APP/Y2430/W/24/3340258
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APPEAL BY JBM SOLAR PROJECTS 10 LTD

**LAND AT MUSTON LANE
EASTHORPE**

**OPENING STATEMENT
ON BEHALF OF THE APPELLANT**

Introduction

1. Climate change poses an existential risk to human life, and clean energy is critical to mitigating it. Indeed, to meet the legally binding target of net zero by 2050, the UK will need to be entirely powered by clean energy by 2035.[1] That much is not controversial here: Melton Borough Council ("the Council"), like the UK Parliament, has declared a climate change emergency.[2]

2. Renewable energy also forms part of the solution to other serious problems this country faces. They include energy insecurity and price rises, resulting in part from ongoing global conflicts.[3] They also include nature and biodiversity loss. As Mr Fearn will explain, solar farms can achieve significant gains for nature.

3. Against this background, §163 of the National Planning Policy Framework December 2023 ("NPPF") tells decision-makers that applicants for renewable energy schemes should not be required to demonstrate a need, that even small-scale projects provide a valuable contribution, and that schemes should be approved if the impacts can be made acceptable.

4. In this particular case, the impacts of the proposed solar farm ("the Proposed Development") at Muston Lane, Easthorpe ("the Site") are acceptable. To outline that case, in Opening we address the main issues identified by the Inspector in the following order:

[1] October 2021,'Net Zero Strategy: Build Back Greener', p.19 CD4.17
[2] CD5.8 is the Council's Climate Emergency Declaration, CD4.11 is the UK Parliament's Climate Emergency Declaration
[3] March 2023, 'Powering Up Britain' CD4.20, April 2022 British Energy Security Strategy CD4.18

character and appearance and public rights of way ("PRoW"); heritage; nature conservation; and finally planning considerations, including the implications for meeting the challenge of climate change.

Landscape and Visual Impact

5. The following matters are all agreed in the Statement of Common Ground ("SOCG"):[4]
    a. The scope and methodology of the LVIA is in accordance with the Guidelines for Landscape and Visual Impact Assessment (3rd edition) (§7.12);
    b. In principle, the Proposed Development is an acceptable form of development in the countryside (§7.5);
    c. The Site is not subject to any landscape designations such as National Parks (§2.6);
    d. The Site is not within a "valued" landscape under §180(a) of the NPPF (§7.13); and
    e. The Proposed Development would not result in unacceptable adverse impacts on residential amenity (§7.15).

6. The key differences between the parties relate to the level of landscape character and visual impacts arising, including whether there would be significant cumulative impacts. In assessing these impacts, the particular nature of solar development must be borne in mind: solar development "treads lightly" within the landscape, respecting existing features and fabric; it is fully reversible; structures are relatively low in height; and it provides the opportunity for significant character and biodiversity benefits at the landscape scale.[5]

7. Following a careful iterative design process,[6] the final landscape strategy includes[7]:
    a. significant new tree and hedgerow planting, with approximately 130 new trees, 3,800m of new hedgerow, a 10m wide tree and shrub belt, and an orchard;
    b. a mosaic of grassland planting comprising more than 100ha;

[4] SOCG CD9.5 – see §2.6
[5] Mr Kratt's Proof at §§7.5.4-7.5.5
[6] which is summarised in the Design and Access Statement (CD1.25), documented in the Design Evolution Report (CD10.13) and summarised within Section 7.0 of Mr Kratt's Proof
[7] Amended Scheme Site Layout and Landscape CD 2.2 – see Mr Kratt's Proof at §§2.2.1-2.2.6, §7.3.1 and his Figures 8-11

c. provision of landscape corridors or "green lanes" typically of 10m in width with offsets from existing PRoW / solar array fence lines and careful arrangement of arrays to limit impacts; [8]
d. creation of a new permissive route extending to some 500m east-west across the Site as well as over 8ha of new publicly accessible open space;[9] and
e. retention of existing landscape structure and features.

8. Against that context and in light of the changes the solar farm would bring about, Mr Kratt finds some "moderate" adverse landscape character effects for the Site and its immediate context.[10] The distinctive character of the expansive vale with a strong defined field pattern would prevail. Over time, the proposed planting would strengthen landscape structure and fabric and reduce inversibility with the surrounding area. Effects beyond 1km from the Site would be of negligible scale.

