



# Department for Communities and Local Government

Mr Gareth Roberts  
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Our Ref: APP/B9506/W/15/3132171

7 April 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MTS EXBURY SOLAR LTD:  
LAND OFF LEPE ROAD, EXBURY, SO45 1AJ**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, B.Hellier BA (Hons) MRTPI, in relation to your appeal against the decision of the New Forest National Park Authority ('the Authority') to refuse planning permission for the installation of a 5MW ground mounted photovoltaic solar array with: transformer stations; internal access track; biodiversity corridors; landscaping; security fencing; security measures; access gate; and ancillary infrastructure, in accordance with application ref 14/01004 dated 10 December 2014.
2. The appeal was recovered for the Secretary of State's determination on 7 January 2016 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 so that consideration could be given to any possible impact on the New Forest National Park.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation, dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Policy considerations**

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of documents forming the *New Forest National Park Local Development Framework: Core Strategy and Development Management Policies Development Plan Document* adopted in

December 2010 (the LP). The Secretary of State considers that relevant development plan policies include those set out in IR11-12.

5. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (the Framework) and the associated planning practice guidance (PPG); the statutory purposes of National Parks set out at IR18; the UK Solar PV Strategy (parts 1 and 2); the 2006 Energy Review; the 2009 UK Renewable Energy Strategy; the UK Low Carbon Transition Plan; and the Written Ministerial Statement "Planning Update March 2015" which, amongst other matters, concerns solar energy and the protection of the local and global environment.

### **Main issues**

6. The Secretary of State agrees with the Inspector that the main considerations in this case are those set out in IR62.

#### *Compliance with the development plan*

7. For the reasons below the Secretary of State considers that the proposal conflicts with LP Policies CP5, CP8, CP17 and D1. Consequently he concludes that the proposal conflicts with the development plan as a whole (IR84).

#### *Landscape effects and visual amenity*

8. For the reasons given at IR 63-68, the Secretary of State agrees with the Inspector that the proposal, taking into account the mitigation proposed, would have significant adverse landscape and visual effects. The Framework requires that great weight should be given to conserving landscape and scenic beauty in National Parks, which have the highest status of protection in relation to landscape and scenic beauty, and, conversely, in this case great weight should be applied to the harm identified (IR69). Consequently the Secretary of State agrees with the Inspector that the proposal would conflict with LP Policies DP1 and CP8 regarding landscape character and local distinctiveness, and CP5 regarding protection of the New Forest National Park (IR11 and 84).

#### *Agricultural land*

9. For the reasons given at IR 70-71 the Secretary of State agrees with the Inspector that the proposal would not result in the loss of any 'Best and Most Versatile' agricultural land, and so there is no objection on this basis (IR70). For the reasons given the Secretary of State also agrees that the proposal would satisfy the requirement of the PPG that poorer quality land should be used in preference to higher quality land (IR72).

#### *Benefits*

10. The Secretary of State agrees with the Inspector's assessment of the benefits of the proposal at IR73-77. National policy recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. As a relatively large scheme its contribution to national renewable energy targets should attract substantial weight (IR73).
11. The development would provide an income to the Exbury Estate and the Secretary of State agrees with the Inspector that this should be given some weight, though for the reasons given he also agrees that the proposal would not comply with LP policy CP17 (IR12 and 74-75). For the reasons given at IR76 the Secretary of State also agrees

with the Inspector that little weight should be attached to the proposed fund for local projects of benefit to the community.

12. For the reasons given at IR77, the Secretary of State agrees that the net ecological benefits that would accrue should attract modest weight.

### **Conditions**

13. The Secretary of State agrees with the Inspector's comments at IR 79-80 on planning conditions and is satisfied that the conditions recommended in the IR Appendix are reasonable and necessary, and would meet the tests in paragraph 206 of the Framework. However, the Secretary of State does not consider that the recommended conditions would overcome his reasons for dismissing the appeal.

### **The planning balance and conclusions**

14. The Secretary of State agrees with the Inspector's planning balance and conclusions at IR81-84. He agrees that the benefits are clearly outweighed by the considerable harm to the landscape and natural beauty of this part of the New Forest National Park (IR81). For the reasons at IR83 he agrees with the Inspector that the exceptional circumstances to justify approval in a National Park have not been demonstrated.
15. The proposal would not be in accordance with the development plan and it would also be contrary to Framework paragraph 116 and, as the impacts are not acceptable and cannot be made acceptable, contrary to paragraph 98 (IR84). The Secretary of State finds no material considerations that indicate the appeal should be determined other than in accordance with the development plan.

### **Formal decision**

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your appeal and refuses planning permission for the installation of a 5MW ground mounted photovoltaic solar array with: transformer stations; internal access track; biodiversity corridors; landscaping, security fencing; security measures; access gate; and ancillary infrastructure, in accordance with application ref 14/01004 dated 10 December 2014.

### **Right to challenge the decision**

17. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
18. A copy of this letter has been sent to the New Forest National Park Authority. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Julian Pitt*

**JULIAN PITT**

Authorised by Secretary of State to sign in that behalf

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# **Report to the Secretary of State for Communities and Local Government**

**by B.Hellier BA(Hons) MRTPI**

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

**Date 1 February 2016**

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**TOWN AND COUNTRY PLANNING ACT 1990  
NEW FOREST NATIONAL PARK AUTHORITY  
APPEAL BY  
MTS EXBURY SOLAR LTD**

Hearing held on 13 and 14 January 2016

Land off Lepe Road, Exbury, SO45 1AJ

File Ref: APP/B9506/W/15/3132171

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**File Ref: APP/B9506/W/15/3132171**

**Land off Lepe Road, Exbury, SO45 1AJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by MTS Exbury Solar Ltd against the decision of New Forest National Park Authority.
- The application Ref 14/01004, dated 10 December 2014, was refused by notice dated 17 February 2015.
- The development proposed is the installation of a 5MW ground mounted photovoltaic solar array with: transformer stations; internal access track; biodiversity corridors; landscaping; security fencing; security measures; access gate; and ancillary infrastructure.

**Summary of Recommendation: The appeal be dismissed**

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**Procedural matters**

*Recovery by the Secretary of State*

1. The appeal was recovered for decision by the Secretary of State for Communities and Local Government by a letter dated 7 January 2016. The reason for this direction is because the Secretary of State notes that the appeal site lies within the New Forest National Park. He would therefore wish to consider himself whether or not the proposal would have any impact on the National Park and the appeal is therefore being recovered because of the particular circumstances.

