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## Appeal Decision

Hearing held on 20 and 21 February 2024

Site visit made on 19 and 21 February 2024

**by Paul Thompson DipTRP MAUD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 November 2024**

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**Appeal Ref: APP/W3005/W/23/3323952**

**Hamilton Hill Farm, Cauldwell Road, Sutton in Ashfield NG17 5LB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Batov (Hamilton Solar Limited) against the decision of Ashfield District Council.
  - The application Ref is V/2022/0562.
  - The development proposed is a solar farm with ancillary infrastructure, security fence, access, landscaping and continued agriculture, to generate power to feed into the local distribution network.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. An application for costs was made by Ashfield District Council against Mr Batov (Hamilton Solar Limited), which is the subject of a separate Decision.

### Preliminary Matters

#### Requested Information in the Pre-Hearing Note

3. In my Pre-Hearing Note (PHN) the main parties were asked to provide clear direction to agreement and disagreement in a Statement of Common Ground (SoCG) regarding land or buildings that were considered as alternatives to the appeal site. This was required to assess the planning considerations relevant to site selection of the proposed ground-mounted solar farms, as identified in the National Planning Practice Guidance<sup>1</sup> (NPPG), which supports the policies of the National Planning Policy Framework (the Framework); and the appellant's Site Search Report, including clarification on any implications for viability of the scheme. In response, the appellant provided Commercial Viability and Technical Notes, received on 6 February 2024.
4. I accepted the documents to save time at the Hearing, as they referred to points raised in the PHN, that required testing at the Hearing. The main parties also had sufficient time to consider their content and prepare their cases. Interested parties not in attendance at the Hearing may not have been aware of the Notes or their content and, had the availability of other sites in the District had a bearing on the outcome of the appeal, they could have been afforded an opportunity to comment on their content. However, their content

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<sup>1</sup> Paragraph: 013, Reference ID: 5-013-20150327, Revision date: 27 03 2015.

could have been referred to at the Hearing, without them being provided. I therefore determined the appeal in light of their content.

#### Agricultural Land Classification

5. On 9 February 2024, the appellant provided a Soil Resources and Agricultural Quality Report<sup>2</sup>. This predated submission of the planning application, but was not submitted with it, and confirms the site to be Grade 2 agricultural land. However, a separate document<sup>3</sup>, submitted with the application, confirmed the land to be Grade 3b. The former meets the definition of Best and Most Versatile agricultural land (BMVAL) but the latter does not.
6. At the Hearing, the appellant's representatives explained that, following discussion with the Council over the SoCG, separate discussions took place with the appellant and the soil assessor. The submission of the report came about thereafter. The appellant's planning consultants and planning solicitor were only made aware of the report on 8 February 2024 and disclosed it the following day, as they were professionally obligated to do so by the Royal Town Planning Institute and the Law Society. To my mind, there was no advantage to the appellant to do so and there is no reason for me to doubt this chain of events.
7. While the document undoubtedly had implications for the preparation and presentation of the Council's case, that also goes for the appellant, as various documents in his evidence relied upon the premise the land was not BMVAL. The appellant therefore prejudiced his own case, as a new main issue, and reason for refusal, were considered at the Hearing, as set out below. Given the timeframe to the start of the event, the main parties had time to ready and present their cases at the event. Despite the possibility not all interested parties may have known about the report, its findings were of fundamental importance and the appeal would have been determined against incorrect evidence had it not been accepted. This would not have been in the public interest or exercise natural justice. I have therefore determined the appeal based on the latest information.

#### Planning Policies, Legislation and Case Law

8. The Levelling-up and Regeneration Act 2023 came into force on 26 October 2023, but the duty proposed to be inserted in a new section 58B of the Town and Country Planning Act 1990, to 'have special regard to the desirability of preserving or enhancing [a scheduled monument]...or its setting' is not in force by Royal Assent and secondary legislation is required for it to come into force.
9. The Framework was revised in December 2023 after the determination of the application, but the main parties were able to address any relevant changes in its approach to the matters relevant to the appeal. On 30 July 2024, the Government published further consultations on proposed reforms to the Framework (including draft text) and other changes to the planning system. However, neither constitute Government policy or guidance and are likely to be subject to consultation responses that may result in alternative approaches. Hence, they carry limited weight in the determination of this appeal.

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<sup>2</sup> Report 1668/1, dated 28 February 2020, by Land Research Associates.

<sup>3</sup> Produced following a site inspection on 17 May 2020 by Bateman Rural Associates Limited.

