



Appeal Decision

Hearing Held on 8 and 9 May 2024

Site visit made on 9 May 2024

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2024

Appeal Ref: APP/P1615/W/23/3329458

Land South of Murrells End Farm, Murrells End, Hartbury, Gloucester

GL19 3DF

- 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 Mr Jack Vaughan of Elgin Energy EsCo Ltd against the decision of Forest of Dean District Council.
 - The application Ref is P0271/22/FUL.
 - The development proposed is installation and operation of a renewable energy generating station comprising ground-mounted photovoltaic solar arrays together with inverter units, substation, site access, internal access tracks, security measures, access gates, other ancillary infrastructure and landscaping and biodiversity enhancements.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the course of the appeal the appellant provided the Council with additional information in respect of its second reason for refusal relating to archaeology, such that the Council is now satisfied, subject to conditions that the scheme would not have an adverse effect upon archaeology upon the site.
3. The appellant also produced additional evidence (Ecological Addendum 2023 – Final Report by RPS dated November 2023) in respect of protected species and the Council consider that that subject to conditions that the proposal would have no adverse effect on horseshoe bats related to the Wye Valley and Forest of Dean Bat Special Area of Conservation, bats in trees, nesting birds (apart from skylarks) amphibians and reptiles, and dormice. However, additional surveys identified that the appeal site was being used by skylarks, thereby the concern raised in respect of protected species remains in so far as skylarks are concerned.
4. A number of documents submitted with the appeal make reference to the export capacity of the proposal being 50 megawatts (MW). However, the Planning Act 2008 specifies that if a generating station is (when constructed) expected to be a generating station whose capacity is more than 50 MW then it is defined as a Nationally Significant Infrastructure Project (NSIP).¹

¹ Sections 14(1)(a) and 15(2)(c) of the Planning Act 2008.

5. The appellant confirmed that the connection offer is for a maximum export capacity of 40000kVA (40 MW). The maximum export capacity of the project remains below the threshold for a generating station to be considered a NSIP.
6. Following the Hearing a Written Ministerial Statement was published on 22 May 2024 in respect of 'Solar and protecting our Food Security and Best and Most Versatile (BMV) Land. The main party's comments were sought on this and those received have been taken into consideration.
7. The appeal site is proximate to a non-designated heritage asset² and various designated heritage assets³. Notwithstanding the agreement between the parties on heritage assets, Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) places a statutory duty on the decision maker to have special regard to the desirability of preserving a listed building or its setting. The National Planning Policy Framework (Framework) gives great weight to the conservation of heritage assets, and that less than substantial harm be outweighed by public benefits of the proposal. Against this context, the matter of heritage has been considered as a main issue.

Main Issues

8. The main issues in this case are the effect of the proposal on:
 - the character and appearance of the area,
 - the living conditions of nearby occupiers,
 - the use of best and most versatile agricultural land (BMV),
 - protected species, notably skylarks,
 - the significance of non-designated and designated heritage assets, and
 - whether, in light of the above issues and other matters, the planning balance falls in favour of, or against, planning permission being granted for the proposal.

Reasons

9. The proposal includes solar panels mounted on fixed frames with an intended total export capacity of up to 49.9 MW, 24 inverter stations, a substation compound, deer fencing, security cameras, internal access track, a temporary construction compound and landscaping. The intention is that the majority of the scheme, with the exception of the Distribution Network Operator substation and new access, would be upon the site for a temporary period of 40 years.
10. At this stage the final details of the design of the site are not known, however concept drawings have been submitted to demonstrate how the site could be laid out and designed. It was agreed at the Hearing that the detailed design and siting could be controlled by planning conditions in the event that the appeal was allowed. Such an approach is reasonable in my judgement given that a contractor has not been appointed for the development. The level of

² Murrells End Farm

³ Grade II* listed Hartpury House (List Entry Number: 1305312); Grade I listed Church of St Mary (List Entry Number: 1304684); Grade II listed Sunday School in the Churchyard, Church of St Mary (List Entry Number: 1078612); Grade II listed Ingleside Farmhouse (List Entry Number: 1152680); Grade II listed Lassington Court (List Entry Number: 1171506); Grade II* listed Church of St Oswald Tower (List Entry Number: 1091372)

information before me is however sufficient for me to assess the impacts of the proposed development.

Character and Appearance

11. Forest of Dean District Council Core Strategy (23 February 2012) (CS) Policy CSP 1 requires new development to conserve, preserve or otherwise respect important characteristics of the environment, and demonstrate an efficient use of resource. The policy establishes that development that is not able to be satisfactorily accommodated will not be permitted.
12. Forest of Dean District Council Allocations Plan 2006 to 2026 (adopted June 2018) (AP) Policy AP 1 relates to sustainable development with an overall aim of improving the economic, social and environmental conditions of the area. AP Policy AP 2 has similar objectives in terms of renewable energy installations. It sets out that proposals that result in a significant adverse impact are likely to be considered unacceptable unless there is clear evidence of local community involvement and leadership.
13. CS Policy CSP.2 requires development to reduce the impacts of climate change, and amongst other matters requires long lasting biodiversity enhancements, including green infrastructure corridors and demonstrate how development comprehensively utilises passive solar gain.
14. AP Policy AP 4 requires new development to be of a high quality which makes a positive contribution to the design quality of the area. Amongst other matters the policy requires that account is taken of local character and history in terms of design solutions is visually attractive, employing good architecture and landscaping which respects the amenity of residents and others and contributes to environmental enhancement. Policy AP 5 of the AP requires development to protect and promotes the special qualities, historic character and local distinctiveness of the district in order to maintain its cultural identity and sense of place.
15. These policies are consistent with the National Planning Policy Framework, which at paragraph 180 requires that planning policies and decisions should contribute to and enhance the natural and local environment and recognising the intrinsic character and beauty of the countryside, and chapter 12 which establishes that good design is a key aspect of sustainable development.
16. Planning Practice Guidance (PPG) on renewable and low carbon energy states that 'there are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology and critically, the potential impacts on the local environment, including from cumulative impacts.' (Paragraph: 005 Reference ID: 5-005-20150618).

