

S.O.W.L.I.S

Save Old Wives from Industrial Solar

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15 December 2022

Mr Lane,
Ashford Borough Council,
Civic Centre,
Tannery Lane,
Ashford,
Kent TN23 1PL

Dear Mr Lane

APPLICATION NUMBER PA/2022/2415 - NORTH COURT SOLAR FARM, OLD WIVES LEES

1. INTRODUCTION

- 1.1. SOWLIS is a community group that represents the residents of Old Wives Lees, as well as those of the surrounding district. This letter sets out SOWLIS's objection to the proposed development of the orchards and land used for farming within and surrounding the village of Old Wives Lees by GSI North Court Limited, as applicant and Mr Robert Balicki, as the landowner.
- 1.2. SOWLIS's response to the proposed development is extensive due to the nature of the impacts of the development and the scope and content of the planning application documentation. For these reasons, we have prepared an Introduction and Summary. We have then reviewed the applicant's case for the proposed development before reviewing the relevant planning policies and guidance. In the Appendix we have set out our comments on the Environmental Statement (ES) that forms part of the planning application.
- 1.3. By way of background, the village of Old Wives Lees sits partially within, and adjacent to, the Kent Downs Area of Outstanding Natural Beauty (AONB) in the Stour Valley between Ashford and Canterbury. The North Downs Way, which is a National Trail incorporating the ancient Pilgrims Way from Winchester to Canterbury passes through the village and the application site. There are a number of listed and historic buildings within the village. Administratively, Old Wives Lees falls within Chilham Parish Council and the Downs North Ward of Ashford Borough Council (the Council).
- 1.4. The neighbouring village of Chilham has particular historic and architectural importance because it is founded on the ancient defensive settlement of Chilham Castle which forms the focus for a clustered development that has been preserved almost intact over many centuries. Its landscape setting, overlooking the River Stour,

provides a special environment of high aesthetic value which also includes sites of archaeological significance. The majority of Chilham is in a Conservation Area and contains many listed buildings. It is also within the AONB.

- 1.5. The other neighbouring village is Chartham, which is within the AONB and looks towards Old Wives Lees from the other side of the Stour Valley. In both cases this is relevant in the context of landscape and setting.
- 1.6. Given the importance of its location within and adjacent to the Stour Valley and the AONB as well as the National Trail, SOWLIS has received significant support from people in the wider district and nationally.
- 1.7. The planning application form states that: "*The proposed development comprises the erection of a solar farm with the potential output of 44 MW of electricity and associated works, including substations, inverters, maintenance tracks, security fencing and cameras*" (the proposed development). It should be noted that this description of the proposed development contains no limit on the number of solar panels, substations as well as no information on the connection to the electricity network grid. The application site is said to be 47.62 hectares. The site areas and potential electricity output (up to 50MW) vary across the application documents.
- 1.8. The proposed development falls within the category of development in Schedule 2, Part 3(a) of the Environmental Impact Assessment Regulations 2017 (EIA Regulations) as it is an *industrial installation to produce electricity over 0.5 hectare in size*. Accordingly, the proposed development must prepare an ES that complies with the EIA Regulations. The process of environmental Impact assessment (EIA) requires that an EIA is carried out before planning permission can be granted (Regulation 3 of the EIA Regulations).
- 1.9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that "*If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*".
- 1.10. Ashford Borough Council's (the Council) Local Plan 2030 (adopted in 2019) (Local Plan) is the development plan for the purposes of this statutory provision.
- 1.11. In SOWLIS's letter of 9 November 2022, it set out its concerns about the application documents and particularly the scope and content of the ES. We note that a number of these points are outstanding.

2. SUMMARY AND CONCLUSION

2.1. SOWLIS consider that, based on any objective review of the relevant planning policy and guidance (at a local and national level) and for the reasons set out below, planning permission should not be granted for the proposed development. This is due to the fact that the planning application does not comply with the relevant planning policies in the Local Plan and there are no material considerations that override the failure to comply with these policies.

2.2. In particular:

2.2.1. the application site is not allocated in the Council's Local Plan for use as a solar farm. The application site does not have any specific use allocation as it has been used for orchards for several decades;

2.2.2. almost the entirety of the application site (88.2% of it) falls within the definition of Best and Most Versatile agricultural land (BMV), at local and national level, which protects such agricultural land from development by requiring that non-agricultural uses of such land are directed to other sites. The issue of food security is a particularly important policy objective in the current circumstances. It should be borne in mind that electricity can be generated in a number of different ways and widely differing scales. For example, roof tops or brownfield land can be used by solar photovoltaics (PV) whereas food or other crops require agricultural land;

2.2.3. the proposed development does not comply with policies in the Local Plan and subsidiary guidance for renewable energy generation, with respect to location and does not contain the technical information required by the Council;

2.2.4. the proposed development will industrialise the current agricultural landscape, which will result in unacceptable landscape and visual impacts on the AONB and its setting, as well as the village of Old Wives Lees. Our comments on this matter are informed by the technical review of the Landscape and Visual Impact Assessment (LVIA) submitted by the applicant undertaken by Land Use Consultants (LUC) (these are summarised in paragraph 2.3);

2.2.5. the proposed development will have a significant effect on the setting of a number of listed buildings/heritage assets and will damage an area of archaeological interest. This will result in harm (and substantial harm in certain circumstances) to them individually, as well as a grouping in the context of a longstanding and high value agricultural landscape;

2.2.6. the longstanding use of the land as orchards, in an area recognised for its fruit growing, has resulted in particular ecological conditions for a range of flora and fauna, which will be adversely impacted by the proposed development; and

2.2.7. other forms of agriculture with appropriate environmental and landscape management have not been considered or properly assessed as alternatives.

- 2.3. In conclusion, for the reasons set out in this document, the application does not comply with Policies ENV3 (a and b), ENV 5, ENV6, ENV9, ENV-10, ENV13, ENV15, which provide sufficient reasons for refusing consent for the proposed development. Whilst the need for renewable energy is a potential benefit, and a material consideration in this context, we do not believe the purported benefits, which have not been accurately set out, outweigh the adverse impacts of the proposed development such as:
- 2.3.1. loss of 41.9 hectares of the BMV agricultural land for a period of 40 years, given the policies to protect such land, direct development away from it and provide for food security;
 - 2.3.2. the significant adverse impacts on, and changes to, the landscape and character of Old Wives Lees;
 - 2.3.3. the significant heritage impacts and the need to safeguard the setting of the Kent Downs AONB;
 - 2.3.4. the application site is located on land that is highly valued and in the immediate setting of the AONB, with both close and longer distance views to and from the AONB. The landscape is similar in character to, and displays the special qualities of the AONB, notably its tranquillity and farmed character;
 - 2.3.5. the proposed development does not protect a valued landscape on the edge of the AONB or recognise the intrinsic value and beauty of the countryside or the BMV agricultural land;
 - 2.3.6. the proposed development does not fit with the rural farmed landscape character and the underlying landform;
 - 2.3.7. the construction of the proposed development will adversely affect rural lanes, including the route of the North Downs Way National Trail, which is a key tourist and recreational route. Ashford's Corporate Plan identifies one of its key priorities is to have a borough that recognises the value of tourism and the benefits it brings to our towns, villages and the borough as a whole; and
 - 2.3.8. the proposed development would have an adverse impact on the setting of the AONB, as a result of:
 - 2.3.8.1. the loss of the sense of tranquillity and remoteness; and
 - 2.3.8.2. introduction of an abrupt change in landscape character from farmland and orchards so characteristic of the area to a large solar farm development.
- 2.4. In this document, we will set out the relevant policy and guidance framework to expand on the above points. In addition, we have identified a number of errors and

inaccuracies in the application documents including inaccurate quotations of policy in support of the proposed development. It is our view that these are also reasons for the application to be refused.