*Description of the proposal*

2. The proposal is described in the application as the installation of a *small scale* 5MW ground mounted photovoltaic solar array. The main parties agree that, since whether or not the proposal should be treated as small scale is a matter of dispute, the description should be amended to omit these words.

*Amended plan*

3. A few days before the hearing the appellant submitted an amended site layout and planting proposals<sup>1</sup>. The changes principally serve to improve the quality and appearance of the boundary treatments. Taking the amendments into account would not materially prejudice the interests of objectors or other parties. I have therefore proceeded on the basis of the amended plan.

*Reasons for refusal*

4. Planning permission was refused for the following reasons.
  1. *The proposal would have a significant detrimental impact on the landscape character of the area (in both short and long distant views) by virtue of its existing intermittent boundary screening and the position of arrays and infrastructure within the site. The proposal is considered not to be small scale and would have an adverse impact on the landscape character of the area and the special qualities of the National Park. Notwithstanding the above it is also considered that the proposal would have an unacceptable cumulative impact on the intrinsic landscape character of the National Park. It has not been demonstrated that the scheme could be considered as a form of*

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<sup>1</sup> Document B3

*agricultural/estate diversification that would outweigh setting aside the adverse impact on the landscape of a scheme of this size and the scheme would therefore be contrary to Policies DP1, CP8, CP5 and CP17 of the New Forest National Park Core Strategy and Development Policies DPD (2010), the National Planning Policy Framework and National Planning Practice Guidance.*

2. *It has not been adequately demonstrated that the proposal would not result in the loss of the best and most versatile agricultural land. As such the proposal is contrary to Policy CP17 of the New Forest National Park Core Strategy and Development Policies DPD (2010) as well as the National Planning Policy Framework.*

### **Site and surroundings**

3. The appeal site covers an area of 8.6ha, being part of a large 26ha arable field. It lies in gently undulating countryside. Its highest point is about 15m AOD with the land falling towards the Solent coastline about 700m to the south and the Dark Water valley 400m to the east. To the north and west the landform is relatively flat although the appeal site rises up slightly above its immediate surroundings.
4. There are a number of medium to large woodland blocks in close proximity with Pophams Wood and East Hill Copse bounding parts of the appeal site to the south-west and north respectively. There is also a tall native hedgerow running from Pophams Wood along the southern boundary. The remaining boundary to the north is an old post and wire fence. The western and eastern boundaries are undefined. A low voltage electricity transmission line follows the southern boundary.
5. The small village of Exbury is approximately 1.3km to the north-west and the outskirts of the larger settlement of Langley lie 1.1km to the north. The small coastal hamlet of Lepe is 800m to the south. There is no inter-visibility between these settlements and the appeal site. There is a scattering of properties closer to the site, including Lepe Farmhouse and Lepe Farm Cottages to the south-west and East Hill Farm to the north-east.
6. Lepe Country Park situated about 1km away, close to the outfall of the Dark Water into the Solent, provides car parking, a toilet block, information centre and cafe. A local trail, the Lepe Loop, following rights of way starts from the car park. Along its route it passes along the undefined east boundary of the appeal site and also follows the bridleway to East Hill Farm which runs parallel with the northern boundary, at a separation distance of about 200m. There is a minor road between Lepe and Exbury some 250m to the west and between Lepe and Langley 600m to the east.

### **The proposal**

7. The proposal is for a 5MW ground mounted array of solar photovoltaic panels comprising parallel rows of south facing panels set at an angle of about 25° so as to capture the maximum available solar energy. The front edge of the panels would be 0.7m above the ground and the trailing top edge would be a maximum of 2.15m above the ground. The panels are metal framed and at every 5m supported by pairs of metal posts driven into the ground. About 31% of the site would be covered by the solar panels with grass beneath.

8. There would be a central access track running the length of the site. At its east end would be two sub-stations, one at a height of 3.7m above the ground and the other 3.0m, and a small control house. Three 2.3m high transformer stations would be spaced along the track. The site would be bounded by a new 2m high deer fence and at intervals along the fence there would be nine CCTV cameras mounted on 4m high poles. Access would be from the existing access to the wider field from the Lepe to Exbury road adjacent to Lepe Farmhouse. The track which already runs some distance into the field to serve a barn would be extended and temporary site construction compound would be formed where it meets the appeal site.
9. The proposal includes landscaping and ecological works, the most notable of which is the planting of three new hedgerows with a total length of some 800m, replacing the northern boundary fence and forming new field boundaries to the east and west.
10. The electricity produced would be fed into the national grid at the Langley sub-station some 2km to the north-east. The transmission line would be buried underground. Whilst this is not part of the application the appellant agrees that a Grampian condition to prohibit operation of the solar farm until an underground transmission link has been provided would be appropriate.

## **Planning policy**

### *Development Plan*

11. The development plan consists of the Core Strategy and Development Management Policies DPD<sup>2</sup>. General development principles are set out in Policy DP1. Development should uphold and promote the principles of sustainable development. In particular it should be appropriate and sympathetic in terms of scale, appearance, form, siting and layout. The importance of local distinctiveness is reinforced by Policy CP8 which does not permit development which, individually or cumulatively, would erode local character or result in a gradual suburbanising effect. Policy CP5 permits renewable energy proposals where they are small scale, are located/designed to reduce visual impacts and do not have significant impacts on the special qualities of the National Park.
12. Policy CP17 supports land-based businesses that help maintain the overall character and cultural identity of the National Park, including farm diversification where this would help to sustain the existing farm business. Non-agricultural diversification is directed to the reuse of redundant farm buildings and supporting markets for local produce.

### *National policy*

13. Government policy is to support the development of renewable energy sources, including solar power, to help to ensure that the country has a secure energy supply and to reduce greenhouse gas emissions. As a result of EU Directive 2009/28/EC, the UK is committed to a legally binding target to achieve 15% of all energy generated from renewable resources by 2020. The 2006 Energy Review has an aspiration of 20% of electricity from renewable resources by 2020. The 2009 UK Renewable Energy Strategy and the UK Low Carbon Transition Plan has

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<sup>2</sup> New Forest National Park Local Development Framework: Core Strategy and Development Management Policies Development Plan Document. Adopted December 2010

as a lead scenario that this figure should increase to 30% although this is not a commitment. None of these documents sets a ceiling and there is a considerable on-going need for renewable energy projects.