Landscape Character

17. The appeal site comprises approximately 73 hectares of agricultural land comprising largely arable agricultural fields. Part of the site is traversed by two rows of overhead power lines and large pylons. The site is gently sloping with the higher ground to the northern boundary and beyond, falling away towards the River Leadon which is located in a southerly direction to the site.

- Hedgerows and trees form the boundaries to the fields, and there are a number of individual trees located within the fields.
18. The area is characterised by a patchwork of mainly large enclosed arable and pasture fields providing a tapestry of colour across the valley and hillside. It is sparsely populated with isolated farmsteads and hamlets dispersed through the landscape accessed by quiet, winding roads and lanes bordered by tall hedgerows.
 19. The site is located within National Character Area (NCA) Severn and Avon Vales 106 NCA and key characteristics include a diverse range of flat and gently undulating landscapes with sparse woodland. Whilst sparse across this landscape, a well wooded impression is provided by frequent hedgerow trees, parkland and traditional orchards. Within the Forest of Dean Landscape Character Assessment 2002 (LCA) the host landscape character is identified as type 6: Unwooded Vale and sub-landscape character area 6b: The Severn Vale. The area is described as deeply rural with little woodland cover other than small copses and shelter belts. Well maintained, and often ancient hedgerows forming an extensive network throughout the vale is a further defining characteristic as is a soft rolling landscape.
 20. In terms of cultural heritage, the farmsteads are mainly historic, and within the hamlets and villages, properties are clustered around the Church whose spire can be seen over some distance. A number of listed buildings are within the vicinity of the site and to varying degrees the appeal site forms part of the setting. This matter is discussed further later in my decision. The field patterns are largely historic and the cultural associations are high.
 21. The Framework indicates that planning policies and decisions should contribute to and enhance the natural and local environment by amongst other matters protecting and enhancing valued landscapes and that the intrinsic character and beauty of the countryside should be recognised. The Framework does not define what constitutes a valued landscape. The site does not form part of any designated landscape. However, given that all landscapes are valued by someone at some time, the term valued landscape would mean a landscape that is of value because of demonstrated attributes that takes it to a higher level.
 22. In this regard, the recreational value of the area is high and is likely to be valued by visitors to the area and residents. Numerous public rights of way (PROW) and national trails (Wysis Way and Three Choirs Way) are within close proximity the site, including footpath GHA55 which runs along the north west boundary of the site and footpath GHA49 and bridleway GHA48 which run along the north eastern boundary.
 23. The appeal site does not lie within a designated landscape and there is no dispute that the site is typical of that identified in the LCA. The condition of the hedgerows is generally good and whilst sparse in places, I do not share the appellant's view that the landscape value is of low to medium value. Although the overhead lines and pylons detract from the landscape character, it is largely intact and in my judgement is of medium landscape value, rather than medium/high as submitted by the Council.
 24. Notwithstanding this, the appeal site is typical of the landscape type and whilst accessible, there is nothing that differentiates it, for example physical

attributes from the wider landscape it is located within. The fields and hedgerow enclosures are typical and not unusual. Accordingly on the basis of what I have seen and read there is nothing that would elevate the appeal site or its surroundings to a valued landscape.

25. The introduction of solar panels and associated equipment over the appeal site would clearly alter the appearance of the agricultural field introducing utilitarian structures where there are none at present. During construction, the operation of plant, machinery and the use of the site compound would affect the tranquillity of the area. The existing field pattern would be altered to the east of Murrells End Farm with proposed fencing cutting across the top corner of one of the fields.
26. A construction period of 16 weeks is indicated by the appellant, which whilst questioned by the Council is a short period. The adverse effects on the character of the landscape during this period would be for a limited period also. Whilst the invertors are likely to be audible in close range, their effect upon the tranquillity of the area would be unlikely to be discernible to the degree that the character of the area would be harmed.
27. During construction and operation the public right of way network would remain. The largely limited height of the equipment, even taking account of the panels being 3.2 metres high, would be unlikely to alter the undulating landform. The retention and supplementing of existing landscape features characteristic of the landscape character type, including hedgerows would allow the proposal to be accommodated within the landscape without undue consequences for the maintenance of the baseline situation.

Visual Effects

28. There is no dispute that from the appellant's Landscape and Visual Impact Assessment (LVIA) Viewpoint 11 that walkers using the footpath GH49 would experience major adverse visual effects from the proposal. The proposal would also likely obscure views across the largely open undeveloped countryside to walkers from elsewhere along this footpath, and to the south of viewpoint 2 along the footpath on the northern boundary of the site where there is no hedgerow at present. From these areas the height of the panels, fencing and associated equipment would be obvious and would intrude into the largely undeveloped area of countryside obscuring important views including in the distance May Hill and the historic settlement of Rudford. The effect in my judgement would be major adverse.
29. From other nearby footpaths, the visual effect would be less because of the intervening distance and the largely filtered views through vegetation, including from viewpoint 3 where the panels and substation would be visible. I recognise however that the development would be more visible when the hedgerows and trees were not in leaf. Even so intervening vegetation which would be supplanted and allowed to grow taller would mean that there would be no lengthy experience of walking towards a renewable energy generating station.
30. In distant views, including from the opposite side of the valley, the proposal would display as different coloured fields within the patchwork of colours prevalent in the locality. The same would be true from LVIA viewpoint 9 which currently provides a clear view of the appeal site within the surrounding countryside. This viewpoint forms part of the Wysis and Three Choirs Way.

From residential properties/gardens and this viewpoint, given the distance between the individual design of the panels, fencing, equipment housing would not be apparent.

