
Appeal Decisions

Hearing Held on 10 & 11 May 2017

Site visit made on 11 May 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 25 August 2017

Appeal A Ref: APP/U2235/W/16/3155702

Land at Pullen Farm, Staplehurst Road, Frittenden, Kent

- 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 Novus Solar Developments Ltd against the decision of Maidstone Borough Council.
 - The application Ref 15/503884/FULL, dated 1 May 2015, was refused by notice dated 24 March 2016.
 - The development proposed is use of the land to provide a solar farm and its enclosure by fencing; with the erection of solar panels, along with the provision of associated transformers, switch gear housing and a substation .
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Appeal B Ref: APP/M2270/W/16/3155716

Land at Pullen Farm, Staplehurst Road, Frittenden, Kent

- 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 Novus Solar Developments Ltd against the decision of Tunbridge Wells Borough Council.
 - The application Ref 15/505149/FULL, dated 1 May 2015, was refused by notice dated 19 May 2016.
 - The development proposed is provision of a temporary construction access and compound (within the administrative boundary of Tunbridge Wells District Council) to facilitate construction of solar farm (within the administrative boundary of Maidstone Borough Council).
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Preliminary and Procedural Matters

1. The two appeals, A and B, are in respect of separate applications made to the two councils, Maidstone Borough Council ('MBC') and Tunbridge Wells Borough Council ('TWBC') respectively. This reflects the fact that the proposed development, inclusive of the necessary construction compound, straddles the administrative boundary of the two local planning authorities.
2. For clarity and convenience the terminology deployed in my decisions is as follows:

'The Councils' is a reference to MBC and TWBC jointly.

'The proposed solar farm development' is a reference to the proposed development in its entirety (i.e. the subject of both appeals taken together).

'*The proposed solar arrays*' is an inclusive reference to the solar panels and the associated equipment and fencing within Maidstone as now described above in relation to Appeal A.

'*The proposed construction access/compound*' is an inclusive reference to the proposed temporary access and compound within Tunbridge Wells as now described above in relation to Appeal B.

Any reference to a specific item within those inclusive references is precisely that.

Matters common to both appeals are dealt with jointly.

Matters concerning one or other appeal exclusively are specifically referenced to 'Appeal A' or 'Appeal B' as appropriate.

3. Notwithstanding that each appeal must be determined on its individual merits the parties agreed that the two appeals logically stand or fall together. The proposed solar arrays in Maidstone could not be implemented without the proposed construction access/compound and in the absence of the former the latter would be wholly pointless and could not be justified. (This was in fact the essence of the TWBC case in any event, given the refusal by MBC of the proposed solar arrays.)
4. A concise Statement of Common Ground (SoCG) was finalised by the main parties on 5 April 2017.
5. Local residents indicated at the opening of the hearing that they had commissioned detailed professional landscape evidence which they intended to put to me. After a short discussion and period of reflection the residents voluntarily withdrew that intention and consequently I have had no opportunity to consider the content or conclusions of that report and disregard it entirely.
6. Following the close of the hearing, before my decision was issued, I became aware of the publication of the examining inspector's final report on the emerging replacement for the Maidstone Local Plan, including main modifications. I therefore afforded parties an opportunity to comment on any implications of this event, specifically, for their cases and I have taken into account the relevant comments received.
7. Amongst other things the appellant contends that the new policies DM4 and SP18 in the replacement plan that is approaching adoption should trigger an opportunity to submit a proportionate heritage assessment. I do not accept this proposition. The heritage issue stands to be considered irrespective of these adjustments to the emerging plan, or the Council's reasons for refusal, having been correctly highlighted by local residents. The application was lodged in the context of the National Planning Policy Framework, which had been established policy for three years at that time, and its expectations of applicants are made very clear at paragraph 128. The appellant's submitted *Cultural Heritage Desk-based Assessment* was explicitly prepared in that context (paragraph 4.1 and Appendix 3 refer) and had the opportunity to fully address the relevant points.

Decisions

8. Appeal A is dismissed.
9. Appeal B is dismissed.

Main Issues

10. I consider the main issues to be as follows:-

- The effect of the proposed development on the character and appearance of the area with particular reference to the landscape;
- The effect of the proposed development on the setting of listed buildings and other heritage assets within that landscape;
- Whether the proposed solar farm accords with local and national policy and whether on balance it represents sustainable development for the purposes the National Planning Policy Framework ('the Framework').

