

CLOSING SPEECH

*On behalf of Melton Borough Council (“the Council”)*

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1. The Council’s position at the end of the Inquiry is the same as in opening. It remains the Council’s position that this proposal for a solar farm is manifestly unsuitable on this very large (almost 100-hectare) site: in the open countryside; crossed by an extensive network of Public Rights of Way (“PROW”) and within the setting of a number of heritage assets of the highest significance.
2. The Inspector has received a considerable amount of written evidence and heard detailed oral evidence over the last week and a half. These closing submissions will not traverse all of that material, but will instead focus on areas of disagreement and seek to highlight the major points which the Council says should inform the Inspector’s ultimate conclusion to dismiss this appeal.
3. These submissions are structured in line with the order in which the evidence was heard.

**Effect of the Proposed Development on the character and appearance of the area**

4. It is common ground that the Development will give rise to harmful adverse effects on both landscape character and appearance. The issue between the parties is the extent of harm and whether it is significant or not.

**Landscape Character**

5. The starting point is the impact of the Development on the landscape character of the Site itself. Whilst the focus of the Council’s Reason for Refusal is on cumulative impacts, this does not mean that the site-level impacts do not register as a harm to be weighed against the Development in the overall balance. Further, before the cumulative impacts can be properly assessed, it is necessary to know what effect the Development will have on the

Site in order to determine whether this would be acceptable or not when assessed in combination with existing consented development.

6. There are two key differences between Mr. Kratt and Mr. Higson here. First, on the sensitivity of the Site. Mr. Kratt assesses it as being “medium” sensitivity and Mr. Higson assesses the sensitivity as being “high”. That is driven by a difference in value – because it is common ground that there is a medium/high susceptibility. Second, there is also a disagreement on the magnitude of effect, which is assessed by Mr. Kratt as being “medium-high” whilst Mr. Higson assesses it as being “high”.
7. Turning to value first. It is common ground that the Site does not form part of a valued landscape under paragraph 180(a) of the NPPF. However, landscape does not have to be a “valued landscape” in order to be afforded protection from inappropriate development.<sup>1</sup> Further, as Mr. Higson explained, Mr. Kratt’s assessment underplayed the value of the Site. Having regard to Table 1 of the TGN 02-21,<sup>2</sup> there are a number of factors which elevate the value of the Site, including offering a sense of time depth, good physical condition, distinctiveness through its strong sense of identity as part of the Vale of Belvoir, recreational opportunities and scenic qualities.
8. Addressing some of these in more detail:
9. One indicator of landscape value is landscape which contributes to distinctive views and landmarks. Evidence that can be used to demonstrate this under the TGN includes “Protected views and view studies”. Here, both the Melton and Rushcliffe Landscape Sensitivity Study and the Bottesford Neighbourhood Plan (“the Neighbourhood Plan”) consider that it is desirable to preserve the expansive and rural patchwork character of the landscape within which the Site sits, and that the landscape within which the Site falls contributes to the view from Belvoir Castle. This is a factor which should elevate the value of the Site.

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<sup>1</sup> CD 8.3 – page 43 – last bullet point.

<sup>2</sup> CD 8.3 at page 11.

10. So too is the fact that the landscape is in good condition, as recognised in the Pegasus LVIA.<sup>3</sup> A further example of landscape character illustrative of a higher value is its “distinctiveness”, and in particular a landscape that has a strong sense of place. The profile for NCA 48 clearly considered that this was the case for the Vale of Belvoir; one of its Strategic Environmental Opportunities is to promote and manage that “*overarching sense of place*”.<sup>4</sup> Further, cultural heritage may elevate value, with the TGN noting that this will occur in landscapes which contribute to the significance of heritage assets, for example by forming its setting. Again, the Site demonstrates those characteristics – falling within the setting of at least five designated heritage assets.
11. For all of these reasons, Mr. Higson’s assessment of value is by far the most balanced. Upgrading Mr. Kratt’s assessment of value alone to “local/district” value would be sufficient to mean that the Development would have a significant effect on the landscape character of the Site.<sup>5</sup>
12. In terms of magnitude of effect, it is common ground that there will be a fundamental and adverse change to the landscape characteristics of the Site and its immediate context.<sup>6</sup> That will be the case both at Year 1 and Year 15 and is unaffected by the various mitigation measures put forward by the Appellant. It also takes into account the fact that some landscape elements of the Site (principally the existing hedgerows) will not be removed.
13. In this respect, the following matters are all agreed:<sup>7</sup>
- (1) The current landscape within the Site is predominantly rural in character and the landscape character of the site is consistent with the character of the wider LCA1.
  - (2) The panels and associated infrastructure will cover a substantial area of land that is currently undeveloped with built form. This development is not characteristic of the

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<sup>3</sup> CD 1.31.2 at para. 2.4.10

<sup>4</sup> CD 8.5 – page 20.

<sup>5</sup> If the Site was of local/district value, then the sensitivity would increase to “high-medium” – and the effects would be between Major/Moderate and Major applying Diagram 2.

<sup>6</sup> Mr. Kratt acknowledges in his Proof at paragraph 8.5.3 that there will be “*large scale, permanent effects on the localised area of the landscape character of the appeal site itself and its immediate context*”. Under this methodology large means: “*total or major alteration to key elements, features, qualities of characteristics, such that post-development the baseline will be fundamentally changed*”.

<sup>7</sup> Kratt xx.

existing rural landscape within the Site and the panels and associated infrastructure can reasonably be described as having an industrial character.<sup>8</sup> The panels themselves would introduce a contrasting form and material into the landscape, out of character with what is currently present.

(3) New fencing and CCTV will also be installed. Mr Higson has assessed that the development would result in 9.7 km of security fencing and 146 CCTV poles (each being 3 metres high). It is agreed that this will involve the introduction of new and unfamiliar elements into the rural character of the landscape.

(4) There will be additional built form too, including 20 inverter stations at around 3 metres in height and a new (and permanent) sub-station. It is agreed that this new built form will not be rural in character.

14. In short, the Development will be perceived as major new industrial-style development built in the open countryside.

15. The factor that led Mr. Kratt to conclude that the magnitude of change was only “medium-high” and therefore that the effects were not significant was his conclusion that the effects were only felt on a “localised area”.

16. However, this is a large site by any measure. This purportedly “localised” harm would be felt across a large area of 100 hectares and within that area there would be a fundamental and adverse change to the baseline landscape character. The suggestion that effects were localised because they may not be felt on the immediately adjacent fields was clearly wrong. For a start, Mr. Kratt hadn’t actually carried out an assessment of how those fields would be affected in accordance with his methodology. Second, it is readily apparent that the effects would be felt on the immediately adjacent fields (see for example, Heritage Visualisation 6 which shows the effect one field away on Footpath 82). Third, and in any event, even if it were right that the fundamental change to landscape character evaporates

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<sup>8</sup> The Pegasus LVIA (CD 1.31.2) states at para. 2.5.2: “*the perceived industrial character of large-scale solar pv development could detract from the intrinsically rural character*”.

or materially changes at the site boundary, the effects would still be felt over such a large area that they cannot be described as being “local”.