31. From the surrounding roads between Highnam and Rudford glimpses of the appeal proposal would be obtained through existing vegetation. However, given the likely speed of vehicles using the road the visual effect would be low and would be unlikely to detract from the driver and passenger experience of the landscape quality of the locality.
32. The appellant is suggesting that to mitigate the harms identified in the LVIA that new hedgerows with hedgerow trees would be planted and existing hedgerows supplemented where there are gaps within them. Whilst such planting is likely to effect sensitive receptors such as walkers using the public right of network adjoining the boundaries to the site with views of features visible now unlikely to be the same once the hedgerows and landscaping has matured, change does not necessarily equate with harm. Indeed, the reinforcement of these landscape features which are a characteristic of the landscape types that the appeal site is identified within would reinforce and enhance the landscape character of the area. I appreciate that plants may die or become diseased, but a landscape management condition could address such issues.
33. Moreover, the stark difference in the appearance of the site during construction and in the early years of the development and the enjoyment of the PROWs would be over a relatively short distance, and the further away a walker/cyclist/horse rider gets away from the site, views of the development would be filtered by existing vegetation thereby the magnitude of impact on visual receptors would be reduced. I acknowledge that trees/vegetation relied on to filter views outside the control of the appellant may be removed or may die, however I can only assess the proposal on the evidence before me and at this stage, as observed on my site visit the vegetation referred to in the LVIA was present.
34. I note the Council's reference to another solar scheme where the construction period has taken substantially longer than the 4 months indicated in this case, however it seems that this is unusual and does not alter the conclusions that I have reached in this regard.

Cumulative effects

35. The LVIA assessed the cumulative impacts of the scheme against 4 schemes⁴, 2 with planning permission and 2 pending a decision. Since the submission of the planning application planning permission has been granted for P0265/22/FUL at Highleadon and P2061/21/FUL at Moat Farm near Newent has been refused planning permission and is currently at appeal.
36. The Council has drawn my attention to other solar developments within relative proximity to the appeal site to the south of Maisemore⁵ which has not been implemented, at Rymes 1 and 2⁶ closer to Newent which are part operational

⁴ Ref P2061/21/FUL (Pending); 15/00410/FUL (Approved); 15/00409/FUL (Approved); P0265/22/FUL (Pending)

⁵ Ref 22/00397/FUL for 37MW

⁶ Refs P1976/14/FUL & P1977/14/FUL

and at Linton Farm⁷, and land north of Stream Lane⁸ which was refused planning permission but is currently at appeal.

37. From higher ground it is likely that some of these schemes could be seen on combination with the appeal site and each other. Users of the Three Choirs and Wysis Way would be likely to experience a number of the schemes whilst walking these long distance routes. The distance between the schemes, intervening landscape features and otherwise rural character and appearance of the area would however ensure that the schemes were not experienced in the same field of view. Moreover, the schemes would be largely viewed in a wider panorama of the landscape. Their presence would be unlikely to detract significantly from the enjoyment of these routes.
38. The proposal in combination with other approved, implemented and unimplemented schemes would not convey the impression of 'Solarshire' as suggested at the Hearing.
39. In my judgement the proposal would cause varying degrees of harm to the character and appearance of the area, with the greatest harm caused close to the site, reducing with distance and over time as landscaping matures. Looking at the proposal as a whole for the lifetime of the development, the harm that would be caused could be suitably mitigated and controlled by planning conditions, such that there would be no conflict with the landscape and visual impact safeguarding principles of AP Policy AP 2 and CS Policy CSP.1, the sustainability aims of AP Policy AP 1, and the character and landscaping objectives of AP Policies AP 4 and AP 5.

Living Conditions

40. Although not a reason for refusal in the Council's decision notice, the parties in the Statement of Common Ground indicated that the proposal would result in harm to the living conditions of nearby occupiers.
41. The proposal would be visible from a number of residential properties including the dwellings in Rudford by the Church and at the top of Church Lane. From these properties, glare from the panels is likely to be observed at certain times of the year and certain times of the day, as set out in the appellant's Glint and Glare Study. However, the intervening distance between these residential properties, existing and proposed landscaping would ensure that there would be no material harm to outlook from these dwellings to the degree that the occupiers' living conditions would be harmed.
42. Construction traffic in all probability would increase the number of vehicles using the country road network within the vicinity of the site. The appellant has calculated that the number of vehicles would be low and whilst such vehicles would be likely to be larger than the average vehicles using the highway network, their comings and goings to the site would be over a relatively short period of time. Whilst the vehicles may inconvenience other road users and may result in increased manoeuvring and reversing to allow vehicles to pass, this would be unlikely to be so frequent to harm the living conditions of nearby occupiers. It is noteworthy that the Highway Authority did not raise objections on highway safety grounds.

⁷ Ref 22/01374/FUL

⁸ P1350/22/FUL

43. The new access would be located in close proximity to Fairfield Cottages. Vehicles would be using an area where there is currently no access and there would be disturbance caused to occupiers of these properties, particularly during the construction phase and decommissioning. Such disturbance would be over a short period of time whilst the site was being developed/dismantled. It would be unlikely, subject to controlling construction activity to result in harm to the living conditions of nearby occupiers. At other times the number of vehicles using the access would be infrequent and would be unlikely to cause any nuisance to occupiers of these dwellings.
44. During the construction phase activity of the site would be likely to impact on the tranquillity of the area, but again this would be likely to be short term and temporary. Any disturbance would be unlikely to be greater than tractors ploughing the fields and harvesting the crops, which can occur throughout the day and through the night.
45. Given the above I conclude that the proposal would not result in harm to nearby occupiers' living conditions. Accordingly, there would be no conflict with AP Policy AP 2 in terms of the effect of renewable energy on residential amenity.