Reasons

The appeal site and its surroundings

11. The site description in the SoCG is rudimentary and the description of the area listed as being contained within that document is non-existent. I cannot therefore rely on them. It is important nonetheless to place the proposal in its proper context for the purposes of my decision.
12. The combined area of appeal sites A and B (from the application forms) exceeds 20 hectares, albeit the fenced area to contain the solar panels within Maidstone is around 15 hectares. The land involved in Appeal B is confined to a temporary construction compound adjoining the east side of Staplehurst Road, a short distance north of its junction with Mill Lane, connecting to the body of the appeal site within Maidstone (Appeal A) via a temporary track which would traverse gently elevated open land to the north of a scatter of residential properties on Staplehurst Road before descending towards an existing agricultural track to the north of Pullen Barn. Temporary connections for construction purposes to what are termed by the appellant the 'southern installation' (circa 9.25 hectares) and the 'northern installation' (circa 4.5 hectares) of solar panels would be from that track.
13. The solar panels, proposed to be in place for 35 years at this juncture, would clearly form the lion's share of the proposed development, both spatially and in terms of potential impact over its anticipated lifespan.
14. Appeal site A (essentially the proposed solar arrays) straddles a slightly meandering watercourse (a tributary of the River Beult) which has formed a gentle valley running north from Sandhurst Bridge Farm but veering to the north east as it develops beyond Sinkhurst Green before turning to the north west between Chickenden Farm and Place Farm/Headcorn Place. As a consequence of the geomorphology the land in which the appeal sites lie is gently undulating and appeal site A broadly occupies the discernible valley sides on a transect from Appleton Farm/Great Hungerden Farm in the south east to Chickenden Farm in the north west. The linear depression of the valley, centrally occupied by the water course separating the proposed southern and northern installations runs broadly between Pullen Barn and Place Farm.
15. This natural depression in the surface of the land is circumscribed by a series of continuously connected public rights of way, principally footpaths (referenced clockwise in sequence from the vicinity of Pullen Barn on Staplehurst Road; WC246, KM327, KM298, KH620 and WC247 to the vicinity of Great Hungerden

Farm on Water Lane). In general, these tend to follow the higher ground above the valley upon which the Appeal site A is centred. WC245, KM327 and KM302 form a partial outer circuit connecting Pullen Barn to Staplehurst Road north of the proposed construction compound and from that point northwards to Chickenden Farm. These also tend to follow the higher ground.

16. The undulating landscape is largely open and pastoral in nature with generally medium sized fields, hedgerows with occasional trees, scattered copses or "shaws" generally associated with ponds. The two fields where the proposed solar panels would be located are larger than is typical of the immediate vicinity whilst to the west and south west of Chickenden Farm the landscape is flatter and perceived as an open sweep historically associated with the Canadian and US air forces which laid the area out¹ as an "advanced landing ground" in preparation for the Normandy 'D-Day' Landings. A memorial to the pilots and ground crews is situated at the head of Chickenden Lane, near the farm.
17. Historic influences on the landscape are also manifest in the settlement pattern, which is largely centred on groups of buildings and hamlets associated with the farmsteads mentioned, with listed buildings occurring at or in the close vicinity of Chickenden Farm, Place Farm, Headcorn Place, Great Hungerden Farm, Sandhurst Bridge Farm and along Staplehurst Road. Owing to the topography and the nature of the landscape there is some, albeit limited, intervisibility between these groups of buildings from certain points even when trees are in leaf.
18. The proposed solar farm development straddles the boundaries between the Frittenden, Staplehurst and Headcorn parishes, which converge at Sinkhurst Green.² The northern installation would be in the Staplehurst Parish, the southern installation would be in Headcorn Parish and the construction compound would be in Frittenden Parish.

Relevant policy

19. In the case of Appeal A the development plan principally comprises the saved policies of the Maidstone Borough-Wide Local Plan (2000), (the 'MBLP'). The emerging replacement for the MBLP has been under examination but is potentially material as emerging policies are evidently not in contention or have been endorsed or are to be inserted on the recommendation of the examining inspector. It is therefore close to formal adoption. I refer to this as the 'EMBLP'. Policies SP17, DM1, DM3, DM28 (now proposed to be renumbered DM24) and DM34 (now to be renumbered DM30) were said by MBC to merit weight and, given the advanced stage the EMBLP has now reached, this weight is substantial, as is the weight to be accorded to a new policies (DM4 and SP18) concerning the historic environment separately. The main modifications also include changes to SP17 and DM3 but, in the round, the broad intentions of the EMBLP concerning heritage, the countryside and the natural environment are not to be fundamentally altered, as MBC has indicated.
20. Within Maidstone, the Staplehurst Neighbourhood Plan³ ('SNP') is now part of the development plan also.

