

Planning appeal under s.78 of the Town and Country Planning Act 1990

Land at Grove Farm and East of the Railway Line, Bentley, Suffolk, IP9 2BZ

Appeal by Green Switch Capital Ltd (PINS ref: APP/D3505/W/24/3370515,
LPA ref: DC/23/05656)

OPENING STATEMENT ON BEHALF OF BABERGH DISTRICT COUNCIL

INTRODUCTION

1. Reliance on arguments as to the importance of delivering renewable energy are commonplace in applications and appeals for solar development and are likely to be repeated at length to this inquiry.¹ The Council accepts (and always has done) that significant weight should be afforded to the benefits associated with renewable energy generation and a proposal's contribution to a net zero future.² The recently made development plan, which is up to date and in accordance with government policy, supports properly considered and suitable proposals for renewable development.³ However, neither the development plan or government policy mandates the approval of solar development at any cost – especially where (as here) a proposal causes harm to nationally important heritage assets and a valued landscape and where there has been no demonstration by the Appellant (let alone a convincing one) that what is proposed is justified in accordance with relevant policy. A sophisticated and deliberate framework of planning policies and legislation has been constructed to guide decision makers, and particularly so in cases concerning impact on heritage assets and the landscape.

¹ The Appellant's case seeks to afford substantial or significant weight to this benefit in four different ways, such is the reliance on the import of what is really a single benefit (see App SoC, §8.26 [CD/C8] in which weight is purportedly afforded to 'support for the UK's transition to a low carbon economy' and to 'the achievement of set emission targets' and 'grid connection availability' and 'energy security.' Only one benefit should be identified (consistent with the recent February 2025 decision of Secretary of State in the Appeal concerning the Land Located to the Southeast of Bottesford Road [CD/H9, §12].

² NPPF 168(a) [CD/D1]; Pl SoCG [CD/C12 §8.8, p.21]

³ Local Plan, CD/E1, pp90-91 (and elsewhere)

2. The benefits of solar schemes (and the resultant weight afforded to them) does not negate the application of that framework which contains a number of key considerations, presumptions and balances for a decision maker to grapple with. The Appellant seeks, in several aspects of the case it now pursues, to sideline such considerations, adopting an almost singular focus on the benefits of renewable energy absent a robust and accurate evaluation of the cost⁴, in heritage and landscape terms, of bringing solar development forward at this site. On the unique facts of this case, both the development plan and national policy firmly direct refusal for this proposed solar development⁵. It is of note that here there are three statutory presumptions engaged against the grant of planning permission:
- a. The proposal would harm the setting and significance of a number of nationally important listed buildings and s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“**LBA**”) provides that in such circumstances, the decision maker must have special regard to the desirability of preserving listed buildings and their setting or any features of special architectural or historic interest. This is a matter requiring “*considerable importance and weight*” to be given to such harms in a planning balance with such a duty presenting a “***strong presumption***” against a grant of planning permission where harm to a designated heritage asset is identified.⁶
 - b. The proposal is, particularly unusually, also wholly within a newly designated Conservation Area, and given the obvious and serious harm caused to the significance of this asset, s.72 LBA is engaged and similarly requires the application of a “***strong presumption***” against the grant of planning permission.
 - c. As set out more fully below, given the conflicts with the Babergh and Mid Suffolk Joint Local Plan 2023 (“**the Local Plan**”) and the Bentley Neighbourhood Plan

⁴ It is noted that in the Appellant’s Statement of Case [CD/C8] at §2.3, the Appellant submitted that that the public benefits of the scheme would outweigh heritage harm at a time at which the Appellant purported to be unaware of the claimed level of heritage harm, i.e. that whatever the harm was, the benefits would prevail.

⁵ The instant development is for “*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*” [see the Decision Notice, CD/A42]

⁶ *R (Barnwell Manor Wind Energy Ltd) v East Northamptonshire DC* [2014] EWCA Civ 137 [CD/H3]; *City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 320 [CD/H6], agreed: [CD/C16, §2.8]

2002 (“**the Neighbourhood Plan**”) identified in the reasons for refusal, the development plan-led approach is that the scheme should be refused, and there are no material considerations which indicate otherwise, applying s.38(6) of the Planning and Compulsory Purchase Act 2004 (“**PCPA 2004**”). Indeed, as identified in the reasons for refusal, national planning policy expressed in the NPPF - and particularly that concerning the historic environment and valued landscapes - further directs that permission should be refused.

