

# STATEMENT OF CASE Babergh District Council

Appeal reference: APP/D3505/W/25/3370515

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Appeal under Section 78 of the Town and Country Planning Act 1990 in respect of:

*‘Construction of a solar farm (up to 40MW export capacity) with ancillary infrastructure and cabling, DNO substation, customer substation and construction of new and altered vehicular accesses.’*

Site address: Land at Grove Farm and Land East of the Railway Line, Bentley

Appeal by: Green Switch Capital Ltd

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October 2025





## CONTENTS

<b>INTRODUCTION .....</b>	<b>2</b>
<b>SITE AND CONTEXT .....</b>	<b>4</b>
<b>PROPOSED DEVELOPMENT .....</b>	<b>5</b>
<b>PLANNING POLICY AND DECISION-TAKING FRAMEWORK .....</b>	<b>7</b>
<b>THE CASE FOR THE COUNCIL .....</b>	<b>11</b>
<b>PLANNING OBLIGATIONS AND CONDITIONS.....</b>	<b>20</b>
<b>CONCLUSION .....</b>	<b>21</b>

## INTRODUCTION

- 1.1 This Statement of Case ('Statement') has been prepared in response to an appeal submitted by Green Switch Capital Ltd ('Appellant') against the decision of Babergh District Council ('Council') to refuse an application for planning permission in respect of a proposed solar farm development.
- 1.2 The application reference DC/23/05656 was refused by the Council on 6<sup>th</sup> February 2025, for the following reasons:
  1. The proposal would conflict with policies SP09, LP19, LP25 and consequently SP03 of the Babergh and Mid Suffolk Joint Local Plan (2023), policies BEN 11 and BEN 12 of the Bentley Neighbourhood Plan (2022) and paragraphs 212, 213, 215 and 216 of the NPPF (2024). The proposal would result in a low to medium level of less than substantial harm to a number of designated and non-designated heritage assets; the most notable and highly graded of which include the Grade I listed Bentley Hall Barn and Grade II\* listed Bentley Hall, Bentley Hall Stables and Church of St Mary. Whilst significant weight is afforded to the public benefits of renewable clean energy, this benefit is not considered sufficient to outweigh the harm to a range of heritage assets, which are matters of considerable importance and great weight. The setting of these assets and thus their significance would be eroded and undermined by the proposed development as it would introduce an industrial incongruous character to the current traditional agricultural character and historical landscape of the area.
  2. The proposal would conflict with policies SP09, LP17, LP18, LP25 and consequently SP03 of the Babergh and Mid Suffolk Joint Local Plan (2023), policies BEN 3 and BEN 7 of the Bentley Neighbourhood Plan (2022) and paragraphs 187 and 189 of the NPPF (2024). The development would introduce an incongruous, industrialised character into a valued landscape, being within the setting and Additional Project Area of the Suffolk Coast and Heaths National Landscape. The development would erode a well preserved and largely unaltered agricultural area and would infill a tranquil transitional gap between settlement and a valuable historical landscape with an abrupt, alien and jarring form of development.
- 1.3 A copy of the officer report ('OR') supporting the reasons for refusal ('RfR') is found at Appendix A to this Statement.
- 1.4 Since determining the application, the Council has designated a Conservation Area within the parish of Bentley (23<sup>rd</sup> April 2025); the appeal site falls within the boundaries of that designation. It is therefore expected to be common ground that this is a new material issue for the determination of the appeal and that the statutory duty found at

s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('Listed Buildings Act') will apply. This appears to be accepted within the Appellant's Statement of Case at para. 8.8, where a level of material harm to that asset is identified by them (the extent of harm being a matter of dispute between the parties).

1.5 Accordingly, to assist the Inspector and in the interests of clarity, and pursuant to the Council's resolution of 5<sup>th</sup> February 2025 (3<sup>rd</sup> para.), the Council has updated its first reason for refusal as follows:

1. The proposal would conflict with policies SP09, LP19, LP24, LP25 and consequently SP03 of the Babergh and Mid Suffolk Joint Local Plan (2023), policies BEN 11 and BEN 12 of the Bentley Neighbourhood Plan (2022) and paragraphs 212, 213, 215 and 216 of the NPPF (2024). The proposal would result in less than substantial harm (at the upper end of the scale) to the character and appearance of the recently designated Bentley Historic Core Conservation Area; less than substantial harm to the following listed buildings: Church of St Mary (Grade II\*) (middle range LTSH), Bentley Hall (Grade II\*) (lower end LTSH), Meeting Hall Stables (Grade II\*) (lower end LTSH), Bentley Hall Barn (Grade I) and Maltings House (Grade II) (lower/bottom end LTSH); and, harm to the following Non-Designated Heritage Assets: Falstaff Manor, Grove Farm, Red Cottages, Potash Cottages, and Church Farm House and Barn. Whilst significant weight is afforded to the public benefits of renewable clean energy, the public benefits of the development are not considered sufficient to outweigh the harm to a range of heritage assets, which are matters of considerable importance and great weight (where they relate to designated heritage assets). The setting of these assets and thus their significance would be eroded and undermined by the proposed development as it would introduce an incongruous industrial character to the current traditional agricultural character and historical landscape of the area. The Appellant has further failed to provide evidence to convincingly demonstrate that there are no reasonable alternatives available for the proposal in light of the designation of the Site within a Conservation Area.

1.6 The Council will subsequently submit evidence in connection with the main issues referred to in this Statement, and it is intended that at least three witnesses will be called dealing with those issues, being: heritage; landscape; and planning policy/the heritage and planning balances.

1.7 Through the appeal, it is noted that the Appellant is seeking to make various amendments to the proposed development. This is a matter considered under Section 3 below, and which in the Council's view should be discussed at the forthcoming Case Management Conference.




## **SITE AND CONTEXT**

- 2.1 A description of the site is provided under Section 2 of the OR.
- 2.2 The Council agrees with the Appellant that relevant heritage and landscape considerations arising from the location of the site and its surroundings can be explored in topic-specific statements of common ground that the parties will work together on.
- 2.3 As noted above, the site now falls within the Bentley Conservation Area, and this is a new material consideration for the determination of the appeal where the s.66 and s.72 statutory duties of the Listed Buildings Act are engaged.
- 2.4 The Council also considers that the site is within a Valued Landscape (a view made clear in the OR and RfR) and will adduce further evidence substantiating this position.

## PROPOSED DEVELOPMENT

- 3.1 The planning application subject to this appeal proposes the following development:
- ‘Full Planning Application - Construction of a solar farm (up to 40MW export capacity) with ancillary infrastructure and cabling, DNO substation, customer substation and construction of new and altered vehicular accesses.’
- 3.2 The application was accompanied by a range of assessments and technical details, which have allowed for judgements to be made as to the likely impacts (and consequent effects) of the nature of development being applied for.
- 3.3 The material (including Site Layout Plan) submitted with the application demonstrates how the development would be carried out, should the appeal be allowed.
- 3.4 The planning application was refused after consideration of plans including General Arrangement (ref. 3223-01-03a and 3223-01-03b) and Landscape Proposals (ref. 3223-01-13).
- 3.5 In making their appeal the Appellant is seeking to update those plans with new ‘Rev A’ iterations. The new Rev A drawings introduce various amendments labelled A to E which alter the proposed development from what was previously considered and determined.
- 3.6 Paragraph 3.1.1 of the Procedural Guide: Planning appeals – England (‘Procedural Guide’, June 2025) states that ‘if an applicant thinks that amending their application will overcome the LPA’s reasons for refusal, they should normally make a new planning application’. The Appellant has not previously discussed those changes with the Council or sought opinion as to whether this would lead to the Council viewing an amended application more favourably (also as §3.1.1).
- 3.7 Paragraphs 16.1 and 16.2 of the Procedural Guide go on to explain that the appeals process is not a vehicle for evolving a scheme and that it is important that what is before the Inspector for consideration is ‘essentially the same’ as what was considered at application. It is for the Inspector to decide whether exceptionally, to accept any changes.

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- 3.8 Contrary to the Appellant's assertion at paragraph 4.10 of its Statement of Case, no consultation on those changes was undertaken at the time of lodging the appeal. The Council has sought clarification regarding the timing and execution of the intended consultation exercise.
- 3.9 The procedural and substantive implications of the proposed amendments can be discussed at the Case Management Conference.