3. THE APPLICANT'S PROPOSED JUSTIFICATION FOR THE DEVELOPMENT

- 3.1. The Planning Design and Access Statement (PDAS) seeks to set out the planning policy context for the proposed solar farm development. In doing so, it seeks to make the case for the development.
- 3.2. Ashford Borough Council's (the Council) Local Plan 2030 (adopted in 2019) is the development plan for the purposes of this statutory provision. It is not as the applicant claims in paragraph 5.1.6 of the PDAS "*a material consideration*". In this case, the Council's development plan policies take primacy. The relevant policy and guidance, amongst other matters, are material considerations.
- 3.3. We have reviewed Section 5 of the PDAS and have the following comments on the planning policy and guidance used to make the case for the development. There is a significant amount of text that is inaccurate and/or misleading. We have italicised and emboldened the text it to demonstrate where this is the case. As a result of these inaccuracies, the text in the PDAS must be treated with considerable caution.
- 3.4. **Comments on the policies in the PDAS from the National Planning Policy Framework (NPPF)**
 - 3.4.1. Paragraph 5.2.14 of the PDAS states: "Paragraph 158 (of the NPPF) states that when determining planning applications for renewable and low carbon development, local planning authorities should:
 - 3.4.1.1. *a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and*
 - 3.4.1.2. *(b) approve the application if its impacts are (or can be made) acceptable".*
 - 3.4.2. NPPF Paragraph 158 actually states: "When determining planning applications for renewable and low carbon development, local planning authorities should:
 - 3.4.2.1. *a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and*
 - 3.4.2.2. *b) approve the application if its impacts are (or can be made) acceptable.*
Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas".

3.4.3. It is particularly misleading to exclude the text highlighted above. In this context, the Council has a specific local plan policy addressing renewable energy generation (Policy ENV10) along with additional guidance on large scale solar [untitled \(ashford.gov.uk\)](#). As a result, the text in the P&DAS cannot be relied upon, as it does not explain why it is necessary to meet this policy requirement and how it does so.

3.5. National Policy Statements – Overarching Statement (EN-1) (July 2011)

3.5.1. This is a policy statement that primarily applies to Nationally Significant Infrastructure Projects (NSIPs). In that context, it is for projects that generate electricity in excess of 50MW. The effect of the policy is to not require the applicant to demonstrate the need for electricity generation (renewable or otherwise) (as with the NPPF policy). The consenting process for NSIPs is governed by the Planning Act 2008.

3.5.2. Paragraph 5.2.16 of the PDAS states: *Whilst the National Policy Statements (NPSs) provide the primary policy framework for determining applications for energy generation infrastructure in excess of 50MW, paragraph 1.2.1 of EN-1 states that the NPS is likely to be a material consideration in decision making on smaller scale applications made under the Town and Country Planning Act 1990.*

3.5.3. Paragraph 1.2.1 of EN-1 actually states: *In England and Wales this NPS **may** be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). **Whether, and to what extent, this NPS is a material consideration will be judged on a case-by-case basis and will depend upon the extent to which the matters are already covered by applicable planning policy.***

3.5.4. In this context, the Council has specific planning policy addressing renewable energy generation along with additional guidance on large scale solar [untitled \(ashford.gov.uk\)](#). Accordingly, we would submit that EN-1 is not a material consideration. However, if the Council believes it is, we are of the view that very limited weight should be attached to it due to the primacy of Council policies and the NPPF policies for determinations under the Town and Country Planning Act 1990.

3.5.5. We note that the PDAS then selectively "quotes" from EN-1 without providing paragraph numbers (see paragraphs 5.2.17-19). We have carried out a word search for these quotations and cannot find any reference to nearly all of them in the document. Where some of the text is included, it is inaccurate – see paragraph 4.1.3 in EN-1 – it refers to the Secretary of State as a decision maker not "decision takers" (i.e., LPAs) as set out in paragraph 5.2.20 of the PDAS. In paragraphs 5.2.21 and 5.2.21 of the PDAS reference is made to paragraphs 5.9.12, 5.9.13 and 5.9.16 of EN-1. These paragraphs refer to heritage matters not "boundaries and designated areas".

3.5.6. In the absence of correct and full quotations, we are of the view that this text is misleading and cannot be relied upon.

3.6. Draft National Policy Statement – National Policy Statement for Renewable Energy Infrastructure (EN-3)

3.6.1. Paragraph 5.2.24 of the PDAS states: "*It confirms that the document **will be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent, this NPS is a material consideration will be judged on a case-by-case basis and will depend upon the extent to which the matters are already covered by applicable planning policy***" (Para. 1.2.1).

3.6.2. Paragraph 1.2.1 of draft EN-3 actually states: "*In England and Wales this NPS **may be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent, this NPS is a material consideration will be judged on a case-by-case basis and will depend upon the extent to which the matters are already covered by applicable planning policy***".

3.6.3. The PDAS then refers to elements of the policies and quotes the text on grid connections at paragraphs 2.48.12 of draft EN-3. It does not quote the following text in bold on agricultural land classification and land type (paragraphs 2.48.12-15):

3.6.3.1. 2.48.13 *Solar is a highly flexible technology and as such can be deployed on a wide variety of land types. **Where possible, ground mounted Solar PV projects should utilise previously developed land, brownfield land, contaminated land, industrial land, or agricultural land preferably of classification 3b, 4, and 5 (avoiding the use of "Best and Most Versatile" cropland where possible).** However, land type should not be a predominating factor in determining the suitability of the site location.*

3.6.3.2. 2.48.14 *The Agricultural Land Classification (ALC) is the only approved system for grading agricultural quality in England and Wales and should be used to establish the ALC and identify the soil types to inform soil management at the construction, operation and decommissioning phases. This should be extended to the underground cabling and access routes. The soil survey may also inform the suitable beneficial use of the land during the operational phase. Criteria for grading the quality of agricultural land using the Agricultural Land Classification (ALC) of England and Wales is decided by Natural England and considerations relating to land classification are expected to be made with reference to this guidance, or any successor to it.*

3.6.3.3. 2.48.15 *Whilst the development of ground mounted solar arrays is not prohibited on sites of agricultural land classified 1, 2 and 3a, or designated for their natural beauty, or recognised for ecological or archaeological importance, the impacts of such are expected to be considered and are discussed under paragraphs 2.50 and 2.53. It is recognised that at this scale, it is likely that applicants' developments may use some agricultural land, however applicants should explain their choice of site, noting the preference for development to be on brownfield and non-agricultural land".*

3.6.4. PPG: Renewable and low carbon energy (2015)

3.6.4.1. The PDAS then refers, at paragraph 5.2.30 of this guidance, to particular factors a local planning authority will need to consider. The document excludes the following emboldened text, the first of which is the first consideration in this part of the guidance:

- ***encouraging the effective use of land by focusing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value.***
- *where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays. See also a speech by the Minister for Energy and Climate Change, the Rt Hon Gregory Barker MP, to the solar PV industry on 25 April 2013 and written ministerial statement on solar energy: protecting the local and global environment made on 25 March 2015.*

3.6.4.2. The PDAS makes no reference to these documents and the policies within them. In particular these policies refer to the importance of locating solar on brownfield land and not greenfield agricultural land and in particular not BMV land.

3.6.5. The Council's Local Plan

3.6.5.1. From page 26 the PDAS then lists a number of the Council's Local Plan Policies, which it believes are relevant. However, relevant text is omitted as set out below.

3.6.5.2. Turning to the Council's policies on Renewable and Low Carbon Energy Policy ENV10 on page 33 of the PDAS, it is notable that text from the Local Plan on Renewable Energy is not included. Paragraph 9.98 of the Local Plan states that: ***It is recognised that any planning decision needs to balance the impact of renewables provision against the benefits of the proposal, and planning practice guidance makes it quite clear that renewable energy does not automatically override environmental protection***". Paragraph 9.99 of the Local Plan adds that: ***This is significant for the Ashford Borough which has large areas designated as AONB and is predominantly rural in character. Proposals which have an adverse impact on the landscape character, distinctive landform, special characteristics and qualities of the AONB or its setting would need to be opposed unless their impacts can be successfully mitigated. Local topography will be an important factor when considering whether there could be any damaging effect on the landscape. The use of Landscape Character Assessments and Landscape and Visual Impact Assessments will be useful in this context and their outcomes should inform any future proposal.***

3.6.5.3. The PDAS also does not include the following policy from the Local Plan on Standalone Renewable and Low Carbon Energy, which is a serious omission. We have set out this policy below and have emboldened key elements that are directly relevant to the determination of this application.