17. In truth, therefore, Mr. Kratt should have assessed the magnitude of change at a site level as being “high” – meaning again, that with this change alone, the adverse effect of the Development on the landscape character of the Site would be significant.
18. As Mr. Higson explained, those effects are still felt as far away as within 1km of the Site – even though there are no physical changes proposed beyond the red-line boundary. Not only will the effects be perceived from both Belvoir Castle and Beacon Hill (see further below), but there are numerous other locations closer to the Site within a 1km radius where there would remain a noticeable change to landscape character: see, for example, Viewpoint 6 (700 metres to the east of the Site) and Mr. Higson’s Context Photograph 3, taken on Footpath 82 approximately 200 metres to the west of the Site. From these elevated positions, the proposed new hedgerows will offer limited screening.<sup>9</sup>
19. The significant adverse effect on landscape character would therefore be felt well beyond the boundaries of the Site. There would not be a significant impact on the wider Local Character Area (“LCA”) - LCA1 – but as Mr. Kratt accepted, it would be rare for a development of this scale to have a significant adverse effect on an LCA – because the same amount of disturbance to the landscape is being judged against a larger area.
20. This site-level harm is a harm in its own right, but the level of harm is also important context when considering the cumulative effects of the Development. There are four approved solar farm developments around the historic village of Bottesford, with the current proposal making five if it is approved.
21. The addition of the solar farm at the c 100 ha Site would result in a total combined area (with the other projects) of approximately 317 ha (based on the site area). That site area assessment (as opposed to looking at the extent of the site covered by panels) is the correct unit of measurement, since any undeveloped areas within this site or the other consented

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<sup>9</sup> See also Context Photographs 4, 5 and 6.

schemes (setbacks, access tracks etc) will still be perceived as being part of a larger solar development – rather than as untouched undeveloped countryside.

22. There is no dispute that it is relevant and important to consider whether the Development would give rise to cumulative impacts on landscape character. The Planning Practice Guidance (“PPG”) is clear that this is a critical factor to take into account.<sup>10</sup>
23. There is also no prescribed methodology for assessing cumulative impacts. Mr. Higson used the Pegasus methodology. As Mr. Kratt agreed, there is nothing in that methodology that tells the user what landscape character receptors to use and nothing which describes how to assess cumulative effects – that is left up to the individual assessor. In applying the GLVIA stages (sensitivity, magnitude and significance of effects) to the receptors he has chosen, Mr. Higson used the tables in the Pegasus methodology. Ultimately, despite all of the methodological questions put to Mr. Higson, Mr. Kratt accepted that he had used a methodology that was in accordance with GLVIA 3.
24. Mr Higson’s approach was simple. He took the view that it was inappropriate to assess cumulative effects by looking at the impact of the development on each individual LCA potentially affected. That was because the consented schemes fall across a number of different LCAs, and looking at effects on an LCA by LCA basis would not assess the cumulative impact of the development together with other consented proposals that fell outside of the LCA being considered. That was the (erroneous) approach taken by Pegasus in its LVIA.<sup>11</sup> CEC did not consider that it was appropriate. Mr. Kratt diplomatically said it would not be an approach that he would recommend.
25. Given that, it is necessary to adopt a study area against which to assess cumulative effects. A study area of 5 kilometres has been used by Pegasus, Mr. Kratt and Mr. Higson. Mr. Kratt must therefore have considered that a study area of this size was appropriate for the purposes of determining whether there would be an adverse cumulative effect arising from the Development.

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<sup>10</sup> See para. 5 of the PPG (CD 4.2A).

<sup>11</sup> CD 1.31.2 – para. 2.7.3.

26. Then it is necessary to consider whether within that study area the Development would give rise to adverse cumulative impacts. GLVIA gives guidance on this. One of the potential adverse cumulative effects it identifies is where the development (together with other consented development, which forms part of the baseline) gives rise to an effect on the overall character of the landscape. It says that this may lead *“to the modification of key characteristics and possible creation of a new landscape character if the changes are substantial enough”*.<sup>12</sup>
27. The starting point is the baseline position within the study area. Within that area, there are a number of different LCAs.<sup>13</sup> The boundaries of these LCAs are dictated primarily by administrative boundaries, rather than a material change in landscape character. Mr. Kratt appears to agree that within the study area there are no material differences or changes in landscape features or elements as one crosses the boundary from one LCA to another. CEC took the same approach.<sup>14</sup> Importantly, solar development is not currently a key characteristic within any of the LCAs that fall within the study area, or within the study area itself.
28. Mr. Higson’s approach was then simple. He asked the question posed by GLVIA – i.e., would that change with the addition of the Development, and in particular would solar development now result in the creation of a new landscape character area. He concluded that it would – and that the effect of the Development would be the creation of a new landscape character area, with a materially different character, around Bottesford (the “Vale around Bottesford”) – see his Figure SH/6.<sup>15</sup> That area would have solar development as one of its key characteristics.
29. That approach was clear from his evidence – both written and in evidence in chief. Understanding that the new character area is created by the Development answers a lot of the questions that were put to him in cross-examination:

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<sup>12</sup> GLVIA – CD 8.1 para. 7.25.

<sup>13</sup> See CEC Review – CD 7.19B – Table 1, Page 14.

<sup>14</sup> CD 7.19B – para. 5.1.7.

<sup>15</sup> Mr. Higson – Appendix 2, pg. 8.

(1) It is correct that the “Vale around Bottesford” is not currently a LCA in its own right and is merely a “hypothetical future character area” – but that will always be the case where the cumulative effect of granting permission for a new development creates an area with a markedly different character. The fact that the area does not yet exist (and is therefore hypothetical and future) explains why the development is harmful in creating it.

(2) And, of course, the boundaries of the new area are strongly related to the locations of solar development. It is the solar development that has resulted in the creation of the new character area in the first place. There is nothing “contrived” about that – as was put to Mr. Higson.

(3) Further, the fact that the existing schemes have been consented and found to be acceptable in their own right is irrelevant. GLVIA is clear that harmful cumulative effects can arise where the project under consideration “tips the balance” through its additional effects.<sup>16</sup> To get to that point, there must have been other schemes that have been consented (and therefore found to be acceptable) before the scheme under consideration can tip the balance. There is nothing unusual in finding that there is an adverse cumulative effect in circumstances where there are already similar schemes permitted in an area. As GLVIA puts it at paragraph 7.17, cumulative effects can arise through “*incremental change as a result of successive individual developments such that the combined landscape and/or visual effect is significant even though the individual effects may not be*”.

30. It is true that an assessment of cumulative impacts does not fit neatly into the traditional approach of assessing the impact of development on an existing receptor – especially where that receptor does not yet exist. That means that the key questions do not relate so much to issues of value, susceptibility, magnitude etc – but rather the question posed by GLVIA at paragraph 7.21.

31. In this respect, Mr. Higson is right that the area around Bottesford would have a markedly different character to the surrounding landscape. Post-development, whether one leaves

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<sup>16</sup> See para. 7.28.



Bottesford to the North, East, South or West, one is quickly in the ZTV of a solar farm (see Mr. Kratt's Figure 15) – whereas at present, much of the area to the South of Bottesford is outside the ZTV of any consented solar farm. There may not be significant inter-visibility between each solar farm, but considered sequentially – as one moves through the landscape - solar development would become a key characteristic of the “Vale of Bottesford” area.

32. It is true that there would remain a distance of approximately 4km between each solar farm. However (i) distance between solar farms alone does not mean that solar development cannot become a key characteristic. There is a similar distance between the existing scattered villages which are currently a key characteristic of the Vale landscape (ii) distance between the boundary of each solar farm is not a helpful guide, when much of the walk or drive between each would be in the ZTV of one or more solar farms (again, see Mr. Kratt's Figure 15). The effects of solar development would be regularly perceived when travelling around the area – whether or not more than one solar development could be seen in the same view. The point is that there would be no “break” from the effects of seeing solar development.
33. It is also true that agriculture would remain the predominant land use within the study area. Plainly, there would not be a transformation such that the landscape character would be primarily perceived as being solar. However, this would be indicative of a significant landscape effect at the very highest end of the spectrum: see paragraph 7.28 of GLVIA. A significant adverse effect can still arise through the creation of a new character area with different key characteristics – see, again, paragraph 7.28 of GLVIA. Mr Kratt agreed that if solar development became a key characteristic (as opposed to the primary characteristic) of the area around Bottesford that would register as a harmful change to landscape character.
34. Finally, it is worth comparing the extent of this new character area with the study area of 5km (indicated as a dashed black line on Mr. Higson's Figure SH/6). The new area, with solar as one of its key characteristics, forms a large part of the overall study area. If the study area changes post-development so that it now comprised of two distinct areas – one which had solar as a key characteristic (the vale around Bottesford), and one which did not (the remainder of the vale landscape within the study area and beyond), that would plainly be a significant adverse effect within the study area.