## PLANNING POLICY AND DECISION-TAKING FRAMEWORK

4.1 Relevant to this appeal the statutory development plan comprises the following:

- Babergh and Mid Suffolk Joint Local Plan – Part 1 ('JLP', 2023)
- Bentley Neighbourhood Plan ('BNP', 2022)

4.2 Within the development plan, those policies considered to be most important for the determination of this appeal are those referred to in the RfR:

- SP03: The Sustainable Location of New Development
- SP09: Enhancement and Management of the Environment
- LP17: Landscape
- LP18: Areas of Outstanding Natural Beauty
- LP19: The Historic Environment
- LP24: Design and Residential Amenity
- LP25: Energy Sources, Storage and Distribution
- BEN3: Development Design
- BEN7: Protecting Bentley's Landscape Character
- BEN11: Heritage Assets
- BEN12: Buildings of Local Significance

4.3 Policy SP03 is cited within the RfR because it sets out where new sustainable development is to be located. In this case, permission can only be granted in accordance with the development plan if there is compliance with policy LP25. The Council will explain in its evidence why policy LP25 (and therefore policy SP03) is breached.

4.4 The above policies form part of recently adopted/made development plan documents. The cited policies are considered to be sound and so should be afforded full weight. It is not understood that the Appellant alleges that they are out of date for any reason.

4.5 The National Planning Policy Framework ('NPPF', last updated 2025) sets out the Government's planning policies for England and how they should be applied; it is a material consideration for decision-taking purposes though it makes clear that it cannot displace the statutory primacy of the development plan.



- 4.6 The NPPF is supported and complemented by the national Planning Practice Guidance ('PPG'). The Council considers that it too is an important material consideration alongside the NPPF.
- 4.7 National Policy Statements ('NPS') for energy infrastructure are capable of being material considerations for applications made under the Town and Country Planning Act 1990 but their primary purpose is to aid the determination of Nationally Significant Infrastructure Projects ('NSIP'). In this case such NPS include:
- EN-1 Overarching National Policy Statement for Energy (2024)
  - EN-3 National Policy Statement for Renewable Energy Infrastructure (2024).
- 4.8 Other material considerations, including the relevance and status of general statements relating to clean energy, can be agreed with the Statement(s) of Common Ground and will be considered in evidence so far as weighting the benefits of the appeal development.
- 4.9 The Council will seek to agree a table of public benefits with the Appellant. In accordance with paragraph 168.a) of the NPPF, the Council affords significant weight to the benefits associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future.
- 4.10 In relation to site selection and grid connection, the Appellant indicated at application stage that a connection agreement had been secured with the network operator (UKPN), with a connection date of no later than 2031 through a nearby high voltage electricity pylon. It is not known if that agreement remains in place and the Appellant has been asked to provide an update.
- 4.11 An update has been sought where new procedures in relation to Grid Reform (also known as the 'TMO4+ reforms') commenced on 10<sup>th</sup> June 2025, following approval by Ofgem in April 2025 (i.e. after the appeal application was determined). The reforms to the grid connection process are being overseen by the new National Energy System Operator ('NESO').
- 4.12 The purpose of Grid Reform is to tackle the existing connections queue, to be achieved through abolishing the previous first-come, first served connections approach that has

led to unviable and speculative ventures known as ‘zombie projects’ holding up other, preferable schemes.

4.13 Thus, projects with existing grid connection agreements are not exempt from the requirements of Grid Reform so as to ensure that they are not frustrating other projects from connecting. As part of Grid Reform, parties who had not yet connected to the grid were required by the end of July 2025 to have submitted an application in order to be assessed. It is not clear from the Appellant’s case whether this has taken place.


4.14 NESO have explained that they will be notifying which projects have been successful (subject to detailed checks) in securing a place in the reformed connections queue from September, before starting to issue revised connection offers during the autumn, prioritising those due to connect in 2026 and 2027. NESO aim to have made all offers for projects needed to meet the government’s 2030 clean power target by early next year. Again, the current status of the appeal project is unknown, and the Appellant has been approached for clarification.

4.15 The third limb of Policy LP25 places onus on an applicant (in this case now the Appellant) to ‘convincingly demonstrate’ that:

- i. Potential harm resultant from development can be effectively mitigated; and
- ii. That there are no alternative sites available within the District or for community initiatives within the area which it is intended to serve. This included providing underground power lines and cabling.

4.16 The application was supported by an Alternative Sites Assessment (‘ASA’) prepared in 2023. That document has not been updated as part of this appeal.