3.6.5.3.1. *9.105 PV Panels or solar technology relating to an individual building is often permitted development provided it is not in a designated area, is not of an unusual design or will not be installed on a listed building. **The Council has established Renewable Energy Planning Guidance Notes that have been approved by Cabinet. The guidance notes have been prepared to assist applicants in bringing forward domestic and medium scale solar PV arrays, as well as large scale solar PV arrays, such as solar farms.***

3.6.5.3.2. *9.106 Following concerns by local communities into the insufficient weight given to the environment with regard to landscape, heritage and local amenity in relation to wind farms, the government updated national guidance. This makes it clear that local planning authorities should only grant planning permission if the development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan and, following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing. No such areas are identified in this local plan and thus onshore wind energy is not anticipated to be acceptable unless an area is identified in a Neighbourhood Plan.*

3.6.5.3.3. *9.107 Kent Downs AONB Joint Advisory Committee has produced a Renewable Energy Position Statement (Updated June 2011) in which it states that due to the high sensitivity of the Kent Downs AONB it considers that large scale commercial wind turbine developments will be unacceptable. **The statement also considers it extremely unlikely that any location can be found in or within the setting of the AONB where field- scale solar PV arrays, such as solar farms, do not have a significant adverse effect on the landscape. National policy guidance also highlights the need to focus large scale solar farms on previously developed land and non- agricultural land and as a last resort, low grade agricultural land. This greatly limits the availability of potential sites within the Borough.***

3.6.5.4. In our view the failure to address the key Local Plan policies on renewable energy, its location and impacts on the environment, constitutes a justifiable reason for refusing consent for this application, regardless of the other matters we have raised.

3.6.5.5. The applicant also states in paragraph 5.3.3 of the PDAS that: *In 2013, ABC published a guidance note for 'The Development of Large Scale (>50kW) solar PV arrays. Whilst much of the policy referenced in the guidance document is now outdated, many of the considerations outlined such as glint and glare, agricultural land classification and ground maintenance are still applicable.*

- 3.6.5.6. The applicant does not provide any reasons to justify their assertion that much of the policy is outdated. They do not set out, which elements of the guidance they believe are outdated. However, they do say that some elements are relevant. It is clear from paragraph 9.105 that this guidance is current and forms part of the planning policy framework for the determination of this application. The Council's web-page, where this guidance can be found ([Advice on renewable energy particularly solar PV and solar thermal. \(ashford.gov.uk\)](https://www.ashford.gov.uk)) states that these guidance notes have been approved by the Council's cabinet and will advise decision makers when determining a planning application.
- 3.6.5.7. Perhaps the reason for the claim that the guidance is outdated stems from the guidance explicitly stating (on pages 10 and 11) that:
- 3.6.5.7.1. *"Ideally large-scale solar PV arrays should be directed towards previously developed land/brownfield sites, contaminated land, industrial land. There are few sites of appropriate status and size in Ashford Borough. Large scale solar PV arrays should avoid landscapes designated for their natural beauty, sites of acknowledged/recognised ecological/archaeological importance/interest. It is therefore likely that such development will look to land currently in agricultural use.*
- 3.6.5.7.2. *The presence of the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) will therefore be a significant issue in the determination of applications to be taken into account alongside other sustainability considerations. This position should be taken into account when identifying sites for large scale solar photovoltaic development. The following steps should be undertaken by the developer when considering locating a large scale solar photovoltaic development on agricultural land. If a planning application is subsequently submitted, it should be accompanied by the relevant information detailed in the steps below.*
- 3.6.5.8. The steps the guidance refers to is the checklist on page 26. This checklist has not been considered and nor have the requirements of Appendix A and B (along with a range of other matters). In relation to the duration of the consent no explanation is given in the PDAS as to why the maximum period of 25 years in the guidance has been disregarded. The applicant is proposing a 40-year operation period, which is a significant period of time.
- 3.6.5.9. In Section 6 of the PDAS, the applicant makes a series of claims about the need for renewable energy generation. The applicant states in paragraph 6.2 that: *the increase in renewable energy generation is seen to be of paramount importance within the UK in order to achieve the legal target under the Climate Change Act, which was amended in 2019, requiring all greenhouse gas emissions to be net zero by 2050.*
- 3.6.5.10. Whilst renewable energy is of course important, it is clear from the national and local policies that it is not of paramount importance. Other considerations, such as the need to protect and safeguard the best and most versatile agricultural land, as

well as heritage assets and the setting of the Kent Area of Outstanding Natural Beauty need to be considered.

- 3.6.5.11. Contrary to what the applicant states in paragraph 6.2.8, the Council does not have a target for renewable energy. On page 343 of the Local Plan the text clearly states that there is no target in relation to Policy ENV10 Renewable and Low Carbon Energy. It is misleading for the applicant to make assertions such as these (as well as others) in the PDAS.
- 3.6.5.12. With respect to the declarations of climate emergencies by Kent County Council and the Council, the related policies are intended to reduce their own greenhouse gas emissions primarily by estate management and energy efficiency. The Kent and Medway Energy and Low Emissions strategy relates to local authority priorities. These policies/initiatives do not relate to development control matters. The relevant policies for this application are in the Local Plan.
- 3.6.5.13. Paragraph 6.2.10 of the PDAS then states that: *As mentioned in Section 2 of this Statement, the orchards are in poor condition and agricultural production is likely to cease within the next couple of seasons leaving the land with an uncertain future. With this in mind, siting a solar farm on the land for 40 years will provide the land with a purpose which contributes towards achieving renewable energy targets and energy security for the UK*".
- 3.6.5.14. If the orchards are in a poor condition, we submit that this is not a relevant material consideration for justification for the grant of planning permission for this development. The orchards could be treated/improved and/or replanted. In addition, alternative crops could be grown. It is possible to generate energy on different resources (roof tops, brownfield land, developed land) as well as floating solar on reservoirs. It is not possible to use these to grow food. The need to protect the best and versatile agricultural land is a clear national and local policy requirement.
- 3.6.5.15. Sections 6.11-13 and 7 of the PDAS sets out the planning balance and conclusions that the applicant wishes the Council to adopt when determining the application. We submit that for the reasons set out above, the application is not compliant with the national and local policies and in particular with the Local Plan. It is also misleading and contains numerous errors. Given that the application site is not allocated for use as a solar farm in the Local Plan the application must be determined in accordance with the Local Plan and the relevant material considerations (section 38(6) of the Planning and Compulsory Purchase Act 2004).

4. POLICIES ON THE BEST AND MOST VERSATILE AGRICULTURAL LAND

- 4.1. The NPPF defines Best and Most Versatile Agricultural Land as land in grades 1,2 and 3a of the Agricultural Land Classification (ALC). In the Executive Summary to the applicant's Soil and Agricultural Land (SAL) report it states that the application site is: *88.2% BMV, mostly comprising Subgrade 3a (33.6 ha, 70.7%) with some Grade 2 (8.3 ha, 17.5%). The remaining land comprises moderate quality, non-BMV Subgrade 3b land (5.3 ha, 11.1%) and non-agricultural land comprising a small buffer around an existing farm building (0.04 ha, 0.1%)*".
- 4.2. However, the stated size of the site varies between 47.54 hectares (117.5ac) to 49.88 ha (123ac) (Transport Statement) throughout the application documents submitted making it difficult to calculate the accurate amount of BMV land within the site.
- 4.3. Industry best practice and guidance has not been adhered to in preparing the SAL. There is a selective approach, and by the applicant's own omission a 'hybrid' approach was taken to the assessment of ALC when using the IEMA policy guidance - Institute of Environmental Management Assessment (published February 2022), even though the latest soil sampling was taken in May 2022 the policy guidance should have been adhered to.
- 4.4. In the SAL the impact both on construction and operational phases are classed as 'not significant' and the magnitude is classed as Negligible to Minor. There is also no Soil Management Plan. No evaluation on the potential impact on relevant and potential soil functions at the site are proposed in terms of biodiversity, ecology, carbon capture and archaeology has been undertaken.
- 4.5. Paragraph 174 of the NPPF states: *Planning policies and decisions should contribute to and enhance the natural and local environment by: (b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.*
- 4.6. Paragraph 175 of the NPPF states: *Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework (58); take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.*
- 4.7. Footnote 58 (emboldened above) states: *Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.*
- 4.8. National guidance on this point also includes a speech by the Minister for Energy and Climate Change, the Rt Hon Gregory Barker MP, to the solar PV industry on 25 April

