



Department for
Communities and
Local Government

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Our Ref: APP/M2270/A/14/2226557

30 November 2015

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY CAPEL GRANGE SOLAR ENERGY LTD
OS PLOT 8200, BADSELL ROAD, FIVE OAK GREEN, TONBRIDGE, KENT TN12 6QX**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Woolcock BNatRes(Hons), MURP, DipLaw, MRTPI, who made a site visit on 19 May 2015 in connection with your client's appeal against the decision of Tunbridge Wells Borough Council (the Council) to refuse planning permission for the development of a 22.3ha solar photovoltaic park on land 120m to the south of the village of Five Oak Green, along with attendant equipment and infrastructure.
2. On 22 January 2015 the appeal was recovered for the Secretary of State's determination in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

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

Environmental Statement

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 and the addendum to the ES primarily dealing with surface water drainage. The Secretary of State agrees with the

Inspector (IR78) that the information provided in the Environmental Statement is adequate for the purposes of this appeal decision.

Policy and Statutory Considerations

5. 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.
6. In this case the development plan consists of the saved policies of the Tunbridge Wells Borough Local Plan 2006 (LP), together with the Tunbridge Wells Borough Core Strategy 2010 (CS) (IR12). The Secretary of State considers that the development plan policies of most relevance to this appeal are those summarised by the Inspector at IR13-14.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (the Framework), the accompanying planning practice guidance (the guidance), and the Community Infrastructure Levy (CIL) Regulations.
8. The Secretary of State has had regard to his predecessor's Written Ministerial Statement (WMS) – *Solar energy: protecting the local and global environment* of 25 March 2015. The statement explains that meeting energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high quality agricultural land. Specifically, the WMS underlines 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.
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

Main issues

10. The Secretary of State considers that the main issues in this case are those described by the Inspector at IR80.

The development plan

11. The Secretary of State agrees with the Inspector at IR111-112 that the proposal would be contrary to LP Policy MGB1 because it would not preserve the openness of the Metropolitan Green Belt and would conflict with the purposes of including land within it; and contrary to LP Policy EN25, as it would not have a minimal impact on the landscape character of the locality.
12. For the reasons given at IR112, the Secretary of State agrees with the Inspector that the appeal scheme would not accord with CS Policy 2 because it would be at odds with its general presumption against inappropriate development in the Green Belt that would not preserve its openness, and would conflict with the purpose of including land within it; and CS Policy 4, which aims to conserve and enhance locally distinctive sense of place and character. He also agrees with the Inspector that it would be at odds with the policy of

restraint pursuant to CS Policy 14, which aims to maintain the landscape character and quality of the countryside and to protect the countryside for its own sake.

National policy and guidance

13. The core planning principles set out in the Framework encourage the development of renewable energy, whilst recognising the intrinsic character and beauty of the countryside. The Secretary of State agrees with the Inspector's conclusion (IR113) that LP Policies MGB1 and EN25 are not fully consistent with the balancing exercise for sustainable development set out in the Framework. Like the Inspector, the Secretary of State gives significant weight to the Framework in determining this appeal and has gone on to perform a balancing exercise to weigh the benefits of the proposed solar park against its disadvantages.

Green Belt

14. The Secretary of State agrees with the Inspector (IR82) that the proposal is inappropriate development in the Green Belt. He has had regard to paragraph 87 of the Framework which states that inappropriate development is, by definition, harmful to the Green Belt and that it should not be approved except in very special circumstances. He has also taken account of paragraph 88 of the Framework which states that substantial weight should be given to any harm to the Green Belt, and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Furthermore, the Secretary of State has taken account of paragraph 91 of the Framework which states when renewable energy projects comprise inappropriate development, very special circumstances need to be demonstrated if projects are to proceed, and these may include the wider environmental benefits associated with increased production of energy from renewable sources.

15. The Secretary of State agrees with the findings of the Inspector at IR83-84, that the proposal would have a significant adverse effect on the openness of the Green Belt, and would adversely affect the countryside, even if controlled by condition. For the reasons given by the Inspector at IR84, the Secretary of State agrees that the proposal would therefore harm the Green Belt.

Character and appearance

16. The Secretary of State has given careful consideration to the Inspector's reasoning (IR85-87) and agrees with his conclusions (IR88) that the proposal would harm the character of the area, and would have a significant adverse effect of moderate/substantial significance on the local landscape.

Agricultural land and soils

17. For the reasons given at IR89-91, the Secretary of State agrees with the Inspector that the limited grazing likely to be available under and around solar panels would significantly underutilize a large expanse of the best and most versatile agricultural land for a long time, conflicting with national policy and guidance; and that this matter weighs heavily against the proposed development (IR91).

Biodiversity

18. The Secretary of State agrees with the Inspector's conclusion at IR93 that, overall, the proposed development would enhance biodiversity. He agrees too that this is a consideration that weighs in favour of the proposal.

Heritage assets

19. For the reasons given by the Inspector at IR94-95, the Secretary of State agrees that the proposal would have a moderate adverse effect on the setting of the Grade II Brook Farmhouse. He agrees too that this is a consideration which should be given special weight and considerable importance in the overall planning balance. The Secretary of State agrees that, in terms of the Framework, the adverse impact on this asset would amount to less than substantial harm and that this is a consideration to be weighed against the benefits of the proposed development.

Renewable energy

20. The Secretary of State agrees with the Inspector (IR96) that the proposal, with an estimated installed capacity of 10.36 MW and average electrical output of 11,850 MWhr/yr, would make a significant contribution to achieving renewable energy targets; and that the wider environmental and energy security benefits of the proposal weigh significantly in its favour.

Other matters

21. The Secretary of State agrees with the Inspector that there is scope within the appeal site for the design and implementation of a drainage scheme that would ensure the development did not significantly increase flood risk (IR97). For the reasons given at IR98, the Secretary of State agrees with the Inspector that noise and disturbance could be minimised by the implementation of an approved construction environmental management plan. He also agrees that the scheme would not have a dominating or overbearing effect on the outlook from nearby residential dwellings, and accepts the Inspector's conclusion that there is no evidential basis for claims that the proposal would adversely affect tourism. Turning to potential traffic problems, the Secretary of State agrees with the Inspector (IR99) that there is no convincing evidence that construction traffic would significantly increase the risk to local road users and also agrees that a construction traffic management plan would help to minimise any congestion or risk to highway safety.

Conditions

22. The Secretary of State has had regard to the schedule of conditions at Annex A to the IR. He is satisfied that the Inspector's proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that they would overcome his reasons for dismissing this appeal.

Planning Balance

23. The Secretary of State has given careful consideration to the Inspector's overall balancing exercise at IR 101-113. He considers that significant weight should be given to the contribution the scheme would make to the Government's commitment to tackle

climate change by reducing carbon dioxide emissions and towards energy security, along with ecological enhancement, and the benefits that would result to the local economy from job creation and farm diversification (IR103).

24. However, he disagrees with the Inspector's conclusion (IR105) that the temporary nature of the proposal is relevant insofar as the effects of the scheme, both positive and negative, would endure for a limited period. The Secretary of State takes the view that 25 years is a considerable period of time and the reversibility of the proposal is not a matter he has taken into account in his consideration of whether the scheme should go ahead. Reflecting March's WMS, the Secretary of State has, rather, considered whether there is compelling evidence to justify the proposal's location on the best and most versatile agricultural land. The significant underutilisation of 14.4 ha of the best and most versatile agricultural land is a factor that weighs heavily against the proposal. Like the Inspector, and having regard to the terms of the CIL Regulations, the Secretary of State agrees that no weight should be given to the offer by the appellant of a community fund. He has also given no weight to local concerns about the effects on property values.
25. Against the positive benefits described at paragraph 23 above, the Secretary of State agrees with the Inspector at IR106 that the identified harm to the character and appearance of the area is of moderate/substantial significance. He also attaches special weight and considerable importance to the moderate adverse effect on the setting of a listed building, as well as giving substantial weight to the harm to the Green Belt

Overall conclusions

26. For the reasons set out above, the Secretary of State considers that the balance in this case falls against the proposal. In particular, the proposal would conflict with Green Belt policy. Furthermore, there is no compelling evidence to justify the use of 8.5 ha of the best and most versatile agricultural land over and above that which would be utilised by the permitted scheme. The proposal would also be at odds with national policy and guidance, which encourages the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land. Overall, the Secretary of State considers that the evidence submitted does not demonstrate that the impacts of the appeal scheme are, or could be made, acceptable; and he concludes that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Like the Inspector, the Secretary of State therefore considers that the proposal would not accord with the requirements for sustainable development set out in the Framework.
27. In coming to his decision, the Secretary of State has taken account of the permitted scheme as an important material consideration, but it does not alter his conclusions that the benefits of the appeal scheme do not clearly outweigh the identified harm, and that the very special circumstances necessary to justify the development do not exist.

Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the development of a 22.3ha solar photovoltaic park on land 120m to the south of the village of Five Oak Green, along with attendant equipment and infrastructure.