¹ Doc 8

² Doc 4

³ Made on 7 December 2016

21. In the case of Appeal B the development plan is the Tunbridge Wells Local Plan 2006 ('TWLP') and the Core Strategy for that borough (TWCS). The most relevant policies are EN25 of the TWLP and CP4 and CP14 of the TWCS.
22. The development plan policies most relevant to Appeal A are ENV6, ENV28 and ENV34 of the MBLP and PW3 of the SNP.
23. MBC also has a 'Planning Advice Note' concerning large scale (>50KW) solar arrays but the note does not have the status of SPD, as the appellant notes, and, although potentially material, may be accorded little weight.
24. The National Planning Policy Framework ('the Framework') is of course a powerfully influential material consideration and various ministerial statements and advice are also material. I refer to these as necessary. I also take account of relevant guidance in the Planning Practice Guidance ('PPG').
25. Regarding Appeal A: Policy ENV28 of the MBLP does not anticipate renewable energy developments in the countryside and tends to the absolute in resisting harm, as opposed to balancing harm against benefits. To that extent a lack of consistency with the Framework approach reduces the weight I accord it. That does not however, render it irrelevant and, as MBC effectively indicates, the policy's general object of protecting the countryside is not inconsistent with the Framework's core principle that the intrinsic character and beauty of the countryside should be recognised.
26. Policy ENV34 of the MBLP concerns the protection of Special Landscape Areas including the 'Low Weald' which encompasses the larger southern installation within the site of Appeal A. The policy accords priority over other planning considerations to the protection and conservation of the scenic quality and distinctive character of such areas requiring that "particular attention" be given to the scenic quality and distinctive character of such areas. The appellant counsels caution in the use of saved policies, partly on account of the letter dated 24 September 2007⁴, but I note that in itself refers contextually to the former PPS3 specifically which concerned housing development. Moreover, landscape quality tends to endure over time even though approaches to its classification may alter with local administrative circumstances and changing classification methodologies.
27. Quality is intrinsic to a landscape as we find it and in policy terms it is relevant now to look to the Framework for over-arching context. Whilst the valued landscapes which paragraph 109 seeks to protect and enhance do not equate to designated landscapes it is clear enough that the term does not preclude landscapes that are or have been formally recognised in the statutory development plan. The approach adopted at County level in the past, or by adjacent boroughs, is less relevant in this context than the fact that, within the Maidstone context, the Council has judged the landscape here to be worthy of protection for its particular and distinctive qualities. This, amongst other factors, including its physical attributes, is evidence that the landscape here is valued in the sense intended by the Framework.
28. MBC notes in any event that policies in the EMBLP tend to the same conclusion locally, namely that the Low Weald is a landscape of local value to be conserved and enhanced (SP17 –as proposed to be modified) and that

⁴ Appendix N to appellant's statement

decisions on renewable energy should take into account the landscape and visual impact of the proposal (DM28 or DM24 as it is to become), an approach echoed by policy PW3 of the SNP, albeit the currently adopted definition of the extent of the Special Landscape Area stops at the watercourse separating the southern array from the northern, thereby formally excluding the latter from the purview of policy ENV34 of the MBLP. The southern array, on the other hand, is formally excluded from the purview of policy PW3 of the SNP on account of it falling within Headcorn CP.⁵

29. Policy DM1 of the EMBLP will require amongst other things responsiveness to landscape value, DM3 will seek to protect positive landscape character and avoid significant adverse impacts as a result of development. DM34 (or DM30 as it is to become) will seek to prevent harm to identified landscapes of local value.
30. Turning to the local policies relevant to Appeal B, CP4 of the TWCS aims to conserve and enhance rural landscapes in the interests of maintaining the Borough's locally distinctive sense of place and character, whilst CP14 aims to protect the countryside for its own sake through a policy of restraint to maintain its landscape character and quality. Protection of the countryside for its own sake is not an expression used in the Framework but the concept is not wholly incompatible with its core principle that incorporates recognition of its intrinsic quality and beauty, albeit this must plainly involve the balanced approach to sustainable development which is the hallmark of the Framework. Policy ENV25 of the TWLP aims to minimise the impact of development on the landscape character of localities and avoid detrimental impact to the setting of settlements and unsympathetic to the character of rural lanes with specified attributes of importance including amenity and landscape. Again, those objects are not incompatible with the relevant objects of the Framework.
31. Notwithstanding the location of the proposed development astride borough and parish administrative boundaries, and the consequential differences in detail, all established and emerging policies relevant to landscape quality and distinctiveness pull in the same broad direction. Due regard to landscape quality and character must be accorded appropriate importance as a central tenet of local policy as expressed in adopted and emerging plans.
32. That importance is also a feature of national policy in the Framework, as is recognition of the importance of renewable energy, also embodied in a core principle of the Framework and within section 10, which addresses the impacts of climate change. The importance of landscape considerations in the necessarily balanced approach to, amongst other things, renewable energy, has been repeatedly emphasised in Ministerial statements and advice.⁶ The Ministerial perspective is reflected in PPG.
33. Impact on heritage assets is also a concern of central importance nationally and whilst in this case the Councils raised no particular concerns, local residents put forward sufficiently cogent reasons for me to identify heritage impact as an issue of potentially decisive importance. Policy ENV9 of the MBLP, which addressed, amongst other things, the setting of listed buildings, has