35. Overall, the adverse cumulative effects should be given significant weight.

### Visual Effects

36. There is also an extensive network of PROW, both within and adjacent to the Site. This includes over 1.5km of public footpaths, and 1.4km of byway open to all traffic (“BOAT”), which extend through the Site itself. This PROW network connects directly into the village of Muston and Bottesford, and represents a considerable recreational resource. The paths are agreed to be well-used<sup>17</sup> and it is clear that members of the local community value and make use of the appeal site. The route along the Grantham Canal is also agreed to be a popular route for both cyclists and walkers.

37. The views afforded on these routes are not of “community value”, as assessed by Mr. Kratt. There are a number of places (for example, Heritage Viewpoint 7, where there is a bench) where one would pause to appreciate the view. So too, on Footpath 90 as it heads south, and on the BOAT at Viewpoint 4 where the path opens up to enable you to experience far reaching views across the Site and to the Castle. As such, they should have been assessed as being of local/district value and the sensitivity of these views has been underplayed by the Appellant.

38. The rural character of these paths is a key part of their appeal to local residents and visitors. In particular, the PROWs enable clear open views across the expansive vale. This is a significant part of the value of the existing views. Whilst there are some parts of the PROW network which are enclosed on both sides, this is limited and the vast majority of the routes have a hedge on one side only – enabling clear open views in one direction.<sup>18</sup> Mr. Kratt agreed that enclosure of PROWs on both sides is not currently a characteristic of the Site.

39. The experience of walking these paths will be fundamentally, and negatively, changed. In particular, the existing expansive and high-quality views over the Site will be lost. This was recognised by Pegasus who, in the original LVIA, found that there would be major (and

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<sup>17</sup> Kratt xx.

<sup>18</sup> For example, on Footpath 90 as it travels north-south on the western edge of the Site, there are open views to the east across the length of the footpath, with a hedge on one side only; similarly, on Footpath 82, there are currently open views to the North as it travels through the site, with a hedge on one side only; same too with the BOAT (F85B) – from where that heads south, there are open views on at least one side of the route.

therefore significant) effects on viewpoints from PROWs from within the Site, even post-mitigation.<sup>19</sup> Whilst Mr. Kratt disagrees, that original assessment was plainly correct.

40. At Year 1, from a number of viewpoints solar panels and security fencing would be visible at close range before planted screening takes effect: see, for example, Heritage Viewpoint 7A. In these close-range views, the panels would generally be viewed as a solid mass of development – and the industrial appearance of the Development would contrast sharply with the rural scenery that walkers currently enjoy. The open views across countryside would be lost.
41. Even at Year 15, as Mr. Kratt acknowledged, the new hedgerows will not prevent awareness of the presence of the development behind them in close-range views: for example, Viewpoint 4 on the BOAT, Heritage Visualisation 7 on Footpath 82, or post-submission visualisation 5 on Footpath 90. That is particularly the case in winter where there may be more visibility through the hedgerow.
42. Further, because of the topography of the Site, there are viewpoints where the panels will not be screened from view even at Year 15: for example, Heritage Viewpoint 7C and 13A and B.
43. However, perhaps the most harmful effect is the loss of open views across the Site. Views of panels in Year 1 will be replaced by views of a hedge at Year 15. The hedge does not mitigate the loss of the open view – it simply changes what is blocking that view. The vast majority of the new hedgerows are enclosing a view that is currently not enclosed in one direction. As what is valued in the view is that openness, the proposed planting will not mitigate for that at all – and the harm identified at Year 1 (which is a significant harm even on Mr. Kratt’s evidence) remains.
44. This loss of an open aspect will be experienced across the Site – enclosure will now become a characteristic of the appeal Site. Mr. Kratt’s Figure 8 shows the extent of enclosure. For much of their length, Footpaths 82 and 90 will be enclosed by hedges on both sides; so too the BOAT. The Inspector will reach a view on the extent to which there will be an

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<sup>19</sup> CD 1.31.2 – 2.4.27 and 2.8.16.

oppressive tunnelling effect, but even if that has been avoided, the fact that the paths are 10 metres wide will be of little consolation to users for the visual harm caused by the loss of the existing open views. In real terms, it is far less likely that anyone would choose to walk on the Site and enjoy its important recreational resource.

45. Accordingly, there would be a significant effect on Mr. Kratt's VRG1 receptor even at Year 15. This is harm that ought to be given significant weight.
46. There would also be clear views of the scheme from elevated publicly accessible locations. The existence of these views is important in of itself. The PPG clearly considers that renewable schemes can have a zero zone of influence, where screening and land topography are appropriate.<sup>20</sup> That clearly has not been achieved here. The Zone of Potential Influence extends to some 1,385 hectares, around 13% of the area within 5km of the site.<sup>21</sup>
47. Part of the Jubilee Way runs along the north-western edge of the Belvoir Castle Registered Park and Garden. The view here (LVIA Viewpoint 9) which takes in the Site, is considered to be a view of "Borough-Wide Importance" "*characterized by a rural patchwork of fields, bordered by hedgerows and punctuated by woodlands and historic villages.*"<sup>22</sup> The Neighbourhood Plan is clear that "*the borough wide importance of this view must be reflected in development proposals in the Parish that might affect this view*".<sup>23</sup> It is a popular recreational destination. The rural patchwork character of this view would be clearly interrupted by the proposal, causing harm to a view of Borough-wide importance.
48. Mr. Kratt's assessment of the impact at this view significantly downplayed the effects. Pegasus recognised that there would be a moderate adverse effect at Year 1. This was downgraded at Year 15 on the basis that screening mitigation would reduce the impact – but, as Mr. Kratt acknowledged, from this view the solar panels cannot be screened by planting.<sup>24</sup> Further, his assessment is fundamentally at odds with both CEC (who concluded that the Site would be "clearly visible" in the view)<sup>25</sup> and Pegasus (who concluded that the

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<sup>20</sup> PPG on renewable energy – CD 4.2A – para. 13 – last paragraph.

<sup>21</sup> See Mr. Kratt's Proof at para. 6.6.6

<sup>22</sup> CD 8.8 – Table 3.4.

<sup>23</sup> See paragraph 103.

<sup>24</sup> See Proof at para. 9.4.37.

<sup>25</sup> CD 7.19B at para. 4.2.12.

panels would have the potential to appear as a “noticeable feature”).<sup>26</sup> In this respect, Mr. Kratt’s assessment that the Development would be “barely discernible” is clearly an outlier in the range of professional opinion before the Inquiry.

49. In the view from Beacon Hill (LVIA Viewpoint 15), the Development would be seen in the context of the Lodge Farm development. This is a “Key View” under the Neighbourhood Plan: see Map 9a (Viewpoint 1). As Mr. Higson explained, the effects would be moderate/major at Year 1 and Year 15. As with the view from Belvoir Ridge, the impact of the Development in the view is not capable of being mitigated.
50. Overall, the landscape harm here should be given significant weight. That harm is capable of being divided up into several free-standing elements (the impact on landscape character at a Site level; beyond the site; the cumulative impacts; the impacts on PROWs; the impacts from elevated viewpoints). We will resist that temptation, or the temptation to suggest that the harm is greater than the sum of its parts. However it is looked at – the harm is significant and its weighting in the overall balance should reflect that.