10. The emerging Ashfield Local Plan 2023-2040 Regulation 19 Pre-Submission Draft (ELP) was consulted on until the end of January 2024, and was still progressing at the time of the Hearing. The Council has not advanced any policies, but the appellant referred to policies and strategic objectives from the Regulation 18 version of the ELP. The wording and focus of one of which has changed. The ELP still appears, therefore, to be some way off adoption and may potentially have unresolved matters. While I have had regard to the content of the policies and objectives to which I have been referred, I am only able to afford them no more than limited weight.
11. I have been referred to two National Policy Statements (NPS) relevant to this case. The Department for Energy Security & Net Zero *Overarching National Policy Statement for Energy (EN-1)* and *National Policy Statement for Renewable Energy Infrastructure (EN-3)*. The size of the proposal (7MW) means it is not determined under the Planning Act 2008, as a nationally significant infrastructure project (NSIP), and therefore it is not Critical National Priority infrastructure. Despite this, EN-1 is clear that it may be a material consideration in decision making on applications falling under the Town and Country Planning Act 1990 (as amended). The NPS were designated in January 2024, and both refer to an urgent need for energy generating infrastructure.
12. On 27 February 2024, the Council provided a copy of the Lullington Judgment<sup>4</sup>. Furthermore, on 15 May 2024 the then Secretary of State for Energy Security and Net Zero (Claire Coutinho MP) made a written ministerial statement (WMS) about "Solar and protecting our Food Security and Best and Most Versatile Land". I invited the main parties to provide comments in writing to their relevance to the appeal, which I have taken into account in my determination.

## Main Issues

13. The Council's first reason for refusal refers to the availability of other sites to accommodate the development. However, given the updated position regarding the agricultural land classification of the site, it is necessary for this to include consideration of the effect to BMVAL. The Council also confirmed, at the Hearing, that concerns identified in its second reason for refusal regarding how the development would be visually perceived by nearby residents relates to the potential effects of change to the character of the land as viewed from nearby homes. On this basis, the main issues are:
  - whether the proposal is consistent with the development plan regarding development in the countryside, having regard to its effect on the landscape character and appearance of the countryside, including its openness;
  - the effect of the proposal on the significance of the Mound on Hamilton Hill<sup>5</sup>, a Scheduled Monument, through development within its setting; and
  - whether there are other available sites within the District that could accommodate the proposed development, including consideration of the proposal's effect on the use of best and most versatile agricultural land and evidence to justify any loss.

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<sup>4</sup> Lullington Solar Park Ltd vs Secretary of State for Levelling Up, Housing and Communities and South Derbyshire District Council, [2024] EWHC 295 (Admin).

<sup>5</sup> List Entry Number: 1002921.

## Reasons

### *Development in the Countryside*

14. Proposals for development in the countryside of Ashfield are considered in relation to LP<sup>6</sup> Policy EV2. This states that permission will only be given for appropriate development within a closed list of several criteria, one of which concerns rural uses, including agriculture, forestry, mineral extraction, and waste disposal to reclaim mineral workings. The appeal scheme would not fit into any of these criteria. However, the policy also requires development must be located and designed so as not to adversely affect the character of the countryside, in particular its openness.
15. The main parties are in agreement that, for the purposes of the Framework, the site is not situated within a valued landscape, but is part of an existing Mature Landscape Area, Coxmoor/Kings Mill, referred to in LP Policy EV4. The site also forms part of the wider designations of the Sherwood character areas within the Greater Nottingham Landscape Character Assessment (GNLCA, 2009) and National Character Area 49 (2014). It is also within the Sandstone Forests and Heaths character type in the East Midlands Regional Landscape Character Assessment (2010).
16. The site consists of several parcels of open and undeveloped agricultural land at the eastern edge of Sutton-in-Ashfield and the land rises in a southeast direction from Hamilton Road to Cauldwell Road. There it borders a small cluster of homes in its southeast corner, including Hamilton Farm. No footpath exists to that side of Hamilton Road, so the narrow verge and the low hedgerow planting of the site are prominent enclosing features to the road. Hedgerows are also present at other boundaries, including to most of the northern boundary with Cauldwell Road, which also includes hedgerow trees, and to the west at Coxmoor Road.
17. The site is physically contained by these roads and Hamilton Hill to its northeast, and is influenced, to a certain extent, by its close relationship with industrial uses in the adjacent urban area. However, from what I have seen and read, the site and its surroundings embody the typical landscape characteristics of the character areas, which make a positive contribution to the character of the countryside. Moreover, the site is not visually separate from the undeveloped fields and other land within the countryside between urban areas in the districts of Ashfield and Mansfield, which are also undulating and enclosed by planting. While noise and movement on roads nearby, including Sherwood Way, means the site is not a tranquil area of the countryside, this does not alter its perception as part of the countryside.
18. Taken together these stated features, particularly the open and undeveloped nature of the site, give rise to a clear and distinct, pattern of development. The presence, or not, and the nature of built form also helps to distinguish between more urban and rural forms, including the countryside. This makes a significantly positive contribution to the landscape character and appearance of the countryside surrounding Sutton-in-Ashfield. As such, the site would be sensitive to change in this respect.

