

# S.O.W.L.I.S

Save Old Wives from Industrial Solar  
Kiln Cottage, Lower Ensdon Road, Old Wives Lees, Canterbury, Kent CT4 8BA

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## **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, who object to the proposal to build an industrial solar installation at North Court fruit farm. This letter sets out SOWLIS's comments on the updated application. We also refer to our letter of 15 December 2022.

1.2. This application has now blighted the village of Old Wives Lees, Chilham, Chartham, the Kent AONB and North Downs Way National Trail for over two years. The applicant has not engaged with the community directly since the original deadline for objections in January 2023. It has engaged in lengthy correspondence with Ashford Borough Council (Council). We have seen some of the correspondence but not all of it.

1.3. The Applicant states that it has taken onboard comments made by consultees and objectors and amended the application. For the reasons set out in this letter we are of the view that it has not amended the application in a meaningful way nor has it carried out revised assessments of the impacts of the application in a transparent manner. The revised documents are tendentious and sometimes misleading. An example is the reference to a number of appeal decisions in the Planning Statement, which it says support the application. As set out in the Appendix to this letter the facts, planning policy and circumstances of those decisions are different and not directly relevant to the determination of this Application.

1.4. The Council will be aware that Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the legal position for determining applications. It states 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*".

1.5. The Council's Local Plan 2030 (adopted in 2019) (Local Plan) is the development plan for the purposes of determining the application. The applicant has not properly addressed the Council's policies, as well as national policy and guidance. The proposal to site a large-scale solar installation in a valued and protected landscape is inappropriate and contrary to the Local Plan policies.

1.6. We understand that the applicant was contacted by the landowner as he wished to secure an alternative form of income from his land. That appears to be the reason why this site was selected as opposed to a more suitable location with a grid connection and on

previously developed or poor agricultural land. The references to no alternative sites being available by the applicant needs to be considered in this context.

## **2. Summary of points**

### **2.1 Local Plan**

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;

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 Best and Most Versatile Land (BMV)**

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;

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

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

### **2.3 Kent Downs Area of Outstanding Beauty (AONB)**

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;

Therefore, 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;

The proposed development does not fit with the rural farmed landscape character and the underlying landform;

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 reviews of the Landscape and Visual Impact Assessment (LVIA) submitted by the applicant undertaken by Land Use Consultants (LUC) (these are summarised in paragraph 3.8).

## 2.4 Tourism

The Parish of Chilham surrounding the proposed site has a number of important places that attract large numbers of visitors such as the Chilham Castle and gardens as well as the village of Chilham itself. The new Winery of Domaine Evremond is part of *'The Wine Garden of England. A group of industry pioneers who represent the diversity of top-quality wineries in Kent. The seven wineries are collectively committed to creating a world -class wine trail and visitor experience in Kent'*

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.

## 2.5. North Downs Way National Trail (NDW)

The proposed site is currently crossed by the famous North Downs Way, a historic route celebrated for glorious views across open Kent countryside. It is one of only 15 designated National Trails in England and Wales, passing through the unique and diverse protected landscape of the Kent Downs AONB. The Pilgrims Way, an ancient and historic pilgrimage route to Canterbury Cathedral also joins the North Downs Way here. The route is internationally renowned for its' wonderful views and gives people the opportunity to find peace, tranquillity and transformation in nature. As a result, the path plays a key role in supporting the local tourism industry.

## 2.6. Heritage

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.

## 2.7. Cultural impact

The landscape and setting of Old Wives Lees and Chilham as well as the Stour/Valley and Kent AONB have played an important part of the cultural heritage of the United Kingdom.

The writer and historian Hilaire Belloc traced the history of the Pilgrims' Way in his book, *The Old Road* (1904). In it, Belloc makes a compelling case that it is a defined ancient pathway, that it is linked to a *'deep' past'*, and that this traced a specific memory trail across the landscape. He asserts that Old Wives Lees held a spiritual significance for early pilgrims:

*'... between Chilham and Knockholt there rises a hill. On the south-east of it flows the Stour, with the modern main road alongside of it; on the north two lanes, coming to an angle, lead through a hamlet called Old Wives' Lees.*