Best and Most Versatile Agricultural Land

46. The appeal site comprises 16 hectares (ha) of Grade 2 agricultural land, 41.3ha of Grade 3a and 13.9ha of Grade 3b land. BMV is defined as Grades 1, 2 and 3a of the Agricultural Land Classification. As a percentage of the site area the appellant has calculated that 79.6% of it is BMV land.
47. Apart from the area covered by the substation which would be a permanent feature located on Grade 3a land, the remainder of the BMV agricultural land would not be permanently lost through the development of the site. The appellant has indicated that this loss would be 0.2ha, with a temporary loss of 1.1ha for tracks, turning head and inverters and associated equipment. Such an area falls well below that whereby Natural England would need to be notified.
48. Both national and local planning policies refer to the use of BMV land as opposed to loss. Thus, whilst the proposal would take the land out of arable production for a long period of time (40 years), that land, other than the substation area, would not, subject to suitable management, be lost.
49. The appellant has provided details of how the development would be installed, and whilst concern has been raised by the Council about the effect of the scheme on soils and agricultural land value, I find the appellant's evidence more reliable, detailing how the panels, cables, fencing and equipment would be installed. A soil management plan could control construction activities and decommissioning to ensure that damage does not occur to soils and drainage and could ensure that work is not undertaken in wet conditions.
50. Furthermore, an alternative way to farm the land would be unlikely to have a significant effect on the quality of the land value to the degree that would negatively affect the existing situation. Indeed, by taking the land out of intensive crop production allowing grass to grow and grazed by animals is likely to be a benefit to the overall soil quality, similar to the effects of leaving land

fallow. The planting of wildflowers and grassland would also be a benefit in terms of improving biodiversity on the site.

51. Given the above I am satisfied that the proposal would be unlikely to have a negative effect on the agricultural land use classification of the appeal site.
52. Whilst national or local planning policies do not prevent the use of BMV land for solar schemes, they do however require justification to be provided. AP Policy AP 2 requires that the use of BMV land is avoided unless justified by clear and compelling evidence. The Written Ministerial Statement (WMS) of 25 March 2015 has similar expectations requiring that any proposal for a solar farm involving the best and most versatile agricultural land (BMV) to be justified by the most compelling evidence.
53. The PPG explains that where a proposal involves greenfield land, consideration should be given to whether the proposed use of any agricultural land has been shown to be necessary, whether poorer quality land has been used in preference to higher quality land and whether the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.
54. This approach is also reflected in the Framework, which at paragraph 180 requires that planning policies and decisions should contribute to and enhance the natural and local environment, by amongst other matters protecting and enhancing sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan) and recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services to – including the economic and other benefits of the best and most versatile agricultural land.
55. The National Policy Statement for Renewable Energy Infrastructure (EN-3) sets out that whilst land type should not be a pre-dominating factor in determining the suitability of the site location, where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of “Best and Most Versatile” agricultural land where possible. The recent WMS (May 2024) echoes this advice.
56. The appellant has indicated that the optimum location for solar photovoltaics developments depends on a number of factors including the availability of utilities and viability of a grid connection; land availability; accessibility; compatibility with national and local planning policy; preference for previously developed land or industrial settings; agricultural land quality; visual impact; and proximity to community sensitive locations and areas of designated environmental significance.
57. As part of the Environment Statement the appellant looked at other site options in the vicinity of the appeal site, option 1 to the north west of Murrells End was discounted because it was a smaller field, near a military area and close to housing with a large road frontage. Option 2 to the south east of Murrells End was discounted because of evidence of flooding on the site and the site was Grade 2 agricultural land. Option 3 to the west of Murrells End closer to the villages of Rudford and Tibberton was considered to be too far from the point of connection and would require disruption of the local road network to access that point of connection. Option 4 had Network Rail

- infrastructure running through the site and was considered too far from the point of connection.
58. The appeal site was considered to be a suitable location, taking into account land availability, the site being relatively well contained from a visual perspective, not coinciding with sites designated for nature conservation, proximity to other energy infrastructure including existing overhead lines, being located predominantly in Flood Zone 1, remote from listed buildings or scheduled monuments, suitable access route, its location away from main settlements and sensitive receptors, and no main river nearby.
59. Each of the 4 fields includes areas of Grade 2, 3a and 3b agricultural land and it is submitted that this makes the timing of drilling and harvesting difficult because of differing crop growth and workability issues. The part of the fields closest to the River Leadon is also affected by water levels in winter with crop growth usually poor. Be that as it may the photographic evidence submitted by the appellant appears to show a reasonable harvest on the fields, other than in the areas that are at risk of flooding. No evidence has been provided that the farming of the land is unviable as a result of the changes to land quality across the site.
60. I appreciate that proximity to a grid connection is an important criterion when assessing the suitability of sites for development such as that proposed, however limited evidence has been provided which indicates that a greater distance from the connection would make a scheme unsuitable or unviable.
61. In terms of assessing sites with a lower agricultural land value, the Council produced an overview of the District's Grade 4 and 5 agricultural land. The appellant did not assess such sites for their suitability. Instead, the evidence submitted focussed on a smaller area between the outskirts of Gloucester and Newent identifying provisional agricultural land classification and BMV likelihood, as opposed to further afield.
62. I readily acknowledge that a land owner's consent is required to undertake detailed soil surveys and this can prove expensive and time consuming. I also appreciate that a land owner must be willing to have such development on their land. However, the alternative sites assessed were located presumably on the same land holding as the appeal site, and do not demonstrate to me that there is no suitable land of a lesser land value than would be suitable for the scheme. Whilst the land close to the River Leadon was discounted because of flood risk, and noting that the Council requested that the development was removed from this area, I was advised at the Hearing that solar panels can be located in areas that flood as long as the panels are above the water level and the inverters are outside of the area of flood risk. Within this location there would be reasonable proximity to the grid connection, albeit the output from a scheme would be significantly reduced given the area of land in this location. Be that as it may, a rejection of this area which is grade 3b on flooding grounds does not justify using such a large area of BMV land for the siting of solar panels.
63. Furthermore, whilst highlighting that preference for previously developed land was a factor in identifying optimum locations for solar photovoltaic development, no substantive evidence was provided in this regard, despite the appellant advising that potential non-agricultural, urban and previously

developed land (or 'brownfield land') was identified and considered but were found to be unsuitable.