14. Reflecting Government policy paragraph 98 of the National Planning Policy Framework (NPPF) indicates that an application for renewable energy should normally be approved if its impacts are (or can be made) acceptable.
15. In relation to development within a designated landscape such as National Parks paragraph 115 of the NPPF gives great weight to conserving landscape and scenic beauty. There is a presumption against major developments in National Parks except in exceptional circumstances and where it can be demonstrated that they are in the public interest. In assessing such proposals paragraph 116 of the NPPF indicates that regard should be had to: need, including any national considerations and local economic benefits; the possibility of a location outside the designated area; and any detrimental effect on the environment, on the landscape and on recreational opportunities and the extent to which that effect could be moderated.
16. Paragraph 112 of the NPPF indicates that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.
17. Current national planning practice guidance (PPG) makes it clear that the need for renewable energy does not automatically override environmental protections and that protecting local amenity is an important consideration which should be given proper weight in planning decisions<sup>3</sup>. The PPG also sets out particular considerations that relate to large scale solar farms<sup>4</sup>. They include:
  - encouraging the effective use of land by focussing 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;
  - the proposal's visual impact, the effect on landscape of glint and on neighbouring uses and aircraft safety;
  - the need for, and impact of, security measures such as lights and fencing;
  - the potential to mitigate landscape and visual impacts through, for example, screening with native hedges; and
  - the energy generating potential, which can vary for a number of reasons including, latitude and aspect.

### *Statutory protection*

18. The two statutory purposes of National Parks<sup>5</sup> are: to conserve and enhance the natural beauty, wildlife and cultural heritage of the area; and to promote

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<sup>3</sup> Planning Practice Guidance: Paragraph: 007 Reference ID: 5-007-20140306

<sup>4</sup> Planning Practice Guidance: Paragraph: 013 Reference ID: 5-013-20150527

<sup>5</sup> Section 5(1) of the National Parks and Access to the Countryside Act 1949



opportunities for the understanding and enjoyment of their special qualities. Where there is a conflict between the two purposes, greater weight is to be attached to the conservation purpose. In pursuing these purposes the NPA also has a duty to seek to foster the economic and social well-being of local communities within the National Park<sup>6</sup>.

### *Policy statements*

19. In a letter dated 22 April 2014 to local authorities the Minister of State for Energy and Climate Change refers to the publication of a comprehensive solar photovoltaic (PV) strategy<sup>7</sup> which establishes that solar PV is one of the priority renewable energy technologies. The strategy underlines the importance of focusing growth on domestic and commercial roof space and previously developed land. The letter advises that in considering planning applications, amongst other things, the planning concerns of local communities are heard and that proposals in National Parks and in areas close to them will need careful consideration.
20. Further advice on national policy is contained in a written statement from the Secretary of State for CLG to Parliament of 25 March 2015. It too refers to the solar PV strategy. It notes 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 and, in any use of agricultural land, poorer land is to be used in preference to land of a higher quality.

### **Agreed matters**

21. The National Park Authority (NPA) and the appellant have signed a joint statement of common ground. Other matters were agreed in the written statements or at the hearing.
  - a. The Core Strategy and Development Management Policies DPD was adopted prior to the publication of the NPPF. Nonetheless the policies referred to are in accordance with the policies of the NPPF and should be treated as up to date.
  - b. Under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 the NPA published its EIA Screening Opinion on 12 August 2014 concluding that the submission of an EIA is not required.
  - c. The application is for a temporary permission for a period of 25 years. At the end of this period the site would be cleared and restored to agriculture.
  - d. The Natural England Agricultural Land Classification (ALC) Map grades the area as Grade 2 agricultural land. The appellants carried out a site specific agricultural land classification assessment informed by a soil survey. This concludes that the appeal site is Grade 3b. This result is not disputed by the NPA and it is agreed that the site is not the best and most versatile (BMV) agricultural land.
  - e. It is agreed that for the purposes of NPPF paragraph 116 the proposal should be treated as a major development.

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<sup>6</sup> Section 11A of the National Parks and Access to the Countryside Act 1949

<sup>7</sup> UK Solar PV Strategy (Doc C6)

- f. It is anticipated that the solar farm would export up to 5000MWh each year it is operational. This equates to the annual energy consumption of approximately 1515 households and as such would provide a valuable energy resource at a local level. It would also displace 2150 tonnes of CO<sub>2</sub> annually.
- g. There are no objections to the proposal in relation to noise or to glint or glare. There are no matters in dispute in relation to heritage assets, transport or drainage. Subject to imposing appropriate conditions there are no matters in dispute in relation to ecology or archaeology.
- h. The New Forest National Park Authority Landscape Character Assessment shows the appeal site lying within Landscape Character Area LCA 15 North West Solent Estates. The key landscape characteristics, the key positive landscape attributes, landscape evaluation and future landscape management guidelines set out in this document are material considerations.
- i. Whilst not a planning document the National Park Management Plan is a strategic document which sets out an overall vision and approach for the National Park. It focuses on maintaining the New Forest as a special, distinctive and unique place for present and future generations. Its policies and guidance are a material consideration.
- j. The application was accompanied by a Landscape and Visual Impact Assessment (LVIA). This includes a map showing a Zone of Theoretical Visibility (ZTV) within which the solar farm would be visible. It takes account of the screening effect of woodland blocks and buildings but not of smaller features, including hedgerows. The ZTV formed the basis for identifying 11 viewpoints from which the visual impact has been assessed. At the site visit the NPA identified a further location on the Lepe to Langley Road. It was agreed that taken together these locations allow for an adequate assessment of visual impact.

## **The case for the appellant**

*The material points are:*

### ***Landscape and natural beauty***

#### Landscape effects

22. The scale of the landscape in the vicinity of the appeal site is one of medium to large fields and woodland blocks. The site is relatively low lying and flat and, as an arable field, it would be able to be readily reinstated after the temporary use as a solar farm. It is also relatively well enclosed by existing woodland and hedgerows and is not overlooked by higher land. Views of a solar array would be limited and often against a backdrop of trees. The site is generally tranquil. However it does not lie within the most tranquil areas in the New Forest<sup>8</sup> and is open to some urban influences. To the east the Fawley Power Station chimney and electricity pylons are visible. There is, on occasion, the hum of industrial activity associated with industrial activity along Southampton Water. It should also be pointed out that the landscape elements in the LCA already include the large solar array at Newhouse Field.