Right to challenge the decision

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. From 26 October 2015, 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.
30. A copy of this letter has been sent to Tunbridge Wells Borough Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

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

Date: 8 October 2015

Town and Country Planning Act 1990

Tunbridge Wells Borough Council

Appeal by

Capel Grange Solar Energy Ltd

Site visit made on 19 May 2015

Land at Capel Grange Farm, Badsell Road, Five Oak Green, Kent TN12 6QX

File Ref: APP/M2270/A/14/2226557

File Ref: APP/M2270/A/14/2226557

Land at Capel Grange Farm, Badsell Road, Five Oak Green, Kent TN12 6QX

- 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 Mr Matthew Hayes, Capel Grange Solar Energy Ltd, against the decision of Tunbridge Wells Borough Council.
- The application Ref: 14/00271/FULL, dated 31 January 2014, was refused by notice dated 15 September 2014.
- The development proposed is "The development of a 22.3 ha solar photovoltaic park on land 120 m to south of the village of Five Oak Green, along with attendant equipment and infrastructure."

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. The site lies with the Metropolitan Green Belt. The appeal was recovered, by letter dated 22 January 2015, for determination by the Secretary of State because the appeal involves proposals for significant development in the Green Belt.
2. The planning application was accompanied by an Environmental Statement dated January 2014 (ES) under The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011 No. 1824). An addendum to the ES, primarily dealing with surface water drainage, was submitted in May 2014. The response from consultees is set out later in this report.
3. The Council refused the application, against officer recommendation for conditional approval, finding that the scheme would be contrary to local and national policy for the following three reasons.
 - (1) The proposed development would result in the unacceptable loss of best and most versatile agricultural land, and it has not been adequately demonstrated that poorer quality land could not be used instead.
 - (2) Elements of the proposed development constitute inappropriate development in the Green Belt. Insufficient very special circumstances have been demonstrated to outweigh the harm caused to the Green Belt, taking into account the duration of the development for 25 years.
 - (3) The proposed development, by reason of its scale and appearance, would have a harmful effect on the character and appearance of the site, which would be detrimental to the landscape setting of Five Oak Green.
4. At the site visit I asked for clarification about what documentation comprised the application, and what was illustrative material. This was clarified in Parts 1 and 2 of the letter from the appellant dated 4 June 2015.¹ Application plans that were before the Council and that are now to be considered in this appeal are set out in Annex B to this report.
5. The Council advised at my site visit that it had granted planning permission on 10 April 2015 for the development of a solar photovoltaic park on part of the appeal site. The on-site differences between the appeal scheme and the permitted scheme were highlighted to me at my site visit. I requested details

¹ Letter from Wardell Armstrong marked on file.

about the permitted scheme, which are included in Part 3 of the 4 June 2015 letter.² In summary, the permitted scheme reduced the site area from 22.3 ha to 13.2 ha, the capacity of electricity generation from 10.36 MW to 6.6 MW, and the utilisation of Grade 3a classified agricultural land from 14.4 ha to 5.9 ha.³ An overlay plan showing the appeal scheme and the permitted scheme is included at Document 3.5 of this report. The appellant and the Council submitted written representations about the implications of the extant permission.⁴

6. I also requested details about solar park/farm development in the wider area, that I saw under construction at the time of my site visit, at Sherenden Road (a 27 ha site also known as the Hadlow scheme) and Knells Farm (a 25 ha site). These details are included in Part 4 of the 4 June 2015 letter.⁵

The Site and Surroundings

7. The appeal site lies to the south-east of the village of Five Oak Green, and is set back from Badsell Road (B2017) to the north of the site, from which the site takes access. Colts Hill, part of the A228, lies to the east. The site is currently used predominantly for orchards, and is crossed by several electricity lines. A Public Right of Way (PROW) from the centre of village, which provides public access to the footpath network to the south, abuts part of the western boundary of the appeal site, in the vicinity of Alder Stream. Brook Farmhouse is a Grade II listed building that lies near to the south-western corner of the appeal site. Other heritage assets are shown on ES Figures 7.1-7.3.
8. The land around the village is a reasonably flat part of the Medway Valley. However, there is a ridge of higher land located towards the eastern part of the appeal site. The south-eastern corner of the site is about 40 m AOD and its north-western boundary is about 24 m AOD.⁶ An extended Phase 1 habitat map is included as ES Figure 8.1. This indicates that the site is predominantly an orchard, with species rich hedgerows around most of the site perimeter, and species poor windbreaks located across parts of the site.
9. The appeal site lies within National Character Area NCA121 Low Weald, which is characterised by broad, low-lying, gently undulating clay vales, with a generally pastoral landscape of arable farming and fruit cultivation. In the 2004 Landscape Assessment of Kent the northern and western parts of the site lie within Landscape Character Type (LCT) Low Weald Fruit Belt with the south-eastern part located within LCT Kent Fruit Belt. The former comprising a mixed farmed landscape of dwarf fruit trees, arable, hops and pasture. The latter with more small scale orchards with high hedges.
10. The site lies wholly within Local landscape Character Area 13: Paddock Wood/Five Oak Green Low Weald Farmland (LCA13) in the Supplementary Planning Document Borough Landscape Character Area Assessment 2002 (with 2011

² Application Number 14/506168/FULL. Relevant documents are included as Documents 3.1-3.5 attached to this report.

³ *Planning Statement* November 2014 at Document 3.4.

⁴ Documents 6 and 7.

⁵ Documents 4.1 and 4.2 attached to this report. The location of these sites in relation to the appeal site is shown on Document 4.3.

⁶ The local topography is shown on the drawing entitled Site Topography; Hydrology, Drawing No.LE11951/Figure5.2, which is marked on the file. This shows contours at 0.5 m intervals.

update). LCA13 is characterised by a mixed farmed landscape with extensive open arable fields, dwarf fruit orchards and pockets of hops and pasture, with remnant wind breaks providing a strong vertical element in the open flat landscape. Local landscape character objectives for the area include respecting the vulnerability of the slopes rising up to the south to new developments/land use change.

11. An agricultural land survey, which included samples at a grid density of one boring per hectare, along with two hand-excavated soil inspection pits, determined that of the 27.8 ha assessed, 66% of the site (18.4 ha) was subgrade 3a and the remaining 9.4 ha subgrade 3b. The subgrade 3b land is located in two areas; an area along part of the northern boundary of the site near to Badsell Road, and a central belt extending from the south of Brook Farm almost to the east of the appeal site.⁷ For the 22.3 ha appeal site the appellant refers to 14.4 ha (65%) of Grade 3a land and 7.9 ha (35%) of Grade 3b land.

Planning Policy

12. The development plan includes saved policies of the Tunbridge Wells Borough Local Plan 2006 (LP), along with the Tunbridge Wells Borough Core Strategy 2010 (CS).
13. LP Policy MGB1 requires, amongst other things, that the openness of the Metropolitan Green Belt would be preserved and that no development which would conflict with the purposes of including land within it would be permitted. It adds that planning permission would not be granted other than for the development listed in the policy. The proposed development is not included in the specified list. However, clause (4) of Policy MGB1 does provide for engineering, other operations or any material change of use provided that it would maintain the openness of the Green Belt and would not conflict with its purposes. LP Policy EN25 sets out criteria for development outside the defined Limits to Built Development, in which the appeal site lies. These include having a minimal impact on the landscape character of the locality, and no detrimental impact on the landscape setting of settlements.
14. CS Policy 2 defines the boundaries of the Green Belt and includes a general presumption against inappropriate development that would not preserve its openness, or would conflict with the purpose of including land within it. It adds that any new development should accord with the provisions of PPG2 or its replacement. CS Policy 4 aims to conserve and enhance locally distinctive sense of place and character. CS Policy 14 concerns development in villages and rural areas, and provides, amongst other things, that the countryside would be protected for its own sake and that a policy of restraint would operate in order to maintain the landscape character and quality of the countryside.
15. The parties also refer to the *National Planning Policy Framework* (the *Framework*) and *Planning Practice Guidance* (the *Guidance*).

⁷ The distribution of these soils is shown on Plan 1 of the Vaughan Redfern Report, which is marked on the file.

The Proposal

16. The proposed solar panels would have a maximum height of 2.25 m. They would be enclosed by a 2 m high deer fence with 2.5 m high pole-mounted infra-red security cameras at approximately 50 m intervals along the boundary. Hedgerows around the site would be retained with gaps filled and vegetation allowed to grow to a height of 3 m. The land around and beneath the panels would be laid to grass and grazed by sheep. Land between the proposed security fence and the boundary of the holding would be retained as orchard, with some wildflower planting and possibly some Christmas tree production.
17. The appeal scheme would have a total estimated installed capacity of 10.36 MW with an average electrical output of 11,850 MWhr/yr. This could service 2,800 homes, with carbon dioxide emission savings of between 122,944 tonnes and 265,144 tonnes over its 25 year life, depending on the energy mix which applied at the time. The grid connection is proposed to be dealt with in a separate application, but it would be via an underground cabled connection from the proposed on-site substation to the existing overhead 33 kV line that crosses the site.⁸
18. A community fund is offered by the appellant at a rate of £1,000 per installed megawatt for environmental, social or economic projects within the vicinity of the proposed solar park.