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<sup>6</sup> Ashfield Local Plan Review – Adopted November 2002.

19. A Landscape Mitigation and Enhancements plan for the site and its long-term future management would generally reflect planting in the local environment. It would also help to conserve the remains of intact historic field patterns with mature bushy hedgerows and reinforce these where they have become degraded or lost, and reinstate hedgerow trees, as identified in actions for two focused policy zones (SPZ11 and SPZ47) within Sherwood in the GNLCA.
20. Despite this, the proposal would be a development of significant proportions to the edge of Sutton-in-Ashfield, which would harm the appearance of a large area of land incorporating open and undeveloped agricultural fields, and would contrast significantly with the modest grouping of homes in Cauldwell Road. Due to the level difference across the site, in the short- to medium-term, the landscaping would have a limited effect in mitigating the visual prominence of the PV panels within the site.
21. The subsequent loss of openness and erosion of the site's undeveloped qualities would undermine how the countryside relates to the settlement. That being said, as with the appeal at Southwell<sup>7</sup>, there is a certain inevitability of some landscape impact associated with solar farms in the early stages of their operational life, when planting is establishing. Equally, in the long-term, while proposed planting would soften the visual effect of the development's physical presence from most views nearby, it would be discernible to users of Hamilton Road above the hedgerows on higher land within the site. While such receptors would likely be transient, the site forms part of the countryside at the very edge of Sutton-in-Ashfield, so the footpaths and roads that pass around it, on three sides, would be highly accessible to pedestrians or those driving to either access the countryside or simply pass by. The effect in this sensitive location would be more profound during winter months when planting may not be in leaf. There would also be visibility of the proposal in more distant views from higher land, including from Mansfield Road to the northwest, which I was asked to visit.
22. The occupiers of the homes to the northern side of Cauldwell Road do not currently entirely enjoy broad open aspect across the site due to the presence of existing planting and outbuildings. Notwithstanding planting that would be introduced, they would remain receptors of the landscape and visual harm that would result from the proposed development, particularly as planting establishes, when it would be highly prominent from these properties. Tree planting close to those properties, to screen the development from view, would alter their perception of the surrounding landscape, but hedgerow trees would not be out of place, nor would they inevitably be oppressive in views.
23. I cannot agree with the findings of the appellant's Landscape and Visual Appendix to the Planning Statement of Case<sup>8</sup> (PSoC) and the Landscape and Visual Impact Assessment, that the magnitude of the impact of the proposal would be mitigated. However, as the effects would primarily be localised, the harm that would result from the proposal would have a limited effect on the landscape character and appearance of the countryside, including its openness.
24. For the above reasons, I conclude that the proposal would not be consistent with the development plan regarding development in the countryside, having regard to its effect on the landscape character and appearance of the

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<sup>7</sup> Appeal Reference: APP/B3030/W/21/3279533 – Land North of Halloughton, Southwell, Nottinghamshire.

<sup>8</sup> Ref: R003v2 – P23-0612, dated July 2023.

countryside, including its openness. Moreover, the appeal scheme would not fall into any of the categories of appropriate development listed in LP Policy EV2, so it would conflict with that policy and LP Policy ST4, which also requires countryside development to fit within those categories. The harm to the character and openness of the countryside would also bring further conflict with the aims regarding such matters expressed in EV2 and LP Policies EV4 and ST1. There would also be conflict with Part 15 (Conserving and enhancing the natural environment) of the Framework.

25. While the Council did not refer to Policy EV4 until the Hearing, the appellant had opportunity to address its content so I am satisfied that no one would be prejudiced by my finding in relation to it.