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<sup>8</sup> Map 4 National Park Management Plan based on Tranquil Areas Study (Ash Consulting group 1996)

23. On this basis the surrounding landscape is assessed as having a medium sensitivity to solar farm development. As it is within the National Park the landscape value is high. Given a high value and medium susceptibility to change the sensitivity of the LCA is considered to be high.
24. The proposal would be contained entirely within the confines of the appeal site. There would therefore be no physical alteration to the physio-geographical elements of the landscape. With the proposal in place the landscape character of the site would experience a partial change. However the bulk and extent of the array would be in scale with the existing landscape pattern and none of the key elements which contribute to the character of the LCA would be affected.
25. More specifically the tranquillity of the area would be preserved. Contrary to the statement of the NPA Landscape Officer the development would not form a semi-industrial landscape. Noise from the transformers would not be perceptible beyond the appeal site boundary. There would be no large buildings or lighting normally associated with industry. Indeed in other solar farm appeals Inspectors have concluded that *an industrial landscape would not arise*<sup>9</sup> and *the many receptors, whilst seeing the development, would not see it as being industrial*<sup>10</sup>.
26. A key positive landscape attribute of the LCA is a *strong mosaic of mixed agricultural fields of parliamentary enclosure with small areas of assarted fields in places*. The NPA values the openness of the site but there is no indication that openness is a key characteristic. On the other hand the introduction of new hedgerows as proposed will improve the sense of enclosure. The alignment of the hedgerow being proposed for the eastern boundary would, in any event, approximate to the line of a nineteenth century hedge.
27. Two of the special qualities of the National Park are its outstanding natural beauty and its tranquillity. The main characteristics of its outstanding beauty are its ancient woodland, heathland, bog and an unspoilt coastline with unspoilt views of the Solent and Isle of Wight, together with its wide variety of different landscapes<sup>11</sup>. These characteristics would not be adversely affected by the proposal.
28. As there is no harm to the key landscape characteristics of the LCA or to the special qualities of the National Park the proposal would have only a low magnitude of effect. With a high sensitivity and a low magnitude of effect the proposal would result in only a minor scale of effect on landscape character.

#### Visual effects

29. There would be views of the proposal from the public right of way on the eastern boundary of the site. In acknowledgment of this the proposed hedge mix along this boundary would be planted as feathered plants which would be expected to form a 2.0m hedge after five years which would have thickened out into an effective screen by year ten. The site would also be visible to users of the bridleway to the north. Again this would be mitigated by a new hedgerow this time of a standard hedgerow mix. In the first five years of the operation of the site there would be a major visual effect on walkers and horse riders. This would

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<sup>9</sup> Appeal ref APP/Z6950/A/14/2213400 paragraph 36

<sup>10</sup> Appeal ref APP/N6845/A/13/2203220 paragraph 36

<sup>11</sup> Document D2 page 5

reduce to a moderate effect for the next five years and then a residual minor effect beyond year ten.

30. There would be glimpses of the proposal from the Lepe to Exbury road but otherwise the remaining viewpoints have intervening screening. Visitors to the coast and to the Lepe Country Park would not be able to see the proposal.

#### Cumulative effects

31. The only other operational solar farm within 5km of the appeal site is the Newhouse Field Solar Farm (Phase 1 and 2)<sup>12</sup>. The cumulative effect on landscape character would be negligible. In terms of visual effects a cumulative screened ZTV has been produced which shows that the two developments would not be visible together from any point. Travelling along the Lepe to Langley road there would be the possibility of sequential views but in practice views are restricted by intervening vegetation.

#### Landscape enhancement

32. The structure and integrity of the appeal site would be enhanced through additional new hedgerow and tree planting. The introduction of these features would be consistent with the aspirations and guidelines of the LCA. The introduction of these together with the habitat improvements along the field edges would also contribute positively to the special qualities of the National Park. There would be a net benefit to landscape character.

#### Conclusion

33. The proposal would result in only minor landscape effects and, once the proposed hedgerows grow, only a minor effect on visual amenity. The hedgerows would be positive landscape elements and would result in a net improvement to the landscape. There are no cumulative effects. It is concluded that there would be no material detrimental effect on the landscape and natural beauty of the National Park.

### ***Agricultural land***

34. The land has been shown to be Grade 3b. The NPA is wrong to rely on the Natural England ALC Map. The guidance accompanying the Map states that the grading is provisional because the scale is not sufficiently accurate for use in the assessment of individual fields or development sites, and should not be used other than as general guidance<sup>13</sup>. The local perception that the field is better quality is wrong. The land is drought prone and yields approximately 2.75 to 3.0 tonnes of wheat per acre, where it should yield 4.0 tonnes.
35. A search for potential alternative sites was carried out within a 5km radius of the Langley sub-station. Since a key purpose of the application is to provide an income stream to Exbury Estate the area of search was dictated by this. A site owned by another developer or with a purchase price that is too high would be of no use to the appellant. The NPA suggested the redundant Fawley power station site but this is being considered as a location for higher land value end uses. Nonetheless, the search has established that there are no suitable sites on

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<sup>12</sup> Committee reports, decision notices and plans for these two linked developments are in Doc A2 (Appendices 4-9)

<sup>13</sup> Natural England Technical Information Note TIN049. See Doc B1 (agricultural appeal statement)

brownfield land, non-agricultural land or on lower value agricultural land. There can be no agricultural objection to the use of the appeal site.

### ***Matters favouring the proposal***

36. It is agreed that the proposal would make a significant contribution towards renewable energy and the wider economic benefits associated with carbon saving. An assessment of the potential for renewable energy in the New Forest<sup>14</sup> found that wind turbines are difficult to accommodate in the National Park and that alternative sources of renewable energy should be considered in order to contribute towards national and local targets.
37. Small scale for the purposes of Policy CP5 is not defined. Government guidance<sup>15</sup> identifies ground mounted solar schemes of up to 5MW as small scale. The proposal meets this criterion.
38. The proposal will provide a secure and reliable income stream to assist the Exbury Estate. The estate owns 365ha of agricultural land subject to Natural England's Environmental Entry and Higher Level Stewardship (HLS). It is let for arable production, grazing and use as smallholdings. Some is retained as woodland and game cover. The Estate also owns 20 residential properties and 17 commercial properties in the village. It maintains the water and sewerage systems in the village and the Exbury Club. The submitted accounts show that the Estate is running at a deficit and finds it particularly difficult to maintain its buildings. The income would go towards reducing this deficit and maintaining a high standard of estate management. In response to concerns of the NPA development proposals have been provided<sup>16</sup>. Allowing the proposal would therefore secure local employment and community facilities for the future and represent the diversification of a land based enterprise in accordance with Policy CP17 and in support of the duty to promote economic well being.
39. In addition to the benefits secured to the Exbury Estate the appellants will pay £10,000 to the Estate which has covenanted to use the money for community benefits<sup>17</sup>. One such benefit might be to make the Lepe Loop accessible to disabled people.
40. There will be a number of ecological benefits<sup>18</sup>. The appeal site will be maintained as grassland, there will be new hedgerows with field margins and a green corridor planted and maintained within the site linking Pophams Wood and East Hill Copse. Bird boxes, bat boxes, raptor perches and hibernacula will be introduced. Following discussions with the NPA revisions were made to provide a suitable habitat within the site for field woundwort and other declining arable annuals.