9. The Council's landscape character case is focused on alleged cumulative impacts. Mr Kratt will explain that the Proposed Development would not have a significant effect on landscape character when considered in combination with other solar developments. The Proposed Development itself does not result in a significant effect on landscape character; it has relatively limited visual influence; the cumulative solar developments share little intervisibility and cannot be readily seen in combination; and solar would still represent a very small proportion of the wider landscape.[11]

10. As to visual amenity, the Council's case is focused on impacts to PRoW. While some sections of PRoW are within the Site boundary, no existing PRoW extend between the proposed area's solar arrays.[12] It is proposed that all existing PRoW routes are retained; that affected PRoW would be set within landscape buffers or "green lanes"; and the layout is such that the solar arrays and other infrastructure would only adjoin each PRoW on one side.[13] Overall, the Proposed Development would give rise to some "moderate" adverse visual effects for those receptors in close proximity to the Site in the longer term.[14]

[8] as per Mr Kratt's Sections in his Proof at Fig 11
[9] See illustrative cross-sections at CD2.3
[10] Mr Kratt's Proof at section 8
[11] Mr Kratt's Proof at §8.6.12
[12] Mr Kratt's Proof at §6.3.6 and figure 4b
[13] Mr Kratt's Proof at §3.2.8
[14] Mr Kratt's Proof §9.4.2 for views within the Site and §9.4.6 for views from wider context

11. Part of the Council's case relates to the impact of new planting on openness. However, Mr Kratt will explain that some more "enclosed" views are not uncharacteristic, and that the proposed green lanes are wide and in many places still allow for longer distance views.[15]

12. The Proposed Development would also bring about a number of landscape related benefits. These include the new permissive path and open spaces; a rest to the soil resource on the Site from intensive arable farming; and long-term enhancement of landscape structure.[16]

13. Mr Kratt's conclusion that this is an appropriate location for a solar farm in landscape terms, and that the Proposed Development is of good design, aligns with the conclusions of the Committee Report that the scheme could be successfully assimilated into the surrounding landscape.[17]

Heritage

14. In refusing the application, it appears that the Council was not clear about its own heritage case, which has been the subject of a great deal of evolution and revision.
    a. At application stage, the Council's Conservation Officer (in comments belatedly disclosed to the Appellant) asserted harm to Easthorpe Conservation Area, Muston Conservation Area, Bottesford Conservation Area, Belvoir Castle (Grade I), and the Church of St Mary, Bottesford (Grade I).
    b. However:
        i. There is no designated Conservation Area at Muston.[18]
        ii. The reason for refusal does not refer to impacts on Easthorpe or Bottesford Conservation Areas.
        iii. While the reason for refusal does make reference to Belvoir Castle and the Church of St Mary, it also refers to the Registered Park and Garden at Belvoir (Grade II*), two unnamed Grade II* Listed Buildings and three unnamed Scheduled Monuments.
        iv. The two unnamed Grade II* Listed Buildings were subsequently identified by the Council through their Statement of Case and subsequent

[15] Mr Kratt's Proof at §9.4.5
[16] Mr Kratt's Proof at §§7.4.4-7.4.7
[17] CD3.1 at §8.3.15
[18] Ms Armstrong's Rebuttal at §2.8

correspondence[19] as the Church of St John the Baptist and the Village Cross at Muston, neither of which were referred to by the Conservation Officer.

v. Similarly, the Scheduled Monuments were subsequently identified as the Village Cross, Moated Grange with Fishpond, Muston and Medieval Village Earthworks and Moat, Easthorpe. Again, none of these were referred to by the Conservation Officer.

c. Since that correspondence, the Council's case evolved again: it no longer considers that harm would arise to the Village Cross, the Church of St John the Baptist or the Medieval Village Earthworks and Moat.

d. The Council's final case appears to be that harm would arise to five designated assets: Belvoir Castle, the Belvoir Conservation Area, the Registered Park and Garden, the Church of St Mary, and the Scheduled Moated Grange at Muston.

e. Mr Malim's Proof also makes reference to harm arising to "*non-designated heritage assets*".[20] Mr Malim does not, however, name any specific non-designated heritage assets.[21] Despite subsequent correspondence indicating the Council is not expanding its case, the Council's position in respect of non-designated archaeology within the Site remains unclear.

15. The Appellant does acknowledge there will some heritage harm arising. Ms Armstrong concludes that there would be harm at the lower end of the less than substantial scale to Belvoir Castle, the Belvoir Conservation Area, the Registered Park and Garden, the Church of St Mary, and the Church of St John the Baptist.[22] However, a key difference between Ms Armstrong and Mr Malim is the level of impact arising.

16. The Site forms part of the setting that contributes to overall heritage significance of each of these five assets. Yet, as Ms Armstrong will explain, setting is not the most important part of each of these assets' heritage significance, and the Site is not the most important part of each of these assets' settings. The limited harm arises in each case through changes in some incidental views. Any harm identified would be removed on decommissioning.