The Case for Tunbridge Wells Borough Council

19. The Council's case is set out in its written representations statement dated November 2014. The gist of the Council's objections to the proposal are as follows.⁹

Harm to character and appearance of the site and landscape setting of Five Oak Green

20. The site is located outside the Limits to Built Development identified in the LP and so is within the open countryside, where the *Framework* recognises the intrinsic character and beauty of the countryside as a core planning principle, and expects valued landscapes to be protected and enhanced. The *Guidance* indicates that local topography is an important factor in assessing whether large scale solar farms could have a damaging effect on the landscape. Adverse landscape effects during the operational phase at year 10 are likely to be of moderate to substantial significance. Short and medium views would be most affected, with the ES finding a moderate to substantial adverse effect from Viewpoints 1, 2 and 3. The visual impact may reduce over time with proposed hedgerow planting and management, but this would not be a fully effective screen, particularly in winter or from the upper windows of nearby residential properties. The proposal would cause harm to the visual amenities and rural character of the area, and would adversely affect the setting of the village, contrary to LP Policy EN25, CS Policies CP4 and CP14, and paragraphs 17 and 109 of the *Framework*.

⁸ Planning Statement dated January 2014 paragraph 1.7.

⁹ The following is based on the Council's Written Representations Statement dated November 2014.

Harm to the Green Belt and insufficient very special circumstances

21. Paragraph 91 of the *Framework* advises that elements of many renewable energy projects will comprise inappropriate development, which is by definition harmful to the openness of the Green Belt. The proposed extensive area of panel arrays and ancillary electrical equipment would conflict with one of the purposes of the Green Belt, which is to assist in safeguarding the countryside from encroachment. In considering whether very special circumstances exist the demonstrable visual harm should be added to the harm caused by reason of inappropriateness. The proposed development would be reversible, but 25 years would be a long timescale, with an option of extending further through additional planning applications giving a degree of permanence. The environmental benefits that would accrue from the scheme in reducing carbon emissions and increasing energy security, or the lack of other potential sites for solar farms within the environmentally constrained Borough, the benefits to ecology through a less intensive agricultural use, and the support for sustainable growth of rural businesses and enterprises, are not considered sufficient to outweigh the harm to the Green Belt. It is not accepted that very special circumstances exist, and the proposal does not comply with CS Policy 2 or LP Policy MGB1.

Unacceptable loss of best and most versatile agricultural land

22. Paragraph 112 of the *Framework* requires the presence of the best and most versatile agricultural land (grades 1, 2 and 3a) to be taken into account. It adds that significant development, such as the appeal scheme, should be shown to be necessary, and that areas of poorer quality land should be used in preference to that of higher quality. The *Guidance* encourages the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided it is not of high environmental value. It adds that proposals involving greenfield land should, amongst other things, allow for continued agricultural use where applicable and/or encourage biodiversity.
23. The grazing of sheep proposed in this case would be an incidental use rather than resulting in the creation of a viable sheep farming enterprise. The adverse effect on agriculture also arises from the long time that the solar park would operate, offering no flexibility to return to a more productive agricultural use. The continued use of the more productive parts of the site for fruit growing would take advantage of the soil quality. The Council acknowledges that it is unlikely that any significant amounts of poorer quality agricultural land would be available for a large scale ground mounted solar installation, but there is no requirement for a specific quantum of land to be used for solar farms within the Borough. Opportunities will exist in other parts of the south-east of England using brownfield land and lower grade agricultural land. The appellant's sequential analysis lacks robustness.
24. The scheme permitted at Sherenden Road involved mainly grade 3a land, but the circumstances are not comparable to the appeal scheme because that proposal included mitigation through upgrading the quality of land elsewhere. Furthermore, the appeal scheme has a greater harmful visual impact due to its local topography and the proximity of the village of Five Oak Green. The land at Knells Farm was nearly all Grade 3b.

The planning balance

25. The benefits of the proposal through generating a significant amount of renewable energy are outweighed by the harm that would result to the landscape, visual amenities and setting of Five Oak Green, the loss of Green Belt openness, and the loss of potentially more productive agricultural land for 25 years. Notwithstanding the proposed mitigation, the solar park could not be made acceptable, and would conflict with the development plan, the *Framework* and the *Guidance*.

The permitted scheme

26. The permitted 6.6 MW scheme is significantly different from the appeal scheme, and the revisions were sufficient to overcome the Council's three reasons for refusal of the appeal scheme. An important material difference was the reduction of the area of the best and most versatile agricultural land used from 14.4 ha to 5.9 ha. The significant reduction in scale would reduce the impact on the openness of the Green Belt. The smaller scale scheme would have a reduced impact on the setting of the village by 'drawing away' panels and security fencing from the western and southern boundary of the site, so creating a much wider buffer of undeveloped land adjacent to Alder Stream and Brook Farm. This area is particularly sensitive because of the PROW. The permitted scheme also avoids the highest parts of the site, which reduces its visibility from both the village and the A228. The reduced scale of the permitted scheme would also reduce the wider environmental benefits in terms of carbon reduction, but the balanced planning judgement weighed in favour of granting permission for the revised scheme.¹⁰

The Case for Capel Grange Solar Energy Ltd

27. The appellant's statement of case and final comment respond to the Council's three grounds of refusal, the gist of which is set out below.¹¹

Impact on agricultural land

28. Capel Grange Farm is a unit of about 49 ha (120 acres) and the principal enterprise is apple production. Margins are declining and recent adverse weather patterns have caused yield fluctuations with resultant swings in profitability. Problems with soil type and susceptibility to frost damage mean that certain areas of the farm are unlikely to produce profitable yields, even if replanting was undertaken. These poorer areas have been selected for the solar park with replanting proposed on the better areas of the farm. The solar park has the potential to strengthen the business by levelling out fluctuations in profitability and releasing resources to develop and improve other areas of the business in the longer term and provide a pension for the farm partners.¹²
29. The site would continue in agricultural use throughout its 25 year life as a solar park, after which it would be returned to full agricultural use. There would be no permanent and irreversible loss of best and most versatile agricultural land. The less intensive use of the site would bring ecological benefits. These are matters

¹⁰ Document 7.

¹¹ Statement of Case dated October 2014 and Final Comments dated December 2014.

¹² Financial appraisal of the proposed solar park at ES Appendix 4.1.

which can be controlled by planning conditions, as is evident from the submitted appeal decisions. The proposal is not contrary to the provisions of either the *Framework* or the *Guidance*.

30. There are limited opportunities for siting large solar installations in the Borough, and the Capel Grange site was identified after a robust site search and identification exercise that was almost identical to that undertaken in the Sherenden Road and Knells Farm schemes. There is a complete lack of consistency in the Council's treatment of the Sherenden Road and Knells Farm schemes, and the appeal scheme, with regard to the use of the best and most versatile agricultural land and the application of the *Guidance*.

Green Belt evidence

31. The combination of a range of factors demonstrate that very special circumstances apply sufficiently to the appeal scheme to allow temporary development of a solar park at this Green Belt site. These include:
- (a) Constraints restricting the availability of suitable sites. A sequential test was followed in order to identify the Capel Grange site, including constrained areas, cultural heritage considerations, topography and grid connection.
 - (b) Proximity to an available electricity grid connection point. A grid connection has been secured for the appeal scheme, and there is now no further capacity in the Pembury to Paddock Wood 33 kV circuit.
 - (c) Other renewable energy technologies are unlikely to be appropriate for this site.
 - (d) Solar photovoltaic is a reliable and sustainable technology, and a major element of the Government's commitment to tackle climate change. The *Framework* states that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.
 - (e) The iterative design of the scheme.
 - (f) The height of the panels and screening by trees and hedgerows.
 - (g) The carbon dioxide emission savings from the offset of electricity generation by fossil fuels, along with ecological enhancement.
 - (h) Job creation during construction and 1 or 2 permanent jobs over the life-time of the development.
 - (i) Establishment of a community benefit fund.
 - (j) No negative impact on local tourism.
 - (k) The site is not within any national designation other than Green Belt.
 - (l) Construction and decommissioning phases would be temporary, and after 25 years all equipment would be dismantled and removed from the site. The Council considers that the appeal scheme would achieve a degree of permanence. However, the appeal should be considered on the basis of a temporary period for 25 years. Any degree of permanence would be a matter to be considered in the future.

32. Although very special circumstances exist for the proposed development, it would not affect the openness of the site or conflict with the purposes of the Green Belt designation, and so would accord with clause (4) of LP Policy MGB1. The proposal would represent agricultural diversification and so would comply with LP Policy MGB1. The CS is silent in respect of the need for development of medium/large scale renewable energy infrastructure.