⁵ Doc 4

⁶ Notably the minister's speech to the Large Scale Solar Conference of 25 April 2013; the ministerial statement HWCS488 of 25 March 2015 *Solar energy: protecting the local and global environment*; and the Minister's letter to the Planning Inspectorate Chief Executive of 27 March 2015

been deleted and the current development plan for the borough as a whole is effectively silent on that matter. Policy PW4 of the SNP, however, is to the effect that new developments must have regard to the historic environment and heritage that is an integral part of the landscape.⁷ The proposed main modifications to the EMBLP include a new policy DM4, which closely reflects the statutory duty regarding listed buildings and their settings.⁸ That statutory obligation applies irrespective of the content of the development plan in any event. The proposed new policy SP18 links the collective contribution of heritage assets in the borough to the high quality of its landscape, reflecting the approach of the Framework at paragraphs 61 and 126, for example. The weight I accord to these emerging policies reflects their consistency with the relevant legislation and the approach embodied in the Framework and is substantial.

Character and appearance of the area with particular regard to landscape

34. As previously noted, a landscape professional was engaged by the local residents. I do not share his apparent concern that the appellant's landscape impact analysis does not adhere precisely to the current LVIA methodology recommended in the Landscape Institute's guidelines. There is no policy requirement to do so and the 'Purple Book' in its own terms purports to be no more than a statement of recommended guidelines based on the evolution of what is considered best practice to date, such recommendation in any event to be adapted as appropriate by the professional to the task in hand.
35. The important requirement is to approach the task systematically and transparently recognising that assessment of landscape and visual impact is not an objective science but ultimately a series of judgements by the relevant professional which may or may not be shared by others. It is evident that the appellant's landscape advisor has discharged that requirement and there is no suggestion from that Councils' professional advisers that is not the case. Moreover, in this context it is relevant to note the recent judicial comment that... *"planning decision-making is far from being a mechanical, or quasi-mathematical activity. It is essentially a flexible process, not rigid or formulaic. It involves, largely, an exercise of planning judgement....."*⁹
36. In considering the landscape element in planning decisions it is usual to consider effects on landscape character and potential visibility of a development in order to draw conclusions on the factors combining to impact on relevant receptors. In this case relevant receptors would include a limited number of local residences but more pertinently both regular and occasional users of the network of public rights of way previously noted. Notwithstanding localised difficulties or inhibitions that, from the experience of my site visit, I noted might be associated with grazing livestock, I have no evidence to suggest that they are anything other than reasonably well used, both by local people and visitors to the area. They are in any event public rights of way and the landscape to be appreciated from them is within the public domain.
37. In the more strategic context of the broader landscape the location of the proposed solar array within a valley, notwithstanding some potential for visibility from the distant Greensand Ridge, reduces the potential for

⁷ As explained in the representation to PINS from Stephen Oakes dated 19 January 2017

⁸ Planning (Listed Buildings and Conservation Areas) Act 1990 s66(1)

⁹ *Barwood Strategic Land II LLP v East Staffordshire Borough Council and SSCLG* [2017] EWCA Civ 893 para. 50

cumulative impact to negligible proportions. It is the potential for more localised impact that is central to the issue in this case.

Landscape character

38. The inherent quality of the landscape overall is reflected in its partial inclusion within the MBC (Low Weald) Special Landscape Area (SLA). However, I do not consider undue weight should be accorded to the fact that the boundary of that corresponds to the water course between the two proposed arrays, thereby formally excluding the proposed northern array from its purview. The fact of the matter is that there is no discernible change in landscape quality or character across that boundary. The two fields are integral and directly contribute to the character, appearance and quality of a relatively discrete but undulating tract of countryside within the circumference of the higher ground which tends to accommodate the network of paths and scattered elements of rural settlement. From all points on this network, as one progresses through it, the overall pleasantness of the largely pastoral scene is very apparent, as is its almost timeless sense of tranquillity and sense of remoteness from the pressures of the modern world. These are distinctive attributes, both physical and less tangible, which create a sense of place of a particular type. Whether formally designated or not, as the case may be, I have no doubt that the appeal site and its perceptible environs may properly be regarded as a valued landscape for the purposes of the Framework. The area within the Special Landscape Area qualifies by reason of that designation and in view of its particular attributes, whereas the area outside the designation shares those qualities in any event.
39. The landscape character SPD places the site within the Staplehurst Low Weald with a guideline to conserve and the 2015 Maidstone Landscape Capacity Study (LCS) assesses this as being of high overall landscape sensitivity and sensitive to change. For the above reasons, nothing I have read or seen, including the submitted LVIA, would cause me to question its sensitivity. The LVIA notes that *"the introduction of a large area of modern infrastructure installation within the context of a traditional farming environment has the potential to have a negative impact"*, albeit it goes on to opine that *"the site is relatively remote and benefits from significant visual enclosure, thus providing the capacity to absorb development without causing significant landscape effects over a wide area."*¹⁰ It does note, however, that *"views affecting the users of public rights of way tend to have a high sensitivity."*¹¹
40. In any event, it is clear to me that the character of the sensitive tract of landscape I have described would be transformed at its centre by the installation of the proposed solar arrays and associated equipment. They would be fundamentally incongruous relative to that character.