*'There is a tradition that the pilgrims of the later Middle Ages went through Chilham and then turned back along these northern lanes, passing through Old Wives' Lees. This tradition may be trusted. They may have had some special reason, probably some devotional reason, for thus going out of their way... They may have made a detour for the purpose of visiting some special shrine, or for some other reason which is now forgotten.'* (pp.271-272)

The appeal to the imagination of this route being one of pilgrimage with all the spiritual meaning associated with that has been powerful. One of the most vivid examples is in Michael Powell and Emeric Pressburger's *A Canterbury Tale*, from 1944. There it is attributed with an almost mythical quality. The film is set in and around the fictional village of Chillingbourne – almost certainly based on Chilham – and was filmed in the area around Old Wives Lees. The film was part of the UK's cultural support the second World War

Please refer to Powell and Pressburger documentary at 27 minutes [BBC Radio 4 - Archive on 4, Powell and Pressburger: Poetic Patriotism](#)

Other films made in the Parish of Chilham include:

- Emma (2009) ...
- The Collector (1965) ...
- A Canterbury Tale (1944) ...
- The Amorous Adventures of Moll Flanders (1965) ...
- The Slap (1974) ...
- The Orchard End Murder (1981) ...
- Blue Bell Hill (2023) ...
- Sparkling: The Story of Champagne (2021)
- Last Orders (2001) was filmed in Old Wives Lees

In 2022, Kent Downs AONB commissioned artistic pieces for an open-air Art Trail along its 153-mile length. 'Feel our voice' by Kezia Cole is a sculpture made from wood from apple crates and is set on the Pilgrim's Way/ North Downs Way National Trail and would overlook the proposed solar installation.

Peter Morris, the North Downs Way trail manager, said: '*We have created an open-air gallery for the public, which has been designed to add to the overall experience of our national trail and promote its special characteristics, while also bringing art to an audience who might not normally step into a typical museum space.*'

The National Trails website describes views from the site of 'Feel our voice' thus: 'Picture postcard rural Kent. Orchards and farmhouses, and Oast Houses with views across the Stour Valley as you head towards Canterbury.' These views need to be protected. Promoting and enhancing the arts for community enjoyment is a key feature of the Ashford Plan.

For the above reasons the application should be **refused**.

We now set out our comments on the documents submitted by the applicant in support of the application.

### **3. Supplementary Planning Report**

3.1 It is important to note that the applicant has not addressed the comments we made on the Council's planning policies in sections 3-8 of our letter of 15 December 2022. The Planning Statement notes that there has been no material change to the Council's policies and simply refers to some of the relevant policies. In essence, it is just restating its position in the context of the limited changes it has made to the masterplan.

In particular, the Council has a specific local plan policy addressing renewable energy generation (Policy ENV10) along with additional guidance on large scale solar in the document entitled ABC Large Scale Solar PV version 2, which states on pages 10 and 11 that:

*"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".*

*"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".* The steps outlined for ALC grade 2 land advises against supporting development. Defra's ALC map shows all of the land at North Court to be grade 2.

The failure to comply with this policy as well as the other relevant national and local policies means that the application should be refused. The references to some appeal decisions are not relevant in this context as the relevant policies are different, as are the factual circumstances. We have set out how they are different in the Appendix. Whilst they may be material considerations in the determination of this application for the reasons set out in the letter and Appendix, we think the Council should attach them relatively little weight.

3.2 The changes to field parcels and the footpaths will not alter the impacts of the development on those using the footpaths AE7 and AE8, which is a National Trail. They also do not alter the impacts on the setting of the Kent AONB and listed buildings. The increase in planting will mean that walkers will often be walking in a tunnel of vegetation without any outlook to the Stour Valley and Kent AONB, adversely impacting amenity.

3.3 GSI North Court state in 5.3.3 that the community orchards will remain in private ownership and will be managed by SCI North Court or its agents for the duration of the solar farms operation. The community orchards will be fenced and gated with lockable gates, with public access limited to set hours and days of the year. Access for community group will be by appointment or agreement for community events or activities, although no details are provided. There is no evidence of public consultation regarding the original idea of community orchards, the original location or the subsequent changes. **We are still unclear of where they would actually be sited as the Site Plan and other plans are inconsistent.**

3.4 The section on Ecology does not address the points we have made on ecology in our letters of 7 November 2022 and 15 December 2022.