64. I acknowledge that there is no requirement to farm agricultural land a certain way and note that subsidies have been given to farmers in the past to take land out of production and to encourage biodiversity, improve soil health and water quality, amongst other matters. My attention has been drawn to The Government Food Strategy (June 2022) which does not seek to increase food production recognising near self-sufficiency in wheat, most meat, eggs and some vegetables, but not in soft fruit although the trend is favourable. It also states that 'overall for the foods that we can produce in the UK, we produce around 75% of what we consume. That has been broadly stable for the past 20 years and in this food strategy we commit to keep it at broadly the same level in future'.
65. Notwithstanding this, national planning policy which was issued in December 2023 nearly 18 months after the Food Strategy referred to, makes several references to BMV land as set out above. Framework paragraph 181 whilst making specific reference to plan making, suggests that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality⁹. I do not accept that the use of BMV land is not a concern for Government. In this regard the WMS of 15 May 20024 provides a steer setting out that 'the highest quality agricultural land is least appropriate for solar development and as the land grade increases, there is a greater onus on developers to show that the use of higher land quality is necessary'.
66. I have limited evidence before me regarding the economic benefits of the BMV agricultural land to the farm unit. The land clearly provides jobs with reference being made to contractors being used for the majority of husbandry operations. However little evidence has been provided that the economic benefits of the scheme justify the use of BMV agricultural land for the use of the site as proposed.
67. In terms of other benefits, these are addressed later in my decision and until these have been assessed I am unable to conclude on this matter.

Skylarks

68. AP Policy AP 7 requires net biodiversity gains for protected and priority species and habitats which should also be safeguarded and supported. Framework paragraph 180 d) is consistent with this objective. AP Policy AP 8 establishes that green infrastructure is provided as an integral part of development schemes.
69. Skylarks are ground nesting birds preferring open habitats including arable farmland, making use of nesting cover and bare ground for feeding that crops provide throughout the year.
70. They are a protected species and a species of Principal Importance (a Priority Species) listed in Section 41 of the Natural Environment and Rural Communities Act 2006 (NERC Act). The NERC Act includes a duty under s40(1) that every public body must, in exercising its functions, have regard to the purpose of conserving biodiversity. In addition, the Secretary of State must a)

⁹ Framework footnote 62

take such steps as appear to the Secretary of State to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any list published under this section; or b) Promote the taking by others of such steps.

71. Skylarks are one of the species of birds identified on the Red List of the Birds of Conservation Concern (BoCC). Species listed on the BoCC Red List are of the most urgent conservation concern, having declined in numbers by 50% over the last 25 years, those that have shown an historical population decline between 1800 and 1995 and species that are of global conservation concern.
72. The appellant's Ecological Assessment (February 2022) (EA) identified that there were 9 skylark territories within the arable fields forming the appeal site. The addendum to the EA (November 2023) breeding bird survey identified 10 skylark territories within the site boundaries. The finding of both reports were that the proposal would present particularly high risks for ground-nesting species such as skylark with the potential for disturbance and reduced opportunities for breeding and foraging.
73. The submitted evidence indicates that whilst solar sites may continue to be used by skylarks for foraging, they are rarely utilised for nesting. The undisturbed grassland along the southern boundary of the site may provide suitable nesting opportunities for skylarks as may the wildflower meadow proposed. However, the size of these areas (4.05 ha and 10 ha respectively) would be significantly less than the habitat and nesting opportunities that the appeal site currently provides. Furthermore, the presence of 'predator perches', including overhead power lines, hedgerows and trees are likely to mean that substantial parts of these areas would be unattractive to the birds, with evidence provided that skylarks actively avoid nesting within a field within 50 metres of such a perch to enable them to see predators, which was not disputed.
74. At the Hearing the appellant produced additional information showing land to the north of the appeal site and to the west of Murrells End Farm which could be used for skylark mitigation. The submitted information indicates that the area of land would be large enough for 27 skylark plots based on an accepted ratio of the provision of 2 plots for each skylark plot lost and an additional 7 plots to compensate for potential extra territories lost.
75. It was also submitted that the plots within each of the three fields would be more than 50 metres away from vantage points that may be used by predators. However, this would not be the case because one of the overhead power lines that crosses part of the central and western fields was not identified on the submitted aerial photograph. Accordingly, a smaller area than that proposed would be suitable for skylarks to nest. Fewer plots could be provided as a consequence. Moreover, whilst breeding bird surveys have been undertaken on the appeal site, they have not been provided on the fields where the skylark mitigation is proposed.
76. Accordingly, I cannot be certain that the mitigation proposed is suitable to accommodate the skylarks whose territory would be displaced by the proposal, or that the area of land proposed as mitigation would be suitable to accommodate those breeding pairs. This is because in the absence of surveys there is no certainty that there would be sufficient distance between new and

existing plots for skylarks in these fields, or indeed other ground nesting birds which may inhabit these fields.

77. I understand that the main parties are still in discussion in respect of suitable mitigation for skylarks, however at the time of the Hearing had not reached agreement. It is also understood that further survey work would need to be undertaken to establish whether the fields where the mitigation is proposed hosts skylark or other protected species' territories. In this regard I have considered whether the mitigation for skylarks could be controlled by a suitably worded planning condition. However, Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within The Planning System sets out that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted (where) there is a reasonable likelihood of the species being present and affected by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted.
78. Given my findings I conclude that a condition to mitigate the disturbance to skylarks is not suitable. The proposal would not safeguard and support protected and priority species and habitats, notably skylarks, in conflict with the biodiversity aims of AP Policies AP 7 and AP 8, the sustainable development objectives of AP Policy AP 1 and the environmental protection and biodiversity objectives of CS Policies CSP.1 and CSP.2. The statutory test would not be complied with.