Visibility

41. The centrality of the proposed solar arrays on undulating land within the network of footpaths that is generally elevated would, absent mitigation, ensure that the negative change in character would be more or less continuously apparent. Having walked that network as a whole, including the identified viewpoints, I consider the submitted LVIA and the appellant's

¹⁰ LVIA Paragraph 6.3

¹¹ Ibid. Paragraph 6.4

representatives to have generally underestimated the potential visual impact of the arrays on users of the footpath network, even from the east; albeit this would generally be less affected than footpaths to the west owing to the greater distance and the screening of the southern array by its location on a westward facing slope and the existing mature vegetation along its eastern boundary. Users of Staplehurst Road/Water Lane to the south would not generally be aware of the installation as a consequence of visibility. (In respect of Appeal site B, however, its primary location directly adjacent to Staplehurst Road north of the Mill Lane junction would render it very evident during the relatively limited period of construction.)

Combined landscape and visual effects including scope for and effect of mitigation

42. Overall, as a consequence of the undulating nature of the topography and the location of proposed solar arrays at the centre of a circumscribing network of relatively elevated footpaths the substantially negative change to the character of the justifiably valued landscape would be readily apparent, absent mitigation, to regular local users of the footpath network and visitors to the area wishing to appreciate the area's qualities by use of that network. I place little weight on the potentially temporary nature of this adverse impact as 35 years is effectively a generation at least.
43. A significant element of planting proposed for mitigation purposes is outside the application site on land not indicated to be directly controlled by the appellant. This is inherently problematic as conditions requiring action outside an application site have to be negatively worded ('Grampian') style to be effective and retention of planting on land outside the direct control of the appellant would in any event be subject to enforcement difficulties. I acknowledge that by letter dated 7 March 2016 the relevant landowner has given "permission for access to the land outside the lease boundary of the proposed array to carry out the ecological works and hedge planting that have been detailed on the (above referenced) planning application"¹² but a letter of good intent does not equate to a binding and enforceable agreement and no such agreement, by way of an alternative, is before me. Attitudes and ownerships change over time and effective development management necessarily relies on certainty of control. It is unclear whether a long term management scheme as suggested by the Council as a condition could be adequately built into an offsite scheme of measures.
44. More fundamentally in any event I also have concerns, bearing in mind my assessment of the effect of the proposed solar arrays on landscape character and their potential visibility from the public realm around much of the Appeal site A, that the effectiveness of appropriate native species as a visual barrier would be insufficient at the rate of growth anticipated over 8 -10 years. In my estimation it is probable that more growth would be required to screen the development effectively from significant parts of the public realm and that this in itself would introduce uncharacteristically uniform vegetation at height so as to draw attention to the existence of the development behind an incongruously thorough and substantial screening within this undulating pastoral landscape that gains much of its character from open views across fields and hedgerows. In short, I do not consider the site readily lends itself to the principles of effective mitigation outlined in PPG.

¹² Doc 3

45. PPG warns that solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. I consider this to be a case in point. The implications of that undulating characteristic for enjoyment of the local footpath network through a valued landscape of considerable quality would in my view be significantly deleterious. Moreover, for the reasons I have indicated, such mitigation as might be possible and is proposed to ultimately screen the solar arrays from view would in itself have a marked tendency, if of sufficient stature to visually screen the development effectively, to harm the distinctive character of the landscape in any event, notwithstanding that some previously lost hedgerow would be replaced. In terms of the local landscape the proposed solar farm development does not commend itself.
46. All in all therefore, while the site would be well concealed in the broader landscape, I consider the difficulties of rendering the development sensitive to the more localised landscape, which is of considerable quality and importance, have been under-estimated and would not be effectively overcome by what is proposed in the way of mitigation in furtherance of the intentions of policy ENV6 of the MBLP. Notwithstanding the original advice of its officers, the Council's strong reservations are vindicated and the proposed solar arrays cannot be said to effectively pay particular attention to the scenic quality and distinctive character of the SLA as required by policy ENV34 of the MBLP or to be sensitive to the landscape as required by policy PW3 of the recently made SNP to the extent that it applies. Both merit the full weight due to adopted policies of the development plan as I find no significant inconsistency with the Framework's intention to protect and enhance valued landscapes.
47. On that basis there would be specific and harmful conflict with the weighty intentions of the existing development plan insofar as the effect of the proposed development on the character and appearance of the area, with particular reference to the landscape, would be very significantly detrimental. That outcome, in combination with the temporary construction works, would be contrary to the overall thrust of both existing and emerging development plan policy across the administrative boundaries and relevant policy nationally to the extent which that recognises the intrinsic character and beauty of the countryside and reflects that core principle in paragraph 109.