Background

3. The proposed development⁷ is for a large Solar Farm and substation⁸ on agricultural land totalling 46.80ha (“**the Site**”) and comprising two distinct areas, one a ‘main site’ and the other a ‘substation site’ which is the other side of the Great Eastern Main Line railway line.⁹ The main site comprises two arable fields separated by a road (Church Road, which is a locally designated Quiet Lane¹⁰) which are part of the same farm system. In addition to the solar panels proposed, the proposal seeks permission for two ancillary buildings, a Control Building and a Spares Container (to be located within the main site to the southern boundary of the field east of Church Road), and two substation compounds (one within the main site adjacent to the ancillary buildings, and another DNO Substation within the substation site¹¹). What is proposed is extensive, modern and industrial, including not only hectares of solar panels themselves but also significant supportive infrastructure. The site which is proposed for that scheme is steeped in history, bears multiple historic landscape features which have persisted for over 500 years, and evidences a connection with numerous prominent English land owners of the Early Modern Era, the Middle ages and indeed before.
4. The Appellant applied for the instant scheme at a time prior to the designation of the Bentley Conservation Area (“**the CA**”). Even at that time, however, it should have been obvious that the scheme was inappropriate given the richly historic landscape in which it was proposed, and the total incongruity of introducing a solar farm there. As such,

⁷ Full description of 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.*” see the Officer’s Report [CD/A40]

⁸ See landscape proposals CD/A38

⁹ PI SoCG, CD/C12, §2.3

¹⁰ PI SoCG, CD/C12, §2.10

¹¹ PI SoCG, CD/C12, §3.12-13

the scheme was refused by the Council on 6 February 2025 on the basis of two reasons for refusal, one concerning heritage and the other landscape, noting at that time, that the Council did so whilst recognising the “*significant weight to the public benefits of renewable clean energy.*”¹² As we have already noted but it is worth repetition, recognition of such benefits has always been at the forefront of planning decision making in this case, but such benefits simply do not prevail in every case, least of all given the important historical features present on and around this Site and the nature of relevant policy and legislation engaged here.

5. The CA was subsequently designated on 23 April 2025 following public consultation and a detailed Report.¹³ The Appellant made no material amendment to the scheme which had previously been applied for, and on 5 August 2025 appealed against the refusal of permission. Nor had it made any attempt to properly address or comply with the requirements in development plan policy LP25 requiring a convincing demonstration that resulting harm to assets can be mitigated and that there were no alternative sites in the District. In light of the designation of the CA, the Council accordingly amended its reason for refusal so as to inform the appeal process,¹⁴ such that the relevant reasons for refusal for the purposes of this inquiry are, in essence:

- a. **Heritage:** The proposal results in less than substantial harm to a range of designated and non-designated heritage assets including to the newly designated CA.¹⁵ The setting of the relevant assets and their significance would be eroded by the instant development which would introduce an “*incongruous industrial character*” to an area which has an agricultural character and historic landscape. In addition, the Appellant failed to convincingly demonstrate there were not alternative sites for the proposal. Together, this results in conflict with a number of local and national policies.¹⁶

¹² Decision Notice, **CD/A42**

¹³ Report concerning the CA, **CD/F10**

¹⁴ Council SoC, **CD/C17A1**, §1.5

¹⁵ In full, 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*” [Pl SoCG **CD/12**, §5.4]

¹⁶ Namely, policies SP09, LP19, LP24, LP25 and consequently SP03 of the Local Plan and policies BEN 11 and BEN 12 of the NP and paragraphs 212, 213, 215 and 216 of the NPPF (2024).