### ***Newhouse Field Solar Farm***

41. This is a 7.5MW solar farm approved in two phases<sup>19</sup>. The scale is very similar to that of the present proposal. It was approved notwithstanding that it was not

<sup>14</sup> Renewable Energy Potential Assessment in the New Forest District: September 2010. Doc D5

<sup>15</sup> DECC UK Solar PV Strategy Part 1: Roadmap to a brighter future: Ofgem feed-in tariff. Doc C6

<sup>16</sup> Doc B4

<sup>17</sup> Doc B5

<sup>18</sup> Set out in the submitted Landscape and Ecological Management Plan. Michael Woods Associates and Pegasus Group

<sup>19</sup> See footnote 12 above

deemed to be small scale. A key factor was that it would provide a stable and long term revenue stream to the Cadland Estate, an organisation which can readily be compared to the Exbury Estate. It was treated as a farm diversification scheme which complied with the provisions of Policy CP17. The overarching objective of both the appeal proposal and the Newhouse Field development is to secure income for the benefit of the Estates. The weight to be given to this objective should be the same in both cases.

### ***Planning balance***

42. The landscape and visual harm would be limited and there would be no adverse effect on the special qualities of the National Park. The proposal should be treated as small scale in the context of Policy CP5 and as such would accord with that policy. NPPF paragraph 112 is satisfied since the development would not utilise BMV agricultural land and there are no other suitable sites of lower value land available.
43. Set against this limited harm are the contributions to the national renewable energy resource, the support for the Exbury Estate and the local economy<sup>20</sup>, there would be a defined community contribution and landscape and ecological improvements. These considerations clearly outweigh the harm. If the proposal is found to be contrary to Policy CP5 it would nonetheless comply with Policies DP1, CP8 and CP17. Legal precedent<sup>21</sup> is that in assessing compliance with the development plan it is not necessary to satisfy all policies. When it is assessed against NPPF paragraphs 115 and 116 the benefits as described would amount to exceptional circumstances which would be sufficient to justify major development in the National Park. The proposal should be allowed.

### **The case for the National Park Authority**

*The material points are:*

#### ***Landscape and natural beauty***

##### Landscape effect

44. The primary duty of the NPA is to deliver the two statutory purposes of the National Park. It is important to note that the PPG states that the deployment of large scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. The appeal site is gently undulating and the surrounding copses and hedges provide only limited enclosure. In the vicinity of the site there is a sense of openness and of being completely surrounded by countryside. Key landscape characteristics of the LCA include large arable fields close to the coast from which there are views over the Solent and a sense of tranquillity.
45. By comparison the proposed installation would comprise an unexpected, industrial installation within an otherwise open, characterful landscape. The panels, CCTV, security fence, ancillary buildings, equipment and new track would all add to the urbanisation of the site. The security fencing would create a field within a field and the site compound would be outside of the security fence and have an urban character of its own during the construction phase. The NPA does

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<sup>20</sup> In supporting the interests of the Exbury Estate it would satisfy Policy CP17 and the same weight should apply in this case as in the Newhouse Field approval.

<sup>21</sup> R v Rochdale MBC ex-parte Milne [2000] EWHC 650 (Admin)

not agree that the magnitude of landscape effect would be low. The scale of the development and its unnatural, semi-industrial appearance would have a significant effect upon the fabric, character and quality of the landscape. Its description of the proposal as having an industrial nature has been supported on appeal elsewhere<sup>22</sup>. The Inspector in that case stated that the solid structure of the arrays would form a strong physical presence of industrial appearance.

46. There is already the operational solar farm at Newhouse Field identified as a landscape element within the LCA. The NPA considers that the cumulative effect of further similar developments would be entirely at odds with the unspoilt rural character of the area.
47. The reinstatement of a historic hedge line and replacing a post and wire fence with a hedgerow would create positive landscape elements but they would not be a reason to accept the loss of openness and nor would they mitigate the adverse landscape effects of the installation itself.

#### Visual effects

48. The installation would be widely visible from a range of views including from the footpath and bridleway to the east and north respectively. From the north there are views over the farmland to the south. The footpath to the east is directly across the field and across the brow of the hill, resulting in a direct interaction with the openness of the landscape. The Lepe Loop trail is well used by locals and visitors. It is publicised by Hampshire County Council and the NPA within a portfolio of walks which can be enjoyed by walkers without damaging some of the nearby more sensitive habitats. It helps to promote to the public an understanding and enjoyment of special qualities of the National Park.
49. The NPA agrees with the conclusions of the LVIA that the scale of the visual effect on users of the footpath and bridleway would be major. Whilst the new hedgerows would provide some mitigation the establishment of a robust native hedgerow from scratch would take a minimum of five to six years, assuming optimum care is taken, during which time the visual harm would persist. Even then the field is not flat and panels would be visible above the hedge when viewed from the north. There is also a glimpse of the site from the Lepe to Langley road over a stretch of some 30m. There would be significant harm to visual amenity.

#### Conclusion

50. The landscape effects would be significant and cumulatively the proposal would lead to a further urbanisation of the surrounding landscape. The visual effects would, for the first five years, be substantial. The screening would then start to take effect but even so, because the site is slightly undulating, the new hedgerows would be unlikely to be entirely effective. Overall there would be a significant adverse effect on the landscape and natural beauty of the National Park.