Scale and appearance

33. The extent of the solar park would be relatively large in relation to the village, but there would be limited perception of it from sensitive receptors. The proposed solar park would have limited visibility from within the surrounding area and screening would be provided by hedgerows and trees. By years 5-8 there would be no significant effects on the landscape character of the area. The site can be sufficiently screened such that it would not have a detrimental impact upon the landscape setting of Five Oak Green. The Sherenden Road and Knells Farm photovoltaic schemes are unlikely to be visible in the same views from transport routes, PROW or public viewpoints, and the development at Capel Grange would not result in any cumulative impact. The proposed development is of an appropriate scale, mass and design, in accordance with relevant provisions of LP Policy EN25.

The permitted scheme

34. The extant planning permission has clearly established a precedent for the development of a solar park at the appeal site within the Green Belt. Such development would be regarded as inappropriate development and very special circumstances were demonstrated in order to justify the permitted development. Having established that very special circumstances exist for the extant permission, such very special circumstances would apply equally to the appeal scheme. The moderate extension of the permitted scheme would have a negligible additional landscape and/or visual impact. Permitting the appeal scheme would increase the average electrical output by 4,300 MWhr/yr above that which would be generated by the permitted scheme, which could serve an additional 1,020 homes. Carbon dioxide emissions offset during the 25 years would increase above the offset that would result from the permitted scheme from between 44,613 tonnes and 96,213 tonnes, depending on the energy mix at the time. The appeal scheme would also allow the available grid connection to be optimised.
35. The appeal scheme would increase the extent to which the best and most versatile agricultural land was used. However, the proposed development would be temporary and reversible, it would have agricultural diversification benefits, and a negligible impact on the local agricultural resource given the ongoing agricultural activities proposed. The wider benefits of the appeal scheme significantly outweigh any adverse impact of using the additional Grade 3a agricultural land. The additional benefits from the appeal scheme significantly outweigh any impacts which may be associated with a moderate extension of the extant permission.¹³

¹³ Document 6.

Written Representations

Application stage

36. The Council received representations from 31 households about the application, including 9 representations in support of the proposal and 1 neutral submission. The representations are summarised in Section 6 of the Council's Planning Committee Report, dated 10 September 2014, and the gist of submissions at the application stage are as follows.
37. Issues raised by objectors included the use of agricultural land for a long period, flood risk, harm to the setting of listed buildings and to the character and appearance of the area, cumulative impact with solar farms surrounding the village, loss of orchards and biodiversity, noise and safety concerns. Some objectors, including the Campaign to Protect Rural England (CPRE) considered the proposed development to be inappropriate development in the Green Belt and that no very special circumstances exist.
38. Supporters of the proposal referred to the generation of clean electricity by safe technology, low yields from the orchards with irregular cropping due to frost damage, limited visual impact from public viewpoints, that flood risk could be decreased with the replacement grass sward, along with improved land fertility and biodiversity.

Consultees

39. Consultation replies at the application stage are summarised in section 7 of the Council's Planning Committee Report, and the gist of these submissions follows.
40. Capel Parish Council initially (25 February 2014) recommended refusal of the application and was concerned about flooding and potential for the site to be reclassified as brownfield land at the end of the 25 year period. Subsequently the Parish Council voted to recommend approval (1 July 2014), but noted concerns about cumulative effects and whether the proposal was suitable within the Green Belt.¹⁴
41. The Environment Agency removed its initial objection following submission of the amended Flood Risk Assessment, and subject to the imposition of a condition about surface water drainage. The agency acknowledged that the site is situated within flood zones 1, 2 and 3, but does not dispute that construction of a solar array is acceptable within any flood zone. The Upper Medway Internal Drainage Board has no objection subject to the imposition of conditions.
42. Natural England advised that the proposal is unlikely to affect any statutorily protected sites, and did not wish to comment on this proposal, other than referring to its standing advice about protected species.
43. Kent County Council advised that the site lies within an area of some limited archaeological potential, especially associated with early prehistoric remains and post medieval agricultural and horticultural use. However, it considered that heritage issues here could be addressed through a planning condition which secured the implementation of a programme of archaeological work.

¹⁴ Four councillors voted for approval, two voted against.

- 44. Highways and Transportation Kent County Council raised no objection to the proposal, but recommended conditions regarding a traffic management plan and condition surveys for Badsell Road. The County also noted that although the proposal would be visible from PROW WT194, which runs adjacent to the site, it would not directly affect the PROW.
- 45. The Highways Agency has no objection.
- 46. NATS has no safeguarding objection to the proposal regarding air traffic.
- 47. Kent Police provided general crime prevention advice about solar farms.

Appeal stage

- 48. There were 26 written submissions at the appeal stage, which are summarised as follows.

Written submissions objecting to the proposed development (11)

- 49. Mrs Gwendoline Lamb, local resident. Objects to the scale of the proposed development in this rural area and the use of prime agricultural land, along with a fear that it would make flooding worse.
- 50. Bryan and Jane More, local residents. Concerned about serious implications for increased flooding, which could be caused by this proposal within Green Belt land.
- 51. Roger and Adrienne Bishop, local residents. The need for renewable energy does not 'trump' Green Belt. There would be a very large impact on the surrounding area and any ecological benefit would not outweigh the visual amenity and cumulative effects. Five Oak Green would be hemmed in by two large industrial solar developments. Government guidance suggests brownfield sites and commercial units could provide the same benefits with little or no environmental impact. There is no national requirement to build such development within a local authority's area, in any event consent has been granted for a scheme and Government targets have been exceeded.
- 52. The scheme would not protect the countryside for its own sake, and would not be appropriate to the scale and character of the settlement, and so would conflict with Local Plan policy. It would also result in the removal of over 10,000 trees and use best and most versatile agricultural land, which would damage the prospect of its return to full agricultural use. There have never been any sheep on the land. The Environment Agency has dropped its objection, but the rising water table coupled with runoff from the panels and surface water would exacerbate flooding. Construction traffic would impact the underlying clay. The existing fruit trees mitigate some of the flooding threat. Mr and Mrs Bishop refer to EU policy for renewable energy, and cite statements about subsidised capacity in solar and wind energy schemes resulting in overcapacity.
- 53. Fiona Pengelley, local resident. The adverse impact upon the character and appearance of Five Oak Green would be significant and of great concern to the local community. The site is neither predominantly flat, nor gently sloping, but follows the contours of Colts Hill. The solar park would be clearly visible from the main footpath out of the village and any newly planted hedges would take over 10 years to mature. There would be a cumulative effect with the permitted

scheme as the two sites would be visible shortly after each other along the same journey. The scheme would grub out over 12,000 trees, and increase the risk of flooding. The best and most versatile agricultural land should be retained for food growth, and there are no special circumstances to use this Green Belt land. It has not been shown that there are no other appropriate sites, eg Transfesa Industrial Estate at Paddock Wood.

54. Bruce and Liz Lynes, local residents. Concerned about the impact on the countryside and its tranquil feel, especially from footpaths around the area. It would have a detrimental effect on the values of the surrounding properties, and make way for more industrialisation. After 25 years the site would become a brownfield site, allowing for housing.
55. Laura Donaghue, local resident. There has been no public consultation and no evidence of any intent of working with the community. Capel Parish Council ignored strong objections from the community. The visual effect of 2.25 m high panels on the local countryside would be huge and the scheme would not respect the site. The site would be a mere 200 m from main living areas on the first floor of some properties. Vegetation is seasonal. Concerned about the cumulative effect with permitted scheme, and loss of the blossom trail and implications for tourism. The community are not willing partners in this development.
56. JW and MA Fenton, local residents. The Metropolitan Green Belt acts as the lungs around London and it is our duty to protect and preserve it from becoming a brownfield site. Connection to the grid here does not amount to very special circumstances, and there is no quota for Tunbridge Wells to fulfil. Locations should be found that are more appropriate following Government guidelines to use brownfield or rooftop sites. Flood risk in Five Oak Green has not been addressed, particularly properties at the eastern end of Badsell Road. The Environment Agency now calculates that greenfield runoff from the site will increase by between 1.8%-8.6%. There is limited space for this to be absorbed and no amount of work to ditches or swales would guarantee that flooding would be eliminated. The risk would remain. Local residents are still trying to settle back into their houses after the floods of 23 December 2013. The removal of trees would have a significant detrimental effect.
57. Mr and Mrs Fenton consider that their basic human right to the peaceful enjoyment of their property has been shattered by the insensitivity of this proposal. The loss of good quality agricultural land would conflict with Government policy and guidance. There is a million square feet of warehousing roof available at one of the largest distribution centres in Europe nearby at Paddock Wood. The village would be sandwiched between two solar photovoltaic developments. Views from local footpaths would be destroyed by either the solar parks or the high hedging necessary to hide them. The proposed development would be overlooked by many properties, including several listed buildings. The Government Response to Consultation on Changes to Financial Support for Solar PV in 2014 refers to evidence that large scale solar PV development is deploying faster than can be afforded. Financial viability of the farm should take into account the growing and selling of Christmas trees. The likelihood of sheep grazing would need to consider insurance and tax implications.