### **The effect of the Proposed Development on heritage assets**

51. It is common ground between the Council and the Appellant that there would be Less than Substantial Harm (“LTSH”) to the significance of the following heritage assets, through development within their settings:
- (1) Grade I Listed Belvoir Castle;
  - (2) Grade II\* Registered Park and Garden (“RPG”) at Belvoir Castle;
  - (3) Belvoir Castle Conservation Area;
  - (4) Grade I Listed Church of St Mary, Bottesford.
52. In addition, the Appellant (although not the Council) considers that there will be LTSH to Grade II\* Listed Church of St John the Baptist, Muston. Further, the Council (although not the Appellant) concludes that there will be LTSH to the Moated Grange at Muston, a Scheduled Monument.

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<sup>26</sup> LVIA at 2.8.15.

53. Views differ as to where such harm should be placed within that LTSH range – with the Appellant finding harm at the lower end of the spectrum to all the assets it considers harmed; and the Council finding harm at the mid-point of the spectrum to all assets except the Moated Grange at Muston.
54. It will be noted at the outset that Mr. Malim’s views are very aligned with those of Historic England. Plainly, Historic England’s position that the Appellant had understated the heritage harm to all of the assets we are principally concerned with should be given significant weight. Historic England did not formally object (for the reasons explained by Mr. Malim) but it had concerns with the application on heritage grounds and its underlying reasoning is of vital importance. That reasoning may not be expressed in the same level of detail as the Appellant or Council’s evidence. However, where harm lies on the spectrum of LTSH is ultimately a matter of judgment. In that respect, it is very instructive to note that Historic England’s position aligns with Mr. Malim’s judgment on a number of important issues.

#### Belvoir Castle (Grade 1 listed)

55. Belvoir Castle is the preeminent and dominant feature of a group of designated heritage assets at Belvoir. Whilst it is agreed that the significance of the Castle is predominantly embodied within its built fabric, there are two aspects of the significance of the Castle that the Appellant has underplayed in its evidence:
56. First, as Mr. Malim explained, an important part of the heritage significance of the Castle derives from its historic associations as a seat of aristocratic power, physically manifested as a castle originally and later as a stately home, situated in a dominant location with a designed landscape encircling it. Its prominent position on top of the ridge overlooking the Vale of Belvoir with views that can extend to Lincoln Cathedral 30 miles away is a result of its original function as a stronghold to control the surrounding countryside, to be seen as a Castle and to project power, whilst also providing tactical defensive advantage in having wide views to prepare for any potential attack. In later times, these same topographical advantages were used to enhance the prestige of a stately home and seat of a long-established and powerful aristocratic family.

57. As Historic England explained in its consultation response,<sup>27</sup> that dominance is expressed not just by the fact that it is visually prominent on the skyline, but also by the fact that the Castle is one of the most important built structures within the landscape. Both Mr. Malim and Historic England take the view that the position of the Castle as one of the most dominant features within the landscape was a “*key aspect*” of its setting and made “*an important contribution*” to its significance.<sup>28</sup>
58. Second, the historic connection between St Mary’s Church in Bottesford and Belvoir Castle is of vital importance. As Mr. Malim put it, the rites of passage of the family that live in the Castle happen in the Church. The Church was the burial place for the Manners family until the 19<sup>th</sup> Century and there are monuments to eight of the Earls of Rutland within the church. The fact that burials at the Church have ceased has not severed the historic connection between Belvoir Castle and the Church, and that connection remains today in any event - the funeral of the 10<sup>th</sup> Duchess of Rutland took place in the church this year. There is also a historic patronage connection between the Manners family and the Church. The historic connection between the two is likely to be well known by the local community. The connection with Woolsthorpe Church is plainly not to the same extent.
59. The importance of this connection with St. Mary’s is emphasized by the inclusion of the spire of St. Mary’s as the background for the portrait of Elizabeth, the 5th Duchess, which hangs in a prominent position in the Castle. St Mary’s Church spire is clearly visible on the skyline in the distance. There is no doubt some artistic licence in the painting. However, the inclusion of the Church in the portrait is a deliberate choice by the artist. Moreover, the fact that the artist has used that licence to emphasise the view to St Mary’s emphasises the importance of the associative connections between the Castle and the Church.
60. The importance of this connection was recognised in the Cultural Heritage chapter of the ES which stated that “*the church is very much associated with both the settlement of Bottesford and Belvoir castle*”.<sup>29</sup> However, since then and over the course of the Inquiry, the Appellant has significantly underplayed the importance of this connection – relying on

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<sup>27</sup> CD 7.14A – PDF page 2.

<sup>28</sup> The Appellant recognises that this is an element of the setting that contributes to significance – see last bullet point at para. 4.10 of Ms. Armstrong’s Proof but does not see it as being as important as it was considered to be by Historic England.

<sup>29</sup> CD 1.31.3 – para. 3.5.27.

the fact that there is no designed visual connection between the Church and the Castle. However, this does not mean that there cannot be a strong associative connection between the two assets. As it is put in GPA3:<sup>30</sup>

*“Contextual relationships apply irrespective of distance, sometimes extending well beyond what might be considered an asset’s setting, and can include the relationship of one heritage asset to another of the same period or function, or with the same designer or architect.”*

61. Similarly, the PPG notes that buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience and significance of each.<sup>31</sup>
62. Given the importance of this connection, locations where it is possible to see the Church and the Castle together from the same location, and therefore appreciate and understand that historic connection between the two, are likely to be particularly important elements of the setting of both the Church and the Castle.
63. The Site, sitting within the setting of the Castle, makes an important contribution to its significance.
64. Dealing first with the contribution that the Appeal Site makes in terms of views towards the Castle:
65. First, the Site is a location from which the dominance of this historic feature can be well appreciated, seen against the skyline and towering above the agricultural farmland of the Vale. This will be appreciated on Site. As one representative example only, Heritage Viewpoint 13b is an example of a view from within the Site of the Castle with no competing elements in the view that detract from our ability to appreciate the significance of the castle or its status as the dominant built development. These views are common throughout the Site: see, for example, Plates 33-37 in Ms. Armstrong’s evidence.

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<sup>30</sup> CD 4.22 – internal page 3.

<sup>31</sup> See extract at para. 7.29 of the Proof of Mr. Bond.



66. Second, the Site (and the paths that cross it), is particularly important as it provides an opportunity to see both the Castle and St Mary's spire from the same area. For example, as you approach the appeal Site along Footpath 82 from Heritage Viewpoint 6B – the Church can be seen looking to the North, and the Castle looking to the South (Viewpoint 6A). Similarly, at Viewpoint 7 – where there is a bench, and one would naturally pause to experience the view. So too from Footpath 90 where the Church can be seen to the North and the Castle to the South. On the circular walk around the Site, along Footpath 82, 90 and the BOAT, the Castle and the Church are both intermittently occurring into the view from different directions.
67. There are of course other locations in the wider area where it is possible to see both Castle and Church from the same location. Mr. Malim's evidence was not that this is the only location where both could be seen, but that this was rare. It is – and it is notable that many of the views on the Appellant's viewpoints plan<sup>32</sup> are close to the Site (and includes views where the Development may well be visible in the view – for example, Viewpoint 2, 4 and 13. Further, those on the appeal site will be walking on PROWs where their attention is more likely to be focused on the landscape and the heritage assets within it. Users of PROW more likely to take in views of Castle and Church together than users of road network whose attention will be focussed on the road.
68. Here it is worth noting that the fact that a Development leaves a number of views unharmed does not mean that harm is automatically placed at the lower end of less than substantial. That will depend on the importance of the views that are and are not affected. For the reasons set out above, the views from within the Site are of particular importance.
69. Third, the Site enables the Castle to be seen in its original context. Historic England considered<sup>33</sup> that the Site is a “*largely undeveloped rural space which helps to provide historic context [to] the surrounding designated heritage assets*”. It went on to note that “*it preserves positive characteristics which help us understand the relationships between the heritage assets and their surroundings. We can experience these assets in a similar way*

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<sup>32</sup> CD 11.16

<sup>33</sup> CD 7.14A at PDF page 2.