4.17 Notwithstanding any potential change to the Appellant’s connection agreement, which remains to be confirmed as above, the Council’s position is that there are changes in circumstances that obviously necessitate a refreshed ASA to be undertaken by the Appellant if the Appellant wishes to satisfy the Inspector that it has ‘convincingly demonstrated’ there are no alternative sites available (Policy LP25(3)).

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- 4.18 This change of circumstances includes the designation of the Bentley Conservation Area, where the harm posed to it further engages the need for an up to date assessment of alternative sites in the district, not least given that a further statutory presumption against the grant of development is engaged by the proposal now sitting in a Conservation Area, in a way all sides acknowledge causes material harm to that designated asset. In the circumstances the question of whether there are alternative sites available should plainly be revisited.
- 4.19 The Council considers this to be a highly material issue that must be taken into account and therefore the Inspector and parties should be provided with an up to date ASA by the Appellant with sufficient time for other parties to comment on it, well in advance of proof exchange so that other parties can address in evidence. The Council would be pleased to work collaboratively with the Appellant and Rule 6 party in the production of that necessary assessment.
- 4.20 The Council's position is that in the event the Appellant continues to rely on the ASA from 2023, that ASA is incapable of satisfying the policy requirement within LP25(3) given the site is now located within a recently designated Conservation Area. The question of whether there is an alternative to development on the site must be asked and answered in a context in which the impact of development on the Site is fully appreciated.

## THE CASE FOR THE COUNCIL


- 5.1 The Council's case is outlined as follows where the main issues for the appeal may be characterised in the following way:
- i. The effect of the proposal on the setting and significance of nearby heritage assets including the Bentley Conservation Area which envelops the site.
  - ii. The effect of the proposal on landscape character and the appearance of the surrounding area, within a Valued Landscape.
  - iii. The overall planning balance, having regard to the development plan and other material considerations.
- 5.2 Those main issues are dealt with below.

### **Heritage and the Heritage Balance**

- 5.3 Section 66(1) of the Listed Buildings Act states that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision taker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses.
- 5.4 The effect of that statutory provision is that the desirability of preserving the setting of a listed building must be treated as a matter of 'considerable importance and weight', with such a duty regarded as presenting a 'strong presumption' against a grant of planning permission where harm to a designated heritage asset is identified.<sup>1</sup>
- 5.5 Section 72 of the Listed Buildings Act provides a similar duty in relation to development within a conservation area. The proposed development in this case would be within the recently designated Bentley Conservation Area such that the statutory duty now applies. Accordingly, the first reason for refusal has been updated to reflect this.

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<sup>1</sup> *The Bath Society v Secretary of State for the Environment* [1991] 1 W.L.R. 1303; *R (Barnwell Manor Wind Energy Ltd) v East Northamptonshire DC* [2014] EWCA Civ 137; *City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 320.

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- 5.6 Paragraph 202 of the NPPF explains that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
- 5.7 The 'Considering potential impacts' subsection of NPPF chapter 16 is broadly consistent with the statutory duties of the Listed Buildings Act albeit is distinct from them. Paragraph 212 states that when considering the impact of a proposed development upon the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). The great weight should be given irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 5.8 Paragraph 213 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
- 5.9 Paragraph 220 identifies that loss of an element which makes a positive contribution to the significance of a Conservation Area should be treated as either substantial harm under paragraph 214 or less than substantial harm under paragraph 215, as appropriate, taking into account the relative significance of the element affected and its contribution to the Conservation Area as a whole.
- 5.10 When considering effects to setting and significance, the Planning Practice Guidance on the Historic Environment (paragraph 013) identifies that while the setting often includes consideration of visual relationships and this is an important part of assessing impacts, the experience of an asset in its setting is also influenced by other environmental factors and by our understanding of the historic relationship between places. Furthermore, when assessing applications which may affect the setting of a heritage asset, there may need to be consideration of the implications of cumulative change.

5.11 The Council will provide evidence explaining the heritage significance of the Bentley Conservation Area and the following heritage assets, together with the contribution that the setting of these buildings makes to their significance:

- Church of St Mary (Grade II\* Listed Building);
- Bentley Hall (Grade II\* listed building);
- Meeting Hall Stables (Grade II\* listed building) (this asset is also referred to within the Reason for Refusal and Appellants' SoC as 'Bentley Hall Stables'. The asset's name as it appears in the List is used here)
- Bentley Hall Barn (Grade I listed building);
- Maltings House (Grade II listed building);
- Falstaff Manor (Non-Designated Heritage Asset ('NDHA'));
- Grove Farm (NDHA);
- Red Cottages (NDHA);
- Potash Cottages (NDHA);
- Church Farm House and Barn (NDHA).