Setting of listed buildings and other heritage assets within the landscape

48. The statutory duty in determining planning applications and appeals, to which I have previously referred, is to have special regard to the desirability of preserving, amongst other things, the setting of listed buildings. Listed buildings are (designated) heritage assets for the purposes of national policy. It is established that the setting of a heritage asset is "*the surroundings in which a heritage asset is experienced*."¹³ The application was accompanied by the submission, amongst other topic reports, of a *Cultural Heritage Desk-based Assessment*.¹⁴ This focuses primarily on the archaeological potential of the Appeal site A. The report summarises and appends section 12 of the Framework (paragraphs 126 – 141 inclusive) concerning the conservation and enhancement of the historic environment. It notes that there are 8 Grade II listed buildings within "the wider study area" and comments in conclusion that the proposal is "unlikely to significantly affect the setting of Chickenden Farmhouse" and that this is a "Grade II listed building located c 320 metres to

¹³ National Planning Policy Framework: Annex 2 - Glossary

¹⁴ Oxford Archaeology: January 2014

the north west of the proposed solar development” The other listed buildings in the report’s defined circular study area are identified and described in the “Gazetteer of Cultural Heritage Assets” set out at Appendix 1 and mapped at Figure 2. The gazetteer is precisely what it is entitled, i.e. simply a list, and the report goes no further in respect of the Chickenden Farmhouse or the other listed buildings that surround the site, albeit at varying distances greater than 320 metres.

49. Paragraph 128 of the Framework is clear as to the approach that should be taken, i.e. the significance of any heritage assets affected, including any contribution made by their setting, should be described by applicants for planning permission. Simply noting their existence is not enough.
50. Third parties opined (in response to my question on the point) that the landscape within which the proposed solar farm development would be set is defined by listed buildings, rather than being simply a landscape with listed buildings. A number are to a small extent, in association with neighbouring rural buildings, visible from the Appeal site A (albeit with greater potential for visibility in winter months) and its immediate surrounds and there is visibility of the site from the vicinity of those buildings. However, the setting of heritage assets is not confined solely to visibility and I do not uncritically share the appellant’s contention to the opposite effect, namely that it is simply a landscape which happens to contain some listed buildings of limited visibility.
51. The residents’ more holistic view is not entirely devoid of substance bearing in mind that these designated heritage assets are experienced in the course of appreciating the landscape as a whole, for example in the course of a walk along one or more of the various footpaths, and belong to it along with the various other traditional rural buildings including the non-designated heritage assets in the Kent Historic Buildings Index. The explanatory text to policy PW4 of the SNP explains that... *“heritage is an integral part of the landscape. It is reflected as sites and the surrounds of sites but it is also the pattern of fields, route-ways and clusters of houses and farms. Understanding the heritage of an area includes understanding the landscape as a whole.”*
52. The best evidence before me (which is certainly no more than proportionate in the sense intended by paragraph 128 of the Framework) as to effect of the proposed development on the significance of the designated heritage assets is contained within the representations of Dr Betts.¹⁵
53. The gist of Dr Betts’ analysis is as follows: The appeal site is not in fact physically remote but rather the historic Wealden landscape hereabouts comprises collections of hamlets and isolated farmsteads linked by fields, footpaths and tracks. The proposed development has 9 listed buildings surrounding it within 500 metres (plus 3 buildings from the Kent Historic Buildings Index). Also there are farm workers’ cottages, barns and oasthouses within this range. The insertion of a large utilitarian industrial installation such as that proposed would be at odds with this “natural” rural landscape so as to cause a “disconnect” between these buildings and their environment, thereby negatively altering the character and appearance the historic landscape which is considered attractive to visitors. Contrary to the “presumption that planning permissions should do no harm to the environs of a listed building” the environs of numerous listed buildings would be impacted.