#### ***Agricultural land***

51. The NPA does not dispute the findings of the soil survey and accepts that the appeal site land is Grade 3b. The Natural England ALC map shows the land and

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<sup>22</sup> Appeal ref APP/R3325/A/13/2197853 paragraph 13

the surrounding land as Grade 2 which is particularly important in the National park where poorer soils predominate. The reason for refusal was seeking more information to explain the factors that had led to this significant drop in land quality. There remains, however, a requirement to seek out lower quality agricultural land or non-agricultural land. In this respect the alternative site search is unsatisfactory because of its limited geographical area and because it assumes that any site should be in the National Park.

### ***Matters favouring the proposal***

52. It is accepted that the proposal would provide a valuable contribution to cutting greenhouse gas emissions. The NPA recognises its responsibility to contribute towards renewable energy production. It is party to the Renewable Energy Potential Assessment but this document covers both the National Park bits of the New Forest District and those parts outside the National Park. There is no National Park target for solar power. Indeed the report points out that if only 2% of all the ALC Grade 4 and Grade 5 land outside the National Park were utilised for solar PV it would give 19MW of installed capacity. The NPA is clear that, so as to protect the landscape quality of the National Park, Policy CP5 is a proper policy response. In accordance with its provisions a number of small scale solar developments have been approved in the National Park including solar panels on the New Forest Centre at Lyndhurst. On the other hand, because of its scale and impact, there is no question but that the proposal would conflict with this policy.
53. The focus of Policy CP17 is to support commoning, farming and forestry. Farm diversification proposals envisage agricultural diversification through land management or non-agricultural diversification through the re-use of redundant farm buildings. The proposal would not form part of a well conceived land diversification scheme for the Exbury Estate and would have limited wider socio-economic benefits. The five year plan does not show how the Estate would operate as a viable business.
54. The deed of covenant between the appellants and the Exbury Estate is not part of the planning application nor is it enforceable by the NPA. The NPA is not persuaded that there will be any community benefit. Indeed there was a significant level of community objection.
55. It is accepted that there would be some ecological benefits from the submitted management plan. It is noted however that some measures would be carried out as part of the HLS Scheme. There is also concern that the effectiveness of the proposed green corridor running north to south would be reduced by its limited width and the openings at either end.

### ***Newhouse Field Solar Farm***

56. It is accepted that in considering this proposal some importance was placed on the income support that would be provided to the Cadman Estate. In that instance the NPA took the view that there was a viable business plan. However other considerations influencing the decision to approve this development were the proximity of the site to Fawley power station and a large electricity sub-station as well as local support for the proposal. The circumstances of the site are therefore not directly comparable with the present proposal.



### ***Planning balance***

57. The proposal is not small scale and it cannot therefore comply with Policy CP5. There would be significant landscape and visual effects to which, in accordance with NPPF paragraph 115, great weight should be given and these would not be outweighed by the benefits. The test of exceptional circumstances in NPPF paragraph 116 would not be met. The appeal should be dismissed.

### **Third party representations**

#### *Exbury and Lepe Community Group*

58. The Group believe that landscape impact is an over-riding reason for rejection. This is a quiet unspoiled area which provides long views and a rare mixture of countryside and coastal scenery. They also raise objections that:
- The site is versatile and productive farmland. Productive crops like maize and oil seed rape have been grown on it in all recent years. The new assessment of Grade 3b is at odds with the productive yields that local people have repeatedly witnessed.
  - The appellant has failed to demonstrate that alternative sites are not available and suitable.
  - Adverse impact on nearby designated ecological assets.
  - Adverse impact on the popular Lepe footpath.
59. On the site visit the Group drew attention to views from the East House Farm bridleway across the appeal site. It was apparent that the field was slightly domed in section and that the proposed hedge along the northern boundary would be unlikely to hide the panels on the higher part of the field. Moreover to the south-east there was a view of the Solent through a gap in the woodland blocks, with the appeal field in the foreground.

#### *Exbury and Lepe Parish Council*

60. The Parish Council refers to the letter of 22 April 2014 from the Minister of State and the Solar PV Strategy which both encourage the use of existing buildings and brownfield sites. The Newhouse Field solar farm on the Cadman Estate was approved before the publication of the NPPF and other recent guidance. There is a particular concern that the Grade 3b result should not take away from local knowledge that the land is carefully managed, productive land.

### **Written Representations**

61. The application attracted 55 letters of objection and 9 letters of support. Letters of objection included one from the Exbury and Lepe Community Group which claims to have 122 members, the Exbury and Lepe Parish Council, the CPRE and the New Forest Association. The issues raised were either matters that were addressed at the application stage or which repeat the arguments set out by the above parties.

## Conclusions

*References are made, where appropriate, to sources of material in earlier parts of the report by indicating the relevant paragraph number thus: [ ]*

### **Main considerations**

62. I consider the main issues are:

- whether the proposed solar farm would conserve the landscape and natural beauty of the National Park;
- whether there would be a loss of the best and most versatile agricultural land; and
- whether any adverse effects from the above would be outweighed by the benefits, including those associated with the production of renewable energy, farm diversification, biodiversity and the local economy.

### **Landscape and natural beauty**

#### Landscape effects

63. The appeal site lies in an open setting in quiet countryside where the gentle undulations in the landform and good vegetation cover tend to limit views. The mix of large and small fields, pasture and crops, woodland and coastal marsh, all in close proximity, contribute to a distinctive natural and unspoilt environment. It is not entirely without urban influences, particularly those of the Fawley Power Station chimney and the area is therefore not one of the most tranquil in the National Park. However these influences are in the distance. The overriding quality of the landscape on the ground is its undisturbed rural character, generally enclosed, yet with occasional views towards the coast [22][44].
64. A ground mounted array of solar panels is designed to produce electricity, as is a wind turbine or a coal fired power station. In this sense it is an industrial use. It is very different from a field of maize and many people would perceive the proposed installation as having an industrial or urban character. It would be a substantial development of solar panels and associated transformers, substations, CCTV camera poles and security fence which would be only partially enclosed by existing vegetation. Its character would be entirely out of keeping with the tranquil and unspoilt nature of the area. I find that the submitted LVIA underestimates the magnitude of the effect of the overall development on the landscape and find that there would be a significant adverse landscape effect [28] [45].
65. The National Park Management Plan acknowledges that the outstanding natural beauty of the National Park encompasses a wide variety of landscapes. The rather open agricultural setting of the appeal site is not referred to specifically as a key characteristic but it contributes positively to the *strong mosaic of mixed agricultural fields*, which is. It should be valued for its local distinctiveness. The argument is put that the change to a more intimate pastoral landscape by introducing new hedgerows and ecological enhancements would be beneficial [26][47]. However in this setting I consider a loss of openness would be detrimental to the existing landscape.