### *Significance and Setting of the Mound on Hamilton Hill*

26. The appeal site is next to Hamilton Hill, atop which is the Scheduled Monument 'Mound on Hamilton Hill'. In considering its significance as a designated heritage asset, I have had regard to Historic England (HE) guidance<sup>9</sup>. There is a certain mystery to the asset and the evidence of the main parties, and HE refers to many possibilities for the potential use of the Mound, including as a Bronze Age Barrow, look out, and site for gallows. However, its significance is most likely to relate to its administrative and decision-making functions as a 'moot'. Moreover, at the Hearing, the parties agreed upon the description of a moot taken from the list entry for the Secklow Hundred Mound, another Scheduled Monument<sup>10</sup>. The Mound is therefore most likely to have been used as an open-air place for meeting or assembly, including by courts or other bodies responsible for the administration and organisation of the countryside in Anglo-Saxon and medieval England. While it may have been possible to hear meetings taking place on the hillsides, the principal area for meetings was the Mound itself. Its form also shares similarities with the general characteristics of a moot, as the centre is consistent with the height of the hill and earthworks formed sunken areas surrounding it. This suggests a platform was provided for speaking and the evidence also points to the position of the Mound and its sunken areas to the north of the hill, being a purposeful act to reduce the effects of prevailing winds on speakers being heard.
27. The list entry for Secklow Hundred Mound suggests that they are comparatively rare, which underlines the national importance of the Mound on Hamilton Hill. Furthermore, in the context of paragraphs 206 and 205 of the Framework, it is a designated heritage asset of the highest significance and the greatest of weight should be given to its conservation.
28. While the Mound is scheduled, the hill is not and the evidence before me does not categorically suggest that the bank and ditch at the bottom of the hill are either related to, or contemporaneous with, the Mound.
29. The definition of setting contained in the Framework refers to the surroundings in which a heritage asset is experienced and HE guidance<sup>11</sup> states views of or from an asset will play an important part in this. This also confirms the way in which an asset is experienced in its setting is influenced by understanding of

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<sup>9</sup> Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12, 2019.

<sup>10</sup> List Entry Number: 1007940, Secklow Hundred mound: a moot at the junction of North Row and North Ninth Street, Milton Keynes.

<sup>11</sup> The Setting of Heritage Assets (Good Practice Advice in Planning Note 3), Second Edition, 2017.

the historic relationship between places and does not rely on visibility between them, as they may have a historic connection important to experiencing their significance. This does not depend on public rights of access.

30. As far as it relates to the appeal before me, the hill physically forms an integral part of the setting of the Mound. As the hill is conspicuous in the surrounding landscape, so too would have been certain elements of its use as a moot. Moreover, during my site visits I observed that views from the centre of the Mound and the sunken areas surrounding are restricted to a certain extent by the hill and there is only limited visibility of the same, from the south and southwest. However, from the edges of the scheduled area, views are expansive in all directions, including over the site and the roads around it. It therefore stands to reason that persons stood to the extremities of the scheduled area and beyond it would also have been visible within the immediate landscape, including from the position of surrounding roads.
31. Although the relationship between the surrounding countryside is fundamental to understanding why the Mound stands where it does, that relationship has been altered by change over time, including through expansion of settlements and the permanent presence of roads and buildings. This includes the large building and infrastructure constructed for Amazon sited a short distance away across Sherwood Way, which is prominent within its setting.
32. Nonetheless, to this day, the hill, and the Mound atop it, are experienced as being separated from Sutton-in-Ashfield by undeveloped agricultural land. Whether or not this was deliberate, and irrespective of the presence of the Amazon building and some other development off Cauldwell Road, this physical separation is important to understanding its likely origins as a moot. The open and undeveloped nature of the appeal site therefore makes an important positive contribution to the setting and, thereby, the understanding of the overall significance of the Mound.

#### *Effect on the Mound on Hamilton Hill*

33. In considering the proposal's effect on the setting and, thereby, significance of the Mound, I have had regard to the HE guidance documents and EN-3.
34. With the proposed development it would still be possible to experience the hill, the Mound, and its setting from land to the south and southeast, as this does not form part of the proposal. It would remain undeveloped, and part of the landscape and the views within it. Nevertheless, the proposal would bring development closer to the Mound away from Sutton-in-Ashfield and erode the open and undeveloped qualities of the agricultural land within the site. Where the Mound would be visible across the site, this would unacceptably harm the contribution made by the land to its setting. Similarly, given the expansive views available from the edge of the scheduled area, the development would be a significant detractor and distraction within the views out over land within its setting to the west. The appreciation of this effect would be greater were public access to be reinstated to it as part of the proposal.
35. For reasons identified in the first main issue, the proposed planting around the site, including trees and shrubs to the east of the panels, would not be effective in mitigating against the harm that would be caused within the setting of the asset, for a considerable period during the operational phase of development. Furthermore, while there would be no restriction to planting of agricultural

land, and this could be used to direct views up to the hill from a position opposite in Hamilton Road, in time it could equally partially obscure it from some other views along the road.

36. There is agreement between the main parties that the orientation required to capture sunlight would be away from the Hill, so views from it would be toward the back of the panels. Potential glint and glare from the panels would therefore not detract from the significance of the monument. Similarly, noise associated with construction and decommissioning phases of development would be temporary. I am also mindful that traffic noise is apparent from within the surroundings of the asset and its potential use as a moot means such noise would not be harmful to how it is experienced.
37. Notwithstanding the close relationship of the Amazon building with the Mound, the extent it and the solar panels on its roof are visible from it, or whether the Council found it to be harmful within its setting, this would not provide justification for further development of other land surrounding the Mound that I consider would be harmful to its significance through being within its setting.