- b. **Landscape:** Similarly, the development would introduce an “*incongruous industrialised character into a valued landscape*” having regard to the location of the Site within the Additional Project Area of the Suffolk Coast and Heaths National Landscape. Accordingly, the development would “*erode a well preserved and largely unaltered agricultural area*” and “*a valuable historical landscape with an abrupt, alien and jarring form of development.*”¹⁷
6. In the following section the Council sets out its case in respect of the Main Issues¹⁸ in the inquiry.¹⁹ In a nutshell, however, the Council’s case is that the Appeal should be dismissed because:
- a. The scheme, if it ever went ahead, would cause a high number of individualised harms to the significance of a range of designated heritage assets, each of which harms attracts considerable importance and weight, and each represent a strong presumption against development. There would also be harm to the setting and significance of other heritage assets. Whilst significant weight is afforded to the renewable energy credentials of the scheme, this does not outweigh the identified heritage harms taken together and as a result, applying the LBA, the NPPF, and relevant development plan policies, the appeal should be refused²⁰.
 - b. The scheme also results in harm to a valued historic landscape by virtue of the introduction of an incongruous, modern, alien form into that landscape. This again results in conflict with the development plan and is contrary to national policy.
 - c. The Appellant has failed to convincingly demonstrate that there are no alternative sites for the instant development (and has, in fact, achieved the opposite), which is contrary to policy LP25(3) of the Local Plan.

¹⁷ Decision Notice, **CD/A42**

¹⁸ As expressed in the Inspector’s post CMC note [**CD/21**]

¹⁹ Acknowledging that the Council is not calling evidence on the effect of living conditions on local residents having regard to noise, glint, glare and visual impact (paragraph 9(e) of the post CMC Note). This point is being pursued by the Rule 6 Party, Bentley Parish Council and Stop Grove Farm Solar.

²⁰ The same would be the case even if substantial weight were afforded to such benefits as Mr Stroud has set out in evidence – see his rebuttal at 3.9 [**CD/C35A**]

- d. There are no material considerations which indicate a decision should be taken contrary to the development plan, or to discharge either of the presumptions set out above within the LBA.

MAIN ISSUE 1: HERITAGE

7. The full and rich history of the area surrounding the Site is obvious from its very designation as a Conservation Area (and from the accompanying Conservation Area Appraisal and Management Plan (“CAAMP”²¹)), and is explored further by Mr. Handcock in his evidence.²² The area represents a comparatively untouched landscape with roots in the early medieval period, still evidencing a manorial landscape of interrelated landholdings, an aspect of the identified significance arising from its association with the prominent Tollemache family.
8. The proposed development causes a barrage of heritage harms to the significance of a range of assets, largely by virtue of the obvious introduction of a form of development which is critically at odds with the richly historic manorial landscape within which it is proposed. As described, the introduction of a large Solar Farm within the Bentley Conservation Area would be “*an abrupt, alien, jarring form of development*”²³ in imposing industrial form²⁴ into a historic rural setting first recorded in the Domesday Book.²⁵ As a result of that incongruous form of development, in particular, the following less than substantial heritage harms arise to five listed buildings (a birds eye view of the location of these is helpfully provided by Mr. Handcock):²⁶
 - a. Church of St. Mary (Grade II*²⁷) – harm would arise in the middle of the less than substantial range to this sensitive asset.²⁸ That would occur by virtue of the

²¹ CAAMP [CD/F1] & [CD/F11]

²² See section 3 of Handcock PoE, [CD/17C1]

²³ Decision Notice, CD/A42

²⁴ A term previously adopted by the Appellant’s advisors, even if attempts are now taken to downplay that assessment (Heritage Impact Assessment, CD/A8, §6.2.7, and Response to Comments on proposal, CD/A39, Appendix A, §5.11.6: “*the Proposed Development would have a direct impact on how the historic landscape within the Site is understood as it would change the landscape character of the Site from agriculture to power generation which may be considered a sub-type of an ‘industrial’ character*” and see also §6.4 of the same (see also Heritage Officer Comments at [CD/B18A, p.4], [CD/B18B], and see comments from the Suffolk Preservation Society [CD/B21A, §1.2])

²⁵ Handcock PoE, [CD/17C1, §3.2]

²⁶ Handcock PoE, [CD/17C1, fig. 9]

²⁷ NHLE: 1193823

²⁸ Planning SoCG, [CD/C12, §8.36]

significant change in how the land close to the church appears and would be appreciated, depreciating the kinetic experience of moving to/from the Church along Church road, Potash Lane and elsewhere. The proposed development would also devalue views to and from the Church by introducing visible infrastructure of modern and manufactured character thereby eroding the experience of a rural church set within a scattered, open landscape.