2013. In the speech Mr Barker stated: *“This means it must work for local communities, with sensible, sustainable design of new projects. And for larger deployments, brownfield land should always be preferred. The solar farm at the former Wheal Jane tin mine, just down the road, is a good example of how this can be done. In other parts of the country, solar has been installed on disused airfields, degraded soil and former industrial sites. This is the model for future solar projects. But this is not a new position. I have been clear on this point from when I first entered government. Back in 2010 I told the House of Commons that “large field-based developments should not be allowed to distort the available funding for roof-based PV, other PV and other types of renewable.” I still stand by this. Indeed, in January I reiterated this in the House of Commons. I said, and I quote: “We need to be careful that we do not over-incentivise large-scale ground-mounted projects in inappropriate places – I am thinking of greenfield agricultural land – that could generate strong opposition to our community energy agenda... ..It needs careful design and thoughtful consideration. It certainly could not be a scheme about renewable energy at any cost. Impacts on the local community, on landscape and on consumer bills have to be a real consideration...” So, our message is very clear. And it is consistent. We have revised our subsidy structure, offering higher levels of support to building-mounted solar PV. And we will do our best to spread examples of best practice, focusing deployment on buildings and brown-field land – not green-field.”*

- 4.9. In the written ministerial statement on solar energy: protecting the local and global environment made on 25 March 2015 Mr Pickles states that: *“The National Planning Policy Framework includes strong protections for the natural and historic environment and is quite clear that local councils when considering development proposals should take into account the economic and other benefits of the best and most versatile agricultural land. Yet, some local communities have genuine concerns that when it comes to solar farms insufficient weight has been given to these protections and the benefits of high-quality agricultural land. As the solar strategy noted, public acceptability for solar energy is being eroded by the public response to large-scale solar farms which have sometimes been sited insensitively. Meeting our energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high-quality agricultural land. Protecting the global environment is not an excuse to trash the local environment. When we published our new planning guidance in support of the Framework, **we set out the particular factors relating to large scale ground mounted solar photovoltaic farms that a local council will need to consider. These include making effective use of previously developed land and, where a proposal involves agricultural land, being quite clear this is necessary and that poorer quality land is to be used in preference to land of a higher quality.** We are encouraged by the impact the guidance is having but do appreciate the continuing concerns, not least those raised in this House, about the unjustified use of high-quality agricultural land. In light of these concerns, we want it to be clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence. Of course, planning is a quasi-judicial process, and every application needs to be considered on its individual merits, with due process, in light of the relevant material considerations”.*

- 4.10. As stated above the applicant does not address the above guidance or policy nor the Council's Advice on Large Scale Solar PV Arrays as set out in detail in section 3.6 above. The Applicant also fails to acknowledge that the Government is considering including land classed as 3b in the Agricultural Land Classification <https://www.theguardian.com/environment/2022/nov/17/de-facto-ban-on-solar-farms-in-england-to-continue-therese-coffey-signals>. Whilst this is not yet adopted policy it shows the direction of the Government's thinking on this matter.
- 4.11. We have set out details of the Council's Policy on Renewable and Low Carbon Energy – ENV 10 above in Section 3.6. This also includes the supporting text to those policies. In the context of Best and Most Versatile Land we consider that the siting of the proposed development on such land as being contrary to Policy ENV 10 (a) which states that: *"Planning applications for proposals to generate energy from renewable and low carbon sources will be permitted provided that: a) The development, either individually or cumulatively **does not result in significant adverse impacts on the landscape, natural assets or historic assets**, having special regard to nationally recognised designations and their setting, such as AONBs, Conservation Areas and Listed Buildings"*.
- 4.12. This is due to the fact that 88.2% of the land is a natural asset of high value, which is proposed to be taken out of agricultural production for 40 years. We are of the view that this is a significant adverse impact in a time when food security is of growing concern. Whilst grazing is considered as an option as part of the proposed development, it is not clear from the application documents how this will co-exist with the desire to increase biodiversity in such circumstances. It should also be noted that grazing can take place on land of very low or marginal agricultural value.
- 4.13. The Applicant has shown no assessment of how they have considered directing development to land that is not the Best and Most Versatile Land or to brownfield land. They have sought to play down the fact the proposed development does not comply with national and Local Plan policy on this important point.

5. POLICIES ON RENEWABLE AND LOW CARBON ENERGY

- 5.1. We have made several references to the Council's *Policy ENV10 - Renewable and Low Carbon Energy* above. For ease of reference, we have set out in full as follows:
- 5.1.1. *Planning applications for proposals to generate energy from renewable and low carbon sources will be permitted provided that:*
- 5.1.1.1. *a) The development, either individually or cumulatively does not result in significant adverse impacts on the landscape, natural assets or historic assets, having special regard to nationally recognised designations and their setting, such as AONBs, Conservation Areas and Listed Buildings;*
- 5.1.1.2. *b) The development does not generate an unacceptable level of traffic or loss of amenity to nearby residents (visual impact, noise, disturbance, odour);*

- 5.1.1.3. *c) Provision is made for the decommissioning of the infrastructure once operation has ceased, including the restoration of the site to its previous use; and,*
- 5.1.1.4. *d) Evidence is provided to demonstrate effective engagement with the local community and local authority.*
- 5.1.2. *A statement should be submitted alongside any planning application illustrating how the proposal complies with the criteria above and any mitigation measures necessary and be informed by a Landscape and Visual Impact Assessment”.*
- 5.2. We now turn to consider the other relevant components of this policy. Landscape and Visual Impact, as well as heritage matters are dealt with in sections 6 and 7 below. In this section we shall comment on the application’s compliance with parts (b), (c) and (d).
- 5.3. The development does not generate an unacceptable level of traffic or loss of amenity to nearby residents (visual impact, noise, disturbance, odour).
- 5.3.1. **Traffic**
- 5.3.1.1. SOWLIS considers that the Transport Assessment submitted by the applicant significantly underplays the traffic impacts that the construction of the proposed development will have on the rural road network and Old Wives Lees. There are circa 2500 vehicle (primarily lorry) movements in the centre of Old Wives Lees during the six-month construction period. The Transport Assessment states the daily movement is expected to be 126 movements a day.
- 5.3.1.2. This will have a significant impact on the amenity of residents of Old Wives Lees and Lower Ensden. Lower Lees Road is proposed to be the main access point to the site, and this will put the construction traffic in conflict with residents, agricultural traffic, the school bus and walkers on the Pilgrims Way. The scale of the development in such an unsuitable location will result in unacceptable impacts that cannot be meaningfully mitigated by the proposed Construction Management Plan as there are no other appropriate forms of access to the site due to the constraints of the rural road network.
- 5.3.1.3. The proposed access point on Lower Ensden Road next to the properties at Lower Ensden are hazardous due to the narrow width of the lane as well as being on a double bend. The access point will also affect the amenity of the residents on Lower Ensden Road as it is not currently used as an access. The gating and fencing will also affect residents’ amenity as well as having an adverse visual impact on the setting of the listed buildings at Lower Ensden.

5.3.2. **Comments on Visual Impact**

5.3.2.1. Please see the review prepared by LUC for comments on the LVIA. In addition, the visual impact of the proposed development will have a significantly adverse impact to all the properties at Lower Ensden, as well as residents on Lower Lees Road who back on to the development site. Whilst some impacts may be mitigated, in time, the impact of the development will be visible from the upper floor of many properties regardless of mitigation (this is acknowledged by the applicant). This is due to the significant scale of the development and the gradients on the site. The changes to the perceived landscape for the residents of Old Wives Lees adjacent to the proposed development as well to those in the AONB who will see the development will be significant and detrimental to the character and appearance of the area.

5.3.3. **Comments on Noise**

5.3.3.1. We enclose a letter dated 13 December 2022 from Finch Consulting, which sets out the deficiencies in the Noise Assessment Report submitted as part of the application documents. In our noise consultant's opinion, the Council ought to refuse to grant planning permission for the development, since the submitted noise impact assessment report does not align with local and national policies on noise, and as such, the Council will not be able to provide cogent reasoning to grant permission based on the report.

5.4. **Decommissioning**

5.4.1. The application documents do not contain any meaningful information on the proposed decommissioning of the site.

5.4.2. For example, paragraph 3.12 of the PDAS states: *After 40 years, the project will have reached the end of its operational life and will enter a phase of decommissioning, unless the lifetime of the development is extended subject to a further planning application. Decommissioning will involve dismantling and removal of all materials and equipment that have been in situ on site during the operational phase. The decommissioning phase is anticipated to take approximately 1-2 months. Once the solar modules and supporting infrastructure have been completely removed, the site will be restored to its former agricultural use.*

5.4.3. The ES states at paragraph 4.3.2 *"Decommissioning will involve the dismantling and removal of all materials and equipment that have been in situ on Site during the operational phase. The decommissioning phase is anticipated to take approximately 1-2 months. Once the solar modules and supporting infrastructure have been completely removed, the Site will be restored to its former agricultural use"*. The ES contains no assessment of the impacts that may arise from decommissioning. There are likely to be impacts on soil, ecology, as well as traffic, noise and dust impacts. None of these are considered. These impacts need to be assessed and included in the ES.

