



## Appeal Decision

Hearing Held on 20 May 2025

Site visit made on 21 May 2025

**by Philip Major BA(Hons) DipTP MRTPI**

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

**Decision date: 14<sup>th</sup> July 2025**

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### **Appeal Ref: APP/M2840/W/24/3354297**

#### **Land south of Wood Lodge Farm, Thrapston**

- 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 Wood Lodge Solar Project Limited against the decision of North Northamptonshire Council.
  - The application Ref: NE/23/00858/FUL, dated 8 August 2023, was refused by notice dated 4 October 2024.
  - The development proposed is the installation of a solar farm comprising ground mounted solar PV panels with a generating capacity of up to 49.99MW, including mounting system, inverters, underground cabling, stock proof fence, CCTV, internal tracks and associated infrastructure, landscaping, biodiversity net gain and environmental enhancements, for a temporary period of 50 years.
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#### **Preliminary Matters**

1. The proposal, although refused planning permission by the local planning authority (LPA) was subject to subsequent review of that decision. At that time the LPA decided that it would no longer oppose the development. Council officers were present throughout the hearing proceedings and the site visit, but the opposition to the proposal was led by a local group. That is the Save Titchmarsh, Thrapston and Upper Nene Valley Countryside and Habitats group, which is hereafter referred to as STAUNCH. I am grateful for the contributions made by members of STAUNCH at the hearing and their attendance at the site visit.
2. Before dealing with the issues which I set out below I must address 3 matters which are of concern to STAUNCH and local residents. The first of these is the validity of the planning application. STAUNCH has argued that the red line boundary of the proposal includes land which is not in the ownership or control of the Appellant. As such it is asserted that the certificate which was submitted with the application is incorrect and was knowingly submitted as an erroneous document. Hence it is claimed that the application should not have been validated, and that it cannot be lawfully determined. STAUNCH offers the view that attempts to rectify the erroneous certificate are themselves flawed. I heard representations on this matter at the hearing, which have also been submitted in writing.
3. There is caselaw which broadly covers similar situations which I do not need to deal with in detail here. Suffice to say that where all relevant parties are aware of what is being proposed, and that there was no deliberate attempt to mislead, then so long as no party suffers prejudice the proposal can be considered. Despite the mandatory wording of the relevant statute it is

apparent that the courts have determined that there can be discretion in determining cases where no prejudice is demonstrated. I accept that in this case the mistaken certification was not undertaken deliberately or with the intent to mislead. It seems to me that all parties with an interest in the land have been well aware of the proposal since its inception. As such it is my judgement that there would be no prejudice to any party by my continuing to deal with the case. That is what I shall do.

4. Secondly, it is asserted that, notwithstanding the matter of certification and validity, the Appellant or landowner has no proven right of access over a short stretch of the proposed access adjacent to the property known as Old Tollbar House at the far eastern end of the site. There is a stretch of land which has no recorded title, and the owner of Old Tollbar House has referenced common law provisions to suggest that he must be the owner, at least, of half of the unregistered land. Whether or not the Appellant or landowner has a right of access to use the unregistered land for agricultural or other purposes has not been wholly demonstrated to me. That said, there is no dispute that matters of access of that nature can only be determined under civil law. As is fairly accepted by STAUNCH, such a determination is not a matter for me. If I were to grant planning permission then it would be necessary for the developer to show that access rights exist in order for the scheme to be implemented.
5. Thirdly, STAUNCH is adamant that an Environmental Impact Assessment (EIA) should have been required for this proposal, principally but not solely because of the potential impact upon the Upper Nene Valley Gravel Pits Special Protection Area (the SPA). A screening directive was issued by the Planning Casework Unit of the Ministry of Housing Communities and Local Government on 24 July 2024, with an associated statement of reasons for the direction. That direction found that the proposal is not EIA development. Although it would have been possible for me to request a further screening direction I have chosen not to do so. As explained at the hearing there is so much information available with this case that it is unlikely that an EIA would have provided further clarity in any event. I am therefore content to proceed to determine the appeal on the basis of the submitted information.
6. Apart from these matters it is pertinent to record here that the need for renewable energy is not a matter which is open to question in the appeal. There is a myriad of national policy and advice which makes such provision important. The position is succinctly expressed in the National Planning Policy Framework. Significant weight attaches to the benefits of renewable energy.

