled by conditions. The objection by Network Rail relating to boundary definition would be a matter for legal resolution that should not affect the grant of planning permission. [69, 88, 89]

Balance of considerations

124. I have endorsed the conclusion of the main parties to the appeal that the proposal would represent inappropriate development in the Green Belt. The NPPF states that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. [57, 58]

125. In accordance with the NPPF, the harm to inappropriateness must be given substantial weight. I have also found that the harm to openness and to the purposes of the Green Belt should contribute further substantial weight.

126. In terms of other harm, I have found that the minor adverse effect on landscape character and the visual appearance of the area should be given limited weight, and this should add to the weight given to Green Belt harm.

127. On the other side of the balance, the principal 'other consideration' is the benefit of renewable energy generation and greenhouse gas reduction, which merits considerable weight. Economic and biodiversity benefits both contribute further moderate weight in favour of the proposal.

128. However, no additional weight can be added by any contribution to fulfilling the BCCS strategy, and only moderate weight can be given to the evidence of the lack of alternative sites. The claimed fall-back position should not attract any additional weight.

129. When all factors are taken into account, I consider that the potential harm to the Green Belt and the minor harm to character and appearance would not be clearly outweighed by the other considerations identified above. Very special circumstances to justify the proposal would not arise.

130. I have no reason to doubt the appellant's figures for the number of solar farms already permitted in Green Belt locations. I have no clear information on the circumstances of these cases, but I can only conclude that if the proposals were found to be inappropriate development, that other considerations were held to outweigh the harm caused. I have not found that to be the case in this appeal, which I have sought to assess on its own merits. While I have also taken account of the many previous appeal decisions referred to in evidence by both parties, because of the individual circumstances of each case, none has provided a compelling precedent. [26]

Conclusions

131. The appellant considers that the proposal would result in economic, environmental and social benefits, and hence should be regarded as sustainable development to which the presumption in favour set by paragraph 14 of the NPPF should apply. However, for decision taking the presumption does not apply if other policies in the NPPF indicate that development should be restricted. Footnote 9 to that paragraph specifies Green Belt designation as one of the restrictive policies. Therefore, I consider that the presumption should not apply in this instance. The decision should be made in accordance with the development plan, unless material considerations indicate otherwise. [28]

132. I conclude that, as inappropriate development also harmful to the openness and purposes of the Green Belt, the proposal would conflict with the Green Belt protection objectives of BCCS Policy CSP2. There would also be conflict with BCCS Policy ENV7, whose support for renewable energy proposals is subject to compliance with other local and national policy, here represented by Green Belt protection. The minor adverse effect on the landscape and visual appearance of the area would not be in accordance with the objective of BCCS Policy ENV2 to retain the special qualities and local distinctiveness of the Black Country. [16, 18, 19, 34, 72, 86]

133. The appeal proposal would also be contrary to the Green Belt protection objectives of UDP Policy ENV2. The reason for refusal cites conflict with UDP Policy ENV3, but that policy is specifically directed to criteria for development acceptable in principle in the Green Belt and therefore would not apply in this instance. The minor adverse effect on the landscape and visual appearance of the area would not be in accordance with UDP Policy ENV32, which seeks to resist development that fails to take proper account of its context. [21, 22, 35, 36, 37, 72]

134. Other than the minor effect on character and appearance, these conflicts with policy would not be outweighed by other considerations. Although there is some tension between different policy objectives within the development plan, as is sometimes the case, in my assessment the appeal proposal would not be in accordance with the plan taken as a whole. The proposal should therefore be rejected.

Conditions and Obligations

135. The Council has provided a schedule of draft conditions, to which the appellant has suggested some amendments. I have considered the proposed conditions and the suggested amendments in the light of the tests set out in paragraph 206 of the NPPF and the guidance of the PPG. I find that neither the proposed or