¹⁵ Sent to PINS 19/01/17

54. Although expressed in “layman’s terms” the picture that is painted is certainly recognisable on visiting the site and the area. Although plainly not “natural” in the sense of being wild and uninfluenced by the hand of man, this is nevertheless an almost entirely agrarian landscape that has evolved gradually over time with the designated heritage assets being functionally related to it in origin and distributed amongst the various small groups of buildings which are characteristic. Bearing in mind the glossary to the Framework, the advice therein and relevant case law,¹⁶ I consider the totality of that setting (and its current relative integrity) does contribute to the significance of that collection of designated heritage assets which the listed buildings represent, distributed generally around the location of the proposed development.
55. It is clear from Dr Betts’ analysis that in the circumstances of the locality, and bearing in mind also the definition of ‘historic environment’ in the glossary to the Framework, the whole picture in this respect is greater than the sum of its parts. Whilst his analysis falls short of articulating a clear exposition of precisely how important the overall agrarian setting is to the significance of the assets in question (the onus for which the Framework places on applicants for planning permission in any event) it is clear that the proposal has the potential to have an adverse impact on their significance, albeit temporarily if removed after 35 years.
56. That said, it was readily accepted by Dr Betts that the harm to their significance would be ‘less than substantial’ for the purposes of Framework policy. That does not necessarily equate to slight or inconsequential harm, as is very clear from the Framework, but rather it is a factor to be weighed in the balance against any public benefits along with any other harm. Bearing in mind also my conclusions on the first main issue, the interaction with those and the submissions of Dr Betts in particular, it is a factor, although not decisive in itself, to which I accord more weight than either the Councils or their advisors evidently do, such matters not being in dispute with the appellant.¹⁷
57. To conclude on this issue: Harm to designated heritage assets, including their setting, must be accorded considerable weight and importance. In this case the harm to the significance of the listed buildings in the landscape claimed by third parties is less than substantial. Whilst in my estimation more significant than has previously been recognised by either the appellant or the Councils, and therefore clearly a factor to be weighed in the balance against the public benefits of the proposal, I would not consider the less than substantial harm sufficient in itself, in this case, or parallel harm in respect of relevant intentions of the SNP or EMBLP to outweigh the benefits of the proposed development, which would be significant. It is harm nevertheless, and therefore adds weight in the balance to the principal harm I have identified, namely to the character and quality of the local landscape, which of course encompasses the presence of heritage assets, both designated and non-designated, in any event.

Consideration and conclusion: Decisive issues in the planning balance

58. My third main issue essentially concerns material considerations and the balance that must be struck in ascertaining whether or not the proposed development may be considered sustainable.

¹⁶ *Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG* [2014] EWCA Civ 137

¹⁷ SoCG

59. Parties have referred to a number of appeal decisions but these are of particularly limited assistance in a case such as this, which turns very specifically on its own merits and precise circumstances. None are directly comparable in those respects and the weight I accord to them as material considerations is correspondingly limited.
60. Framework policy is of course highly material and the development plan is neither absent nor silent on relevant matters. The conflict with the basic intentions of policy therein I have identified has previously been acknowledged in the Maidstone Planning officer's report recommending approval.¹⁸ For these appeals, therefore, the issue of sustainability falls squarely to be considered in the legislative context of Section 38(6) of the Planning and Compulsory Purchase Act 2004 – a context clearly set out in paragraph 196 of the Framework.
61. Having carefully considered the site and its surroundings including particularly those nearby environs within the public realm, my clear view is that the proposed development on Appeal site A as currently conceived would give rise to significantly harmful conflict with the intentions of the development plan as it exists, and is proposed to exist, and that furthermore the conflict with national policy on landscape protection would be both significant and harmful. It would not protect or enhance a valued landscape. The notably temporary harm of that nature arising from Appeal B could only be justified therefore if I were to conclude that, in respect of Appeal A, material considerations outweighed the harm to policy intentions in respect not only of heritage but also in respect of landscape.
62. It is very clear in the Framework that renewable energy is needed and therefore an object to which importance must be attached. That is to be reflected in policy DM28 (now to become DM24) of the EMBLP, which acknowledges both heritage and landscape considerations. Equally, heritage considerations and the protection and enhancement of valued landscapes is an object to which importance is to be attached and ideally developments of all kinds should be plan-led, avoiding harmful conflict with local policy objectives where possible. Moreover, Ministerial statements are to the effect that the promotion of renewable energy should not automatically outweigh local environmental concerns including those relating to landscape quality and character. That message is reinforced through PPG which indicates in any event a preference for the use of buildings and previously developed land for solar power projects in preference to agricultural land, albeit there is no sequential test required and that the most compelling justification for its loss is only required in the case of best and most versatile land, which is not a factor in the present case.¹⁹
63. Clearly, renewable energy projects such as that proposed in this case must be developed where there is capacity in the Grid and I acknowledge the scope for the use of previously developed land and large scale buildings is limited in even the broader area beyond the vicinity of the appeal sites. Equally, it has to be recognised that it is in the nature of electricity generation, including renewable energy, that subject to Grid practicalities, it is relatively footloose and may therefore be developed in a wide range of situations with varying degrees of inherent environmental sensitivity.