## **Decision**

7. The appeal is dismissed.

## **Main Issues**

8. The main issues in the appeal are:
  - (a) Whether the proposed development would be likely to have a significant effect on the integrity of the Upper Nene Valley Gravel Pits Special Protection Area (SPA) and if so whether any suitable mitigation would be available and achievable;
  - (b) The effect of the proposal on the character and appearance of the surrounding area;

- (c) Whether the use of the agricultural land in question is justified;
- (d) Whether suitable and safe access to the site can be achieved.

## **Reasons**

### ***Effect on the Special Protection Area (and Appropriate Assessment)***

9. The Upper Nene Valley Gravel Pits SPA encompasses an extensive area of linear form generally to the west of the appeal site. The qualifying species which are of interest in this case are golden plover and lapwing. The appeal site is not within the designated area of the SPA. There is a dispute in relation to whether the appeal site includes land which is functionally linked to the SPA as foraging grounds for these 2 species. There is a significant amount of data submitted with the application and appeal. As is usual Natural England (NE) has been consulted in view of the proximity of the SPA and the potential for the appeal site to include functionally linked land (FLL). Much of the data is contradictory and has been evolving as the date for the appeal hearing approached.
10. The Appellant has commissioned 2 wintering bird surveys which have not found evidence of the use of the appeal site by the qualifying species in sufficient numbers such that the land can be regarded as FLL. But STAUNCH has produced alternative evidence of the use of the land. Some relatively recent sitings in January 2024, November 2024, and January 2025 record both lapwing and golden plover on site at times. These sitings have been verified by the County Bird Recorder.
11. In addition STAUNCH has been critical of the methodology used for the wintering bird surveys carried out on behalf of the Appellant. Amongst other criticisms it is pointed out that there were no nocturnal surveys for these species, which are known to forage at night. Whilst the Appellant stands by its survey evidence it seems to me that there is significant doubt that the wintering bird surveys have been robust enough to enable me to conclude that the appeal site is not used by golden plover and lapwing as foraging grounds.
12. I have noted the previous advice of NE, and also taken account of its latest correspondence dated 7 May 2025. In that correspondence there is acknowledgement of the evolving evidence base, and the 'invitation' to the competent authority to apportion weight to the evidence. It falls to me, as the competent authority in this case at appeal, to make that judgement. Given the extensive and persuasive evidence presented by STAUNCH my judgement here is that the use of the appeal site by golden plover and lapwing in sufficient numbers for the land to be functionally linked to the SPA has been clearly demonstrated. The STAUNCH evidence is more robust than the limited information which flows from the wintering bird surveys.
13. I therefore find that the evidence here demonstrates beyond all reasonable scientific doubt that the proposed development would be likely to have a significant effect on the integrity of the features for which the SPA has been designated. Designation of the SPA identifies the fact that golden plover and lapwing spend time feeding and roosting on surrounding agricultural land. The agricultural land includes the appeal site and is functionally linked to the SPA. Although other potential developments nearby have been mentioned by STAUNCH these are not in a position for me to be able to consider them

cumulatively with the appeal site. They are either not decided or not progressing at the present time.

14. In the event that I found the appeal site to include FLL, as I have here, the Appellant has put forward mitigation. This involves land also in the ownership of the same landowner, and I was informed at the hearing that there is an agreement to enable the use of that land for mitigation purposes if necessary. The land is largely to the north of the appeal site, with smaller parcels to east and west, and is agreed not to be land currently functionally linked to the SPA.
15. Although a Grampian condition has been put forward which seeks to ensure that a scheme comes forward to manage the land as 'new' FLL, STAUNCH has nevertheless been critical of the land offered. In particular, by reference to the type of land preferred by golden plover and lapwing, STAUNCH claims that the mitigation land would be unsuitable. Although NE has not objected to the use of a Grampian condition in principle I am not aware that it has carried out any qualitative assessment of the potential for mitigation.
16. There is little detail of any potential mitigation scheme before me. That said it is not disputed that sufficient land (in area) would be available if the details of the mitigation itself were to be acceptable. With that in mind I have noted the critique of STAUNCH in relation to the potential mitigation land and note in particular the following points:
  - Some of the land is used for purposes, such as equestrianism, which would be likely to conflict with the use as FLL;
  - Some of the land is in small parcels, which would run contrary to the particular birds preference for large open spaces;
  - Some of the land would be crossed by a public right of way, which would be likely to interfere with its use as FLL
  - Some of the land is close to the busy A14, which is potentially a hindrance to its use as FLL.
17. These are not the only criticisms of the land offered in mitigation. In total I have doubts as to whether it would be realistically possible to bring forward a scheme which would suitably mitigate for the loss of FLL at the appeal site. With particular reference to the potential to impose a Grampian condition it would not be acceptable to do so if I found that there would be no reasonable prospect of the required actions in the form of a mitigation scheme being achievable. Because of this reasonable criticism levelled at the proposed mitigation land I am not satisfied that it has been shown that appropriate mitigation would be possible in this case, and therefore a Grampian condition would be unacceptable here. Much more reassurance in the form of specific information would be necessary if a Grampian condition, or other mechanism to secure mitigation, were to be imposed.
18. For the reasons set out above as my appropriate assessment it is my judgement that the proposed development would lead to the loss of foraging habitat for sufficient numbers of qualifying species identified in relation to this SPA. Additionally I am not satisfied that it has been shown that suitable mitigation could be achieved. It follows that planning permission would only be justified if there were demonstrable imperative reasons of overriding public importance to justify the scheme. This is a high bar which is not surmounted