3.5 On Biodiversity Net Gain (BNG), the applicant has not explained how this will be delivered if the site is also used for grazing. On one hand the application states that the site will not be lost to agricultural uses as it could be used for grazing and on the other it says it will deliver significant benefits to biodiversity and habitats. If sheep are used for grazing how will any increases in BNG be maintained? On this point there is insufficient detail as to how the applicant intends to maintain and deliver BNG over thirty years. They do not refer to any legal agreements or funding for this.

3.6 The plan on page 23 does not include the route off Lower Lees Road within the planning application boundary.

3.7 With regards to Landscape, the changes as described in the supplementary report do not alter the negative impacts of the development on the character of the rural landscape. There has been no public consultation nor is there any reported procedures as to how such changes were agreed and implemented.

3.8 A further evaluation by LUC into the LVIA Supplementary Planning Report concludes that there is still potential for significant effects during construction and operation between Year 1 and Year 15 affecting the landscape fabric and character of the site, Old Wives Lees Orchards LCA, the surrounding LCAs and the Kent Downs AONB setting, notably the farmed landscape and tranquillity. The Ashford Character Assessment 2009 notes the high sensitivity of the landscape. There will also be visual effects at residents of Lower Ensden, Old Wives Lees and Selling Road ; on people using the local roads, rights of way networks/footpaths; The North Downs Way National Trail (and potentially the Stour Valley Way). There would also be significant effects from a number of viewpoints.

3.9 In paragraph 6.2.2 the applicant states that it intends to construct the solar panels on Best and Most Versatile land (BMV). Defra's Agricultural Land Classification (ALC) map clearly shows 100% of the land at North Court Farm to be ALC Grade 2 (<https://naturalengland-defra.opendata.arcgis.com/datasets/5d2477d8d04b41d4bbc9a8742f858f4d/explore?location=-51.256486%2C0.970309%2C18.13>).

The applicant claims most of it to be ALC Grade 3a. Nevertheless, even if one were to accept GSI North Court's assessment of the ALC, by its own calculations, almost 90% of the site for the proposed development is BMV land. This is contrary to the Council's planning policies and national guidance.

3.10 In paragraph 6.2.4 GSI North Court disingenuously makes reference to Appendix 6: Monitoring Framework of the Ashford Local Plan which defines Grades 1 and 2 land as 'high grade agricultural land'. But this note applies to major residential developments. They also make reference to SP1 of the Local Plan in connection with 'high grade agricultural land', though the phrase is not used in that policy.

3.11 In paragraph 6.2.6 the applicant states that "*this land would only be temporarily removed from agricultural use during the construction period, returning to agricultural use in the operational phase.*" There is no evidence that this will be the case; indeed there is anecdotal evidence that the landowner has no intention of using his land for livestock. Furthermore, while many advocates in favour of solar farms promote 'Agri- voltaic' (dual use) farms, none exists in the UK.

3.12 In paragraph 6.2.17 the applicant states "*...relocating the proposed development elsewhere within the Borough could lead to a similar area of BMV land lying within the development boundary.*" There is no reason for GSI North Court to restrict its search for a suitable site to Ashford Borough. It has given no indication it has searched elsewhere or looked at Canterbury, Swale or Medway.

3.13 In paragraph 6.2.18 the applicant states "*A search for alternative sites, avoiding the loss of BMV land, has been undertaken by the Applicant.*" None of the alternative sites are brownfield sites. The options to develop brownfield or use roofs of existing commercial and

industrial buildings have not been explored. Nor have sites outside the Ashford or Swale or Medway been included.

3.14 In paragraph 6.2.20 the applicant states '*Should the planning application not be approved, the landowner has advised that he or his family are unlikely to continue with their commercial orchard business.*' This is not a material consideration and should not be considered in relation to this application.

3.15 In paragraph 6.2.21 the applicant states '*... it is considered that at the local level, planning policy does not consider the ... Grade 3a land to be high quality land.*' BMV is the nationally recognised category of the Agricultural Land Classification, defined in the glossary of the National Planning Policy Framework as '*land in grades 1, 2 and 3a of the Agricultural Land Classification.*'

3.16 In paragraph 11.1.6 the applicant states '*The development would be decommissioned after 40 years at the end of its operational life*'. The original proposal was for a lifetime of 25 years. This was later increased to be 30 years, and the application now states that it will be 40 years. This stretches the definition of temporary. The Cambridge Dictionary defines 'temporary' as 'not lasting or needed for very long'. Forty years is a very long time – almost two generations. GSI North Court states that 'planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use' (Planning, Design and Access Statement § 5.2.30). Many residents of Old Wives Lees (with the possible inclusion of the current landowner) will not live to see the decommissioning of the installation.