[19] See Ms Armstrong's Rebuttal at §2.17. Council Statement of Case (CD 9.3), later correspondence regarding confirmation of their heritage case (CDs 10.2, 10.8, 10.9 and 10.12)
[20] Mr Malim's Proof at §5.3.1, see also Mr Bond's Proof at §8.36
[21] Ms Armstrong's Rebuttal at section 3, referring to CD9.3, CDs 10.2, 10.8, 10.9 and 10.12 and CD9.5
[22] As detailed in section 4 of Ms Armstrong's Proof

17. Ms Armstrong finds no harm to the Scheduled Moated Grange at Muston. The Site does not contribute to the significance of the asset, which is primarily derived from the historic and archaeological interest of the visible earthworks and below ground remains.[23]

18. Impacts on non-designated below ground archaeology within the Site can be adequately addressed by way of planning condition.[24]

19. Ms Armstrong will also explain that the evolution of the scheme demonstrates that the Appellant has sought to minimise potential impacts on the surrounding historic environment where possible in line with §201 of the NPPF. [25] The harm arising from the final scheme must be weighed in the planning balance.

Nature Conservation

20. In light of third party comments, Mr Fearn will address the inquiry on the topic of nature conservation interests, which do not form part of the Council's reasons for refusal.[26]

21. In respect of the Grantham and Banks Local Wildlife Site ("LWS"), Mr Fearn will explain that there would not be any impact resulting from the Proposed Development. In short, there is no potential pathway for impacts by virtue of the separation distance and lack of hydrological connectivity.[27]

22. In respect of the Muston Meadows Site of Special Scientific Interest ("SSSI") and National Nature Reserve ("NNR"), the proposed buffer provided is likely to represent a considerable improvement on existing ecological conditions, which presently comprise an intensively farmed arable landscape. In consideration of the removal of farming practices such as chemical spraying, and the contribution the scheme would make to a resilient ecological network through habitat enhancements, Mr Fearn concludes that the Proposed Development would be of benefit to the SSSI.[28]

[23] Ms Armstrong's Proof at §§6.6-6.17
[24] See Ms Armstrong's Rebuttal
[25] Detailed at §§3.1-3.8 of Ms Armstrong's Proof
[26] Appendix 3 to Mr Burrell's Proof, with a further statement appended to Mr Burrell's rebuttal
[27] Mr Fearn's Statement is at Appendix 3 to Mr Burrell's Proof (see §6.1.5).
[28] Mr Fearn's Statement at §§6.1.6-6.1.7 and Mr Fearn's Further Statement Appended to Mr Burrell's Rebuttal

23. More generally, new planting and biodiversity enhancement measures would result in a significant biodiversity net gain ("BNG") of 144.64% in habitat units and 32.13% in hedgerow units across the Site.[29] There would also be additional biodiversity benefits beyond those included in the BNG calculation, including new bat and bird boxes, refuge features, hibernacula, insect hotels, beehives and log piles.[30]

Benefits and Balance

24. Turning to benefits and the balance. Mr Burrell finds that, applying s.38(6) of the Planning and Compulsory Purchase Act 2004, the proposal clearly complies with the development plan when read, as it must be, as a whole.[31] It is notable that no land at all is allocated for renewable energy development in that adopted plan.[32]

25. Successive Governments' robust support for the rapid deployment of solar technology at unprecedented scale is detailed by many appeal decisions and will be explained by Mr Burrell in evidence. The policy background makes clear that to reach net zero, low carbon energy infrastructure will need to be deployed at an "*unprecedented*" scale and pace.[33] A secure, reliable, net zero system in 2050 is likely to be composed "*predominantly*" of wind and solar.[34] In 2022, the British Energy Security Strategy anticipated that a five-fold increase in solar capacity in the UK would be required by 2035, from 14GW to 70GW.[35] That aspiration remains.