- amended conditions would adequately mitigate the adverse impacts of the proposal to enable the development to be allowed to proceed.
136. However, should the Secretary of State disagree with my conclusions and decide to allow the appeal and grant planning permission, conditions would need to be imposed to define the permission and ensure that the impacts of development were appropriately mitigated. A schedule of recommended conditions, based on the Council's draft with some modifications, is attached at Annex One to this report.
137. Standard conditions are required on the time limit for commencement of development and compliance with approved plans, in order to define the permission. It should not be necessary to specify the supporting documents listed by the Council.
138. Approval of details of surface water drainage is required in order to reduce the risk of pollution and flooding. These details would include the formation of any swales, so that the separate condition on this aspect suggested by the Council would not be necessary. In my view, it is reasonable to require this matter to be resolved prior to the commencement of development, rather than to allow considerable site works to proceed before approval of the details, as suggested by the appellant.
139. Approval and implementation of a programme of archaeological work is reasonable in order to avoid the risk of harm to heritage significance. The appellant suggests that this should be amended to require only a watching brief during site excavations, in the light of the submitted Heritage Statement's conclusion of a low-moderate range of archaeological interest. However, I give weight to the view of the Council's specialist consultant that the evaluation provided by a written scheme might obviate even the need for a watching brief.
140. Approval and implementation of measures to protect trees and hedge and the Jack Holes SINC are necessary to avoid the risk of harm to the natural environment. These details should include protection from any effect of temporary road construction, so that a separate condition on this aspect is not necessary.
141. Two conditions are needed to ensure that bird populations are conserved by avoiding site clearance work during the nesting season. The amendment suggested by the appellant to the draft condition specifically aimed at protection of barn owls would be unduly onerous, as it would not be necessary to prevent work if nesting boxes were not in use. I have amended the condition proposed by the Council for other nesting birds in order to improve its precision and enforcement.
142. Approval and implementation of the final form of the proposed Landscape and Biodiversity Management Plan is necessary to ensure the landscape and biodiversity value of the site is protected and enhanced. The form of condition proposed by the Council has been amended to place greater emphasis on biodiversity measures. As the Plan would cover vegetation and wildlife potentially affected during site clearance and construction, it would not be reasonable to delay submission and approval of the Plan, as suggested by the appellant.

143. Approval and monitoring of the matters to be covered by the Construction Management Plan and the Construction Methodology Statement sought by the Council would be reasonable and necessary, in the interests of public health and highway safety respectively. Restrictions on potential noise generation and hours of work are necessary to protect the living conditions of nearby residents.
144. Controls over external materials of buildings and structures, open storage while the site is operational and external lighting are necessary to avoid harm to the character and appearance of the area. The approval of site security measures is justified by the unstaffed operation of the site, in order to reduce the risk of crime.
145. A condition is necessary to ensure that the development is dismantled and the site restored to its former condition, either at the end of the 25 year period sought by the application, or sooner in the event of electricity generation ceasing, in order to limit harm to the openness of the Green Belt. I endorse the appellant's view that the period should commence with the first commissioning date, rather than the date of the permission, and have amended the draft condition to require notification of this date to the Council.
146. The appellant has provided evidence of the landowner's control of land required for landscape management and ecological enhancements. No planning obligation should be required, as suggested by the Council.[66, 81]

Recommendation

147. I recommend that the appeal should be dismissed.
148. Should the Secretary of State disagree, I recommend that planning permission should be granted subject to the conditions set out in the Schedule annexed to this report.

Brendan Lyons

INSPECTOR

Annex One

Schedule of Recommended Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. This development hereby permitted shall be carried out in accordance with the following approved plans: -
 - Location Plan (1447.04 Rev.A)
 - Site Plan (15007001-06 dated 01.09.2015)
 - Typical Transformer Stations (15007001-07)
 - Substation WPD – Switchroom Design (15007001-08)
3. Prior to the commencement of the development a scheme for the provision of surface water drainage works, based on sustainable drainage principles, shall be submitted to and approved in writing by the Local Planning Authority. The drainage works shall be completed in accordance with the details and timetable agreed.
4. Prior to the commencement of the development a programme of archaeological work to determine any archaeological remains present shall be submitted to and agreed in writing with the local planning authority. The development shall be carried out in accordance with the agreed scheme of archaeological work including any necessary mitigation.
5. No development or site clearance work shall commence until details of protection for the trees, hedgerows and the Jack Holes SINC in accordance with BS5837 2012: *Trees in relation to design, demolition and construction – recommendations* have been submitted and approved in writing by the Local Planning Authority. The approved protection measures shall be fully implemented prior to the commencement of any works on site and shall be retained throughout the construction phase until the completion of development.
6. No development shall take place in proximity to any barn owl nesting box unless a barn owl survey has first been undertaken by a qualified and experienced ecologist. The survey shall ascertain whether nesting activity is taking place and the status of any chicks. The survey shall make recommendations for further mitigation required which shall be carried out in full prior to any development in proximity to the nesting box. A copy of the survey and recommendations shall be forwarded to the Local Planning Authority within 7 days of its completion.
7. To avoid the risk of harm to other species of nesting birds, site clearance and dismantling works shall be undertaken outside the bird nesting season, which runs between mid-February and September inclusive. At other times, no site clearance works should be undertaken until the site has been surveyed for nesting birds by a qualified and experienced ecologist. If nesting birds are discovered, clearance works in proximity to the nest shall be suspended until a further survey has confirmed that the young have fledged. A copy of any survey shall be forwarded to the Local Planning Authority within 7 days of its completion.
8. No development or site clearance shall commence until a Landscape and Biodiversity Management Plan setting out the management and enhancement of the