### Visual effects

66. There are limited views of the site from both the Exbury and Langley roads. These would normally be experienced as glimpses by passing drivers and would not be significant. Much more significant would be the impact on users of the eastern footpath/northern bridleway which is promoted as the Lepe Loop recreational route [29][48]. There is no dispute that in the early years of operation there would be a very significant impact on users. The proposed hedgerow planting would provide screening, starting in year 5 and becoming fully grown by year 10. It is the sort of mitigation envisaged by the PPG. However, in this case, from the north the higher parts of the site would be likely to still be apparent above the new hedge and be seen in the context of a long distance view of the Solent [59]. Furthermore, whilst the eastern hedge would provide a screen it would result in a loss of openness for walkers on the Lepe Loop which is otherwise, apart from the shore path, a relatively enclosed route.
67. In summary therefore: there would be visual harm during the period of time over which the development would be open to views from footpath and bridleway users; there is the likelihood that from the north the panels would not be entirely screened even in the longer term; and there would be an adverse impact on the open character of the Lepe Loop as it passes to the east of the site which would be to the detriment of its users. I find that there would be a significant visual effect.

### Cumulative effects

68. I do not find there would be any cumulative landscape effects. There is one other solar farm in the LCA but the addition of a further site would not result in a solar farm dominated landscape. Visually there would be no inter-visibility between the sites and no likelihood of sequential views.

### Conclusion

69. I find that the proposal, taking into account the mitigation proposed, would have significant adverse landscape and visual effects. Great weight should be given to conserving landscape and scenic beauty in the National Park [15] and, conversely, in this case great weight should be applied to the harm identified.

### ***Agricultural land***

70. The appellants have shown that the land is Grade 3b. The NPA accepts that a site specific analysis must supersede the broad brush approach of the Natural England ALC Map and it does not produce any evidence of its own to challenge this or the evidence from the Estate on yields. The reason for refusal refers to a loss of BMV agricultural land. Grade 3b land is not BMV land and the objection must therefore fall away [34][51].
71. The concern of local people is understood [58][60]. There can be no doubt that the land is productive and apparently more productive than much of the surrounding land. This is a different argument than intrinsic land quality. However the value of the land in relation to the holding and how it compares to the quality of other land in the National Park was not pursued by NPA other than in a very general fashion.

72. The search for alternative sites does not identify any suitable sites on lower quality land. It was a very limited search but, apart from the Fawley brownfield site, the NPA is not aware of any other suitable site [35]. I accept that that brownfield land is not available to the appellant. Having regard to this and my conclusions on BMV land I further conclude that the proposal would satisfy the requirement of the PPG that poorer quality land should be used in preference to higher quality land [17].

### ***Matters favouring the proposal***

73. The appellant acknowledges that the proposal is major development for the purposes of NPPF paragraph 116 [21e]. It is quite illogical then to suggest that it is small scale for the purposes of Policy CP5. Few structures and installations have a land take of 9ha. I find that it is not small scale and that it would by definition fail to comply with Policy CP5 [37][52]. Nonetheless, the contribution of the proposal to national renewable energy targets is not disputed. National policy recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. As a relatively large scheme the proposal should attract substantial weight.

74. The development would provide an income to the Exbury Estate. The LCA is described under the title *North West Solent Estates*. This is a reference to large parts of the area where substantial land holdings are owned and managed by private estates. The Cadman and Exbury Estates are examples. They are both land based businesses which help to maintain the overall character and cultural identity of the National Park. The attempt by the NPA to draw a distinction between the diversification proposals of the two estates is unconvincing. The support the proposal gives to the Exbury Estate should be given some weight [38][53].

75. The support to the Estate should also be considered in relation to Policy CP17. This refers to non-agricultural diversification in the context of use of buildings. Furthermore it says that any such diversification should have a low environmental impact and that is not my conclusion in this case. The proposal would not therefore comply with this policy.

76. I have no doubt that the intention of the appellants and Exbury Estate to set up a £10,000 fund for local projects of benefit to the community is genuine. However both parties agree that the submitted Deed of Covenant is not part of the application and is not enforceable by the local planning authority. It is not a matter that could be secured by condition. Little weight should be attached to it as a benefit [39][54].

77. There would be ecological benefits that would accrue as a result of the development associated with the proposed hedge planting and change from an arable to a grassland regime. They are welcomed by the NPA ecologist and I agree that they are a positive feature. Some would have happened anyway as part of the HLS Scheme but there would still be a net benefit which attracts modest weight [40][55].

### ***Newhouse Field Solar Farm***

78. Whilst the Exbury and Cadman Estates should be treated equally in relation to support for the land-based economy this does not mean that the Newhouse Field

solar scheme and the appeal proposals are directly comparable. They are not. The Newhouse Field site is considerably affected by noise from the adjacent sub-station, the overhead high voltage electricity line and pylons and the nearby power station chimney. It is close to the built up area of Langley and it is a much more urbanised setting. It is not usefully comparable [56].

### ***Conditions***

79. The Council submitted suggested conditions<sup>23</sup> which, together with the advice in the PPG, formed the basis of a discussion at the hearing. There would be a need for a standard commencement condition and for one listing the approved plans. It was agreed that, as the development would be time limited, a reinstatement condition would be necessary. Further details of landscaping and ecological works would be required, with planting in the first available season after the construction phase. During the construction period conditions should be imposed to secure an archaeological investigation and to control hours of working. Although no external lighting is proposed this should also be conditioned.
80. Should the appeal be allowed and planning permission granted the suggested conditions are set out in the Appendix to this report.