58. Mr and Mrs BR Turner, local residents. Object to the industrialisation of the land immediately bordering their listed property, which forms a central part of the village. An additional solar park would swamp the village and make it a 'no go' area during the construction period. There is still concern about the threat of flooding. Good agricultural land should be used for growing food and the orchard of some 12,000 trees would be destroyed. Mass solar panels are not the answer to long term energy needs, producing only a small percentage of supply, and even less on a dark winter's day when energy needs are greatest.
59. Ewan & Jane Mackenzie, local residents. Flooding is a real and current problem in Five Oak Green. A solution that allows water to be taken through the village to the fields the other side of the railway (the north) would be needed before they would be happy to endorse a development that would add to this runoff.
60. Helen Hardware, address not given. Large quantities of trees would need to be removed and the addition of the solar park would spoil the numerous characteristics of Five Oak Green. The village already has a problem with commercial traffic, inadequate infrastructure and parking. The additional traffic from the scheme would create further damage, congestion and danger.
61. Tara Brooksbank, local resident. The proposed solar farm would ruin the look and feel of the village, which is prone to flooding. The loss of trees would strongly impact on this on-going problem. Solar farms are extremely ugly and unsightly and would bring no benefit to the village. It is the overall feeling that this must not be allowed to happen to this area.

Written submissions in support of the proposed development (15)

62. Mrs M Marsh, local resident. Generating power from sunlight is worthwhile. There is a need to drastically reduce the use of fossil fuels and nuclear power has a long legacy. Solar parks allow for panels to be orientated so as to maximise output, and livestock can still graze underneath the panels. This site is well protected from being overseen, and frost has affected apple crops. Farmers need to be able to diversify.
63. Stephen Davey, local resident. There is a need for energy generation alternatives to using fossil fuels, and this scheme would generate sufficient power for nearly 3,000 households. Wind farms are unsightly and damage wildlife and habitat. So too, do tidal schemes. A solar park has no moving parts and creates no noise. It would not create an additional flood risk, leaves the land suitable for sheep farming, and for return to farming at the end of the life of the panels. A larger solar park on better quality farmland has been permitted at Hadlow.
64. Ann Smith, local resident. We have a responsibility to provide clean energy for future generations. Green Belt land would not be lost as this would be a temporary development and would remain as agricultural land. The land at Hadlow for the permitted scheme was graded 3a.
65. Charles Darbyshire, one of landowners of the appeal site. On poorer sites it is not possible for apple production in the UK to compete with imported product. Growers have to diversify. A solar park with sheep grazing beneath panels would allow farming to continue. Additional rain water storage has been added, and the Upper Medway Drainage Board considers the scheme offered potentially significant flood protection to Five Oak Green. Other benefits include a teaching

facility, increased wildlife and community benefit fund in excess of £250,000 during its lifetime. The land could easily be returned to bare farmland at the end of its life. Grade 3a land is not that good, particularly if it is within a frost pocket. The site is predominantly flat, surrounded by existing hedging, with any gaps to be filled with new tree plantings. The Council's decision is flawed. It permitted a larger scheme on 3a land in the Green Belt. Both schemes can fit into this area without negative impact. Surveys show 85% support for renewable energy nationally. The appeal should succeed for the sake of securing power supplies for the nation, for farming to continue and to maintain a diverse countryside.

66. Ingrid Cohen, resident of East Peckham. The need for renewable energy solutions is real, and this site lends itself very well to a solar park. There are misconceptions about flood risk and the Environment Agency is now in favour of the proposal. The proposed development is supported by Capel Parish Council and consultees. A comparable application was approved on the Hadlow site.
67. Nicholas Pope, resident of Tunbridge Wells. The UK is in desperate need of renewable energy to meet Government targets. The scheme would have a minor impact on the land, but would provide critical electricity. It would have a dual use with sheep grazing, which seems a good use of land that is not suitable for orchards. The solar park would be well screened from view, and would appear less intrusive than some hillsides covered in plastic to provide protection for fruit and vegetables.
68. Sue Bottomley, local resident. Solar parks are the way forward for the future. The infrastructure would not be seen from the road. Trees and sheep would be on the land. The scheme would not devalue property in the surrounding area.
69. Dr Alaric Smith PhD(Biogeography) MSc (Biology) BSc (Zoology), local resident. The project would provide an excellent source of renewable energy, while providing for increased biodiversity and reduced flood risk, but not changing the status of the land. There is a moral and ethical duty to generate energy in cleaner and more sustainable ways. The visual and physical impacts on the local area would be small in comparison to other projects, such as housing. Solar panels on roofs would only provide a small fraction of the solar plant needed to counteract the effects of global warming.
70. Rhiannon Wellington, address not given. There is a need to embrace sustainable power supplies for future generations. Capel Parish Council supported the scheme, and the Government supports such schemes. The land could still be farmed, for sheep or goats, or used to produce honey. It is currently banded average to poor in terms of farming. The visual impact would be minimal. There is no flood risk, and flooding could be reduced. It could be decommissioned and dismantled easily. A larger scheme on better quality farm land has been permitted at Hadlow.
71. AJ Burgess, resident of Tunbridge Wells. Rejection of this proposal would be at odds with wider policies of promoting renewable and low carbon energy in the locality. Local concerns about visual impact do not appear to be valid. There seems to be some inconsistency with the decision to approve the scheme at Hadlow.

72. Christopher Dennis BSc(Hons) ACIEEM, local resident and professional ecologist. Tunbridge Wells Borough Council should favour such projects because of the responsibility to help tackle climate change. The scale, location and design of the scheme would preserve the landscape character of the area. It would increase biodiversity due to the instatement of wildlife-friendly hedgerows and tree lines.
73. Megan Forster, local resident. Solar panels are no more intrusive or ugly than fields of polytunnels, or the yard of broken buses next to the proposed site. More trees would be planted around the boundary which would compensate for the fruit trees that have come to the end of their productive life.
74. JM Sells, local resident. The site is ideal as being away from the main village and surrounded with high hedges. The scheme would be a great asset for the village. The site would still be able to raise animals and crops on land which has poor soil. With energy shortage the village would be helping the future generation, and a substantial fund would be used for village improvements.
75. Gordon Darbyshire, local resident and partner in Capel Grange Farm. The scheme would enable diversification and to continue top fruit production on areas of the 120 acre farm better suited to this. On land which tends to lay wet in winter, dries out in summer, and is at high risk of frost damage, there is very limited choice. Unviable orchards would be gubbed and not replanted. Solar panels are more effective than crops grown for renewable energy production. Planning conditions could require that the site remain as agricultural land, with removal of the panels after 25 years, unless a new planning permission was granted. The site would not become a brownfield site. It is not technically possible to put solar panels on every large building. Brownfield sites in southern England are needed for housing. In the face of an imminent fuel squeeze and price rises, the case for additional generation capacity is stronger than ever. Solar farms have a comparatively short construction phase and therefore are becoming a significant part of the solution to the energy problem.
76. George Templeton, resident of Tonbridge. This solar park would generate power sufficient to supply around 2,800 homes. The land would remain in farming use for grazing sheep, with minimal visual impact of the site to local homes. Local plans to safeguard electricity supplies should be encouraged. No statutory body has raised objection to the scheme, and Capel Parish Council are publicly supporting the scheme.

Appraisal

Preliminary matters

77. The following appraisal is based on the evidence in the written representations and my inspection of the site and its surroundings. In this section the figures in parenthesis [] at the end of paragraphs indicate source paragraphs from this report.
78. The ES and its addendum reasonably comply with the relevant provisions of the EIA Regulations. I am satisfied that the Environmental Information is adequate for the purposes of determining this appeal, and I have taken it into account in these conclusions and in my recommendation. [2]
79. The extant permission for a 6.6 MW solar voltaic park on a 13.2 ha part of the appeal site is an important material consideration. The on-site differences between the permitted scheme and the appeal scheme were highlighted to me at my site visit. There is nothing to suggest that the 6.6 MW scheme would not be implemented were the appeal to be dismissed. I have, therefore, had regard to the permitted scheme as a realistic fall-back position. [5]

Main considerations

80. In the absence of any matters set out, about which the Secretary of State particularly wishes to be informed for the purposes of considering this appeal, the evidence indicates that the main considerations here are as follows. [1]
- (1) Whether the development conflicts with policy to protect the Green Belt and the effects of the proposed development on the openness of the Green Belt and upon the purposes of including land within it.
 - (2) The effects of the proposed development on its own, and in combination with other photovoltaic development in the area, on the character and appearance of the area.
 - (3) The effects of the proposed development on agricultural land and soils.
 - (4) The effects of the proposed development on biodiversity.
 - (5) The effects of the proposed development on heritage assets.
 - (6) The contribution of the proposed development towards the generation of energy from renewable sources.
 - (7) If the development is inappropriate in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development. This balancing exercise first considers the appeal scheme on its own merits, before considering the fall-back position and the additional effects of the appeal scheme, over and above those of the permitted scheme, in terms of both adverse impacts and benefits.
 - (8) The extent to which the proposed development would be in accordance with the development plan for the area.