5.4.4. The Construction Environmental Management Plan and Transport Assessment has no information on decommissioning and there are no conditions proposed to address this issue.

5.5. **Community Engagement**

5.5.1. Evidence to demonstrate effective engagement with the local community and local authority. The Statement of Community Involvement is selective in the identification of appropriate policies and guidance (2.4 Local Policy Guidance), and fails to provide "*evidence to demonstrate effective engagement with the local community and local authority*" Policy ENV10 Renewable and Low Carbon Energy, Ashford Local Plan 2030, S9.109:d) P291 adopted-ashford-local-plan-2030.pdf; and Statement of Community Involvement Planning Guidance Notes 2013 Part 2 Planning Application Consultations 28.p13 statement-of-community-involvement.pdf (ashford.gov.uk).

5.5.2. The above policy states clearly that "effective engagement" is required. Engagement is a two-way process that builds relationships and brings together communities to collaborate in decision making. It is not "consultation" which is a one-way process. The applicant initially sought to avoid the process of engagement in various ways. Initially, reference to a website stated it could not carry out any pre-application consultations with residents due to Covid-19. This was despite the fact there were no lockdowns in force. There were then two public exhibitions. In both cases, details of the proposed development were unclear. There were no clear plans and requests for information were met with the comment 'please send an email and we will get back to you'. In many cases no response was received despite chasing. It is reasonable to state that these events were not meaningful or informed. It is a clear case of the applicant going through the motions of consultation because it is expected, as part of the planning process. By way of example, the applicant has sought to take credit for providing a community orchard, when no such orchard has been requested and is not desired.

5.5.3. The dedicated webpage continues to contain inaccuracies and information is limited. The website was not secure and therefore inaccessible to the public through Search Engines. The website was not used to publicise dates of any meetings nor to gather data and feedback or communicate the outcomes of any consultation activities. Displays and slides from public consultations are not posted on the website. There were no other available communication channels such as a dedicated email address, named contacts, virtual exhibition, online Q & A sessions, Freephone number. The SCI notes that 150 comments were received online regarding the proposal but there is no analysis or evidence of the outcomes in terms of relevant issues.

5.5.4. The SCI notes that letters were sent to "adjacent parish councils" and "ward members" but fails to identify them, gives no information on the outcomes nor provides copies; Appendix B copy of undated letter to residents – was delivered on

5th May 2022 but dated January 2022; Appendix C newspaper advertisement gives no date or details as to which publication, and whether online and/or print copy. We are not aware of any actual notices being published.

- 5.5.5. With regard to the second public consultation, attendance numbers are not given, no method of gathering and recording relevant issues is evidenced, therefore the statement that the main concerns for the public were visual impact and noise cannot be verified. The images were not finalised and showed mitigation at year 15, not at the start of the development. There is no evidence of any consideration or feedback to the public. The SCI is also selective in identifying and listing the main concerns of SOWLIS.
- 5.5.6. The applicant has sought also to say that they are prepared to make contributions to the local community including the provision of solar panels to certain residents. This has included the possibility of discounted electricity. No details of what is proposed was set out in the pre-application discussions, so we have not been able to establish whether they meet the legal tests for planning obligations in the Community Infrastructure Regulations. No draft Heads of Terms for a section 106 Agreement are included in the application documentation.

6. POLICIES ON LANDSCAPE, CHARACTER AND DESIGN

6.1. Policy ENV3a - Landscape Character and Design

- 6.1.1. *All proposals for development in the borough shall demonstrate particular regard to the following landscape characteristics, proportionately, according to the landscape significance of the site:*
- 6.1.1.1. *a) Landform, topography and natural patterns of drainage;*
 - 6.1.1.2. *b) The pattern and composition of trees and woodlands;*
 - 6.1.1.2.1. *c) The type and composition of wildlife habitats;*
 - 6.1.1.3. *d) The pattern and composition of field boundaries;*
 - 6.1.1.4. *e) The pattern and distribution of settlements, roads and footpaths;*
 - 6.1.1.5. *f) The presence and pattern of historic landscape features;*
 - 6.1.1.6. *g) The setting, scale, layout, design and detailing of vernacular buildings and other traditional man made features;*
 - 6.1.1.7. *h) Any relevant guidance given in the Landscape Character SPD;*
 - 6.1.1.8. *i) Existing features that are important to and contribute to the definition of the local landscape character shall be retained and incorporated into the proposed development; and,*
 - 6.1.1.9. *j) Any non-designated, locally-identified, significant landscape features justified in a Parish Plan or equivalent document.*

6.2. Policy ENV3b – Landscape Character and Design in the AONBs

- 6.2.1. *The Council shall have regard to the purpose of conserving and enhancing the natural beauty of the Kent Downs and High Weald AONBs.*
- 6.2.2. *Major development proposals within the AONBs will only be permitted in exceptional circumstances and where it is demonstrated they are in the public interest.*

- 6.2.3. *All proposals within or affecting the setting of AONBs will also only be permitted under the following circumstances:*
- 6.2.3.1. • *The location, form, scale, materials and design would conserve and where appropriate enhance or restore the character of the landscape.*
- 6.2.3.2. • *The development would enhance the special qualities, distinctive character and tranquillity of the AONB.*
- 6.2.3.3. • *The development has regard to the relevant AONB management plan and any associated guidance.*
- 6.2.3.4. • *The development demonstrates particular regard to those characteristics outlined in Policy ENV3a, proportionate to the high landscape significance of the AONB.*
- 6.3. The review prepared by LUC comments on the LVIA and the above policies. On a true reading of the policies, the proposed development conflicts with the above policy and should be refused on this basis. In summary, the proposed development will have a significant and adverse impact on the landscape character of the site, the surrounding area, and the special qualities of the AONB. It will have a significant effect on this highly sensitive undulating, tranquil farmed landscape. The proposed development would be seen by many people including local residents, in their homes, those using the local rights of way and local roads, as well as people walking the North Downs Way a National Trail that passes through the site. The prominent location on the Stour valley sides, means that there will be both local and longer distance views from the AONB. These significant effects will remain over the lifetime of the development (40 years).
- 6.4. We do not agree with the judgements of effects submitted in the LVIA as part of the Environmental Statement. LUC has identified numerous issues, inaccuracies and errors and believe that the landscape and visual effects are underplayed. The LVIA in its current form does not provide appropriate or accurate information on the extent of landscape and visual effects such that ABC cannot make an informed decision on the application.

7. POLICIES ON THE CONSERVATION AND ENHANCEMENT OF HERITAGE ASSESTS

- 7.1. We have set out below the relevant national and local policy on this issue. It is our view that the ES Appendices 6.2 and 6.3 addressing Archaeology and Heritage deliberately understate the impact of the proposed development on the setting of the designated heritage assets adjacent to the site and fails to assess the non-designated assets, such as the oasts and nineteenth century buildings on Lower Lees Road and the hamlet of Lower Ensdon. The impacts are also understated in the ES, which calls into question the legal adequacy of the ES. In this respect, please see out comments on the ES in the Appendix.
- 7.2. These buildings have considerable significance as vernacular former agricultural buildings, and cottages, as well as group value. The Kent Downs AONB Unit describes the area in which they are set (in their letter of 30 November 2022) as an

area “a high-quality landscape character”. They also note that “the site’s highly attractive and undulating topography and role in forming the setting of the Kent Downs AONB is specifically recognised in Ashford’s own Landscape Character Assessment”.

- 7.3. It is our view that the proposed development will impact the setting of these buildings, particularly those on Lower Ensden Road, so as to substantially harm their significance as heritage assets. This is due to the scale and proximity of the solar panels, which are in certain cases 30 metres from these buildings. With respect to Lower Ensden Road the solar panels will loom over these buildings due to the topography.
- 7.4. Whilst this is ultimately a matter of judgement for the Council, we are of the view that it is not reasonable to conclude that there will be no harm or less than substantial harm, to these assets, particularly when viewed from the footpaths that run through the site and also when viewed from the bench on the North Downs Way as well as from Chilham and Chartham.
- 7.5. We will comment on the public benefits to be weighed against the harm after the policy extracts below.
- 7.6. **NPPF Policies**

7.6.1. Paragraph 199 of the NPPF states 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). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”.