Ashford Borough Council's own guidance documents limits the lifetime of solar installations to 25 years: '*Planning applications should specify the length of time being applied for. A 25 year time limit will normally be imposed*' (Renewable Energy Planning Guidance Note 2 p.30).

3.17 In paragraph 10.1.2 the applicant states '*the route of the connection will only be decided upon by the District Network Operator (DNO) (UK Power Networks, UKPN) once the proposed development is at the Contractor's detailed design stage subject to receipt of planning consent for the solar farm*'. This does not address the grid connection and how this will be delivered. The grid connection is cumulative development, and this has not been assessed in the ES or as part of the consideration of alternatives.

3.18 In paragraph 10.1.3 the applicant states '*The indicative cable route ... extends west from the site along Lower Lees Road, south-west along Long Hill, then north north-west along New Cut Road, to the point of connection to the west of New Cut Road.* Lower Lees Road and Long Hill are part of the North Downs Way.

3.19 In relation to archaeology and heritage the applicant has not addressed the points in section 7 of our letter of 15 December 2022. It just restates the original review and plays down the harm to, and significance of, heritage assets and their setting. No reasons are given for their conclusions. The proposed development by its very scale and content will not preserve or enhance the character and local distinctiveness of the area. It will transform the agricultural setting of the heritage assets. This is non-compliant with ENV13 of the Ashford Local Plan 2030 which states: '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.'

3.20 The Design and Access Statement has not been updated.

#### **4. Environmental Statement Addendum**

4.1 The applicant has not fully addressed errors in the Environmental Statement (ES) set out in our letter of 9 November 2022 and Appendix 1 to our letter of 15 December 2022. The document restates the conclusions of the ES. There is no reference to the EIA Regulations or how the ES complies with the regulations. No assessment of how the environmental impacts will be mitigated and/or addressed by condition has been provided.

4.2 No additional surveys or assessments have been carried out to reflect that the applicant is now seeking permission for a 40-year use of the land as a solar farm. There has been no update to the methodology to reflect this or consideration of the impacts over this timeframe.

4.3 The connection to the grid has not been assessed despite being a key component of the development.

4.4 There are references to agricultural uses (undefined) being continued but no consideration of the impacts of this on ecology and BNG.

4.5 In paragraph 7.8.4 the ES states '*The in-combination impact would not exceed 20 ha of BMV land therefore would not trigger Schedule 4, Part (y) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (Statutory Instrument 2015/595), but its combined effect would be considered to be Major or Moderate, and Significant in EIA terms*'. The development will remove a significant amount of BMV land from food production for forty years. The assessment of this impact is not adequately assessed and the impacts are downplayed and inconsistent.

4.6 Soil – 6.2.20 landowner claims that he will not continue with commercial orchard business because of the 'deteriorating quality of the soils and trees'. This is not a material consideration. Solar arrays do not protect the soil, there is mounting evidence that the run off from the panels causes top soil erosion and the quality of the grass is diminished.

4.7 In chapter 8, the impacts on the landscape and setting of the Kent AONB are downplayed with very little reasoning. See paragraph 8.4.10 in particular. In addition, the conclusion (paragraph 8.11) states that the changes to the site masterplan are considerable but there is no change to the assessment in the ES. It does not address the points made by the Kent Downs AONB Unit, Land Use Consultants and the review by Land Management Services commissioned by the Council.

4.8 In chapter 9, no assessment of the generating capacity has been made as is required under Appendix B of the Council's guidance on large scale solar. In the absence of any evidence relating to the generating capacity, it is not possible to rely on the alleged benefits of renewable electricity generation when assessing the adverse impacts on BMV, landscape/AONB, heritage assets and the community.

4.9 The alternatives refer to the "available grid connection" but no evidence of the availability of this grid connection is provided in this document or the Planning Statement. The alternatives should consider alternative sites and alternative grid connections. (See Alternative Site 4 as an example).

4.10 For these reasons we do not think the ES is adequate and nor does it comply with the relevant EIA Regulations. We ask that the Council carries out a review of the ES to satisfy itself that it is adequate.