- (9) The extent to which the proposed development would be in accordance with the *National Planning Policy Framework* (the *Framework*) and *Planning Practice Guidance* (the *Guidance*).

81. I consider whether any permission should be subject to any conditions or obligations and, if so, the form that these should take, before considering my overall conclusions. The remainder of this report addresses the matters outlined above, and my recommendation is based on these findings.

Green Belt

82. The scheme would involve development that is not included in the exceptions set out in paragraph 89 of the *Framework*, and paragraph 90 does not apply. The advice in the *Framework* that elements of many renewable energy projects will comprise inappropriate development applies in this case to the proposed panels, electrical equipment and security installations. The proposal would be inappropriate development in the Green Belt. The *Framework* states that when located in the Green Belt inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The *Framework* provides that substantial weight should be given to any harm to the Green Belt, and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. [21,32,37,50]
83. The extensive array of solar panels and associated equipment would have a significant adverse effect on the openness of the Green Belt. The scheme would require security fencing and cameras, which would also adversely affect the countryside, even if controlled by condition. The resultant encroachment into the countryside would be at odds with one of the purposes of the Green Belt. [21,32]
84. I find that the proposal would be inappropriate development in the Green Belt. Furthermore, it would be at odds with one of the purposes of the Green Belt, and would erode its openness. The proposed development would, therefore, harm the Green Belt. I next consider whether the proposal would result in any other harm, and then have regard to other considerations, so as to undertake the balancing exercise outlined above.

Character and appearance

85. The site lies within LCA13, which is characterised by a mixed farmed landscape with extensive open arable fields, dwarf fruit orchards and pockets of hops and pasture, with remnant wind breaks providing a strong vertical element in the open flat landscape. The panels and associated infrastructure would be utilitarian structures in this countryside location. The structures of the frames and the panels, along with their regular arrangement in long rows, would be out of keeping with the character of the area. The solar panels would be of a colour and texture that was not typical of its agricultural context, and so the proposed development would introduce a discordant element of significant scale into the local landscape. This area has medium sensitivity to the type of development proposed. Given the proximity of the village, and the nearby PROW links, the proposal would, to some extent, adversely affect the countryside setting of Five Oak Green. With a moderate/high magnitude of effect, the proposal would have

an adverse effect on the landscape resource of moderate significance.
[9,10,16,20,33,49,51,53,54,60,61,66,72,74]

86. I turn next to visual effects.¹⁵ From the PROW to the west of the appeal site the solar panels would be apparent in some views, particularly in winter when trees are not in leaf. This would be likely to be so even with the proposed mitigation measures. From Viewpoints 1, 2 and 3, with high sensitivity receptors and medium magnitude of effects, the proposed development would have a visual impact of moderate/substantial significance. The effect would be localised with views from vantage points further to the west (such as Viewpoints 6 and 10) likely to be of imperceptible or slight significance. From the east and south (Viewpoints 5, 4 and 7) the local topography and intervening vegetation would provide an effective screen. The visual impact of the scheme from these vantage points would be of slight significance. The effect from further afield in this direction (Viewpoints 8, 11, 9, 13, and 10) would be imperceptible. The solar panels would be well screened in views from Badsell Road (B2017) to the north of the site, and would be absorbed into the wider views of the landscape in more distant views from the north (such as from Viewpoints 12, 14 and 15).
[7,8,20,33,37,53,55,61,62,65,67,68,69,70,71,73]

87. The other solar farms in the locality are sited a considerable distance from the appeal site. Given the limited visibility of the appeal scheme from nearby roads any sequential cumulative visual impact for those using local roads to the east and west of Paddock Wood would not be significant. Some sequential cumulative effects might occur for those using the PROW network around Five Oak Green. However, glimpses of the solar parks would be likely to affect only a small part of any such walks. The appeal scheme would not have a significant cumulative adverse impact on the local landscape or the visual amenity of the area.
[6,33,37,51,53,57]

88. The proposal would harm the character of the area, and would have a significant adverse effect on its appearance. Overall, the proposal would have an adverse effect of moderate/substantial significance on the local landscape. The development proposed would be temporary, but the harm to the landscape would last for 25 years, and so would be significant. This harm is a consideration that weighs against the proposal.

Agricultural land and soils

89. The *Framework* provides that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing soils. It also adds that account should be given to the economic and other benefits of the best and most versatile agricultural land, defined as Grades 1, 2 and 3a land, and where significant development of agricultural land is necessary areas of poorer quality land should be preferred to that of a higher quality. This preference is reiterated in the *Guidance*, which goes on to refer to proposals allowing for continued agricultural use where applicable and/or encouraging biodiversity improvements around arrays of solar panels.

¹⁵ The zone of theoretical visibility and viewpoint locations are shown on ES Figure 6.1.

90. The appeal scheme would use 14.4 ha of Grade 3a agricultural land. Taking this land out of intensive agricultural production and using it for solar panels and grazing for 25 years might, with appropriate management, result in some improvement of soils. I have taken into account that the use of heavy construction equipment on these soils could result in lasting damage, but a method statement could be included in a construction management plan, and a condition could require restoration of temporary access tracks and compounds. [52,62]
91. The current occupiers of the orchard argue that the soils at Capel Grange Farm tend to lay wet in winter, dry out in summer, and are at high risk of frost damage. However, it seems to me that the limited grazing likely to be available under and around solar panels would significantly underutilise a large expanse of the best and most versatile agricultural land for a long time. This would conflict with national policy and guidance, and is a consideration which weighs heavily against the proposed development. [23,28,29,49,52,53,57,58,63,64,65,67,68,70,74,75,76]
92. Such a finding would not be inconsistent with the Council's conclusions for the schemes at Sherenden Road and Knells Farm. The site at Sherenden Road comprised nearly all Grade 3a land, but that scheme included mitigation through upgrading the quality of land elsewhere. The land at Knells Farm was nearly all Grade 3b. [24,30,63,64,65,66,70,71]

Biodiversity

93. The proposed development would require the removal of internal hedges. But these largely function as windbreaks and are species poor. The effects on wildlife would not be significant given the limited diversity of recorded species and the wide availability of similar habitats elsewhere in the locality. Nature conservation interests and any protected species could be adequately safeguarded by the imposition of appropriate planning conditions. Less intensive agricultural use of the site would be beneficial for wildlife, as would improved management of the perimeter hedgerows. Overall, the proposed development would enhance biodiversity. This is a consideration that weighs in favour of the proposal. [29,69,72,73]

Heritage assets

94. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving the setting of a listed building. The rural appreciation of the Grade II listed Brook Farmhouse would be impacted, to some extent, by the proposed solar panels because they would be located in a part of the farmhouse's historic landholding. However, the intervening screening by existing and proposed vegetation would limit any adverse impact on the setting of the listed building to moderate significance. There is nothing evident from either the written submissions or from my site visit to indicate that the appeal scheme would have a significant adverse effect on the other heritage items assessed in the ES. [7,57,58,]
95. The proposal would have a moderate adverse effect on the setting of Brook Farmhouse. This is a consideration which should be given special weight and considerable importance in the overall planning balance. In terms of the *Framework* the adverse impact on this asset would amount to less than

substantial harm, and a consideration to be weighed against the benefits of the appeal scheme.

Renewable energy

96. The appeal scheme, with an estimated installed capacity of 10.36 MW and average electrical output of 11,850 MWhr/yr, would make a significant contribution to achieving renewable energy targets. The scheme could service 2,800 homes, with carbon dioxide emission savings of between 122,944 tonnes and 265,144 tonnes over its 25 year life, depending on the energy mix that applied at the time. The proposal would also optimise utilisation of the available grid connection. The wider environmental and energy security benefits of the proposal weigh significantly in favour of allowing the appeal. [17,58,62,64,65,66,67,68,69,70,71,72,74,75,76]

Other matters

97. There is considerable local concern about the potential for the proposed development to exacerbate flooding. The locality has experienced flooding in the past and run-off from hard surfaces has the potential to increase flood risk. However, the submitted Flood Risk Assessment demonstrates that surface water run-off could be adequately controlled. There is scope within the appeal site to design and implement a drainage scheme that would ensure that the development did not significantly increase flood risk. The additional evidence submitted in this regard was sufficient for the Environment Agency to withdraw its objection to the proposal. The likelihood of worse flooding is not a consideration that weighs against the proposal. [41,49,50,51,53,56,58,59,61,63,65,66,69,70]
98. Noise and disturbance, especially during construction and decommissioning, could be minimised by the implementation of an approved construction environmental management plan. Noise from the electricity substation could also be controlled by condition. The proposed landscaping would not, at all times, entirely screen out views of the solar panels from nearby residential dwellings. However, it is likely that vegetation would soften any adverse impact on such properties. Given the separation distance of the proposed panels from nearby properties, and the height of the panels, the scheme would not have a dominating or overbearing effect on the outlook from nearby residential dwellings. Any such effects would fall far short of breaching the human rights of neighbours. There is no evidential basis for claims that the proposal would adversely affect tourism. [55,56,58,76]
99. There is no convincing evidence that construction traffic would significantly increase the risk to those using the local road network. A construction traffic management plan would also help to minimise any congestion or risk to highway safety. [60]
100. Some local residents are concerned, notwithstanding the time limited nature of the proposal, that it would in effect become a 'brownfield' site after any permission expired. No weight should be given to such concerns because the suggested conditions would require removal of the panels and related equipment within 6 months of the expiry of the 25 year period, and restoration of the site to a solely agricultural use. Any other development requiring planning permission proposed for the site would, in the first instance, be a matter for consideration by

the Council. The appeal decisions for other solar farm development cited by the appellant should not be influential in deciding this appeal on its own merits, because much depends on the particular circumstances in each case. [29,54,56,75]