5.12 In the interests of clarity, the Council's first reason for refusal has been updated to reflect that position and should be read in conjunction with this Statement to understand the Council's case.

5.13 Where the proposed development would be located within the settings of those assets, the Council will adduce evidence to demonstrate that the proposed development would result in harm to their significance, primarily due to the resulting encroachment of solar development on the experience of, relationships between and key approaches to the identified heritage assets, including views into and out of the very recently designated Conservation Area.

5.14 The Council will adduce evidence to demonstrate that less than substantial harm (also 'LTSH') arises to the designated heritage assets identified above. For clarity within evidence, the following categorisation will be used to place the level of harm within the less than substantial harm 'spectrum':

More harm ↑ ↓ Less harm	Just shy of substantial harm (near vitiation of significance)
	Upper end
	Middle range
	Lower end
	Very lower/bottom end

5.15 Using this terminology, the following quantum of harm will be identified in relation to each of the designated heritage assets:

- Bentley Historic Core Conservation Area: Upper End LTSH.
- Church of St Mary (Grade II\*): Middle Range LTSH.
- Bentley Hall (Grade II\*): Lower End LTSH.
- Meeting Hall Stables (Grade II\*): Lower End LTSH.
- Maltings House (Grade II): Lower End LTSH.
- Bentley Hall Barn (Grade I): Bottom End LTSH.

5.16 Again, to aid the Inspector and the parties to the appeal, the first reason for refusal has been updated setting out the Council's position on each asset above.

5.17 Where less than substantial harm is identified, policies LP19 and the NPPF (para. 215) require that harm (which is to be given great weight where it arises to designated heritage assets) is to be weighed against the public benefits of the proposed development.

5.18 The Council recognises the significance of the public benefits that would flow from the renewable energy development proposed. However, it will be explained in evidence that due to the extent of harm identified to a range of designated assets including highly graded assets, those benefits are outweighed recognising the considerable importance and great weight that must be afforded to the harm found. The harm posed to non-designated assets must also be weighed, undertaking a 'balanced judgement' in accordance with NPPF para. 216.

5.19 In those circumstances the policies of the NPPF clearly direct that permission should be refused. The appeal scheme also conflicts with policies LP19, LP25, BEN11, and BEN12, for those reasons. The development, being located in a design-sensitive area,

would also conflict with policy LP24 where it does not safeguard existing character, including heritage assets. In such circumstances policy LP24 is also clear that ‘development which fails to maintain and, wherever possible improve, the quality and character of the area will not be supported.’

5.20 The Council’s position is that the harm identified should attract a **substantial** weighting in the overall planning balance.

5.21 Paragraph 8.7 of the Appellant’s Statement of Case implies that half of their heritage case will comprise an assessment of the ‘robustness and appropriateness’ of the designation of the Bentley Conservation Area ‘in terms of the level of scrutiny applied’. The Council’s position is that this appeal is not the appropriate forum to challenge the appropriateness of the mechanism for designating the Bentley Conservation Area. This part of the Appellant’s case, if pursued as apparently intended, would be in the Council’s view unreasonable. If the Appellant had felt that the Council had legally erred in some way during that process, then they could have challenged that decision, but they did not (nor did anyone else, with the effect that the designation cannot now be challenged). Furthermore, it is also clear from the Appellant’s case that in relation to the Conservation Area, material harm would result. The legal duty under s.72 of the Listed Buildings Act applies.

### **Landscape Character and Visual Amenity**

5.22 The appeal site does not fall within the Suffolk Coast and Heaths National Landscape/AONB<sup>2</sup> but is within its designated ‘Additional Project Area’ and forms part of the setting of that landscape.

5.23 Section 1 of the relevant AONB Management Plan is explicit that the Project Areas ‘are valued landscapes as defined by the National Planning Policy Framework and are an important part of the setting of the AONB.’ The particularly valued aspects of the landscape surrounding the site are also made clear in the Valued Landscape Assessment Suffolk Coast & Heaths Additional Project Area Report prepared by Alison Farmer Associates (‘AFA’) on behalf of the AONB Unit in 2020. As set out in the OR

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<sup>2</sup> Termed ‘AONB’ in this Statement for ease.



and RfR, the Council's position is that the appeal site falls within a Valued Landscape within the meaning understood by planning policy and guidance.