7.6.2. Paragraph 200 of the NPPF states that: any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.”

7.6.3. Paragraph 202 of the NPPF states: “Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use”.

7.6.4. Paragraph 203 of the NPPF states: “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”.

7.7. Policy ENV13 - Conservation and Enhancement of Heritage Assets

7.7.1. *Proposals which preserve or enhance the heritage assets of the Borough, sustaining and enhancing their significance and the contribution they make to local character and distinctiveness, will be supported. Proposals that make sensitive use of heritage assets through regeneration, particularly where these bring redundant or under-used buildings and areas into appropriate and viable use consistent with their conservation, will be encouraged.*

7.7.2. *Development will not be permitted where it will cause loss or substantial harm to the significance of heritage assets or their settings unless it can be demonstrated that substantial public benefits will be delivered that outweigh the harm or loss.*

7.7.3. *Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, or where a non-designated heritage asset is likely to be impacted, harm will be weighed against the public benefits of the proposal, including securing the optimum viable use of the heritage asset.*

7.7.4. *All applications with potential to affect a heritage asset or its setting should be supported by a description of the asset's historic, architectural or archaeological significance with an appropriate level of detail relating to the asset and the likely impact of the proposals on its significance.*

7.8. The proposed development by its very scale and content will not preserve or enhance the character and local distinctiveness of the area. It will also cause loss and in our view substantial harm to the designated and non-designated heritage assets on Lower Lees Road and Lower Ensden Road.

7.9. With respect to the claimed public benefits to be considered against the harm the applicant has set out in the paragraph 14.2.2 of ES Appendix 6.2 that: *“Public benefits to be considered are as follows:*

- *Renewable energy generation;*
- *Provision of community orchards and public dog walking areas; and*
- *Biodiversity gains and enhancement.”*

7.10. The applicant contends there will be less than substantial harm with respect to the Grade II listed barn at North Court Farm. Despite this, the application documents make no meaningful attempt to set out what the public benefits are. For example, they do not set out the quantum of energy that will be generated as required by the Council's policies on large scale solar. In the absence of any information, that can also be checked, on this point no weighing exercise can be carried out.

7.11. With respect to community orchards and dog walking areas, the residents of Old Wives Lees have not requested any orchards and can currently walk their dogs over

the site. The reference to biodiversity gains and enhancements is also not quantified or set out in this context so weighing exercise can take place. In any event it would be difficult to reconcile the proposed biodiversity gains with the references to sheep grazing under the solar panels.

7.12. Policy ENV15 – Archaeology

- 7.12.1. *The archaeological and historic integrity of Scheduled Monuments and other important archaeological sites, together with their settings, will be protected and where possible enhanced. Development which would adversely affect such designated heritage assets will be assessed in line with Policy ENV13.*
- 7.12.2. *In addition, where the assessment outlined in Policy ENV13 reveals that important or potentially significant archaeological heritage assets may exist, developers will be required to arrange for field evaluations to be carried out in advance of the determination of planning applications.*
- 7.12.3. *Where the case for development affecting a site of archaeological interest is accepted, any archaeological remains should be preserved in situ as the preferred approach. Where this is not possible or justified, appropriate provision for preservation by record may be an acceptable alternative dependent upon their significance. Any archaeological recording should be by an approved archaeological body and take place in accordance with a specification and programme of work to be submitted to and approved by the Borough Council in advance of development commencing.*

7.13. The Archaeology sections of the applications have not included an assessment of the impact of development on the area of archaeological designation TRO5NE - Pottery, which can be found on the Council's interactive map. This area straddles the fields and footpath between Old Wives Lees and Lower Ensden. In the absence of a proper evaluation the impacts of installing solar panels into this area cannot be assessed prior to development.

7.14. In light of the above points, we cannot see how the applicant can credibly contend that the proposed development is compliant with the Council's Policies ENV13 and ENV15, as it is claimed in paragraph 6.5.4 of the PDAS. It is clear that the proposed development, due its scale and scope, does not comply with these policies and no benefits have been fully set out to seek to outweigh the substantial harm to the heritage assets and their setting in an area of high landscape quality.

7.15. We would like to consider the assessment made by the Council's heritage and archaeological team, as well relevant stakeholders such as Historic England and the relevant archeologically bodies.

8. POLICIES ON RURAL FEATURES HABITATS AND ECOLOGY

8.1. Policy ENV5 – Protecting Important Rural Features

8.1.1. *All development in the rural areas of the Borough shall protect and, where possible, enhance the following features:*

8.1.1.1. *a) Ancient woodland and semi-natural woodland;*

8.1.1.2. *b) River corridors and tributaries;*

8.1.1.3. *c) Rural lanes which have a landscape, nature conservation or historic importance;*

8.1.1.4. *d) Public rights of way; and,*

8.1.1.5. *e) Other local historic or landscape features that help to distinguish the character of the local area.*

8.1.2. SOWLIS consider that the proposed development does not comply with this policy for reasons set out above in relation to landscape, visual impact and heritage.

8.1.3. In addition, with respect to woodland we have the following comments on the Arboricultural Impact Assessment (AIA) report. In general, it downplays the contribution of the trees and hedgerows to the character of the local landscape (adjacent to the AONB), their amenity value to the public (traversed by the North Downs Way) and their wider impact on the environment in terms of biodiversity, as follows:

8.1.3.1. selective use of relevant local policy (ENV3a Landscape Character and Design; omission of ENV3b Landscape Character and Design in AONBs) regarding trees and woodland;

8.1.3.2. disregard of the importance of hedgerows and omission of relevant national regulations and local policy (Hedgerow Regulations 1997 and Policy ENV1 Biodiversity) that afford protection;

8.1.3.3. removal of a total of 140 metres of hedgerow is categorised as having LOW impact on local amenity;

8.1.3.4. the Site Master Plan 25 August 2022 notes “existing hedgerows to be removed (0.077 km)” which is contra to the AIA which states a total of 140 m;

8.1.3.5. no identification regarding the impact on Biodiversity, Landscape/Visual etc.;

- 8.1.3.6. omits information on the prior removal of 2 individual trees and 2 tree groups from the site which took place during the period between the two surveys (2021 and 2022). The AIA notes that two surveys were undertaken, the initial one on 7 and 8th October 2021 and a follow up survey on 18th March 2022. The AIA notes that T35 and T36 together with G12 and G13 were removed between those dates. The removal may well have been due to valid arboricultural reasons, but there is no identification of location, species or reasons for removal, which would help understand the context;
- 8.1.3.7. in terms of potential mitigation, there is no supporting evidence within the Statement of Community Involvement that community orchards were suggested during public consultation. There are concerns regarding how these areas would be planted up and managed, particularly in terms of disease management given that orchards and other agricultural crops are grown on immediately neighbouring farms;
- 8.1.3.8. in terms of mitigation for local benefit, buffer zones should be at least 6 to 8 metres in width and planted up with select standards of native species e.g., Oaks, Birch, Hornbeam, and Beech. The planning application states that portions of hedgerows would be removed to allow construction traffic to access the site. Ancient hedgerows take years to grow, are unique in terms of biodiversity and therefore cannot be replaced through replanting. The report notes that these sections of hedgerows are to be removed to allow access for construction and access. There is already a main access to the site, through the existing farm gate on Lower Lees Road opposite Bowerland Lane. This entrance has good visual line of sight, is open and was given planning permission for commercial and farm vehicles to allow transportation of apples. The proposed access points on Lower Ensden Road are completely unsuitable as they are located along a rural country lane, on a dangerous bend which is poorly lit, has no pavements and is used mainly by cyclists, horse riders and walkers;
- 8.1.3.9. there is a risk that the trees and hedgerows on the site are at risk, both immediately and in the future. A number of unclassified trees are identified in the AIA and are therefore scoped outside the planning application. It is the landowner's responsibility to carry out a visual inspection and take action to reduce the risk. However, the landowner has recently grubbed out hedgerows and orchards on the remainder of his site opposite the proposed solar installation;
- 8.1.3.10. in the past, a tree on the site was the subject of a successful TPO request made by a resident, and to which the landowner objected. The landowner has made it very clear that he will not be keeping the

remaining orchards regardless of the success or otherwise of this planning application.

8.1.4. We note the need for additional ecological information required by KCC in their note on 5 December 2022.

8.1.5. We also refer to KCC's objection on public rights of way in their letter of 5 December 2022, in addition to the points we have made.

8.2. As stated in our letter of 9 November 2022, and our comments on the scope of the ES, we do not believe ecology should be excluded from the ES. As we have previously stated, the ecology survey was inadequate and carried out at the wrong time of year. Given the nature of the ecology on the site (specifically bats) surveys should be carried out throughout the year for different species that use the site as habitat.