## 5. Transport

5.1 In paragraph 3.2.2 'Drawing Number GM11691-046 (Appendix C) shows the indicative location and geometry of two passing places to enable vehicles to pass on Shalmsford Road during the construction phase.' Shalmsford Road is 1 kilometre in length. Two passing places are insufficient to enable regular traffic to travel without great inconvenience and with possible danger to road safety. It is not clear how the impacts of the use of these passing places have been considered and/or assessed as no modelling or traffic data is referred to.

5.2 In paragraph 4.5.2 '*The Applicant is agreeable to provision of minibus transport between the site and Chilham railway station forming part of the Construction Traffic Management Plan. The minibus transport should be demand-dependent to avoid unnecessary trips, with all site staff given a contact number to arrange collection and drop off at the rail station as required*'. The Chilham station car park is for train users. It is not acceptable for the applicant to use it as a works' car park as there will not be enough space for local commuters.

## 6. Heritage

6.1 The Conservation Officer requested a thorough investigation into the impact on the setting of the landscape buildings today backed up by evidence gathered from site and not a theoretical map; and specifically, to review the assessment of the impact on the more local designated and non-designated heritage assets in and around the village (email 8th June 2023). The Conservation Officer describes the "*industrial character of the development*" which will change the setting from rural, resulting in harm to the setting of buildings. The applicant has failed to do either, instead playing down the significance of harm to "setting" and relying instead on additional planting and screening as relevant responses to the Historic Environment comments from Consultees.

6.2 Viewpoint 13 is presented and discussed (1.1.28 Appendix F) "however, due to the intervening built form, vegetation and topography the experience of the Proposed Development would be softened". However, Viewpoint 13 is not mentioned in Appendix A, nor in the ES Addendum, nor is it uploaded/visible on the ABC portal.

## 7. Arboriculture

7.1 The applicant has focused their response to the objection by the ABC Tree Officer regarding the chosen methodology for measuring RPA for groups of trees. However, they have not addressed the main point made by the Tree Officer, who highlighted the need to identify and plot individual trees in order to inform the scale of group RPS's. In particular no comment is made regarding potentially ancient and veteran trees within the groups, which adds weight to the need for individual assessment. This is particularly important given industry and national guidance (Arboricultural Association; NPPF) regarding protection for ancient woodland and ancient or veteran trees.

The standing industry advice requires developers to identify aged and veteran trees as part of tree surveys and to show different root protection areas on plans. The Ancient Tree Forum and the Woodland Trust consider that all ancient trees and mature veteran trees should be recorded in Category A3 in accordance with BS5837:2012

7.2 Paragraph 180 c) of the National Planning Policy Framework (2012) states that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons.

## 8. Grid Connection

8.1 The Supplemental planning Statement states that '*The proposed underground cable route falls outside of the red line boundary and is considered to fall under Permitted Development (Part 15, Class B – electricity undertakings) therefore does not form part of the planning application. Furthermore, the route of the connection will only be decided upon by the District Network Operator (DNO) (UK Power Networks, UKPN) once the proposed development is at the Contractor's detailed design stage subject to receipt of planning consent for the solar farm*'.

8.2 There is no confirmation that the applicant has secured the necessary rights, land or access to the electricity grid. The Council will be aware that some grid connections take 10 years to secure and become operational. Given this uncertainty and sensitivity of the location we do not believe the applicant should be allowed to commence development without demonstrating to the Council that it can construct and have access to the electric grid. The Council should also prevent the developer implementing any permission and then halting works. If the substantive works are not carried out for at for six months the applicant should review and submit for approval the documents that the Council approves as part of the discharge of conditions. This should be secured by way of conditions.