site over a ten year period has been submitted to and approved in writing by the Local Planning Authority. The Landscape and Biodiversity Management Plan shall be carried out to an accepted methodology and provide full details of:

- How vegetation will be maintained through the establishment period and managed thereafter;
- Provision for the replacement of any planting which dies, becomes diseased, damaged or removed;
- Full details of all management and enhancement operations together with a timetable for each operation;
- Monitoring and reviewing the effects of management and incorporating any remedial works required to implement the approved landscape scheme and ecological enhancements.

The site shall thereafter be managed in accordance with the approved Management Plan.

9. Prior to the commencement of engineering and construction activities a Construction Management Plan setting out how the works will be undertaken and giving details of arrangements for the control of noise, dust and debris shall be submitted to and approved in writing by the Local Planning Authority. The approved arrangements shall be maintained during the course of all construction activity.

10. Prior to the commencement of the development, a Construction Methodology Statement shall be submitted to and approved by the Local Planning Authority. The Statement shall include: the number and type of construction vehicles expected to visit the site; the suitability of the access point(s) in terms of geometry, construction details and visibility along Bosty Lane, including Autotrack analysis demonstrating the vehicle can safely and satisfactorily manoeuvre in and out of the access(es); where the parking and turning facilities for site operatives and construction deliveries will be located together with full details of the wheel cleansing arrangements to prevent mud or other material from being deposited on the highway during the period of construction. These provisions shall be maintained during construction in accordance with the approved details.

11. Prior to substations, transformers, and associated machinery / equipment coming into use, evidence that operation of the site will not give rise to a Noise Rating greater than 35 dB one metre from the facade of any residential premises shall be submitted to and approved in writing by the Local Planning Authority.

12. No demolition, construction or engineering works, (including land reclamation, stabilisation, preparation, remediation or investigation), shall take place on any Sunday, Bank Holiday or Public Holiday*, and such works shall only take place on other days between the hours of 08.00 to 18.00 weekdays and 08.00 to 14.00 Saturdays. No plant, machinery or equipment associated with such works shall be started up or operational on the development site outside these permitted hours.
(Bank and Public holidays for this purpose shall be: Christmas Day; Boxing Day; New Year's Day; Good Friday; Easter Monday; May Day; Spring Bank Holiday Monday and August Bank Holiday Monday)*

13. Prior to the commencement of development full details of all external facing materials shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

14. There shall be no artificial lighting of the site unless otherwise approved in writing by the Local Planning Authority.

15. During the operation of the development hereby permitted, no goods, waste or other items or materials shall be stored or displayed in the open on the site.

16. Prior to the commencement of development details of site security measures shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented and retained thereafter.

17. All development associated with the development hereby approved including all solar panels/arrays, supporting structures, transformers, switch gear, inverters, substations, overground cabling, hard standings, road/tracks and fencing shall be dismantled and removed from the site and the land restored to its former condition no later than 25 years from the date of the first commissioning of the solar farm. Alternatively, in the event that the development ceases to operate and/or the generation of electricity stops prior to that date, all development associated with the hereby permitted solar farm including all solar panels/arrays, supporting structures, transformers, switch gear, inverters, substations, overground cabling, hard standings, roads/tracks and fencing shall be dismantled and removed from the site and the land restored to its former condition within three calendar months of operation ceasing. The date of first commissioning shall be confirmed in writing to the Local Planning Authority within one month of its occurrence. It is not a requirement of this condition for any planting or landscaping to be removed.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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