5.24 That position was previously accepted by Suffolk County Council in a quashing Order signed by Sir Duncan Ouseley sitting as a High Court Judge dated 29<sup>th</sup> August 2024 (ref. AC-2024-LON-001658). The relevant ground being:

- 1) The Defendant erred in failing to consider a directly relevant policy of the statutory development plan (LP18 of the Babergh & Mid Suffolk Joint Local Plan) such consideration being mandated by s.38(6) Planning and Compulsory Purchase Act 2004 or to perform its duty to "protect and enhance valued landscapes" pursuant to National Planning Policy Framework 2023 paragraph 180 or to have regard at all to the fact that the Site lies within a Valued Landscape.

5.25 In that case the impugned decision related to the grant of planning permission for a minerals application within the same Additional Project Area, on land to the north of the appeal site.

5.26 The Council's position is that the third limb of policy LP18 is likewise engaged in this appeal, which relates to the AONB Project Areas. The policy expressly requires that in such cases development must 'have regard to the relevant Valued Landscape Assessment' i.e. the 2020 Assessment by AFA. This is an issue similar to that raised in the Order referred to above.

5.27 The Appellant's case is effectively blind to these points, that were raised during the application process and set out in the OR and RfR. The Appellant makes no reference to the AFA Valued Landscape Assessment and maintains at §8.13 of their Statement of Case that the Project Area 'carries no formal landscape policy weight'; that is wrong and ignores the requirement of the third limb of policy LP18.

5.28 Paragraph 8.12 of the Appellant's Statement of Case also states that their position that the appeal site makes no meaningful contribution to the setting of the AONB is due to a 'lack of intervisibility or other relationship' between the two. The Council's evidence will show that intervisibility is only one aspect of setting as recognised in the AONB Management Plan. The Council will show that when a Valued Landscape Assessment is undertaken in accordance with the Landscape Institute's Technical Guidance Note

(LI TGN 2/21) *Assessing landscape value outside national designations*, the evident qualities within the site and its immediate landscape confirm that it is correctly identified as a Valued Landscape.

5.29 The qualities evident in the immediate landscape include:

- The presence of ancient woodlands, hedgerows with mature hedgerow trees, including veteran trees,
- The significant cultural heritage interest derived from the Church/Hall complex, the distribution of woodland, the still discernible dispersed settlement pattern, and vernacular farm complexes which has recently been recognised in its designation as a Conservation Area.
- The knitting together of these landscape features by the sinuous rural lanes, and the fossilised pattern of historic routes that can be found in the PRoW network. This network connects the different parts of the Parish and links it to the wider countryside.
- Associations with the Tollemache family and Oliver Rachkam
- The lack of modern development

5.30 The particular value of the northern part of the parish is identified in the Landscape Appraisal (2019) undertaken for the Bentley Neighbourhood Plan by AFA.

5.31 The LVIA did not identify that the site was within the Additional Project Area and that it was subject to Policy LP18. It did not consider the AFA Valued Landscape Assessment. Even without identifying this, the LVIA concluded that the site and one of the LCAs that cover the site, have medium-high sensitivity to the proposed development.

5.32 The Council will show that the introduction of the solar farm, due to its utilitarian character, will harm:

- The current balanced and cohesive composition of mature trees, wooded skylines, arable fields, historic vernacular buildings and lack of modern development,

- The character of Church Road and Potash Lane; and
- Disrupt the current sense of time depth in the landscape.

5.33 The Council will demonstrate that the site and the immediate landscape has **high value** and **medium/high susceptibility** to the proposed development which results in **medium/high sensitivity** to the proposed development. The magnitude of change is medium. The overall effect on the character of the site and its immediate landscape would be **moderate/major adverse**.

5.1 The landscape proposals would not result in a significant reduction in landscape harm when established because the harm to the valued qualities of the landscape would remain. There would be some reduction in visual effects as some views of the development would be screened during the summer months. The landscape proposals would not restore the historic field pattern as they do not reflect it either in its entirety or in its underlying structure. The solar farm is the only rationale for the hedgerows proposed.

5.34 The appeal proposal will therefore be shown to be contrary to policies SP09, LP17, LP18, LP25 of the JLP, policies BEN 3 and BEN 7 of the BNP, and the NPPF.