Heritage Assets

79. The Grade II* listed Hartpury House is located approximately 850 metres to the north of the appeal site and built in the early 19th century as a country house. It is now part of Hartpury College. The significance of this listed building is informed by its age, architectural and historical interest, surviving historic fabric and traditional features and materials. The immediate setting of Hartpury House comprises its extensive landscaped grounds including an enclosed courtyard whose walls and railings are separately listed Grade II. The wider setting is the rural rolling landscape that tells of its origins as a handsome country house. Intervisibility between the appeal site and Hartpury House is restricted due to topography and distance, nevertheless, the appeal site is part of this wider landscape setting of Hartpury House which makes a positive, albeit limited, contribution to its significance as a highly graded designated heritage asset.
80. The Grade I listed Church of St Mary and Grade II listed Sunday School are located approximately 325 metres to the west of the appeal site. The Church dates from the 12th century with later additions and alterations. The 19th century School sits within the churchyard. The special interest and significance of these listed buildings lies in part in their historical and architectural interest, historical and cultural connection, their age, surviving historic fabric, traditional features and materials. The immediate setting of these listed buildings comprises the churchyard and enclosed space around them. There is also a clear historic and cultural link between the listed buildings and other buildings within the hamlet which comprise their rural setting at the end of the no-

through road. The wider settings are the agricultural fields, which inform the sense of the remoteness and rural location of the Church and School.

81. The appeal site is not readily visible from the Church and School, however the roofscape of the Church is visible, at a distance in filtered views from the public right of way (PROW) along the northern boundary of the site. Regardless of intervisibility, the appeal site comprises fields in the wider setting of these listed buildings, which makes a small but beneficial contribution to their significance as designated heritage assets.
82. The Grade II listed Ingleside Farmhouse is located to the north of the Church buildings and experienced within the context of the Church at the bottom of the no-through road, from the PROW that runs along its side boundary and from the bridge over the river and footpath that links to this. It originates from the medieval period and is described in its listing description as a 'rare survival of a medieval house'. It was a former Rectory and is now a private house. The significance of the building lies in part in its historical, architectural, cultural and religious connections with the small hamlet and the nearby Church buildings, the surviving historic fabric, traditional features, materials and changing use over many centuries. As a farmhouse, the significance is also informed by the rural surroundings and open setting to the north and east with views across River Leadon to the agricultural fields and rising land beyond, including the appeal site.
83. The Grade II listed Lassington Court is of early 18th century origins, constructed as a farmhouse and still in use as one. Although altered its significance derives from the fine architecture, its age, surviving historic fabric and historical and cultural connections and use. The surrounding agricultural fields are a part of the setting of the listed building that contributes to its significance, so too does the building's physical and visual relationship with the hamlet of Lassington. The appeal site is within the setting of Lassington Court and makes some contribution to its significance.
84. The Grade II* listed Church of St Oswald Tower is located in an easterly direction to Lassington Court. Set on elevated ground its significance derives from its age (late 11th century with later additions), its architecture, its historical association with the now demolished Church of St Oswald, with Lassington Court and the religious and cultural associations with the hamlet of Lassington. The rural setting of the church, including from the fields, and the appeal site, is part of its overall significance as a historic church tower situated in a wider rural landscape.
85. The open view from the PROW to the listed Church and School would be eroded by the proposal and something of the wider rural landscape setting weakened. Therefore, the proposal would fail to preserve the setting of these listed buildings and in a small way harm their significance as designated heritage assets, albeit such effect would be limited and localised.
86. The development of the appeal site would be likely to be visible from Ingleside Farmhouse, albeit views would likely be filtered by existing and reinforced hedgerows. That said from the highest part of the appeal site, open views of the roofscape of the listed building would be lost, similar to the effect that would occur with the Church's roofscape. The appeal scheme would also reduce something of the open, agricultural landscape that is part of the setting of

Ingleside Farmhouse, harming to some small degree its significance as a designated heritage asset.

87. The number of large modern, portal framed agricultural buildings, tall pylons and associated wires interrupt appreciation of the rural setting and limits the contribution the appeal site makes to Lassington Court. Therefore, while the appeal proposal would be within its setting, it would have a negligible impact on its significance as a designated heritage asset.
88. The open agricultural landscape that comprises the setting of the Church of St Oswald Tower would however be eroded by the proposal, introducing development where there is none at present, harming to some small degree its significance as a designated heritage asset.
89. Drawing all of the above together, given that the appeal site forms part of the rural landscape setting to the various listed buildings described above, the setting of listed buildings would not be preserved, contrary to the statutory presumption under s66(1) of the Act, which carries considerable importance and weight. That said, the appeal site is only a component part of the wider rural landscape settings to the various listed buildings that makes a positive, albeit limited contribution to their significance as designated heritage assets. The harm to the individual assets identified is further tempered by the limited intervisibility, landscape features and distance. Therefore, owing to the scale and nature of the proposal relative to the significance of these buildings as entities, I consider that the degree of harm to each designated heritage assets would be less than substantial, and at the lower end of the scale.
90. The proposed development would be in close proximity to Murrells End Farm, a non-designated heritage asset. The significance of Murrells End Farm is informed by its historic use and associations with its agricultural surroundings. The setting of Murrells End Farm includes the wider rural fields that the proposal would be developed upon and which contribute to its overall significance. Moreover, views of the building and how it is appreciated from nearby public rights of way is also part of its significance. The appeal proposal would result in a change to the open, undeveloped fields that form the setting of this building and weaken its connection to the wider rural landscape. Consequently, there would be some harm to its significance as a non-designated heritage asset.
91. Paragraph 208 of the Framework requires less than substantial harm to a designated heritage asset be weighed against the public benefits of the proposal. The Framework at paragraph 209 requires that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. I turn to this in my overall planning balance.

Other Matters

Protected Species

92. Whilst the Council is satisfied that the proposal would not have an adverse effect on the following species, subject to suitable conditions, I have a duty under s40(1) of the NERC Act to have regard to the purpose of conserving biodiversity.

93. The EA comprised a desk study, Phase 1 Habitat Survey, a preliminary bat roost assessment, great crested newt environmental DNA surveys, badger, dormouse, breeding bird and wintering bird surveys. The subsequent addendum included surveys to determine the use of the site by roosting, foraging and commuting bats, the use and value of hedgerow for dormice, the numbers and distribution of protected and notable breeding birds on the site. It also included recommendations for avoidance, mitigation and compensation measures.