### ***Planning balance and final conclusions***

81. Substantial weight should be given to the production of renewable energy and the reduction in greenhouse gas emissions. There would be some further benefit to the Exbury Estate and its contribution to the local economy and some modest benefit from ecological enhancements. I also find that, as the land is not BMV agricultural land, no harm would arise in that respect. However I conclude that these benefits are clearly outweighed by the considerable harm I have identified to the landscape and natural beauty of this part of the New Forest National Park and to its enjoyment by the public.
82. The strategic policy approach of the NPA is to support renewable energy developments but only where they can be assimilated without harming the landscape and special qualities of the National Park. By focussing on small-scale developments Policy CP5 follows this approach. It has proper regard to the statutory protection that is given to National Parks and the expectation that large scale schemes will be resisted is entirely reasonable.
83. This does not mean that they should always be resisted. The NPPF says that major development in the National Park should be refused except in exceptional circumstances. In considering such applications NPPF paragraph 116 requires that an assessment should be made of the need for the development and of any detrimental effect. That is the balance that has been undertaken. A further part of the assessment is to consider the possibility of the development taking place outside the designated area. The NPA and the New Forest District Council consider there are opportunities for ground mounted solar arrays on poor quality agricultural land outside the National Park [52]. I agree. I find that exceptional circumstances to justify approval have not been demonstrated.
84. The proposal would not be in accordance with the development plan. For the reasons set out it would conflict with Policies CP5 and CP17. It would not be sympathetic to landscape character or to local distinctiveness and so would also

<sup>23</sup> Document D1

conflict with Policies D1 and CP8. It would also be contrary to NPPF paragraph 116 and, as the impacts are not acceptable and cannot be made acceptable, contrary to paragraph 98.

### **Recommendation**

85. I recommend that the appeal for the installation of a 5MW ground mounted photovoltaic solar array with: transformer stations; internal access track; biodiversity corridors; landscaping; security fencing; security measures; access gate; and ancillary infrastructure be dismissed. In the event that the Secretary of State disagrees with me, I recommend that any permission granted be subject to the conditions in the appendix below.

*Bern Hellier*

INSPECTOR

### **APPENDIX**

#### **SUGGESTED CONDITIONS IF PLANNING PERMISSION IS GRANTED**

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 14M16-P-SL-REV04; 14M16-P- GL-REV06; 14M16-P-AG-REV01; 14M16-P-AR-REV02; 14M16-P-CH-REV01; 14M16-P-CS-REV01; 14M16-P-DS-REV01; 14M16-P-MS-REV01; 14M16-P-PM-REV01; 14M16-P-SC-REV03; 14M16-P-SF-REV01; 14M16-P-SS-REV02; 14M16-P-TS-REV01.
3. This permission shall expire after 25 years following the date that energy production commences. The local planning authority shall be notified of such date in writing not later than one month from the event taking place. Within 12 months of the end of the 25 year period, or if the solar array ceases to be operational for a continuous period of 6 months at any time prior to this, the solar array and its associated infrastructure shall be removed from the site and the land reinstated to a condition that has been first agreed in writing by the local planning authority.
4. The development shall be served by an underground connection to the main sub-station at Langley. The solar array shall not become operational until this connection has been provided.
5. Development shall not commence until a final landscape and ecological management plan has been submitted to and approved in writing by the local planning authority. The plan shall be based on amended drawing BRS.5585\_08D Revision D and shall be implemented as approved.
6. All planting and seeding comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the construction of the development; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
7. Development shall not commence until an archaeological scheme of investigation before and during the construction phase has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
8. No external lighting shall be installed on the site unless details of such work has been submitted to and approved in writing by the local planning authority.
9. Construction works shall not take place outside 08.00 hours to 18.00 hours Mondays to Fridays and 08.00 hours to 13.00 hours on Saturdays nor at any time on Sundays or Bank Holidays.

## APPEARANCES

### FOR THE APPELLANT:

Mr Chris Cox	Pegasus Group (planning)
Mr Andrew Cook	Pegasus Group (landscape and ecology)
Ms Bärbel Francis	Martifer Solar UK Ltd (planning manager)
Mr Graeme Ker	Exbury Estates (resident agent)

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Deborah Slade	Senior Planner
Ms Sarah Kelly	Landscape Officer
Mr David Illesley	Policy Manager

### INTERESTED PERSONS:

Mr Guy Heeley	Exbury and Lepe Community Group
Lt Col Peter Hayward-Broomfield	Exbury and Lepe Parish Council
Mr Michael Stevenson	Local resident

## DOCUMENTS

### A. From the appellant

#### Submitted with the application

- A1 Design and Access Statement
- A2 Planning Statement
- A3 Statement of Community Engagement
- A4 Alternative Site Search Report (updated)
- A5 Ecological Survey
- A6 Agricultural Land Classification Report
- A7 Flood Risk Assessment
- A8 Arboricultural Report
- A9 Magnetometer Survey Report
- A10 Heritage Desk-based Assessment
- A11 Construction Traffic Management Plan
- A12 Landscape and Ecological Management Plan (updated)
- A13 Landscape and Visual Impact Assessment
- A14 Statement from Exbury Estate
- A15 Supplementary Planning Statement
- A16 Committee Report Review
- A17 Exbury Estate Accounts

#### Submitted with the appeal

- B1 Statement of Case including as appendices a Landscape Appeal Statement and an Agricultural Appeal Statement
- B2 Ecological comments/security fencing photos in relation to the appeal statement dated 23 December
- B3 Amended site layout and planting proposals dated 22 December 2015
- B4 Exbury Estates projects and developments
- B5 Deed of Covenant between Exbury Estates and the appellant relating to community benefits

#### Submitted as core documents

- C1 New Forest National Park Core Strategy and Development Management Policies DPD
- C2 UK Renewable Energy Strategy
- C3 Digest of United Kingdom Energy Statistics 2104
- C4 Renewable Roadmap Update November 2014

- C5 Energy Security Strategy
- C6 UK Solar PV Strategy Part 1 – Roadmap to a Brighter Future October 2013
- C7 National Planning Policy Framework
- C8 Planning Practice Guidance (Renewable and low carbon energy, climate change, determining a planning application and natural environment)
- C9 Letter to LPAs Minister of State for Energy and Climate Change 22 April 2014
- C10 Written Ministerial Statement on Planning for Growth
- C11 Letter to LPAs Minister for Energy and Climate Change 1 November 2013
- C12 Memorandum of Understanding
- C13 R v Rochdale MBC ex parte Milne [2001] reported at 81 P and CR 365

## **B. From the National Park Authority**

- D1 Statement of Case
- D2 New Forest National Park Management Plan 2010-2015
- D3 Written Statements to Parliament 9 April 2014 and 25 March 2015
- D4 New Forest National Park Landscape Character Assessment 2015
- D5 Renewable Energy Potential Assessment in the New Forest District September 2010
- D6 Letter from Brandon Lewis dated March 2015
- D7 Details of the Lepe Loop Walk
- D8 Appeal decision APP/R3325/A/13/2197853 (solar farm near Pitney, South Somerset)

## **C. Other documents**

- E1 Statement of Common Ground
- E2 Bundle of representations received by the Planning Inspectorate (23)





## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.