9. COMMENTS ON THE PLANNING APPLICATION DOCUMENTS AND IDENTIFICATION OF ERRORS.

9.1. We refer to letter of 9 November 2022 for our comments on the adequacy of the ES particularly with regard to ecology. Those comments remain valid. In the Appendix we set out our detailed comments on the ES.

9.2. These errors provide additional reasons for refusing the planning application.

10. CONCLUSIONS

10.1. We have set out above how the proposed development does not comply the Local plan and national policy/guidance. In addition to that, SOWLIS is of the view that whilst there is a benefit in renewable energy, its proper location is critical in securing that benefit. Solar panels on roofs are an example of the correct location.

10.2. In this case, the proposed siting of panels on agricultural land for a period of 40 years would remove 47.62 hectares of some of the BMV agricultural land in the Borough of Ashford. Energy can be generated in a wide range of locations and scales. Agricultural production requires land. In this case there is no reason why the orchards could not be replanted, leased to another producer, or alternative crops grown.

10.3. The proposed development appears to be a scheme for the applicant and landowner to generate an income. Whilst it is possible for them to do this, it must be done in the context of the planning framework for the site. In this case, the planning framework provides that the development should not be permitted. In addition, we do not believe the purported benefits, which have not been accurately set out, outweigh the adverse impacts of the proposed development.

10.4. At one of the consultation events, the applicant stated that they hoped the Council would grant planning permission for the development because they had declared a

climate emergency. The Council's policies on this point or corporate policies that relate to estate management. There is no policy in the Local Plan on this point. Indeed, the Local Plan correctly sets the policies, which must be addressed when considering proposed uses of land. In this case the policies on landscape, visual impact, BMV, heritage all direct that the land should be used for agricultural purposes.

- 10.5. The application documents refer to the possibility that sheep might graze underneath the panels. This is precisely that, just a possibility. It might not happen, and if it did it would conflict with the claimed biodiversity enhancements. SOWLIS do not think that the use of land on this basis would outweigh the adverse impacts of the development, as set out in this document.
- 10.6. If the development is permitted, it would industrialise a high-quality landscape, that is tranquil and used for agriculture. It would significantly adversely impact the setting of the AONB and heritage assets. It would also fundamentally change the character of the area and affect the residents' amenity and perception of the environment for a minimum period of 40 years.
- 10.7. For all these reasons SOWLIS respectfully submit that the planning permission for the proposed development should be refused.

Kind Regards

Penny Rickards

On Behalf of SOWLIS – Save Old Wives Lees from Industrial Solar

Appendix 1 – Review of the ES.

Enclosure 1 – SOWLIS letter of 9 November 2022

Enclosure 2 - LUC's review of the LVIA

Enclosure 3 - Finch Consulting's letter dated 13 December 2022 on noise.

APPENDIX 1

Review of Environmental Statement

1. Chapter 2: Legislative Context

- 1.1. There is no reference to section 38(6) of the Planning and Compulsory Purchase Act 2004), or the Town and Country Planning Act 1990, which govern the determination of this application.
- 1.2. In relation to the planning policy and guidance we have set out our comments in this in context of our response to the PDAS (section 3) above.
- 1.3. We refer to our letter of 9 November 2022 for our comments on the exclusion of ecology from the ES.
- 1.4. The section on Transport in this chapter conflicts with the Transport Assessment particularly with regard to trip numbers during construction and operation It should also be noted that Transport Assessment is not clear on the actual trip numbers. The points on, transport, site access and grid connections in our letter of 9 November 2022 are also relevant.
- 1.5. Please refer to Finch Consulting's letter dated 13 December 2022 on noise.

2. Chapter 3: Site Description

- 2.1. The ES is inconsistent in measuring the distance of the site from the AONB. Paragraph 3.5.2 states it is 225m to the west of the Site. Paragraph 8.6.1 states it is 150 to the east.
- 2.2. The ES also conflicts with other application documents (Transport Assessment, Flood Risk Assessment and Noise Assessment) in describing the site and its surrounding. The correct description should be within the ES.

3. Chapter 4: Proposed Development

- 3.1. The ES is at odds with a significant number of the other application documents with respect to the scope and quantum of development. There is no reference to the:
 - 3.1.1. number of inverters and transformers/substations;
 - 3.1.2. to a grid connection;
 - 3.1.3. access routes and tracks are unclear.
- 3.2. For example, other application documents such as the Transport Assessment, Flood Risk Assessment and Noise Assessment include more information on the scope and quantum of development (including different levels of electricity generation up to

50MW). It is our view that the ES should correctly set out development proposals in full so the impact of the development can be properly assessed and considered. This information should also be included in the planning application form.

- 3.3. The ES also refers to industrial areas within the application site. It is not clear what this relates to as the site is a farm and no industrial activity is permitted or carried out.

4. Chapter 5: Alternatives

- 4.1. The ES does not consider alternative agricultural uses on the land such as growing wheat. It only refers potential grazing under panels. The ES does not address the BMV policy in the context of alternatives.
- 4.2. On the issue of alternative sites, reference is made in paragraph 5.3.2 to an assessment of sites throughout the UK for solar development. We are of the view that this assessment should be included in the ES, as part of the proper consideration of alternatives in the UK and sites in the Borough, as well those in nearby Boroughs, given the administrative boundaries.
- 4.3. We have commented on the references climate emergencies and net zero above.
- 4.4. Turning to alternative site design, the applicant has not amended the application to take into account all the residents of the Lower Ensden hamlet. The proximity of the panels to the north of Lower Ensden Road and to the east of the homes will adversely impact their amenity.

5. Chapter 6: Historic Environment

- 5.1. The ES does not address the points we have made in section 7 above.
- 5.2. In particular, the ES does not include an assessment of the impact of development on the area of archaeological designation TRO5NE - Pottery, which can be found on the Council's interactive map. This area straddles the fields and footpath between Old Wives Lees and Lower Ensden.
- 5.3. It also does not contain any assessment of the impact on Lower Ensden Farm, Ensden Oast and nearby cottages as well as Martens Oast.

6. Chapter 7: Soils and Agricultural Land

- 6.1. The chapter on Soils and Agricultural land is partial at best and very incomplete, there are errors in statements which pose severe problems for the effective evaluation of the impact from the proposed development and contradiction regarding removal of hedgerows.

- 6.2. The stated size of the site varies between 47.54 hectares (117.5ac) to 49.88 ha (123ac) (Transport Statement) throughout the documents submitted making it difficult to calculate the accurate amount of BMV land within the site.
- 6.3. The ES does not fully include and consider the Council's policy and guidance on BMV, as well as national policy on the location of solar. Please see section 4 above for our points on this.
- 6.4. Industry best practice and guidance has not been adhered to. There is a selective approach, and by the applicant's own omission a 'hybrid' approach was taken to the assessment of ALC when using the IEMA policy guidance - Institute of Environmental Management Assessment (published February 2022), even though the latest soil sampling was taken in May 2022 the policy guidance should have been adhered to.
- 6.5. The impact both on construction and operational phases are classed as 'not significant' and the magnitude is classed as Negligible to Minor. There is also no Soil Management Plan.
- 6.6. No evaluation on the potential impact on relevant and potential soil functions at the site are proposed in terms of biodiversity, ecology, carbon capture and archaeology has been undertaken.
- 6.7. The assessment of the impacts is also underplayed by stating that the 40-year lifetime of the project is temporary. Such a time period cannot be reasonably considered as temporary.

7. Chapter 8: Landscape and Visual

- 7.1. We refer you to LUC's review of the LVIA on the judgements made in the ES and their adequacy.
- 7.2. We also refer to the Kent Downs AONB Unit's letter of 30 November 2022 on the same point.

8. Chapter 9: Climate Change

- 8.1. The Climate Change Chapter is muddled, has multiple errors and omissions. For example, the ES includes a reference to a 30-year lifetime of the development at paragraph 9.26.3 and the rest of the ES says 40-year lifetime. It also does not set out the basis of its calculations of the actual electricity generation See Table 9.2. The ES states that generation will be up to 44MW. It should set out a monthly breakdown of the actual/likely electricity generation based on existing schemes so the carbon savings can be calculated.
- 8.2. However, the predominant issue is that the Chapter excludes Scope 1 and Scope 3 emissions.