*to how they have historically been seen and experienced over a very broad depth of time*". That assessment is plainly correct. Apart from some changes in field boundaries, and the addition of pylons (common in a rural context), the fields within the appeal site are much the same now as they would have been originally.

70. The impacts of the development are three-fold:

71. First, some views of the Castle will be directly blocked over the long-term for a period of 40 years: see, for example, viewpoint 10 (at the northern end of the Site), and post-submission viewpoint 1 on the BOAT. Clearly, from these views there will be a significant impact on the ability to appreciate the significance of the Castle.

72. Second, the Development would distract from the ability to appreciate the Castle as the dominant built feature in the landscape. For example, from Heritage Viewpoint 13B (on Footpath 82), there is currently nothing in the view that interferes with the ability to appreciate the dominance and prominence of the Castle. At Year 15, because of topography the solar panels will be clearly noticeable within the view. The eye is drawn to the panels in the foreground first, before the castle. There is a similar impact at Heritage Viewpoint 7C. It will be recalled that Ms. Armstrong considered that the Development would not distract in either view. The Inspector will reach a view on Site, but to the extent that the eye will be naturally drawn to the panels first, or will now flick between the castle and the panels, that would plainly interfere with the ability to appreciate the Castle as the dominant built form in the landscape.

73. As both these locations are places where both the Castle and the Church can be seen together in the same location, this also interferes with the ability to appreciate the historic connection between the two. The fact that these views are "incidental" – purely in the sense that they are not "designed" – is of little relevance. As Historic England recognised, non-designed views can be just as important as designed views in enabling one to appreciate the significance of an asset.<sup>34</sup>

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<sup>34</sup> Historic England's consultation response (CD 7.14 A) is clear on how they regard the appellant's approach to incidental views: "*We do not agree with the emphasis on 'incidental views' and would counter that even the non-designed views - particularly in the case of historic routes, and for the spired churches - are still important parts of setting, especially in understanding how these sites were historically experienced.*"

74. Finally, even if the Castle is still recognised as an important stately home in these views, this simply means that the level of harm has not crossed the threshold of “substantial” – which all parties already agree is the case. As it is put in the PPG,<sup>35</sup> substantial harm would arise where *“the adverse impact seriously affects a key element of its special architectural or historic interest”* (paragraph 18).
75. Third, the Castle would no longer be experienced within its original context.<sup>36</sup> The placement of solar panels and screening vegetation would largely remove, or severely distract from, the ability to appreciate and experience the Castle in its rural setting when walking along the footpaths through the original farming landscape, which would be dominated instead by industrial structures. Again, it will be recalled that Ms. Armstrong’s assessment proceeds on the basis that post-Development the agricultural landscape will *“still be read and understood”*.<sup>37</sup> Not only is that difficult to reconcile with Mr. Kratt’s evidence on the fundamental adverse change on the character of the Site itself, but to the extent that you disagree with Ms. Armstrong’s assessment that would be a further indicator that the Appellant has understated the degree of harm to the Castle.
76. Finally, there would also be an impact on views from the Castle – although as Mr. Malim recognised, these are of less importance than views to the Castle from the Site.
77. Although distant from the Castle, the large area that the Development would cover is in the line of sight from the northern terrace and first floor balcony at the northern end of the Drawing Room. The latter view is modeled in Heritage Viewpoint 9. This shows rows of panels aligned north-south in many of the fields visible in the mid-distance, panels which would become more apparent during the day as they move following the sun. This would result in a clearly discernible change to the existing agricultural landscape setting for the Castle and this important vista, replacing historically cultivated estate land by extensive areas of solar panels. As Mr. Malim explained, the choice of this northern part of the Castle for accommodating royalty, rather than the southern aspect which faces the sun and the

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<sup>35</sup> CD 4.2B

<sup>36</sup> GPA3 explains that setting is the surroundings in which an asset is experienced, and that although the extent and importance of setting is often expressed by reference to visual considerations, it is also influenced by our understanding of the historic relationship between places

<sup>37</sup> Proof at para. 5.35.

gardens, demonstrates that the views over the vale must have been of over-riding importance.

78. Further, whilst current views from the Castle itself are limited by the mature parkland trees screening it from the Development, as Mr. Malim explained, the proposed solar farm has a duration of 40 years, and during that period storms and natural aging, or pests and disease such as Ash Dieback or Oak Decline, may well result in thinning out of their screening effect. This would enhance the existing vista from the castle, reverting it to one enjoyed historically.

79. Overall, the harm is at the mid-point of LTSH.

#### Belvoir Castle Park (Grade II\* Registered Park & Garden)

80. The significance of the RPG derives from the implementation of a historic designed landscape around the Castle to enhance its immediate setting. Although much of the RPG is south of the Castle, it enjoys an elevated position on the northern side, providing vistas and long distant views to, and from, the Vale of Belvoir.

81. In terms of the contribution of setting to significance, the surrounding landscape to the RPG is predominantly, if not exclusively, agricultural, and low-lying. The occasional modern intrusions are minor elements in the landscape. They do not detract from an understanding of how the wider agricultural landscape provides the backdrop and contrast to the designed landscape of the RPG. Further, it is from this setting that the wooded upland of the RPG can be seen from long distances across the Vale of Belvoir, and its association with the Castle can be experienced.

82. Of particular importance, LVIA Viewpoint 9 is located at the northern edge of the RPG, adjacent to Woolsthorpe Road where it meets with a public footpath. The approach from Woolsthorpe and especially this viewpoint location, provides some of the most impressive views of the castle and its parkland, whilst also allowing the observer an expansive vista northwards over the Vale of Belvoir, with St Mary's Church spire prominent against the skyline. The RPG can be fully appreciated and experienced its landscape setting from this view – which at present includes a patchwork of agricultural fields, hedges and woodland copses.

83. The proposed development would be clearly visible in the distance, to the south-east of St Mary's, changing this historic rural setting to one with an increasing proportion of modern structures. Further, the Development would fundamentally change how the RPG could be appreciated as part of the Castle's designed landscape from within the Site – the blocking and distraction in the views (referred to above) would severely reduce the opportunity to view much of the RPG in its landscape setting.

84. The harm is at the mid-point of LTSH.

#### Conservation Area

85. The heritage significance of Belvoir Conservation Area derives from its special architectural and historic interest as the estate village for Belvoir Castle. Given the importance of the Castle as the predominant heritage asset within the Conservation Area, it is agreed by all parties that harm to the significance of the Castle would have a parasitic effect on the significance of the Conservation Area.

86. As with the Castle, the harm to the Conservation Area is at the mid-point of LTSH.

#### St Mary's Church, Bottesford (Grade II\* listed building)

87. The heritage significance of St Mary's Church in Bottesford lies not only in its architectural form, but also in its spiritual connotations as the centre of its surrounding community and congregation. The spire is an important aspect of the significance of the listed building. It functions as a landmark across much of the wider landscape.

88. This is not just as a waymarker – helping us to geographically locate Bottesford – but, as recognised by Historic England, as a physical manifestation of the importance of the Church to the community. The spire is one of the largest in Leicestershire, and this physical dominance within the landscape helps the church demonstrate its spiritual importance as the centre of the surrounding community and congregation. Historic England recognised that this role as the dominant built form in the landscape was a “key aspect” to its significance.