## 9. Planning Conditions

We would like to review any conditions that are proposed before the application is referred to the planning committee for determination. As part of this process the conditions should address the following points:

- Development must be commenced within three years;
- It is for 25 years not 40 years.
- The Council should approve the colour, finishes and materials, the height of fences;
- Management Plan/CEMP,
- Plans for parking, loading, unloading, Route cleaning scheme/Route Survey scheme (Pre/Post)/ Road condition survey/ Mitigation plan,
- Worker Travel Plan,
- Tree protection/management, soft landscaping, management of permissive footpath
- Biodiversity Monitoring Reports, Post development Habitat Retention, Plan habitat boxes
- Pre- and Post commencement badger survey, Wildlife Protection Plan, Farmland Bird Mitigation Strategy
- Land Management Scheme
- Lighting Plan
- Post completion Noise Assessment
- Soils Management Plan
- PROW Protection
- Noise prevention – adherence to strict working hours

Kind Regards

Penny Rickards

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

## Appendix Planning Appeals

1. In section 2.3 of the Supplemental Planning Report the applicant quotes a number of recent appeal decisions that they assert provide context to their application and set a precedent for solar development in similar settings with similar points of contention. The below is a commentary on these appeals setting out how the appeals have difference facts and planning policies and cannot be relied upon as precedent and/or be a material consideration for the determination of the North Court Farm Solar Farm application.

### 2. Land at Land West of New Works Lane, Telford Shropshire. Appeal ref: TWC/2021/073727 27 March 2023

The applicant, in the North Court Farm case, considers that, like the Telford scheme, "*North Court Fruit Farm also provides significant ecological enhancements to the site, which has been further enhanced through the changes to the scheme identified in [section 1.3], including a significant biodiversity net gain, extensive hedgerow and wildflower planting and the retention and enhancement of existing footpaths. These factors combined with the generation of renewable energy carry significant weight*".

However, for the following reasons, it is considered that this appeal can be distinguished from the North Court Farm application and should therefore be discounted:

- (i) the Telford application included a reclaimed open cast mine on site that was separate to the AONB with no key views, whereas the site of North Court Farm has until recently been used as commercial orchards and fallow grassland used for hay/ silage. It is also immediately adjacent to, and in the setting of the Kent AONB (see paragraphs 5.38 to 5.40, 10.18 -10.21).
- (ii) the SoS in the Telford appeal considered that the solar farm would be a relatively small component of views up to the valued landscape area, and intervening woodland boundary features would limit wider experience of the panels. However, for North Court Farm, as confirmed in LUC's Landscape and Visual Advice, there are "*a large number of landscape and visual effects that cannot be mitigated*" as well as other impacts including on the North Downs National Trail.
- (iii) the proposed development was not on BMV land but grade 3b land and did not have a National Trail passing adjacent to it as well as through it, as is the case here.
- (iv) there was no planning policy such as the Council's EV10 and guidance on large scale solar.

### 3. Minchens Lane, Bramley, Hampshire, (Appeal ref: APP/H1705/W/22/3304561) 13 February 2023

- (i) The applicant for North Court Farm Solar notes that the site in Bramley is identified as not being within an area which is subject to any landscape designations such as an Area of Outstanding Natural Beauty (AONB). The nearest AONB (North Wessex Downs) was 6km away. Also, it was found that, in the main, the development would be contained within the appeal site itself during the operational life of the development with the landscape beyond remaining physically unchanged. This is a key distinguishing feature between the two cases – North Court Farm Solar Farm lies adjacent to and in the immediate setting of an AONB, with both close and longer distance views to and from the AONB;
- (ii) The applicant also states that the Bramley case supports a development which affects pathways, however, in Bramley the key paths – the Camino St James, Brenda Parker Way, and Silchester Trail – are long distance walking routes and not National Trails, unlike the North Downs National Trail which will be affected by the proposed North Court Farm development;

(iii) In the Bramley appeal, it was also found that the change brought about by the proposal, would have a very limited effect on the significance of designated heritage assets within the setting ...and that it would be reversed following decommissioning. This would result in a very minor adverse effect. In the case of North Court Farm, however, the proposed development will impact the setting of such 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 less than 20 metres from these residential homes, of which, Ensden Kiln, Ensden Oast and Lower Ensden Farmhouse are Grade 2 listed buildings. With respect to Lower Ensden Road the solar panels will loom over these buildings due to the topography;

(iv) In the Bramley appeal, a connection to the national grid through the nearby Bramley substation had been secured. No such connection is secured for North Farm Court.

(v) the references to the Climate Change Act 2008 do not state that the obligations in that are obligations on the Secretary of State for Energy Security and Net Zero and not local authorities. His obligations include the setting of carbon budgets in conjunction with the Climate Change Committee.

(vi) we do not believe it was lawful for the Inspector to take into account the potential business rates as part of the assessment of the benefits.