Very special circumstances

101. I deal first with the balancing exercise that applies to the appeal scheme on its own merits, before considering whether any recalibration is justified by the fall-back position.
102. The appellant argues that a range of factors demonstrate very special circumstances, but the balancing exercise that applies here is whether 'other considerations' outweigh the harm. Reference is made by the appellant to constraints restricting the availability of suitable sites, to the available grid connection, the absence of national designations other than Green Belt, and lack of alternative technologies for this site. But even if the appellant's selection process favoured the appeal site, I do not consider that it should be a decisive consideration, especially as Government targets for renewable energy apply nationally. The design of the scheme, including the height of panels and proposed landscaping, is a factor in determining the effect on the appearance of the area, and by itself is not an 'other consideration' for the purpose of this balancing exercise. The absence of a negative effect on local tourism is not a consideration that can be given much weight. [23,31,51,56]
103. Of the factors cited by the appellant and others supporting the scheme, I consider that significant weight should be given to the contribution the scheme would make to the Government's commitment to tackle climate change by reducing carbon dioxide emissions and towards energy security, along with ecological enhancement, and the benefits that would result to the local economy from job creation and farm diversification. The temporary nature of the proposal is relevant insofar as the effects of the scheme, both positive and negative, would endure for a limited period. Little weight can be given to the potential benefits of the scheme as a teaching facility as no details have been provided about how this would be achieved. No weight should be given to the offer by the appellant of a community fund, or to local concerns about the effects on property values. [18,28,31,51,54,57,62,65,68,74]
104. The balancing exercises applied by the Council in determining the applications for the Sherenden Road and Knells Farm schemes do not establish any precedent that should be determinative in dealing with the current appeal, either in terms of the overall outcome or how relevant policy and guidance should be applied to the particular circumstances. There are important differences between the three sites regarding topography and local context, along with differences in the design of the schemes, which make direct comparisons an unreliable basis for drawing conclusions about how the planning balance here should be decided. [24,30,63,64,65,66,70,71]
105. The balancing exercise, for the appeal scheme on its own merits, weighs the significant benefits from generating electricity from a renewable source, and the associated reduction in greenhouse gas emissions and energy security advantages, along with benefits to the agricultural holding from diversification, and to biodiversity and the local economy, against the harm that would result from the proposal. The disadvantages of the appeal scheme include harm to the

Green Belt and to the character and appearance of the area, along with underutilisation of the best and most versatile agricultural land, and an adverse effect on the setting of a listed building. The proposed development would be temporary and the reversibility of the development after 25 years is a relevant consideration. However, the harm would affect the area for a considerable time. [21,25]

106. The harm I have identified to the character and appearance of the area is of moderate/substantial significance. The appeal scheme would also have a moderate adverse effect on the setting of a listed building, which should be given special weight and considerable importance in the planning balance. Substantial weight should be given to the harm to the Green Belt in the balancing exercise which applies here. The significant underutilisation of 14.4 ha of the best and most versatile agricultural land for 25 years is also a factor that weighs heavily against the proposal. Taking all the above into account for the appeal scheme on its own merits, I find that the 'other considerations' in this case do not clearly outweigh the harm I have identified, and the very special circumstances necessary to justify the development do not exist. [25,51]
107. However, the fall-back scheme is an important material consideration, which has the potential to affect the judgements made in the overall balancing exercise to determine whether very special circumstances exist in this case. It is necessary, therefore, to consider the effects of the appeal scheme over and above those of the permitted scheme, both in terms of harm and benefits.
108. The appeal scheme would result in an additional 9.1 ha of solar panels, which would significantly increase the adverse effect on the openness of the Green Belt and encroachment in the countryside. The additional panels would not have much of an influence on the landscape character of the area, over and above that which would result from the permitted scheme. However, siting panels closer to the PROW to the west of the appeal site, and on the higher ground towards the eastern part of the site, would be likely to increase the adverse visual impact to some degree. The appeal scheme would also result in the use of 8.5 ha more Grade 3a agricultural land than would the permitted scheme. Taking more land out of intensive agricultural use would, to some extent, benefit wildlife, but the difference overall for biodiversity between the permitted and appeal schemes would be marginal. [26,34,35]
109. The main benefit of the appeal scheme would be a significant increase of 3.76 MW in the installed capacity of the solar park, above the capacity already permitted. However, there is nothing to indicate that the permitted scheme would not be sufficient to provide adequate diversification to achieve the objectives for the agricultural holding, in terms of future investment in, and the overall viability of, the enterprise at Capel Grange Farm. There are no grounds to find that the additional diversification benefits to the agricultural holding of the appeal scheme, over and above those that would result from the permitted scheme, should weigh significantly in favour of allowing the appeal. [26,34,35]
110. The benefits of the additional renewable energy generated by the appeal scheme, estimated to be 4,300 MWhr/yr over and above that of the permitted scheme, would go a long way to outweighing the additional harm to the Green Belt and to the appearance of the area. But in my judgement, it would not be sufficient to also outweigh the harm that would result from underutilising an

additional 8.5 ha of the best and most versatile agricultural land for 25 years. I do not, therefore, consider that the fall-back position is a material consideration that alters the outcome of the balancing exercise. My judgement remains that the 'other considerations' in this case do not clearly outweigh the harm I have identified, and the very special circumstances necessary to justify the development do not exist. [26,34,35]

Development plan

111. The proposal would be contrary to LP Policy MGB1 because it would not preserve the openness of the Metropolitan Green Belt and would conflict with the purposes of including land within it. Furthermore, the proposed development is not included in the list of acceptable development specified in the policy. It would also be at odds with the aims of LP Policy EN25, as it would not have a minimal impact on the landscape character of the locality. However, the core planning principles set out in the *Framework* encourage the development of renewable energy, whilst recognising the intrinsic character and beauty of the countryside. LP Policies MGB1 and EN25 are not fully consistent with the balancing exercise for sustainable development set out in the *Framework*. [12,13,20,21,32]
112. The appeal scheme would not accord with CS Policy 2 because it would be at odds with its general presumption against inappropriate development in the Green Belt that would not preserve its openness, and would conflict with the purpose of including land within it. This policy also refers to PPG2 or its replacement, and so incorporates reference to the *Framework*, with its balancing provisions for sustainable development, which is addressed in the next section of this report. However, the proposal would conflict with CS Policy 4, which aims to conserve and enhance locally distinctive sense of place and character. It would also be at odds with the policy of restraint pursuant to CS Policy 14 in order to maintain the landscape character and quality of the countryside, and to protect the countryside for its own sake. [12,14,20,21,32]

National Policy and Guidance

113. Relevant policies of the development plan are not fully consistent with the provisions of the *Framework*. Significant weight should, therefore, be given to the *Framework* in determining this appeal. The economic, social and environmental roles for the planning system, which derive from the three dimensions to sustainable development in the *Framework*, require in this case that a balancing exercise be performed to weigh the benefits of the proposed solar park against its disadvantages. For the reasons set out above regarding 'very special circumstances', the balance here falls against the proposal. In particular, the proposal would conflict with Green Belt policy. Furthermore, there is no compelling evidence to justify the use of 8.5 ha of the best and most versatile agricultural land over and above that which would be utilised by the permitted scheme. The proposal would be at odds with the *Guidance*, which encourages the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land. The evidence submitted does not demonstrate that the impacts of the appeal scheme are, or could be made, acceptable. Furthermore, in my judgement, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the *Framework* when taken as a whole. I find, therefore, that the proposal would not accord with the requirements for sustainable

development set out in the *Framework*. [25,29]

Conditions and Obligations

114. The Council's Committee Report set out suggested planning conditions, and the appellant has suggested amended wording for some conditions.¹⁶ I have considered the need for conditions and their wording in the light of the advice contained in the *Guidance*.
115. A commencement period of 3 years would be appropriate here (Condition 1). Otherwise than as set out in any decision and conditions, it would be necessary that the development was carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning (Condition 2). The details of the design and layout would need to be approved (Condition 3). A condition would be required to specify that the permitted development was temporary and for a 25 year period (Condition 4). Decommissioning and restoration to a solely agricultural use would also be necessary (Condition 5). So too, would provision for restoration where any panels ceased to export electricity to the grid for a period of 6 months (Condition 6). An approved programme of archaeological work would be necessary to safeguard heritage assets, but it would not be necessary to specify the details of the programme (Condition 7).
116. Drainage would need to be approved in the interests of the amenity of the area (Condition 8). For similar reasons, a landscape and ecological management plan would need to be approved and implemented (Condition 9). Highway condition surveys and provision for any necessary remediation works would be required in the interests of highway safety (Conditions 10 and 11). However, it would not be necessary to specify in the conditions that the Highway Authority should be consulted. A construction traffic management plan would be necessary for similar reasons (Condition 12). A construction environmental management plan would also need to be approved and implemented to safeguard the amenities of the area (Condition 13). The temporary construction compound and access tracks would need to be removed within three months of the completion of construction works, and external lighting should be controlled, in the interests of the appearance of the area (Conditions 14 and 15). Removal of permitted development rights for means of enclosure would, exceptionally, be necessary here to safeguard the visual amenity of the area and the openness of this part of the Green Belt (Condition 16). Noise controls would be necessary given the proximity of residential dwellings (Condition 17).
117. In the event that the appeal is allowed, Annex A to this report lists the conditions that I consider should be attached to any permission granted. No planning obligation has been submitted, and there is nothing to indicate that one would be required.