8.3. Emissions from the Operational and Decommissioning phases of the installation and changing equipment over the 40-year lifetime are scoped out of the assessment which calls into question the stated claims of the applicant's savings on carbon emissions.

8.4. Scope 1,2 and 3 are a way of categorising the different kinds of carbon emissions a company creates in its own operations, and in its wider chain¹. The term first appeared in the Green House Gas Protocol of 2001 and today, Scopes are the basis for mandatory Green House gas (GHG) reporting in the UK.

8.5. The three categories of emissions consist of:

8.5.1. **Scope 1 emissions** – covers the GHG emissions that a company makes **directly**, e.g., running its boilers and vehicles.

8.5.2. **Scope 2 emissions** – are the emissions it makes **indirectly** – e.g., the energy or electricity the company buys for heating and cooling buildings, that is produced on its behalf.

8.5.3. **Scope 3 emissions** – are the **associated emissions**, not with the company itself, but that which the company is **indirectly responsible for** up and down its value chain e.g., from buying products from its suppliers, and from its products when customers use them. **Scope 3 emissions are usually the largest emissions.**

8.6. Assessment Methodology and Significance Criteria

8.6.1. Para 9.3.3 states: *Greenhouse gas (GHG) emissions are divided into 3 Scopes. Scope 1 (Direct) and Scope 2 (Indirect) emissions are usually assessed as these are quantifiable and within the Applicant's reasonable control. Scope 1 emissions are direct GHG emissions that physically occur from sources that are operated by the project. For the purpose of this assessment, this may include the combustion of fossil fuels associated with the fuel consumption in onsite machinery, during the construction phase. However, due to the **lack of available data regarding onsite vehicle movements, this has been scoped out of the assessment.***

8.6.2. The direct emissions of Scope 1 are Scoped out of the assessment – they should include operations and all construction activities on site. Estimates at the very least should be included.

8.6.3. However, in para 9.11.3 Scope 1 emissions are included: *The assessment considers Scope 1 and Scope 2 emissions only within the project redline boundary.*

¹ <https://www2.deloitte.com/uk/en/focus/climate-change/zero-in-on-scope-1-2-and-3-emissions.html>

8.6.4. The emissions from the Operational phase of the project are also not included: Para 9.4.1 *Effects Not Considered Within the Scope*

8.6.4.1. 9.4.1 ***Not included in the assessment are those emissions associated with the transport of maintenance staff and operations and maintenance once the Solar Farm becomes operational. Emissions associated with decommissioning are also not included. These are classed as Scope 3 (Indirect) emissions. However, emissions associated with these activities would not significantly change the result of the assessment, and therefore can be excluded.***

8.6.5. **Scope 3 emissions have been selectively dismissed as negligible** – these should include all supply chain carbon and the carbon associated with third party activities. If Scope 3 emissions are discounted it is very likely that the use of the lowest **embodied** emissions will not be a fair reflection.

8.6.6. In Section 9.12 Embodied Emissions the applicant states:

8.6.6.1. 9.12.1 *Embodied carbon is the carbon dioxide (CO₂) emissions associated with materials and construction processes throughout the whole lifecycle of a building or infrastructure.*

8.6.6.2. 9.12.2 *RICs define embodied emissions as ‘Embodied carbon is the resultant emissions from all the activities involved in the creation and demolition of a building. It is the total life cycle carbon less the operational carbon impact.’*

8.6.6.3. 9.12.3 *Embodied carbon emissions of a solar farm development are emissions arising from upstream processes that include; • Raw material extraction • Materials production • Module manufacture • System/plant component manufacture • Installation and plant construction.*

8.6.6.4. 9.12.4 *The embodied carbon of solar PV modules and infrastructure can vary considerably as it is dependent on various factors such as country of manufacture and source of energy to extract and produce the materials.*

8.6.6.5. 9.12.5 *Prior to a 2021 study, the figure of **2,560 kgCO₂/kWp** was commonly referenced as the assumed embodied carbon of a monocrystalline PV system.*

8.6.6.6. 9.12.6 *The more recent study, based on Etude10 data found that embodied carbon of solar in 2020 was **615 kgCO₂e/kWp** of installed capacity.*

8.6.7. However, the figure of 615kgCO₂e/KWp it can be assumed, does not include other sources of emissions such as transport or shipping.

8.6.8. If the higher figure of 2,560kg/CO₂ is used, then the payback would be 12 years and not 2.8 years as stated in table 9.1.

8.7. Decommissioning

8.7.1.9.11.4 *The assessment of the climate impacts associated with the proposed development does **not** consider the following;*

8.7.1.1. • ***emissions associated with decommissioning.***

8.7.1.2. • ***associated with changing equipment on site.*** For instance, the replacement inverters and gas/diesel engines once they reach the end of their operational life.

8.7.2. The planning application is for 40 years and should include decommissioning and the emissions from changing equipment. Most equipment on site will have a design life much less than 40 years and these changes should be accounted for. It should be noted that the National Renewable Energy Laboratory² states that PV panel Design life is 25 – 40 years, therefore to assume the panels would last 40 years is at best over optimistic, omission of these two issues will undervalue the cost of carbon as stated in the report.

8.8. Baseline Emissions

8.8.1. Does the carbon sequestration account for the present and future capability of 70tC/ha the correct factor as stated below as the reference used to obtain this figure is not found on google searches? Trees and undisturbed soil store carbon which is not factored into the figure.

8.8.2.9.13.3 *The Site is currently in use as a commercial fruit farm, with broad leaf fruit trees covering an area of approximately 30.8ha. As such, the amount of carbon sequestered by the fruit trees has been estimated, to ensure a realistic baseline scenario is achieved. Research suggests that orchards in temperate climates typically sequester 70tC/ha within a **25-year+** lifespan. This equates to 257tCO₂e/ha over the lifetime of the development. Based on this, it is calculated that the carbon sequestration potential of the site, were it to be left as a fruit farm, would be approximately 7,905tCO₂, and this sequestration potential would be lost by the development of the solar farm. It is important to note that in order to continue the sequestration of carbon, the trees would need to remain in situ in perpetuity, or the timber used for a long-term purpose, such as furniture manufacturing. If the trees were removed and left to compost, or were used for biomass, the sequestered carbon would be released.*

8.8.3. The ES calculation needs to refer to the 40-year lifetime of the project and take into account the would be replanting of trees throughout this time period.

² <https://www.nrel.gov/>

8.9. Relative emissions

- 8.9.1. The baseline assessment considers both Natural Gas (NG) and onshore wind, but no comparison is made with the large numbers of offshore wind farms producing electricity.
- 8.9.2. There is an error in Table 9.6 – Total emissions of the proposed development compared to onshore wind equivalent – relative emissions (tCO₂e) of 63,382 should be a negative figure.
- 8.9.3. The stated predicted energy output varies between 44 and 50MW throughout the whole application. There is no connection to the National Grid outlined within the application and the measurements assume a constant usable output which without storage is not possible and is the stated energy output dependant on 8 hours a day (maximum of 12 hours) usable daylight hours?
- 8.9.4. Energy produced from solar fell by 5.6% whilst the capacity was up by 2.8% in 2021.
- 8.9.5. In 2021 the UK obtained 19.4% of its primary energy from low carbon sources, with 39% of this from bioenergy, 30% from nuclear, and 17% from wind.
- 8.9.6. Energy supply from bioenergy rose by 4.9%, heat pumps rose by 3.8%, **whilst solar fell by 5.6% with capacity up by 2.8% but less sun hours than 2020**. The supply of nuclear fell by 7.6% due to numerous outages at UK power stations during 2021. Energy supply from wind fell by 14% in 2021, with capacity up by 5.3% but wind speeds 1.2 knots lower than in 2020. Five named storms affected the UK during 2021, including Storm Arwen in November 2021³.

9. Chapter 10: Summary of Residual and Cumulative Effects

- 9.1. The heading refers to Chapter 16. This is a minor point, but it is symptomatic of the errors in the document and the understating of the impacts of the proposed development and the cumulative effects. Please refer to the comments from LUC, Finch Consulting as well as other stakeholders such as KCC and the Kent Downs AONB Unit for details of residual and cumulative effects,
- 9.2. The ES does not contain planning conditions or other proposals that would mitigate the impacts of the development.
- 9.3. In addition to those, the exclusion of noise including construction noise, a proper assessment of the transport impacts (circa 2500 lorry (primarily) movements) and ecology mean that the ES is not compliant with the EIA Regs

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1094025/UK_Energy_in_Brief_2022.pdf