26. One of the most recent policy updates was the designation of the new National Policy Statements ("NPS") EN-1 and EN-3 earlier this year. EN-1 states there is now a critical national priority ("CNP") for nationally significant low carbon infrastructure, including solar, and that for such schemes it is unlikely that consent will be refused on the basis of impacts to issues such as landscape and heritage.[36] Mr Burrell considers that, due to the fact the Proposed Development is on the cusp of being a nationally significant infrastructure

[29] Mr Burrell's Proof at §11.49, SOCG at §7.32.
[30] Appendix 3 to Mr Burrells' Proof
[31] Mr Burrell's Proof at §§8.65-8.66
[32] Agreed in the SOCG at §7.11
[33] CD4.17 Net Zero Strategy, pp. 19, 98 and 102
[34] CD4.3 §3.3.20
[35] CD4.18
[36] CD4.3 at §§4.2.2-4.2.17

scheme (by virtue of an export capacity of 49.9MW against the threshold of 50MW), considerable weight should be given to the policies set out in the NPS.[37]

27. Against that context, the Proposed Development would generate up to 49.9MW of clean electricity, providing the equivalent annual electrical needs of over 23,100 homes in the Borough.[38] Mr Burrell finds this benefit attracts substantial weight.[39] Mr Bond agrees.[40]

28. However, there are also many other powerful benefits the scheme would bring about.

29. It is agreed that the scheme's ability to provide deliverable action on the climate change emergency declarations of both the UK Parliament and the Council attracts further significant or substantial weight.[41]

30. The imperative of boosting energy security is likewise a matter which Inspectors have afforded substantial weight in a number of solar farm appeals.[42]

31. Furthermore, it is well established that grid connections are a scarce resource in the UK and a major barrier in the transition to net zero, as is clear from recent Government strategies such as the Connections Action Plan.[43] Mr Burrell affords the lack of alternative sites with the benefit of a grid connection offer significant weight.[44] Mr Bond considers the grid connection attracts moderate positive weight.[45]

32. Further moderate benefits of the scheme arise from good design and use of best available technology, in particular the use of bi-facial tracker panels which significantly increase productivity compared to traditional fixed arrays.[46]

33. The wider environmental benefits would include creation of new habitats, soil regeneration, improvements to surface water drainage, and green infrastructure enhancements. The BNG

[37] Mr Burrell's Proof at §9.62, having regard to the recent appeal decision at Fobbing CD6.38, para 39
[38] Mr Burrell's Proof at §7.5, §11.9
[39] Mr Burrell's Proof §§11.10-11.26 sets out a series of appeal decisions where either "substantial" or "significant" weight has been afforded to energy generation of this order
[40] Mr Bond's Proof at §8.46
[41] See CD4.11 and CD5.8, Mr Burrell's Proof at §§11.27-11.31, Mr Bond's Proof at §8.45
[42] Mr Burrell's Proof at §11.34, referring to *Thaxted* (CD6.23, §141); *Kemberton* (CD6.25 §65); and *Great Wheatley Farm* (CD6.27 §47).
[43] CD4.20, pg 50. See also March 2023 Energy Security Plan CD4.20, pg 50.
[44] Mr Burrell's Proof at §§11.42-11.47, referring to the Inspector's decision at *Chelmsford* CD6.12
[45] Mr Bond's Proof at §8.51, in line with the Inspector's considerations at *Cawston* (CD6.38).
[46] Mr Burrell's Proof at §§11.36-11.41, Solar Panel Trackers Explainer at Appendix 1 to Mr Burrell's Proof

that the scheme would bring about would be far in excess of the new 10% statutory requirements (which do not apply to this scheme), and in line with other appeal decisions that alone must attract substantial or significant weight.[47]

34. The Proposed Development also provides for an educational resource, with an outdoor classroom and interpretation and information boards.[48]

35. Finally, the economic benefits would include construction jobs and business rate contributions, and the Proposed Development would also support diversification of an agricultural business.[49]

36. These extensive benefits must be weighed against any harms. Policy is clear that there are likely to be some adverse effects arising from renewable development, and these do not make a scheme automatically unacceptable. As detailed above, the impacts in this case are both limited and acceptable. They comprise some landscape harm and less than substantial harm at the low end of the spectrum to five designated heritage assets – harm which in both respects is time-limited and reversible. No harm arises from use of best and most versatile ("BMV") agricultural land, given that the majority of the site is not BMV and that the agricultural land on which the scheme would temporarily sit would not be "lost".[50]

37. Mr Burrell is clear that taking all these considerations in the round, the balance lies strongly in favour of a grant of permission. That is a conclusion which squarely accords with that of the Council's professional planning officers in the Committee Report.[51]

38. Accordingly, in due course, the Inspector will be invited to grant permission, subject to appropriate conditions.

10th September 2024

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[47] Mr Burrell's Proof at §§11.50-11.51
[48] Mr Burrell's Proof at §§11.70-11.73, Mr Bond's Proof at §8.54
[49] Mr Burrell's Proof at §§11.66-11.69, Mr Burrell's Proof at §§11.61-11.65
[50] Mr Kernon's Statement at §1.3
[51] CD3.1 at §10.11.