89. In terms of the contribution of setting to significance, whilst the Appellant has emphasised the importance of views from the churchyard and from within Bottesford, it is important to recognise that it is in more distant views where the landmark status of the Church can be fully appreciated. In close up views from within Bottesford it is less easy to understand the role that the church spire plays in conveying the status of the church across the wider landscape. That can only be appreciated fully from within that landscape.
90. There are a number of views within the Site where there is currently no competing development in the foreground of the view – see, for example, Heritage Viewpoint 6, 7A, 13A and Plates 49 and 50 of the Heritage Statement. That lack of competing development means that from a number of places within the Site, the Church is the dominant built development within the view and so there is currently no distraction from the ability to appreciate the significance of the Church.
91. For the reasons set out above, there is a direct historic link between the Castle and the Church. The Site also plays an important role in enabling the historic association between the Church and the Castle to be appreciated; and also in enabling the Church to be seen in its original context. GPA3 notes that church spires are unlikely to be affected by small-scale development. Even if we read this to mean development of a low height, this all depends on context - and the guidance specifically notes that this may not be the case where a Development interferes with associative views (as here).
92. The impacts from the Development on the Church can be categorised in the same way as the impacts on the Castle.
93. There will be some points along the east-west Footpath 82 where existing views of the Church would be blocked in their entirety – for example, from Heritage Viewpoint 7A. Plainly, the complete blocking of a view will have a significant long-term impact on the ability to appreciate the significance of the church. That location is not the only place on the footpath where the view would be blocked – as the path continues to the west there will be enclosing hedgerows on both sides of the PROW.
94. In other views, the Development would distract from the ability to appreciate the Church spire as the dominant built feature in the landscape. For example, from Heritage Viewpoint

6B – to the north-east of the Site, further along Footpath 82. In existing views, the Spire is the principal landmark in the view. This is a view from part of the setting which is contributing to significance because the church is displaying its landmark status in the view and that prominent landmark status can be fully seen and appreciated. Post development, there will be a large extent of solar panels covering 180 degrees in views towards the Church. The spire would still be visible but would no longer be the dominant built feature in the view. There are similar effects on Footpath 82, close to its junction with Footpath 90: see Heritage Viewpoint 13A.

95. Further, for the reasons set out earlier, the Church would no longer be experienced in its original agricultural context, and the impact in the views towards both the Church and the Castle will interfere with the ability to appreciate the historic connection between the two.

96. As found by Historic England and Mr. Malim, the harm would be mid-way on the spectrum of LTSH.

#### Muston Moated Grange (scheduled monument)

97. The principal dispute between the parties relates to whether the Site falls within the setting of the Scheduled Monument.

98. The purpose of the grange was to farm the land it held for the benefit of the monastery. Mr Malim has provided historic documentation which strongly suggests that part of the Abbey's landholding would have been included within the Site. There is therefore a historical association between the land which forms part of the Site and the grange. Ms Armstrong agrees that it is a reasonable assumption that this historic association existed.<sup>38</sup> Further, the current surroundings to the south and west of the scheduled monument comprises a largely uninterrupted agricultural landscape which reflects the Scheduled Monument's historic functional rationale as a detached farm-holding, granted to the monks of Owston Abbey.

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<sup>38</sup> As explained by Mr. Malim, British History Online reports that the Manor of Muston was given to the Augustine abbey of Owston (Charnwood, Leicestershire) in 1341 at much the same time as Robert de Golville gave Normanton (near Bottesford) to the abbey. Although these Muston lands were sold by the abbey in 1493, the proximity of the scheduled monument to the north-eastern part of the proposed development strongly suggests part of its landholding would have been included within the application site.

99. Whilst there is no direct intervisibility between the Scheduled Monument and the Site, there is sequential visibility achieved by walking along Footpath 82, which connects into Muston and then into the PROW network that continues over the other side of Easthorpe Lane across to the scheduled monument.<sup>39</sup> Those who do that walk are currently able to experience the Scheduled Monument in its existing rural surroundings. As it is put in GP3, “the way in which we experience an asset in its setting is also influenced by...our understanding of the historic relationship between places”.<sup>40</sup>
100. The Site therefore does fall within the setting of the Scheduled Monument as part of the surroundings in which the asset is experienced. That was also the view of Historic England, who took the view that the Site fell within the setting. This setting of the Scheduled Monument contributes to its significance by providing a tranquil context at the edge of Muston village, crossed by footpaths so that the public can experience the Scheduled Monument in its rural surroundings and understand its historic relevance as part of medieval life.
101. The Development would fundamentally change the current farmland setting to the Scheduled Monument through a change in the use of the land within the Site from its historic use for cultivation, to a new use for production of electricity on an industrial scale. As Historic England put it: *“There would still be some changes to its associated agricultural landscape, which would negatively impact how one could experience its wider historic context and relationships to other assets when traveling through that landscape.”*<sup>41</sup>
102. Overall, Mr. Malim is right to find harm to the significance of the Scheduled Monument, at the lower end of LTSH.

#### Conclusion on heritage impacts

103. Ultimately, wherever the harm falls on the spectrum, the extent of harm engages the statutory presumption against development by virtue of section 66 of the Listed Buildings Act, which imposes a statutory duty to have “special regard” to the desirability of preserving a listed building or its setting. Preservation means avoiding harm. If a proposed

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<sup>39</sup> See the map at Ms. Armstrong’s Proof at Plate 56 – para. 6.2 on page 82.

<sup>40</sup> CD 4.22 – page 2.

<sup>41</sup> CD 7.14A – PDF page 3.



development would cause harm, that must be given “*considerable importance and weight*” and results in a “*strong presumption against granting planning permission*”: Barnwell Manor Wind Energy Limited v East Northamptonshire District Council [2014] EWCA Civ 137 (CD 6.6).

104. There is not yet an equivalent statutory duty in respect of scheduled monuments and registered parks and gardens. However, the NPPF adopts a uniform approach to all designated heritage assets as a matter of policy.

105. That policy states that great weight should be given to the conservation of heritage assets (and the more important the asset, the greater the weight should be): NPPF [199]. This is irrespective of whether the harm amounts to substantial harm, total loss or less than substantial harm to its significance: NPPF [199]. Here, besides the Conservation Area, all of the assets affected are assets of the “highest significance” as defined under the NPPF.

106. Therefore, regardless of where the harm falls on the spectrum, this level of harm is a matter that must be given considerable importance in the overall planning balance. It is that overall balance to which I now turn.

### **Overall Planning Balance**

107. The starting point is the benefits of the Development. These have been exaggerated by the Appellant. Its approach involves a significant degree of double counting (which is obviously wrong in principle), and also an attempt to artificially divide the same “benefit” into a number of separate, supposedly free-standing benefits. This approach is of little assistance. The overall planning balance is not a numbers game – 13 benefits do not automatically outweigh 3 harms. That is especially the case where there are numerous examples of the Appellant’s planning balance effectively using different words to describe the same ultimate benefit.

108. Taking those benefits in turn:

(1) Renewable Energy Generation: Both parties agree that substantial weight should be given to the renewable energy generation benefits of the proposal. Whilst Mr. Bond was taken to numerous Government policy documents relating to renewable energy, the

Council has always recognised both the nature and the scale of the climate crisis and the extent of the step-change needed to deliver on the Government’s aspirations. This support is not repeated in this closing – not because the Council does not consider it important – but because it is common ground between the Council and the Appellant.

However, importantly: (i) there is, and can be, no suggestion that Mr. Bond has downplayed this benefit in the overall planning balance.<sup>42</sup> All of these documents were expressly taken into account by Mr. Bond in reaching his assessment that this benefit should be given “substantial weight” and (ii) the context of this crisis does not mean that every site is suitable for large-scale solar on this scale.