#### *Public Benefits of the Proposal*

38. The proposed development would be harmful to the understanding and, thereby, significance of the Mound as a designated heritage asset, through development within its setting. The Council considers this would amount to substantial harm, whereas the appellant considers it should be graded at the lower end of less than substantial.
39. In the context of the Shimbles Judgment<sup>12</sup>, I am not obliged to place harm somewhere on a 'spectrum' to give the necessary great weight to the asset's conservation. Hence, the Framework's division of harm into categories of 'substantial' or 'less than substantial' would be adequate to carry out the weighted balancing exercise to determine if the proposal would be acceptable.
40. The Holocaust Memorial Judgment<sup>13</sup> and the appellant's legal opinion<sup>14</sup> both discuss what amounts to substantial harm. The timeframe of the proposed development would not be permanent, and the land would be returned to its original state following decommissioning. However, the extent of harm that would be caused to the significance of the asset through development within its setting over this period would be meaningful and exceed a generation of change. Accordingly, the harm would endure for a considerable amount of time, so I adjudge it to be 'less than substantial'. In the context of Framework paragraph 205, this would be given the greatest of weight, and paragraph 208 identifies it should be weighed against public benefits of the proposal.
41. In assessing and ascribing weight to the scheme's stated benefits, I have had regard to the appeal decisions in the appellant's PSoC, and weight is attributed to each based on the nature and extent of the development in relation to a scale rising from limited, to moderate, to significant and substantial (where relevant).

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<sup>12</sup> R on behalf of Simon Shimbles v City of Bradford MBC [2018] EWHC 195 (Admin).

<sup>13</sup> The London Historic Parks And Gardens Trust vs The Minister of State for Housing and Westminster City Council [2022] EWHC 829 (Admin).

<sup>14</sup> By Charles Banner K.C.

### Environmental Benefits

42. The UK Government declared a Climate Emergency in May 2019 and the UK is legally bound through the amended Climate Change Act 2008<sup>15</sup> to achieve net zero greenhouse gas emissions by 2050, from a 1990 baseline. The Council's Climate Change Strategy 2021-2026 made a commitment to do everything possible to combat climate change, including leading by example to assist in reduce the carbon footprint of the District by reducing emissions year on year. However, the measures therein are primarily aimed at how it will reduce its own footprint. I acknowledge that the ELP presents a more up-to-date approach to renewable energy and climate change that are not addressed in the LP. However, ELP Strategic Policy S3 requires demonstration that adverse impacts of such proposals are satisfactorily addressed, which is not the case here. The latest version of EN-1 also identifies the urgency of energy development deployment to support this commitment.
43. Given the scale and urgency of the emergency, I attach significant weight to this material consideration, including the impact of climate change on food production. A balance therefore needs to be struck to reduce the former to protect the latter including, in certain cases, BMVAL. Energy and food security are therefore both key issues.
44. The proposal would generate 7MW of energy, enough to power approximately 2,000 homes, in a manner that would reduce the potential implications of CO<sub>2</sub> pollutants generated by equivalent electricity produced from fossil fuels by 1,170 tonnes each year it is operational. The Framework recognises that even small-scale projects provide a valuable contribution to significant cutting greenhouse gas emissions. In that sense it would assist with the transition to a low carbon future, including the economy, in a changing climate. These would therefore amount to significant environmental and energy security benefits.
45. Biodiversity Net Gain is not a mandatory requirement for this development, but the Framework is supportive of measurable attempts to secure it. The proposal would provide, amongst other things, additional tree planting, new and reinforced hedgerows and an area which would be set aside for species-rich wildflower meadow. This is calculated by the appellant to result in the biodiversity value of hedges increasing by 102.82% and habitat gains of 122.89%. Landscape connections would be maintained through the site for mammals, and there would also be hedgehog, bat roosting and bird nesting boxes, log piles and amphibian and reptile hibernacula. This therefore provides sufficient assurance it should be possible to achieve gains through the proposal. However, given that these could be delivered in the absence of the proposal, I afford them moderate weight as environmental and social benefits. The appellant also confirmed, at the Hearing, that the height of planting at the site's boundaries would not adversely affect the power output of the development, as they would be sufficiently distant to ensure no shading effect.
46. The provisions in the appellant's Unilateral Undertaking (UU) obligate that the proposed landscaping would be maintained throughout the development period. While the appellant has indicated that there is no intention for this to be removed, it is unlikely that the decommissioning scheme could ensure that this would be maintained thereafter. The weight that could be afforded to this as a longer-term benefit following the development would therefore be limited.