¹⁸ Paragraph 7.1

¹⁹ SoCG

64. There would of course be economic and social benefits including some employment at the time of construction, in particular, but these could be realised elsewhere as a consequence of comparable projects. Whilst I understand that identifying less harmful sites is likely to be challenging in this part of the country, I am nonetheless obliged to determine the appeal on its own specific merits. I appreciate that the appellant has sought to minimise impact through strategic choice of location and localised measures but, for the reasons I have identified under the first of the main issues in particular, there would be conflict with the intentions of relevant development plan and emerging development plan policies of varying but nonetheless generally substantial weight. The lesser implications for the conservation of built heritage, specifically, also weigh to some extent against the proposal and in terms of the contribution of that heritage to the historic nature of the landscape. (Now to be explicitly recognised in principle as a distinct contribution to borough's strong sense of place by the "new"²⁰ policy SP18 of the EMBLP). This lends additional, by no means insignificant, weight to the conflict with the development plan and national policy concerning landscape specifically.
65. The proposed solar farm is anticipated²¹, broadly speaking, to generate sufficient energy to power in excess of 2750 homes with an annual reduction in CO₂ emission of over 4,000 tonnes. This is a significant environmental benefit of public importance and I am keenly aware of the national and ultimately global environmental benefits and importance in principle of renewable energy projects such as this.
66. However, in the particular circumstances of this case, I do not consider that primary benefit, for all the reasons I have given, is sufficient to outweigh the harmful overall conflict with the intentions of the development plan and those aspects of Framework policy which seek to conserve environmental quality locally. Notwithstanding mitigation proposals, the very considerable quality of the local environment would be severely compromised and the impacts would not therefore be acceptable in the sense intended by paragraph 98 of the Framework. The broader economic, social and environmental benefits of the proposal do not outweigh the primarily environmental harm locally and I therefore consider the balance of planning advantage to be against the proposed solar arrays. They do not, on balance, represent sustainable development.
67. I have taken all other matters raised into account, including the potential for some biodiversity enhancement, but none are sufficient in themselves or cumulatively, to alter the overall balance of that conclusion in respect of Appeal A and it logically follows, in view of its purely facilitating role, that Appeal B should also be dismissed as it would cause unnecessary short term harm.

Keith Manning

Inspector

²⁰ Existing basic policy intentions to be separated out, for clarity and soundness, by Main Modifications 12 and 40 from those concerning, specifically, the natural environment. Paragraphs 44-46 of the examining inspector's final report under *Issue 5*

²¹ Appellant's statement paragraph 7.53

APPEARANCES

FOR THE APPELLANT:

Julia Edwards BSc MLD CMLI AsRTPI	Corylus Planning and Environmental Ltd
Phillip Duncan BSc Hons MRICS	Corylus Planning and Environmental Ltd

FOR THE LOCAL PLANNING AUTHORITIES:

Maidstone BC

Tony Ryan BA Hons TP Dip MRTPI	Principal Planning Officer
Deanne Cunningham BA Dip LA CMLI	Heritage, Landscape & Design Officer

Tunbridge Wells BC

Corinna Griffiths BA Hons MA Hons	Planning Officer
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INTERESTED PERSONS:

Sheila Roche	Local resident
Nick Harper BA Dip LA CMLI HLA	Landscape Architect
Jeremy Beech CBE C Eng	Former Chairman, Frittenden Parish Council
Dr Philip Betts PhD BA Hons	Local resident
Michael Fitzgerald MSc	Local resident
Paul Linaker	Local resident
Simon Evans MA	Local resident
Cllr Jon Buller	Staplehurst Parish Council
Cllr John Perry	Staplehurst Ward Councillor
Cllr Shellina Prendergast	County and Ward Councillor
Anthony Staple	Chairman, Frittenden Parish Council
Caroline Carmichael	Clerk to Headcorn Parish Council
Colin Hosmer	Local resident
Janet Hosmer	Local resident

DOCUMENTS

- 1 Statement from Colin Hosmer
- 2 Email from Ian Harris
- 3 Letter from H A Carpenter & Sons to appellant 07/03/16
- 4 Map of parish boundaries
- 5 'ipetition' (on-line) opposing development
- 6 Handwritten petition opposing development
- 7 Revised position statement – Frittenden Parish Council
- 8 Map of war-time Staplehurst Advanced Landing Ground showing position of ALG Memorial