- b. Bentley Hall (Grade II*²⁹), Bentley Hall Barn (Grade I³⁰) and Meeting Hall Stables (Grade II*³¹) – These assets can be read together and understood as part of an important and highly graded cluster of manorial buildings. Although there is no intervisibility between them and the Site, the Site is a parcel with a long-running connection to the listed buildings through ownership, and social and economic connection as part of the wider manorial estates. The introduction of regimented, modernised form would change the experience of these assets' wider setting, reducing the appreciation of well-preserved manorial structure by erasing open agricultural character. A harm at the lower end of less than substantial harm would therefore arise.
 - c. Maltings House (Grade II³²) – This sixteenth century house lies in a broad agricultural setting which contributes to its significance. The proposed development would result in the introduction of further modern electricity infrastructure to the west of the asset, appearing in views of its façade, thereby detracting from the appreciation of the asset as a rural vernacular building appearing within an associated agricultural landscape. This would result in less than substantial harm at the bottom end of the spectrum.
9. There would also be an adverse impact on a significant number of non-designated heritage assets (“**NDHA**”)³³ which sit adjacent to the site and possess a direct visual relationship to it. These NDHAs were connected to the historic presence of agriculture with four of them being directly connected to the management and farming of the

²⁹ NHLE: 1351964

³⁰ NHLE: 1351965

³¹ NHLE: 1033423

³² NHLE: 1351929

³³ Namely Falstaff Manor, Grove Farm, Potash Cottages, Red Cottages, Church Farm House and Barn, Bentley House and Glebe Cottage

surrounding land. The development would result in that land being transformed in character from open and agricultural to industrial solar farm use, which would be appreciable in views, and especially so in the winter months. The effect would be stark and the immediate setting of the NDAs would be dramatically altered, undermining experiences of them as agricultural buildings set within a relatively unchanged productive landscape. The scale of this harm would be broadly in the middle of the scale.³⁴

10. The development would represent the transformation of roughly 8% of the newly made Bentley Conservation Area itself. For obvious reasons, it does not appear that an application like this, which is pursued over many hectares of land within and upon a designated heritage asset and which harms key aspects of identified special interest, has ever succeeded. Land identified as manorial farmland in the accompanying CAAMP³⁵ and which has been in that use for generations would be lost to the above alien, jarring, and patently modern industrial development. The character of the Site would be completely changed, as would the way in which a significant part of this rural CA is experienced. In particular, appreciation of openness and a sense of manorial landscape (both visually, perceptually and kinetically) would be undermined, including from a viewpoint within Potash Way which has been in existence since the mid 16th century³⁶ and possibly since 13th (as the Hundredisweye).³⁷ Many of the ‘key features of interest’ in the CAAMP would be also erased.³⁸ Collectively, the proposal diminishes the CA locally (around the site), but also generally (a significant part of it will essentially be lost). Accordingly, harm would result at the upper end of the less than substantial scale.
11. The Appellant strains³⁹ to deny that there is any harm at all to four of the six designated assets and asserts that no more than harm at the low or lower end of less than substantial harm arises to St. Mary’s Church and to the CA. In so doing, the Appellant consistently undervalues the historical significance of the Site and its setting, as well as the impact

³⁴ Other than the harm to Bentley House and Glebe Cottage.

³⁵ CAAMP, [CD/F1]

³⁶ Handcock Rebuttal, [CD/C36, §2.20]

³⁷ Edwards PoE, [CD/C18C, p. 7]

³⁸ CAAMP, [CD/F1, p. 6]

³⁹ Heritage SoCG, [CD/C16C2, §3.1]

of the proposed development. There are a number of fundamental differences in approach on the part of the Appellant in this regard which will need to be examined during the inquiry.