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<sup>15</sup> The (2050 Target Amendment) Order 2019.

47. The evidence before me suggests the soil types within the site have low nutrient holding ability and high levels of phosphorus. This affects yields but, at the Hearing, the appellant confirmed it is unlikely there would have been any further changes in soil quality to result in the land not being Grade 2 land. Despite this, the report recommends the land is fallowed or sown to grass and grazed with livestock to increase organic matter in the soil. While it would take some time to reduce phosphorous to a normal level, either option could be achieved without the proposal, along with any associated benefit of grazing to farm diversification. In this context, I am only able to afford this limited weight as a long-term benefit to agricultural production.

#### Site Selection and Timeframe of Development

48. The SSR study area is the starting point in determining the suitability of a site for a scheme of this nature and others were discounted including on heritage grounds. There will therefore evidently be various reasons a site may not be appropriate. However, I only afford this limited weight as a benefit of the scheme given the harm that would result in this particular location.

#### Economic Benefits

49. The construction phase would be over several months, a relatively short period, due to the lightweight nature of the proposals, but there are likely to be some benefits to the economy from the labour market and the procurement of materials and equipment. There could also be some use of local contractors for longer-term management of the site. The Council was not able to confirm whether the contribution to business rates of £17,490 per annum would be correct, but the proposal would contribute in this manner. Hence, these would be social and economic benefits of moderate significance.

#### Heritage and Social Benefits

50. The UU includes provision for a Heritage Visitor Management Plan, which would manage visitor access to the Mound until the development is decommissioned. Visitors would be accompanied monthly, with two parking spaces and pedestrian access available to serve this purpose. Together with information boards that are proposed to be erected at the site, this would assist with the understanding of the site and increase recreational opportunities locally. While this is unlikely to be extent of the gatherings expected when the Mound was likely in use as a moot, there are currently only horses grazing on the hill and public access is limited, so its introduction and informative talks about the Mound's history would bring more activity to it. At the Hearing, the appellant explained that the pedestrian link to provide access to the asset is indicative, and details would be secured through the management plan, with no intention to make physical changes to surfacing. A balance would need to be struck, as there could be implications for persons with mobility issues, but access would be provided where it does not exist. Due to the scope of the proposed access, these would amount to heritage and social benefits of moderate weight.

#### *Conclusions on the Second Main Issue*

51. Taking the stated benefits of the appeal scheme together, while there would be significant public benefits associated with climate change and energy production and security; and other moderate and limited economic, environmental, heritage, and social benefits, the harm that would be caused to

the designated heritage asset through development in its setting, by allowing the proposal, would be of greater significance. In accordance with Framework paragraphs 205 and 208, I am not persuaded there would be wider public benefits of sufficient magnitude to outweigh the greatest of weight to the asset's conservation and the less than substantial harm identified to its significance.

52. For the above reasons, I conclude that the proposal would have a significantly detrimental effect on the significance of the Mound on Hamilton Hill, a Scheduled Monument, through development within its setting. Hence, the proposal would fail to accord with the heritage aims of LP Policy EV11 and the wider aims regarding the effects to the environment referred to in LP Policy ST1. It would also fail to accord with the design and heritage aims of Chapters 12 and 16 of the Framework.

#### *Site Selection and Best and Most Versatile Agricultural Land*

53. Paragraph 163 of the Framework indicates applicants should not be required to demonstrate need for renewable energy developments. However, the Written Ministerial Statement of 25 March 2015 (WMS2015) relates to the unjustified use of agricultural land and expects any proposal for a solar farm involving BMVAL to be justified by the most compelling evidence. The WMS2015 was linked to the updated NPPG, which 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 to 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 requires 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 quality<sup>16</sup>. The Lullington Judgment highlights that EN-3 repeats the aims of the Framework in terms of the approach to the quality of land. Moreover, it provides an indication of the Government's most recent thinking on this issue and refers to land type not being a predominating factor in determining the suitability of a site location.
55. All of the land that would be required for the proposal would be Grade 2 agricultural land, so it comprises BMVAL as defined by the glossary in the Framework.
56. I am mindful of the approach taken regarding the identification of alternative sites in the Forge Field Judgment<sup>17</sup>, but that was in relation to a scheme for which statutory provisions applied to listed buildings and a conservation area. That is not the case here and the approach adopted in the Bramley Judgment<sup>18</sup> is of greater relevance. Moreover, there is no mandate in national planning policies or guidance for alternative sites to be considered or a sequential approach to their selection. Nevertheless, the appellant's Site Search report (SSR) and the SoCG refer to the availability of alternative sites within 1.15km of the identified Point of Connection (PoC) at Sutton Junction. This is next to

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<sup>16</sup> Footnote 62, within paragraph 180.