#### **4. Land at Berden Hall Farm, Ginns Road, Berden (Application ref: S62A/22/0006) 9 2023**

(i) In the Berden case, the local council had declared a climate emergency. This is not the case for Ashford Borough Council which also 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. Ashford Borough Council's Local Plan is the primary applicable policy;

(ii) the Berden site was not within or adjacent to an Area of Outstanding Natural Beauty (AONB). The proposed site of North Court Farm Court is adjacent to, and in the immediate setting, of the AONB.

#### **5. Agricultural land to the south of Murton and north of South Hetton (Appeal ref: APP/X1355/W/22/3308881) 25 May 2023**

(i) The applicant at North Court Fruit Farm claims that the proposal will create a significant benefit to local biodiversity and ecology. However, in this appeal the proposed site was understood not to be in or next to an AONB or contain any particular heritage. It also had a grid connection available. These elements are not analogous to North Court Farm and consequently this appeal does not assist in the present case.

(ii) Additionally, the Murton appeal stated that biodiversity net gains in the form of habitat (124.23% increase) and hedgerow (136.83%) would be achieved. By contrast (and assuming correct data) the applicant in North Court Farm claims only to achieve net gain of habitat units (+81.46%) and a net gain of 6.81 hedgerow units (+15.06%) which is markedly less than the appeal case cited. It is also not clear in relation to this application how this will be achieved if the site was used for grazing.

(iii) The references to the Climate Change Act 2008 do not state that the obligations in that are obligations on the Secretary of State for Energy Security and Net Zero and not local authorities. His obligations include the setting of carbon budgets in conjunction with the Climate Change Committee.

**5. Land south of Leeming Substation, west of the village of Scruton, bordering Fence Dike Lane, part of Low Street and Feltham Lane, DL7 0RG (Appeal ref: APP/G2713/W/23/3315877) 27 June 2023**

The main Issue in this appeal was the effect of the proposed development on, and the potential loss of, agricultural land (currently arable/pasture). A short distance to the north of the site lies Leeming Bar Substation which would provide a grid connection for the proposed solar farm via an existing underground cable.

The North Court Farm applicant claims that this appeal is in line as both are to be temporary developments for 40 years and will provide the agricultural land within the site with a break from intensive agricultural use to improve the soil health throughout the site.

However, in the appeal, it was found that the majority of the site does not form BMV agricultural land. Additionally, it was noted that the majority of crops grown on the appeal site at present are largely used for industrial purposes rather than supplying the food chain (unlike North Court Farm).

In addition: -

- (i) in the appeal, a Substation existed a short distance away which would provide an immediate grid connection for the proposed solar farm via an existing underground cable.
- (ii) unlike North Court Farm, the appeal site here is not in the vicinity of an AONB;
- (iii) the majority of North Court Farm is BMV agricultural land whilst in the appeal it was found that the majority of the site did not form BMV agricultural land;
- (iv) the Council in this case had a carbon neutral strategy plan whilst the Ashford Borough Council does not;
- (v) it was assessed that traffic to the site would pass a very small number of houses whilst for North Farm Court it would affect residents along the A28, Shalmsford Road, Pilgrims Lane, Lower Lees Road, Lower Ensdon Road as well as PRowS AE7 & AE8.

**6. Land at Crays Hall Farm, Church Lane, Crays Hill, Essex CM11 2UN (Appeal Ref: APP/V1505/W/23/3318171) 30 August 2023**

(i) The North Court Farm applicant appears to cite this appeal in support of the North Court Farm proposal based on the appeal site taking place in an area popular with '*local residents, horse-riders, walkers and cyclists*' with many public rights of way crossing the site linking local residents and facilitating recreation. However, in the case of North Court Farm, people walking the North Downs Way, a National Trail that passes through the site will be affected. The prominent location on the Stour valley sides, also means that there will be both local and longer distance views from the AONB.

(ii) It should also be noted that the appeal site was not in or within the vicinity of an AONB. It was found that the proposed appeal site may be suitable for solar renewable energy, due also to the proximate grid connection, the lack of any evidence of any 'best and most versatile' agricultural land on the site and the mixed nature of the area including industrial. These are not elements which are analogous to the North Court Farm.

(iii) The Inspector also found that there were no up to date development plan policies, which is not the case in the case of the North Court Farm application.