(2) Climate Emergency: This is not a free-standing benefit. The fact that there is a climate emergency is not a positive in and of itself – it is plainly undesirable. The existence of that emergency explains why increased renewable energy capacity is needed (i.e., why the first benefit is worthy of substantial weight). However, that emergency is no greater in areas where local authorities have taken the laudable step of acknowledging it. The Development would deliver the same level of CO2 displacement, and power the same number of homes through renewable energy, even if the Council had not declared a climate emergency. There are no specific legal or planning policy implications of the climate change emergency declaration in Melton or, indeed, nationally. Accordingly, whilst the declarations of those emergencies is important context to the appeal, Mr. Bond is right that it does not give rise to a free-standing benefit of the proposal. This is consistent with a number of appeal decisions.<sup>43</sup>

(3) Energy Security: Again, this is not a free-standing benefit. Rather, the benefits relating to energy security add to the weight to be given to the generation of renewable energy and allow that benefit to be afforded substantial (rather than, say, significant weight). As Mr. Burrell accepted, the five-fold increase in solar capacity expected by the Government’s Energy Security Strategy is not in addition to the increase in capacity required to address the climate change emergency. The benefit of powering just over 23,000 homes with renewable electricity will assist both with a security of energy

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<sup>42</sup> Agreed by Mr. Burrell in xx.

<sup>43</sup> CD 6.52 – para. 63; CD 6.51 – paras. 9 and 10; CD 6.40 – para. 41.

supply and with the climate crisis – but the substantive benefit remains the same. Mr. Bond’s approach of not treating this as a separate benefit of the Development is, again, consistent with a number of appeal decisions.<sup>44</sup>

(4) Best Available Technology (“BAT”): As Mr. Bond explained, using BAT is in the operator’s commercial interest in order to get maximum return from the Grid Connection. In simple terms, the use of the tracking system is what enables the development to power 23,100 homes. Without that technology the number of homes powered would be less.<sup>45</sup> Again, therefore, this is not a free-standing benefit, but rather explains why the site is able to generate the level of electricity that all parties agree should be given substantial weight. Further, the NPPF is clear at paragraph 123 that all forms of development should make efficient use of land. If the applicant had not made use of an available technology in order to make most efficient use of land, that would register as a harm against the proposal – potentially sufficient in of itself to refuse planning permission.<sup>46</sup> The fact that this application does what is expected by the NPPF – and thereby avoided a potential reason for refusal – cannot register as a benefit of the proposal. Again, this approach is consistent with a number of appeal decisions.<sup>47</sup>

(5) Good Design: Delivering a development of high-quality design is a policy expectation under Policy D1 of the Melton Local Plan.<sup>48</sup> It is also a policy expectation under national planning policy – paragraph 139 of the NPPF tells us that development that is not well designed should be refused. If the development could not be said to be well designed - it would be contrary to both local and national policy. Even if the Development is policy compliant in this respect (and the Council does not consider that it does comply with Policy D1), merely avoiding harm through policy compliance cannot register as a “benefit”. This is not a scheme that is so well designed that this is a public benefit for others to experience. As Mr. Burrell accepted, no-one would visit the Site to appreciate the tweaks made during the design process (panel set-backs etc).<sup>49</sup>

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<sup>44</sup> See the reasoning in CD 6.46 at para. 60 (and also CD 6.52 at para. 62).

<sup>45</sup> Accepted by Mr. Burrell in xx.

<sup>46</sup> See also, for example, paragraph 129(c) of the NPPF which states that: “*local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework.*”

<sup>47</sup> See, for example, CD 6.52 at para. 64.

<sup>48</sup> See CD 5.1 – PDF Page 149.

<sup>49</sup> Accepted by Mr. Burrell in xx.

The late suggestion by Mr. Burrell in the course of cross-examination that the Development might somehow derive support from paragraph 139 of the NPPF was clearly wrong. The development does not reflect local design policies (paragraph 139(a) – it is contrary to Policy D1. Further, as he eventually accepted, the Development does not “*fit in with the overall form and layout*” of its surroundings (paragraph 139(b)).

In truth, this “benefit” is no more than a recognition that changes that were made to the scheme during the course of the application and appeal process to reduce the extent of the harm caused by the proposal – because the application as originally conceived was unacceptable. Even then, the design approach has not mitigated the harm to zero – even on the Appellant’s case there still remains harm in landscape and visual terms and to heritage assets. No weight should be given to this as a benefit in accordance with the approach taken by the Inspector in the Wood Lane appeal decision.<sup>50</sup>

(6) Early grid connection and lack of alternative sites: this will potentially reduce environmental impacts compared with a grid connection further away and a provide prompt access to the grid. However, again, it is this prompt access which enables the other benefits to be delivered. In truth, there is a strong degree of overlap between this benefit and the others put forward. At the most, moderate weight should be given to this as a benefit – in line with the Cawston Lane appeal decision.<sup>51</sup>

(7) BNG: There is already a policy requirement to achieve a net gain in the NPPF (see paragraph 180). The NPPF does not prescribe the weight to be given to BNG. It is ultimately a matter of judgment. However, solar development often achieves net gains in excess of 100%.<sup>52</sup> That is because in general terms converting arable farmland with grassland for pasture registers as an increase in Habitats Units under the metric. Given that, the percentage net gain will depend on the size of the site. The bigger the site – and therefore the more arable farmland being converted to pasture – the bigger the BNG. The percentage increase in BNG here is primarily a function of the size of the

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<sup>50</sup> CD 6.46 at para. 84. And see also CD 6.52 at para. 74.

<sup>51</sup> CD 6.44 – para. 33.

<sup>52</sup> See Burrell Proof at para. 11.50.

site – and therefore the amount of land being converted to grassland.<sup>53</sup> Whilst this is a benefit – and Mr. Bond gives it moderate weight – it plainly cannot be described as a significant benefit of the proposal.

(8) Green Infrastructure Enhancements: This is a “catch-all” benefit for the Appellant, that simply double counts or re-counts other benefits that it has already taken into account. As set out in Mr. Burrell’s paragraph 11.57 of his Proof, it includes BNG (already separately counted); rest to farmland (given limited weight as a separate benefit); retention and enhancement of the landscape fabric (already taken into account by Mr. Kratt as a factor to reduce the extent of landscape character harm here);<sup>54</sup> new accessible open spaces (already taken into account as a separate benefit worthy of limited weight).<sup>55</sup> The only free-standing benefit that falls within this category is the new permissive path. However, this would suffer from much the same harm as the existing PROWs on the Site, and should be given very limited weight indeed as a benefit of the Development.

(9) Economic Benefits (including farm diversification): any construction and supply chain jobs created during the construction period would be very short-term (based on a 6-9-month construction period). Once operational, the facility would be unmanned – and would be remotely operated and monitored. There would only be one maintenance visit per month. The job creation would be very limited, and in any event is unquantified.

The business rates contributions set out in Mr. Burrell’s Proof, as revised substantively down in his evidence in chief, failed to take into account the fact that only half would be retained locally. In any event, business rates contributions are not material to this decision. Mr. Burrell accepted that there is no evidence before the Inspector that the increased Business Rates receipts will be used to help make this development acceptable in planning terms – for example, no schemes on which the Business Rates receipts could be spent have been identified by the Appellant. In accordance with paragraph 11 of the

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<sup>53</sup> See the metric calculations at CD 1.35.9.

<sup>54</sup> See Kratt Proof at para. 8.5.9 (PDF page 92).

<sup>55</sup> Burrell Proof at para. 11.71-73.

PPG on “Determining a Planning Application”, and the Secretary of State’s reasoning in the Honiley Road decision,<sup>56</sup> no weight should be given to this consideration.

The benefits in terms of farm diversification are also very limited indeed. The scheme would not diversify the existing farming operation (which would be displaced elsewhere). The extent to which additional revenue would be necessary and of benefit to the Estate is only explained in very general terms in the evidence.

Overall, the economic benefits of the Development are worthy of only limited weight.

109. There are other benefits put forward by Mr. Burrell but even on his own analysis they are only worthy of limited weight, and are therefore unlikely to be decisive to the decision.

110. In truth, therefore, there are only two main benefits of this Development – the renewable energy generation (substantial weight) and the BNG (moderate weight). The other benefits merely articulate these benefits in a different way, explain how these benefits can be delivered, or explain the context for these benefits; others are worthy of limited weight.