5.35 The Council's position is that the harm that this represents should attract a **significant** weighting in the overall planning balance.


### **Planning Balance**

5.36 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications under the Planning Acts be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan is therefore the starting point for the determination of this appeal.

5.37 The case of *Corbett*<sup>3</sup> re-emphasised that a key part of the s38(6) statutory duty is to determine whether the development accords with the development plan when viewed

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<sup>3</sup> *R (Corbett) v Cornwall Council* [2020] EWCA Civ 508.



as a whole. It has long been recognised by the courts that it is not unusual for development plan policies to pull in different directions and that the decision taker must therefore make a judgement as to whether a proposal is in accordance with the plan as a whole and bearing in mind the relative importance of the policies which are complied with or infringed and the extent of the compliance or breach.

- 5.38 The Council will adduce evidence highlighting the conflict between the proposed appeal scheme and the policies relevant to the determination of this appeal, which includes those listed under heritage and landscape main issues above.
- 5.39 On account of the significant harms identified, that would not be effectively mitigated, there is conflict with the first limb of policy LP25. For the same reason, that conflict also arises in respect of the policy's third limb. In respect of the requirement under LP25(3) to 'convincingly demonstrate that there are no alternative sites available in the district', it must be observed that this is an onus placed upon an applicant (or Appellant) and this exercise has not been refreshed as part of the appeal submission made. There are clear reasons why this must be prepared again, including the recent designation of the Bentley Conservation Area.
- 5.40 Irrespective of the current lack of a refreshed ASA the scheme nevertheless conflicts with policy LP25 and, in turn, policy SP03. The appeal scheme does not accord with the development plan taken as a whole.
- 5.41 Other material considerations include the NPPF and the public benefits of the development. The Council's planning evidence will explain why the application of national planning policies reinforces the direction of the development plan in refusing planning permission, where the significant harms to landscape and heritage would not be outweighed by the benefits.
- 5.42 Accordingly, the Inspector will be invited to dismiss the appeal because both: a) the development is not in accordance with the development plan; and b) there are no considerations which indicate that permission should be granted contrary to the direction of the plan.




## **PLANNING OBLIGATIONS AND CONDITIONS**

- 6.1 No planning obligation is required in this case, as set out by the Appellant at para. 9.2 of their Statement of Case.
  
- 6.2 The Council will seek to reach agreement with the Appellant in respect of suitable planning conditions, recommended to be imposed were the appeal to be allowed. This can be settled prior to the opening of the Inquiry.

## CONCLUSION

- 7.1 It is the Council's position that the proposed development is contrary to the development plan and would result in clear harms as identified in the reasons for refusal (as amended). Evidence will be adduced on those matters to demonstrate the nature of the harm caused and an assessment of that in planning terms against the policies of the development plan and other material planning considerations.
- 7.2 Accordingly, the Inspector will be invited to dismiss the appeal because both: a) the development is not in accordance with the development plan; and b) there are no considerations which indicate that permission should be granted contrary to the direction of the plan.
- 7.3 The Council reserves the right to make reference to:
- The relevant policies of the Development Plan;
  - The NPPF, NPS, and associated guidance including PPG;
  - Written Ministerial Statements
  - Relevant planning decisions, case law, legislation and other documents relevant to the appeal;
  - Any of issue that might arise in light of the Appellant's evidence.
- 7.4 In respect of heritage matters, the Council will refer to material including:
- Relevant listing descriptions and historic environment records;
  - Bentley Conservation Area Appraisal and any related Management Plan;
  - 'Conservation Principles, Policies, and Guidance' (Historic England, 2008);
  - 'Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning Note 2' (Historic England, 2015);
  - 'The Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3' (Historic England, 2017).
- 7.5 In respect of landscape matters, the Council will refer to material including:

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- 'Guidelines for Landscape and Visual Impact Assessment' ('GLVIA3', Landscape Institute)
  - 'Notes and Clarifications on aspects of the 3rd Edition Guidelines on Landscape and Visual Impact Assessment' (LITGN-2024-01, Landscape Institute)
  - 'Assessing landscape value outside national designations' (TGN02-21, Landscape Institute)
  - 'Suffolk Coast and Heaths AONB Management Plan 2023-28'
  - 'Valued Landscape Assessment Suffolk Coast and Heaths Additional Project Area' (2020)