<sup>17</sup> The Forge Field Society & Others (On the application of) v Sevenoaks DC [2014] EWHC 1895 (Admin).

<sup>18</sup> Bramley Solar Farm Residents Group v SoS for Levelling up, Housing and Communities & Others [2023] EWHC 2842 (Admin).

the site and has available capacity for the scheme to meet contractual agreements. The SSR discounted land to the north of the PoC due to constraints relating to size and dissection by a railway line. Meanwhile, to the south of the PoC as it would not be available, and I learned at the Hearing that one area was being considered for housing. It also considered sites based on key designations, including those with heritage and ecological connotations, this included land to the southeast of the Hill. In this sense, the approach aligned with that referred to in paragraph 36 of the Lullington Judgment and the absence of soil testing of the other land within the search area would not have been determinative given the other reasons that sites were discounted.

57. In addition, consideration of other PoCs would amount to an unnecessary sequential approach, so is not justified in this instance, including in relation to sites further to the west of the district near to other solar farms and the M1 motorway. Furthermore, while the appellant accepts there is poorer quality land further away, given the magnitude of the proposed development, the evidence before me demonstrates it would not be cost effective at a greater distance from the identified PoC. I therefore find that a logical and proportionate approach has been adopted to the consideration of sites that could be served by the PoC.
58. In terms of the approach to disaggregated sites, the SSR confirms sites should not be too far apart from one another. There are clear benefits to the use of rooftops for the installation of solar panels, particularly in conjunction with ground mounted solar installations. However, the appellant's Commercial Viability Note confirmed it was not feasible to aggregate multiple rooftops within the locality, as the District Network Operator requires the installation to be served by one metering point. Even so, the cumulative roof space on the buildings in the search area identified by the Council falls significantly below the footprint of the proposal.
59. The proposed solar farm would occupy land within the site for a temporary period of thirty years and it could be constructed to avoid damage to soil during wetter periods. During this timeframe the land would not be available for arable farming, but the appellant's Environmental Enhancement Strategy and Management Plan sets out an approach to conservation grazing by sheep, with an optional hay cut in summer. This approach is commonplace with solar developments to manage the grassed areas surrounding panels and the document would inform a grazing plan to also be agreed by a planning condition. I am mindful of the comparison with the approach taken in appeal schemes to which I have been referred, including at Scruton. Moreover, it is not compulsory for the landowner to use the land for arable farming and there is no compelling evidence before me to suggest there would be a significant change to food productivity or security from the site not being available for arable farming over the lifetime of the development. Accordingly, there are many competing demands for agricultural land, and some represent total loss but, in the case of solar farms, there is only a partial loss for a temporary period, which can be secured by planning condition. The installation would be removed when it is no longer in use and the land wholly restored to agricultural use afterwards.
60. At the Hearing, the Council referred to the Planning Inspectorate's Environmental Impact Assessment Regulations (2017) Screening Opinion, as this did not refer to the land as Grade 2. However, it did not suggest there

would have been any implications for the screening process, including that the temporary use of the area of land identified for the development would have resulted in a 'likely significant effect'.

61. The proposal would also allow for biodiversity and landscape enhancements around the panels but, in accordance with the NPPG, these conditions need to be met alongside the use of BMVAL. There would be a reduction in the productivity of this land and poorer quality land would not be used in preference to higher quality land, as required by the WMS2015, NPPG and the Framework. However, the site selection process demonstrates that such poorer quality agricultural or brownfield land would not be viably available to serve the development. Furthermore, overall, I am satisfied that the economic and environmental benefits associated with the proposal, that I set out in the second main issue, would constitute the most compelling evidence to justify the temporary loss of BMVAL throughout the lifetime of the proposed development, as required by WMS2015, NPPG and the Framework.