12. Tellingly, the Appellants' attempts to exhaust every possibly avenue in downplaying heritage value and impact extends as far as to propose criticisms of the designation of the CA and adoption of the CAAMP. It is surprising to say the least that such a misconceived approach has been set out and pursued in evidence. For clarity: a planning inquiry is not the appropriate venue to query the lawfulness of the Council's decisions or the validity of a designated Conservation area and adopted CAAMP. There has been no challenge to either document. It is hoped that inquiry time will not be wasted by further unreasonable attempts to explore this.
13. Properly evaluated and understood, the identified heritage harms outweigh the significant weight which the NPPF affords to the renewable and low carbon energy benefits of the scheme (alongside other the scheme's other benefits) and would do so even if the benefits were afforded substantial weight.⁴⁰ The harms are numerous and extensive, including harms to highly rated assets, to non-designated assets, and to the very recently adopted CA. The harm to designated assets must each attract considerable importance and weight in any balance and rightly considered they decisively outweigh the stated public benefits of the scheme.
14. Finally on this topic, a further indication of the Appellant's erroneous approach to the heritage issues at the Site is evident in the persisting claim that "*the Proposed Development has been developed in response to the Appellant's consideration of the historic environment.*"⁴¹ How could that possibly be true when the crucial designation of the CA occurred after the application⁴² was submitted? In truth, little has been done to respond to the extensive heritage features of the Site, and it has not been convincingly demonstrated that the harms will be effectively mitigated.
15. The above results in the scheme being contrary to policies BEN11 and BEN12 of the Neighbourhood Plan and with policies SP09, LP19, LP24, and LP25 of the Local Plan,

⁴⁰ Stroud Rebuttal, [CD/C35A, §3.9]

⁴¹ App SoC, [CD/C8, §8.5]

⁴² Pl SoCG, [CD/C12, §2.6]

with the scheme also patently failing the paragraph 215 NPPF test and being contrary to the remaining applicable heritage policies within the Framework. It is obvious given the statutory and national policy protection for heritage sites which are contravened by the scheme that this would also represent a strong reason for refusing the instant development.

MAIN ISSUE 2: LANDSCAPE: The effect on the surrounding landscape and its status having regard to: the proximity of the National Landscape and the ‘Additional Project Area’ (as a valued landscape), and the effects on users of public rights of way crossing or in the vicinity of the site

16. Not only did the Appellant fail to take into account the historic environment (and subsequently the Conservation Area) when the scheme was designed and in pursuing an appeal, it also agrees that its LVIA failed to identify that the Site was within the Suffolk Coast and Heaths Additional Project Area (“**the APA**”).⁴³ Even now it appears to be in denial that as a consequence Local Plan policy LP18(3) was relevant and mandated consideration of the APA Landscape Assessment⁴⁴ (which document was also not taken into account). The Appellant’s suggestion that APA status “*carries no formal landscape policy weight*”⁴⁵ is obviously mistaken.
17. That gets the Appellant’s approach to landscape off to a bad start: a critical part of a development plan policy and document were entirely omitted from its earlier assessments. Claims that such matters would not have made any difference to the landscape assessment are plainly wrong. Much of this appears to stem from the claim that the Site’s APA location is no longer relevant, a claim which overlooks the reference to the APA in several critical documents including the recently adopted Local Plan.
18. The Appellant pursues a reductive approach to what comprises a valued landscape. It is trite to state this is not simply a matter of designation, and Ms. Bolger explains, the consensus among a number of key assessment documents is that this particular Site is part of a valued landscape. This is in any event again obvious when one visits the Site. It exhibits many of the special qualities of the landscape (e.g. historic patterns of settlement, ancient woodland, remnant parkland and rural lanes) which surrounds it,

⁴³ Pl SoCG, [CD/C12, §8.25-8.26]

⁴⁴ Local Plan, [CD/E1, p. 77]

⁴⁵ App SoC, [CD/C8, §8.13]

noting that these are features of a historic landscape which has been untouched for hundreds of years. Again, the historic dimension of the landscape appears to be consistently overlooked by the Appellant.