by the acknowledged need for renewable energy since this is not the only location where a solar farm could be located. Hence those imperative reasons have not been demonstrated here.

19. Policy 4 of the development plan<sup>1</sup> seeks to ensure that development which would be likely to have an adverse impact upon the SPA must satisfy the requirements of the Habitats Regulations, including mitigating those impacts where identified. I have determined that such impacts are unlikely to be successfully mitigated in this case. Therefore I find conflict with the development plan in this regard. Furthermore the National Planning Policy Framework is clear that where significant harm to biodiversity cannot be avoided, mitigated or compensated for, then planning permission should be refused.
20. I have noted the comments of Natural England which indicate that it relies on the decision maker to reach a conclusion on the evidence presented in this case. My conclusion is set out above.
21. In light of my findings on the first main issue I can deal with the remaining issues more succinctly.

### ***Character and Appearance***

22. The appeal site is located in a gently undulating agricultural landscape, though this is heavily influenced by the presence of the A14 adjacent to the southern portion of the land. Further influence is exerted by the visible edge to Thrapston, where large scale commercial buildings are located to the north-west.
23. The northern sections of the site are more rural in character as the influence of the A14 diminishes. Here the characteristics are dominated by the relatively large scale fields, moderate tree cover and hedgerows and the cultivated nature of the land. Taking these matters together it is clear to me that the introduction of the solar arrays and associated infrastructure would lead to a localised change in character. This change would be limited by the existing topography in that it would not be perceived over great distances.
24. In a similar manner there would be some visual change, but this too would be localised and limited in extent. I recognise that the users of public rights of way would be likely to be enjoying the countryside as part of their utilisation of the rights of way, and hence they are to be regarded as sensitive receptors to any change in the visual environment. The solar arrays and other development would change the views enjoyed and would lead to significant visual harm. This would, though, be limited in spatial extent.
25. The nearest dwellings would have some visibility of the solar farm, but the views would be heavily filtered by vegetation and topography. In my judgement this would not lead to unacceptable loss of outlook from the nearest residential receptors. It is also fair to record that proposed landscaping which could be introduced with the proposed development would assist in assimilating the proposal in the local environment.
26. Taking these matters together I am satisfied that the limited to moderate harm to the character and appearance of the surrounding area would not be such

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<sup>1</sup> North Northamptonshire Joint Core Strategy 2011 - 2031

that it should weigh against the acknowledged need for renewable energy provision. I consider that the proposal accords with the objective of the development plan which seeks to ensure that renewable energy developments minimise and mitigate landscape impacts (Policy 26).

### ***Agricultural Land***

27. The Appellant has submitted information which suggests that a large proportion of the land is of a lower quality (essentially mainly grade 3b). The methodology for the assessment of quality has been questioned by STAUNCH. I have some sympathy with the views expressed by STAUNCH but I do not have any expert counter-evidence which enables me to reach a definitive finding on this matter, notwithstanding that STAUNCH suggest that the land has previously been classified largely as falling within grade 3a. I do agree that the survey methodology may be open to question in some respects (noting only 2 of 64 samples were subjected to laboratory testing) but it would be difficult not to respect the experience of the assessor who carried out the tests in this case. That said, the evidence is rather light in its persuasiveness. Taken overall the evidence on agricultural land quality and loss is such that I cannot afford it any material weight in my deliberations. In any event this is not a matter which is determinative in the appeal in light of my other conclusions.
28. For completeness I record here that I do not accept, as suggested by STAUNCH, that the development would lessen the quality of the land for the future. In addition I am satisfied that the land could continue in agricultural use as sheep grazing land.