### **Planning Balance and Conclusion**

62. There would be harm to the significance of the Mound, through development within its setting; and through development in the countryside, having regard to the effect on its landscape character and appearance, including its openness. These harms bring conflict with the LP which predates the current Framework. However, the Framework is clear existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to policies according to their consistency with it.
63. LP Policy ST1 is a strategic policy that requires compliance with other policies of the plan. This is not uncommon and does not undermine its objectives or compliance with the Framework. It is also supportive of development that does not adversely affect the character, quality, amenity, or safety of the environment. This is generally consistent with the Framework in terms of its aim to achieve well-designed and beautiful places. I therefore afford significant weight to the conflict of the proposal with this policy.
64. The aims of LP Policy EV2 to avoid harm to its character and openness, particularly from development that does not need to be there, differs only slightly from the aim in the Framework to recognise the intrinsic character and beauty of the countryside. However, the policy does not refer to any forms of renewable development, which are generally part and parcel of the countryside. I do not find the references to appropriate development and openness to be a flawed concept, as the supporting text to the policy clearly distinguishes it from the Green Belt. Accordingly, while there is a clear rationale for establishing appropriate forms of development and seeking to avoid harm to the countryside through the design and location of development, the closed list of development types means I regard the underlying objectives of the policy as being only partially consistent with the Framework. On this basis, I am only able to afford the conflict with EV2 and LP Policy ST4, moderate weight, as the latter requires compliance with the former.
65. Despite the Framework not encouraging the designations of landscapes in the manner undertaken by LP Policy EV4, it remains generally consistent with its aim to recognise the intrinsic character and beauty of the countryside. I therefore afford moderate weight to the conflict of the proposal with this policy.

66. Policy EV11 requires development to preserve the setting of a scheduled monument but, as I outlined in Procedural Matters, no such requirement exists in legislation, and the Framework also requires great weight to be given to an asset's conservation. The policy also does not include a balancing exercise in relation to heritage harms included in the Framework. Hence, I only afford limited weight to the conflict of the proposal with this policy.
67. The proposal would not conflict with the WMS, NPPG and Framework regarding the use of BMVAL. The appellant also advances that there would be absences of harm regarding flood risk and drainage betterment, highways and transport considerations, noise and glint and glare. I have not reached a finding on such matters so, in the circumstances, none would neither weigh in favour nor against the appeal scheme.
68. In terms of the harms identified, the localised harm to the landscape character and appearance of the countryside would be limited. Having regard to the weight afforded to development plan conflict in this regard, the stated benefits would be of greater significance and would outweigh the identified harm. However, as I set out in the second main issue, the stated benefits would not outweigh the harm caused by development within the setting of the scheduled monument. Despite the weight afforded to the conflict with the relevant development plan policy, there would be no justification to alter this finding in this overall balance.
69. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan and the material considerations, including the provisions of the Framework and the stated benefits, do not indicate the proposal should be determined other than in accordance with the development plan. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

*Paul Thompson*

INSPECTOR

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY**

|                      |                                                                       |
|----------------------|-----------------------------------------------------------------------|
| Alex Bonser          | Planning Officer at Ashfield District Council, MSc.                   |
| Simon Roper-Pressdee | Consultant Conservation Officer, BSc (Hons), PG Cert IHBC.            |
| Bob Woollard         | Director at Planning and Design Group (UK) Ltd., BA(Hons), MA, MRTPI. |

### **FOR THE APPELLANT**

|              |                                                                                                                |
|--------------|----------------------------------------------------------------------------------------------------------------|
| Nigel Cussen | Planning Policy and the Planning Balance Witness (Senior Director, Pegasus Group), BSc (Hons), Dip TRP, MRTPI. |
| Laura Garcia | Heritage Witness (Heritage Director, Pegasus Group), BA (Hons), MCIfA.                                         |

|               |                                                                                                    |
|---------------|----------------------------------------------------------------------------------------------------|
| Frances Horne | Landscape and Visual Impact Witness (Landscape Director, Pegasus Group), BA (Hons), Dip UED, CMLI. |
| David Hardy   | Planning Solicitor (Partner, CMS), LL.B (Hons), B.C.L (Hons) (Oxon).                               |
| Emma Ridley   | (Principle Planner, Pegasus Group), BA(Hons), MCD, MRTPI.                                          |
| Swara Shah    | Planning Manager, REPD.                                                                            |

#### INTERESTED PARTIES

|                   |                                                                                                |
|-------------------|------------------------------------------------------------------------------------------------|
| Mr Eric Garbutt   | Resident                                                                                       |
| Mrs Karen Hewitt  | Resident                                                                                       |
| Cllr Matthew Relf | District Ward Councillor and Executive Lead Member for Growth, Regeneration and Local Planning |

#### **DOCUMENTS HANDED UP AT THE HEARING**

Draft ELP Strategic Policies S3 and S7.

Application for an Award of Costs on behalf of the Council.

List Entry for Secklow Hundred Mound.

#### **DOCUMENTS RECEIVED FOLLOWING THE CLOSE OF THE HEARING**

The decisions referred to in the PSoC (page 38 onwards).

The appellant's signed Unilateral Undertaking.

The final list of agreed conditions.

Responses from the main parties regarding the relevance to the appeal of the Lullington Judgment and the WMS of 15 May 2024.