19. The impact of some loss of field pattern and hedgerows is a primary feature Mr. Mason relies upon to devalue the Site in landscape terms. Yet, this does little to erode the underlying manorial landscape structure which forms the basis – in part – of the Site’s value. Overreliance on this factor is perhaps why Mr. Mason is alone among the experts in denying the Site constitutes a valued landscape. One need only visit the Site for a moment to dismiss the claim that it is a symbol of *“modern agricultural priorities eclipsing traditional landscape stewardship”*⁴⁶
20. It follows that the Site attracts the enhanced degree of protection afforded by policy LP18 read with paragraph 187(a) of the NPPF. The proposed development would erode the character of this well-preserved landscape, which has remained largely unaltered and free of modern development for so long, by introducing an alien, abrupt and jarring form of development there. All of the special qualities identified in the APA Valued Landscape Assessment⁴⁷ would be diminished and there would be a series of adverse visual impacts, including to users of Church Road, Potash Road, and Pond Hall Lane (which is a PRoW) and at least seven important views identified in the CAAMP. Together this visual and landscape harm represents conflict with policies SP09, LP17, LP18, LP25 and SP03 of the Local Plan, with policies BEN 3 and BEN 7 of the Neighbourhood Plan and with paragraphs 187 and 189 of the NPPF.

MAIN ISSUE 3: PLANNING

21. Despite actually producing what purports to be an updated Alternative Sites Assessment (“ASA”), the Appellant pursues an absurd semantic argument that it is not obliged to convincingly demonstrate an absence of alternative sites by policy LP25(3).⁴⁸ The true construction of the policy is a matter of law and the Council will make submissions as to its meaning in due course. The ASA falls well short of demonstrating, let alone convincingly demonstrating that there are no alternative sites available, resulting in a clear breach of policy LP25(3): not only does the ASA generate suitable alternative sites

⁴⁶ App SoC [CD/C8, §8.14]

⁴⁷ APA Valued Landscape Assessment, [CD/G9, §3.2 *infra*]

⁴⁸ Pl SoCG, [CD/C12, §9.1(11)]

for the proposed development, it also suffers from a series of damaging methodological shortcomings which cast doubt on the extent to which any meaningful analysis of alternatives has been properly undertaken. It is not a robust or in any way satisfactory exercise as required by policy.

22. For the reasons set out above, the scheme results in a host of conflicts with local and national policy concerning landscape and the historic environment. Affording appropriate weight to the benefits of this renewables scheme does not counterbalance that policy and real-world harm. Accordingly, there are no material considerations which indicate that a decision should be taken contrary to the development plan and, applying the statutory direction under s.38(6) PCPA 2004, the application should be refused.

CONCLUSION

23. In addition to national policy and s.38(6) PCPA 2004 directing that the proposal should be refused, there are two presumptions against permission arising from the LBA. Although the benefits of the scheme are significant, they cannot overcome the consistent, strong and emphatic policy and legislative direction to refuse this application. For the reasons summarised above, which will be more fully addressed in evidence and articulated in closing submissions, the appeal should be dismissed.

TOM COSGROVE KC
ROWAN CLAPP
Cornerstone Barristers
20 January 2026

List of attendances on behalf of the Council:

- Mr Laurie Handcock, MA (Cantab), MSc, IHBC, MCIfA, Director of Built Heritage and Townscape, Icen Projects (**Heritage** matters)
- Ms. Michelle Bolger, BA(Hons) (Dunelm), Dip.LA, PGCE, FLI, Director, Michelle Bolger Expert Landscape Consultancy (**Landscape** matters)
- Mr. Steven Stroud, BA(Hons), LLB(Hons), MA (Oxon.), MA, MRes, MSt (Cantab), MRTPI, Associate Director, James Bailey Planning (**Planning** matters).
- Ms. Jasmine Whyard, BA(Hons), MSc, MRTPI, Principal Planning Officer, Babergh and Mid Suffolk District Councils (**Conditions**)