111. Mr. Bond fairly acknowledged that these benefits, taken together, outweighed the heritage harm associated with the Development.<sup>57</sup> That is not surprising and nor does it say anything about the overall acceptability of the scheme. The heritage balance under paragraph 208 of the NPPF loads all of the benefits of the proposal against just one harm. The Council’s case relies on the accumulation of landscape and heritage harm – again, not unusual: where development is found to be unacceptable this is usually because of the existence of more than one harm. Further, the heritage harm does not fall away simply because the balancing exercise in paragraph 208 of the NPPF is “passed”. It must be weighed together with the other harms against the benefits in the overall planning balance.

112. Here, those harms taken together are very substantial. Turning to the weight to give each:

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<sup>56</sup> CD 6.31 – para. 28.

<sup>57</sup> Although as he mentioned in xx, this was finely balanced.

- (1) Heritage: the statutory duty for listed buildings and national policy makes clear that heritage is an important and serious consideration in the determination of the appeal. NPPF paragraph 205 tells us that: *“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be).”* Four of the assets affected are assets of the “highest significance” under the NPPF. That includes two Grade I listed buildings. The size of the development means that multiple heritage assets are engaged. Logically harm to multiple assets should carry more weight than harm to a single asset.<sup>58</sup>

Even if the Appellant’s evidence on heritage harm is accepted, this harm should be given significant weight in the overall balance. There are numerous examples of Inspector’s finding even low level LTSH should be given significant weight.<sup>59</sup> Even on his own evidence, Mr. Burrell’s balance is highly distorted – finding that, for example, the economic benefits of the proposal are as weighty a consideration in the overall balance as the heritage harm. That significantly downplays a consideration that is meant to be of high importance in the overall balance.

In truth, however, as the harm is not low but half-way up the scale towards being “substantial”, for each of the heritage assets Mr. Malim finds harmed (with the exception of the Scheduled Monument). This is a harm that must be given substantial weight in the overall balance.

- (2) Landscape character and appearance: for the reasons set out above, this harm should be given significant weight. When weighing this harm against the benefits of the Development, it is important to remember that there is nothing inevitable about this harm. As Mr. Burrell accepted, schemes of this size come forward and are permitted without causing harm of the nature and extent identified by Mr. Higson. There are a number of appeal decisions where Inspectors have found the degree of harm to landscape character and appearance as being limited – including for 49.9 MW

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<sup>58</sup> Accepted by Mr. Burrell in xx.

<sup>59</sup> For example, CD 6.31 – para. 21 and CD 6.25 – para. 69.

schemes.<sup>60</sup> I deal with the weight to be given to EN-1 below, but there is nothing in that document to suggest that significant harm to landscape character and appearance is the inevitable consequence even of an NSIP proposal. In short, this scheme can be refused on landscape grounds (together with the heritage harm identified) without causing any damage to the Government's aspirations to achieve net zero.

(3) BMV: some weight ought to be afforded to this matter in the planning balance in line with paragraph 180 of the NPPF and Policy 9(4) of the Bottesford Neighbourhood Plan.<sup>61</sup> As Mr. Bond explained, whilst there would be no direct "loss" of BMV land, the effect of the Development is that the land could no longer be used for arable farming as it is at present. That is the most efficient and economically valuable way of farming the land - Strutt & Parker calculated that the value of arable land in England in 2023 is almost 30% more valuable than pastureland.<sup>62</sup> This harm ought to be given limited weight in the overall planning balance.

113. These harms clearly outweigh the benefits of the Development taken in the round.

114. Paragraph 163(b) of the NPPF makes clear that local planning authorities should approve applications for renewable and low carbon development if its impacts are or can be made acceptable. The converse of that of course is that, as Mr. Burrell agreed, applications for renewable development should be refused where the impacts are unacceptable. If, on a straightforward balance of harms vs. benefits, the harms of a proposal outweigh its benefits then its impacts are unacceptable. That is the case here.

115. Plugged into the development plan, the effect is that the Development is contrary to Policy EN-10 of the Local Plan and Policy 9 of the Neighbourhood Plan. These policies do not set out any threshold for when the impacts will be sufficient to mean that the policies are not complied with. However, both policies involve a balance to be carried out between the various associated benefits of the proposal and its harms – having regard to the various factors set out in the Policy. Where the harm associated with one or more of those factors

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<sup>60</sup> CD 6.46 – para. 45; CD 6.41 – para. 36.

<sup>61</sup> CD 5.2.

<sup>62</sup> £11,300/acre vs £8,700/acre – see CD 10.14.



outweighs the benefits of the proposal (as here), the impacts of the proposal will be unacceptable, and the development will not comply with policy

116. It is common ground that if the Development is contrary to Policies EN10 and Policy 9 of the NP, it will be contrary to the development plan taken as a whole. However, in addition to the conflict with Policies EN10 and Policy 9, the development also conflicts with Policies EN1 and D1 of the Local Plan and Policy 2 of the Neighbourhood Plan (Parts 1 and 5).

117. There are no material considerations that outweigh this non-compliance with the development plan. The benefits of the Development have already been taken into account when assessing development plan compliance, and logically therefore cannot save the day as a material consideration that outweighs that non-compliance.

118. The Appellant relies on EN-1 as a material consideration, and it is common ground with the Council that it is a material consideration. The question is how much weight to give to it. At times in the Inquiry, it felt like this was a proposal for an NSIP – with the Council’s witnesses being taken to various provisions in EN-1 and EN-3, designed for Nationally Significant Infrastructure Projects (“NSIP”), and asked to consider its application to this case. However, this is not an NSIP. It has been promoted (presumably deliberately) just below the threshold in order to avoid being caught by Planning Act 2008 regime. The Appellant cannot have its cake and eat it and nonetheless seek to derive considerable support from a regime that it has sought to avoid.

119. Ultimately, there is nothing in EN-1 which says how much weight should be given to it in the determination of section 78 appeals. The weight to be given to it will depend on the extent to which matters are already covered by applicable planning policy (see paragraph 1.2.2). Where matters are already covered by applicable planning policy in the development plan – EN-1 suggests that less weight should be given to the NPS. Here, there are policies in the development plan here which address renewable energy, and which are agreed to be up to date. Accordingly, no more than limited weight should be given to EN-1. This approach would be in accordance with the Honiley Road Decision<sup>63</sup> and also

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<sup>63</sup> CD 6.31- paragraph 31 – page 5:

reflects the Government’s current position that a level of 150MW “more accurately reflects contemporary deployment of projects that can be considered “nationally significant””.<sup>64</sup>

120. Accordingly, there are no material considerations which outweigh the non-compliance with the development plan here.

### **Conclusion**

121. Overall, whilst we have heard much about the importance of renewable energy, this is not a blank cheque, and the NPPF does not support solar development at any cost. With the benefit of renewable energy provision comes corresponding harm. That harm is a function of this sensitive site being simply unsuitable for a development of this nature. It includes significant harm to the character and appearance of a landscape which, whilst not a “valued” landscape in NPPF terms, is highly valued by those who live in and around it and agreed harm – on both parties’ evidence - to five designated assets.<sup>65</sup>

122. This harm is of such a weight and magnitude that it ultimately outweighs the benefits of the scheme.: this scheme is being promoted on the wrong site. Accordingly, in this case, the balance of harms caused by the development would clearly outweigh its benefits.

123. Accordingly, we invite the Inspector to dismiss the appeal.

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18<sup>th</sup> September 2024

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<sup>64</sup> CD 4.31 – page 50 onwards generally and in particular paragraphs 12-16.

<sup>65</sup> Albeit that the parties disagree on what those five assets are – with the Appellant accepting that there would be harm to the Church of St. Johns and the Council.