Bats

94. The appeal site is located within 650 metres of a lesser horseshoe bat roost and within 1.7 kilometres of a maternity roost. These roosts are considered functionally linked to the Wye Valley and Forest of Dean Bat Special Area of Conservation (SAC).
95. The survey results highlighted that 5 trees upon and around the site had high potential to support roosting bats, 5 had moderate potential and 22 had low potential which is not disputed. The bat emergence and re-entry surveys did not report any emergences or return to roosts. It also identified that there were no suitable locations for lesser or greater horsehide bats close to the invertors.
96. The hedgerows around and upon the site were suitable for foraging and commuting. Bat activity surveys were also undertaken identifying calls of greater horseshoe and lesser horseshoe bats throughout the surveys undertaken between May and October 2023.
97. Whilst there is concern that noise from the invertors and substations could affect bat activity, the submitted evidence indicates that the noise emanating during the evening would be continuous, below the levels referenced in the Ecological Addendum, and would be likely to allow a degree of habituation from bats using the site for foraging and commuting. As such and having regard to the additional hedgerows and wildflower/grassland creation, the proposal would be unlikely to negatively affect foraging and commuting behaviours. Matters such as tree retention, new planting and noise and external could be controlled by planning condition such that the proposal would not have a likely significant effect upon these species or their habitats.
98. In respect of the likely significant effect of the proposal on the SAC the Council is satisfied that the additional information submitted in the EA addendum has addressed its concern. Had I been minded to allow the appeal I would have undertaken an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017, however as I am dismissing the appeal for other reasons, it is not necessary for me to do this.

Birds

99. In total 54 bird species were recorded during the breeding bird surveys undertaken between April and June 2023. Of these, 27 species met at least one of a range of criteria relating to nature conservation status¹⁰, of which 17 were confirmed to be breeding or probably breeding and were holding territories within or overlapping the site boundary.

¹⁰ Annex 1 EU Birds Directive, Schedule 1 Wildlife and Countryside Act 1981 (as amended), NERC Species of Principal Importance, BoCC5 Red and Amber Status

100. The development of the site including construction works, vegetation clearance and ground works would be likely to disturb birds using the trees and hedgerows for nesting. Such disturbance is likely to occur over a relatively short period and it is likely that nesting birds would reinhabit these areas once construction activity had ceased. The timing of the proposed hedgerow removal to create the access to the site could be controlled such that it occurs outside of the breeding season.
101. The provision of wildflower planting would likely improved the amount of insects in the locality which would be of benefit to the birds. I am satisfied on eth basis of the evidence before me that the proposal would protect, and enhance biodiversity in terms of birds.

Dormice

102. The surveys undertaken established that there was no sign or evidence of dormice. However, conditions to control hedgerow removal to facilitate the entrance to the site would ensure that any dormice that subsequently inhabit the hedgerows would not be adversely affected by the scheme.

Badgers

103. Subject to mitigation measures which could be included in a suitable worded condition I am satisfied that there would be no disturbance or destruction of badger habitats. It is noteworthy that the Council raised no concern in this regard.

Great Crested Newts

104. There are a number of watercourses within the vicinity of the appeal site which are suitable habitats for Great Crested Newt. The grassland, scrub and woodland edges were also considered suitable terrestrial habitat. The watercourses including the pond upon the site would not be affected by the scheme, nor would the wooded area around it. The provision of grassland/wildflower planting would provide suitable terrestrial habitat for this species. Site clearance and construction works could be controlled by a suitably worded planning condition. Having regard to the above I am satisfied that Great Crested Newts would not be adversely affected by the proposal.

Severn Estuary SAC, SPA and Ramsar Site

105. The appeal site is approximately 14 kilometres from the designated sites. However, the proximity to the River Leadon could impact water quality which could have an adverse effect on the above designated sites.
106. Had I been minded to allow the appeal I would have undertaken an Appropriate Assessment in this regard, but as I am dismissing the appeal for other reasons, it is not necessary for me to undertake one.

Other Considerations

107. There is no dispute between the parties that the provision of a renewable energy scheme weighs significantly in favour of the proposal. The provision of the scheme as proposed would make a contribution to the Government's targets of achieving net-zero emissions by 2050 and would contribute to the Council's own target of achieving net-zero by 2030. The Overarching National Policy Statement for Energy (EN-1) recognises solar (together with wind) as

being the lowest cost way of generating electricity and that by 2050, secure, reliable, affordable, net zero energy systems are 'likely to be composed predominantly of wind and solar'.

108. The proposal would support the transition to a low carbon future in a changing climate, would result in considerable reductions in greenhouse gas emissions and improve energy security in accordance with Framework Chapter 14 and AP Policy AP 2. Located close to the urban areas of Gloucester and Newent, the proposal would produce electricity for 14,000 family sized homes and would be available for both commercial and domestic consumption.
109. The scheme could be delivered quickly on land that is available and where a grid connection has been made. This matter weighs in favour of the proposal particularly given the commitments set out above.
110. Although the proposal would be likely to generate income for the land owner as part of a farm diversification scheme, little evidence has been provided to demonstrate the economic benefits of this and accordingly I can at most only give this matter very limited weight.
111. The proposal would provide employment opportunities during construction, operation and decommissioning. This is clearly a benefit of the scheme but the economic benefits have not been quantified and therefore I can only give this matter limited weight.
112. The biodiversity enhancements proposed accord with development plan policies, however whilst acknowledging a demonstrable net gain, some of this is necessary to mitigate the impacts of the scheme and to be policy compliant, thereby whilst a benefit, the weight to be afforded this reflects these matters.
113. Intensive farming of arable land has been found to damage soils and the carbon that is stored within them¹¹. Farming the land in a different way and converting the land to grassland has been found by the British Society of Soil Science to achieve rapid gains in soil carbon. The use of the land as proposed including the wildflower planting would reduce the amount of machinery traversing the fields and the associated compaction and would be likely to improve soil upon the site.