### ***Highway Access and Safety***

29. The matter of the availability of lawful access is not a matter for me. However, there have been concerns expressed in relation to the adequacy of the proposed access from the A14. It is not disputed that a significant number of heavy goods vehicles would be required to utilise the A14 slip road to Toll Bar Lane. The slip road is of restricted length and would not be easy to negotiate given the busy nature of the A14. Of equal concern would be the re-entry to the A14, where a simple give way junction has no joining slip road.
30. Criticism of the traffic flows predicted for this development identified that the assessment seems to be based on a significantly smaller scheme elsewhere. In those circumstances it would be unwise to rely on the trip generation suggested for this scheme. I note that there are no objections from the relevant highway authorities, but if this lack of objection is based on incorrect data it cannot be wholly relied upon. The Appellant accepted that the likely construction period may well extend beyond that indicated. In my judgement the evidence base here has not demonstrated a sufficiently accurate assessment of likely trip generation. The likelihood is, in reality, that a greater number of movements of heavy vehicles would be required, over a longer construction period.
31. When considered in the round I am not satisfied that in this case the evidence has demonstrated that the access to and egress from the proposed development site has been shown to be safe for the traffic likely to be generated during the construction phase of the development. On balance I

consider that there would be conflict with the National Planning Policy Framework, which seeks to avoid an unacceptable impact on highway safety.

### **Other Matters**

32. Other matters raised in writing and at the hearing include site selection, grid connection, ecological impact and biodiversity net gain.
33. Site selection is a matter for the Appellant based on a number of factors. In this case I have no substantive evidence to suggest that the selection process was carried out in any unusual manner. Following the identification of broad areas it would be expected that more detailed studies would be conducted, as has happened here. I do not seek to criticise the selection process though some of the subsequent justifications for selecting this site may be open to question in some regards, as set out above. Grid connection was a point of contention but this has been addressed by the Appellant and I have no reason to dispute that a connection would be available if permission were to be granted.
34. Some criticism of the ecological studies carried out was made, including that features such as badger setts and bat roosting sites were missed. The site visit carried out did reveal apparent indications of some features not reported in the ecological surveys. But this is not fatal to the proposal as there would be opportunities to address these matters through the imposition of appropriate conditions.
35. Although biodiversity net gain has been disputed on this site (because of existing stewardship arrangements) this is a moot point. The application was submitted before biodiversity net gain became mandatory, and in this case would not be necessary for permission to be granted. That said I am satisfied that a minimum of 10% could be achieved.

### **Planning Balance**

36. The need for renewable energy is accepted and is of significant weight. In addition this proposal would not create unacceptable harm to the character and appearance of the landscape. There are areas where I am not persuaded that the evidence has demonstrated a lack of harm, such as in relation to the loss of high grade agricultural land and the maintenance of highway safety. Indeed in relation to highway safety the evidence points towards there being some harm. There is, as identified, some conflict with the development plan. But overriding all of these matters is the fact that this proposal would be harmful to the integrity of the Upper Nene Valley Gravel Pits Special Protection Area for the reasons I have set out. No suitable mitigation has been demonstrated. This tips the balance firmly against the proposed development and therefore the appeal must fail.
37. For the reasons given above I conclude that the appeal should be dismissed.

*Philip Major*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Mr R Moules	King's Counsel, Landmark Chambers
Mr N Beddoe BA(Hons) MSc MRTPI	Lighthouse Development Consulting
Mr S Baker BSc MSc MRTPI	Lighthouse Development Consulting
Ms Emma Hayes BA(Hons) PGDipLA MA CMLI	Tir Collective Landscape Architects
Mr S Elsom MSc ACIEEM MRSB	Stuart Elsom Ecology

### FOR STAUNCH:

Mr D Bailey MRTPI (retd)	
Mrs S Cole	STAUNCH Secretary
Mrs J Fletcher	Local resident
Mr J Scotland	Local resident

### FOR THE LOCAL PLANNING AUTHORITY:

Mr P Baish	North Northants Planning
Ms E Davies	North Northants Planning

### INTERESTED PERSONS:

Cllr W Brackenbury	Ward Member, Thrapston
Mrs M Marsh	Local resident
Mr J Franklin	Local resident
Mr S Fyfe	Local resident

## **DOCUMENTS HANDED IN DURING THE HEARING**

- 1 Clarification of various matters from Mrs Fletcher
- 2 Photographic extracts
- 3 Extract of NE comments on agricultural land elsewhere
- 4 Cheney family statement
- 5 Badger Group location map
- 6 Statement of Cllr Brackenbury
- 7 Statement of Mr Franklin
- 8 Naturespace Partnership district licence report