Heritage and Planning Balance

114. I have found that the proposal would not preserve the setting of nearby listed buildings, in conflict with the Act, a matter which carries considerable importance and weight in each case. The harm that would result in terms of the Framework would be less than substantial harm to the significance various heritage assets through development affecting their settings. In each case, the harm carries great weight, and the Framework requires it be balanced against the public benefits of the proposal.
115. Public benefits of the proposal would stem from the provision of renewable green energy to approximately 14,000 homes, which would lead to a reduction in greenhouse gases, reduce the use of fossil fuels and the amount of carbon in the atmosphere. The reduction in farming the soil would also reduce carbon emissions. The sum of these public benefits to my mind would be considerable and sufficient to outweigh the harm to the designated, and non-designated

¹¹ The State of the Environment: Soil (2019), the Environment Agency

heritage assets identified. Having regard to the scale of any harm to Murrells Farm as a NDHA, the harm would also be outweighed. The Council found similarly in these regards. Therefore, the proposal would satisfy the historic environment protection policies of the Framework.

116. The proposal would result in localised and limited harm to the character and appearance of the area, but the harm could be suitably mitigated by new hedge/tree planting and meadow planting to accord with AP Policies AP 1, AP 2, AP 4, AP 5 and CS Policy CSP.1. The additional landscape planting by way of hedgerows and trees would reinforce special characteristics of the landscape character area and whilst 40 years is a long time, a temporary permission is sought and the land could be restored after this period.
117. In terms of the use of BMV land, EN-3 sets out that land type should not be a pre-dominating factor in determining the suitability of the site location. It does however require that where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of "Best and Most Versatile" agricultural land where possible.
118. The evidence before me does not satisfactorily demonstrate that it is necessary to use BMV land for the proposal in this case. The economic benefits of the use of BMV have not been substantiated and whilst there are clear 'other benefits' in providing a renewable energy scheme which attract significant weight, such benefits are not unique to this site. They could be accrued elsewhere on a similar sized scheme which does not use BMV land or such a large area of BMV land.
119. The use of BMV land has not on the evidence before me been justified by clear and compelling evidence. Nor has it been demonstrated that there is clear evidence of local community involvement to justify the proposal. There is conflict with AP Policy AP 2, the Framework and the WMS (15 May 2024) which sets out that 'the highest quality agricultural land is least appropriate for solar development and as the land grade increases, there is a greater onus on developers to show that the use of higher quality land is necessary'.
120. In reaching thus conclusion on the use of BMV land I have had regard to the appeal decisions drawn to my attention in so far as they relate to the use of BMV land. In respect of the Halloughton decision¹² the agricultural land value was grade 3b so is not BMV land. The amount of BMV land used in the Marden decision¹³ was considerably less than the appeal before me amounting to 47% of the appeal site and in this case the evidence before the Inspector was that the Borough had a higher than national average of BMV land and it was difficult therefore to find an alternative site which was made up entirely of lesser quality land. The consideration of lower quality agricultural land has not been undertaken in the appeal before me and I find the scheme in this decision not directly comparable.
121. In the Thaxted decision¹⁴ the amount of BMV land used was high (85%) and the Inspector found that the climate change emergency, the Framework and statements amounted to compelling evidence which justified the use of BMV in

¹² Ref APP/B3030/W/21/3279533

¹³ Ref APP/U2235/W/23/3321094

¹⁴ Ref APP/C1570/W/23/3319421

that case. Whilst there are similarities with the case before me, it appears that an alternative site assessment was before the Inspector which covered a seemingly larger area than that undertaken in the appeal before me. Furthermore, it appears that lower quality agricultural land was not identified which is not the case in the appeal before me. So, although there are similarities, the circumstances are not directly comparable. It is noteworthy also that this decision was issued before the publishing of the most recent WMS (May 2024) so the additional emphasis that this includes on the use of BMV land for solar development was not considered.

122. The Bramley decision¹⁵ also pre-dates the WMS above and in this case the Inspector found that the use of BMV land complied with the policy in the development plan relating to renewable energy, which is not the case in this appeal.

123. The new landscaping and meadow planting proposed would result in significant biodiversity net gain, a matter which weighs in favour of the proposal, which is not disputed.

124. Whilst I am satisfied that the proposal would preserve and enhance biodiversity in terms of the protected species identified above, at this stage there is no certainty that the harmful effect of the proposal on skylark territories could be suitably mitigated. Given the rarity of this species and it being included on the BoCC red list and my statutory duty, the significant benefits of the proposal do not outweigh the harm that would be caused to this protected species, and the conflict with the development plan in this regard.

Conclusion

125. Whilst significant weight is given to the provision of a renewable energy scheme along with the benefits outlined above, they do not individually or cumulatively outweigh the identified harms or the conflict with the development plan taken as a whole.

126. The appeal is dismissed.

RC Kirby

INSPECTOR

¹⁵ Ref APP/H1705/W/22/3304561

APPEARANCES

FOR THE APPELLANT

Jack Vaughan	Appellant
Richard Boother	Planning Agent (RPS)
George Lilley	Landscape Witness
Tony Kernham	Agricultural Witness

FOR THE COUNCIL

Stephen Colgate	Principal Planning Officer
Caroline Lidgett	Biodiversity Witness
Carly Tinkler	Landscape Witness

INTERESTED PARTIES

Phil Coathup	UK Solar Alliance
Bob Brown	CPRE Gloucestershire
Margaret Orritt	Local Resident
Penny Wolfson	Local Resident
Bob Wolfson	Rudford/Highleadon Parish Council
Councillor Gregory	Hartpury Parish Council
Councillor Clarke	Hartpury Parish Council

DOCUMENTS SUBMITTED AT THE APPEAL

DOC 1 – Skylark Mitigation Letter from RPS Principal Ecologist dated 7 May 2024
DOC 2 – Natural England Annex A – Additional Advice
DOC 3 – A Grid Guide to Accelerating UK Connections
DOC 4 – Phil Coathup comments on appeal proposal
DOC 5 – Philip Burford comments on appeal proposal
DOC 6 – Appeal decision Ref APP/U2235/W/23/3321094
DOC 7 – Appeal decision Ref APP/C1570/W/23/3319421
DOC 8 – Decision letter Ref s62A/2022/0011
DOC 9 – Schedule of Additional Conditions
DOC 10 – Connection Offer