¹⁶ Documents 5.1 and 5.2.

Conclusions

118. The Council received 31 representations about the application, including 9 letters in support. The proposal has the support of Capel Parish Council. At the appeal stage there were 11 written submissions objecting to the proposed development, and 15 written representations in support of the scheme. There is some criticism about public consultation for the appeal scheme, but measures to inform and involve the local community reasonably comply with relevant requirements. Local opinion about the proposal is divided. The appeal should be decided having regard to the development plan, and the determination made in accordance with it, unless material considerations indicate otherwise.
[36,37,38,48,55]
119. The proposal would be inappropriate development in the Green Belt. In my judgement, and for the reasons set out above, the 'other considerations' in this case, including the fall-back position, do not clearly outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm, and the very special circumstances necessary to justify the development do not exist. The proposal would conflict with relevant development plan policies, and would not accord with the requirements for sustainable development set out in the *Framework*. There are no material considerations here that would indicate that a determination other than in accordance with the development plan was justified. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Recommendation

120. I recommend that the appeal be dismissed. However, if the Secretary of State is minded to disagree with my recommendation, Annex A lists the conditions that I consider should be attached to any permission granted.

John Woolcock
Inspector

ANNEX A - CONDITIONS 1-17

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans;
 - Drawing 1 Existing site plan date stamped 19/05/14.
 - Drawing 2 Construction Plan date stamped 19/05/14.
 - Drawing 3 Operational Site Plan date stamped 19/05/14.
 - Swept Path Analysis turning left off Badsell Road received by email 25/03/14.
 - Capel Grange Block Plan date stamped 03/02/14.
 - Flood risk addendum and hydrology management report date stamped 19/05/14.
 - Existing and Proposed Elevations (21/05/14) date stamped 22/05/14.
 - Existing and Proposed Floor Plan.
- 3) Notwithstanding the details shown on the submitted drawings and documents, no development shall take place until detailed plans and information regarding the following aspects of the proposed development have been submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details:
 - a) Details of the design and appearance of the solar panels, at a minimum scale of 1:50;
 - b) Details of the design and appearance of the solar arrays, mounting and means of securing in the ground, at a minimum scale of 1:50;
 - c) Detailed layout of the solar arrays, cable runs, substation, electrical stations, security fencing and CCTV cameras, at a minimum scale of 1:100;
 - d) Details of the design, foundations, external appearance, finish and scale of the substation, electrical stations, security fence and CCTV cameras, at a minimum scale of 1:50;
 - e) Details of the location and design of the pond and swales, including cross sections, at a minimum scale of 1:100.
- 4) The permission hereby granted is for the development to be retained for a period of not more than 25 years from the date when electricity is first exported to the electricity grid (First Export Date), or in the event that electricity is not exported to the electricity grid from the date that works first commenced on site, whichever applies shall indicate the commissioning of the development. Written confirmation of both the commencement of work and the First Export Date shall be submitted in writing to the local planning authority within one month of the event taking place.

- 5) Within a period of 6 months following the end of the 25 year period granted by Condition (4), the solar photovoltaic park hereby permitted shall be decommissioned and the panels and all related above ground structures, equipment (including security fencing) and materials, and all below ground structures, equipment and materials within 750 mm of ground level, shall be removed from the site. No later than 12 months before the decommissioning of the solar photovoltaic park, a decommissioning and restoration scheme for the site shall be submitted in writing to the local planning authority for approval in writing. The scheme shall make provision for the removal of all the above components and the restoration of the site to a solely agricultural use. The approved scheme shall be implemented within 6 months of the restoration scheme being approved in writing by the local planning authority or such other period as the local planning authority may approve in writing.
- 6) If any of the individual solar panels hereby permitted ceases to export electricity to the grid for a continuous period of 6 months then, unless otherwise approved in writing by the local planning authority, a scheme of restoration shall be submitted to the local planning authority for its written approval for the removal of the solar panel(s) and associated equipment and the restoration of (that part of) the site to a solely agricultural use. The approved scheme of restoration shall be fully implemented within 6 months of the date of its written approval by the local planning authority.
- 7) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the local planning authority.
- 8) Prior to the commencement of the development hereby permitted, a surface water drainage scheme and drainage management plan shall be submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development. The surface water drainage scheme shall seek to implement a Sustainable Urban Drainage hierarchy which achieves reductions in surface water run off rates to greenfield rates in accordance with the submitted Flood Risk Addendum and Hydrology Management Report dated May 2014. The development shall be carried out in accordance with the approved details and approved drainage measures shall be retained for the duration of the development as set out in the approved documents.

- 9) Prior to the commissioning of the development hereby permitted, a landscape and ecological management plan (LAEMP) shall be submitted to and approved in writing by the local planning authority. The LAEMP shall include the following:
- a) A landscaping scheme for the site (which may include entirely new planting, retention of existing planting or a combination of both).
 - b) Description and evaluation of features to be managed.
 - c) Ecological trends and constraints on site that might influence management.
 - d) Aims and objectives of management.
 - e) Appropriate management options for achieving aims and objectives.
 - f) Prescriptions for management options.
 - g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over the duration of the development).
 - h) Details of the body or organisation responsible for implementation of the plan.
 - i) Ongoing monitoring.
 - j) Where the results from monitoring show that landscape and ecological aims and objectives are not being met, how contingencies and/or remedial measures will be identified, approved and implemented so that the LAEMP can meet its aims and objectives.
- The approved LAEMP shall be implemented in accordance with the approved details. The approved landscaping/tree planting scheme shall be carried out fully within 12 months of the commissioning of the development. Any trees or other plants which within a period of five years from the commissioning of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives prior written consent to any variation.
- 10) Prior to the commencement of the development hereby permitted, a condition survey of Badsell Road between the vehicular access to the site and the junction with the A228 Colts Hill shall be submitted to and approved in writing by the local planning authority.
- 11) Within 3 months of the First Export Date a condition survey and report for Badsell Road between the vehicular access to the site and the junction with the A228 Colts Hill shall be submitted to the local planning authority. The report shall identify whether there has been any deterioration in the surface of the road when compared with the survey submitted under Condition (10). If there is any deterioration a schedule of remedial measures, a timescale for their implementation and a methodology for a further condition survey and report and remedial measures shall be submitted to and approved in writing by the local planning authority and implemented in accordance with the approved timescale and details.

- 12) No development shall commence until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include:
- a) details of the construction vehicles (number, size and type);
 - b) details of vehicular routes to and from the site, delivery hours and contractors' arrangements (compound, storage, parking, turning, surfacing, booking system, signage and wheel wash facilities);
 - c) details of the site access points for post development maintenance vehicles;
 - d) details of emergency contact numbers during the construction phase.

The development shall be carried out in accordance with the approved details.

- 13) No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details of ground anchoring, ground re-profiling works, temporary storage/construction compound areas, permanent and temporary access routes and construction, the management of surface water, a construction method statement and construction hours. Development shall be carried out in accordance with the approved details.
- 14) Within three months of the completion of the construction of the development, the temporary construction compound and temporary access tracks (where such access track included a new route or hard surfacing) shall be removed from the site and the land restored in accordance with a scheme, the details of which shall first be submitted to and approved in writing by the local planning authority.
- 15) No external lighting shall be installed on the site without the prior written consent of the local planning authority.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking and re-enacting that Order with or without modification), no fencing or means of enclosure other than those permitted under Condition (3), shall be erected within or around the site unless details of such means of enclosure have first been submitted to and approved in writing by the local planning authority.
- 17) Prior to the first use of the electricity substation an acoustic report assessing the noise impact shall be submitted to and approved in writing by the local planning authority. The report shall address the issue of noise (including low frequency noise) and vibration from the substation to ensure that there is no loss of amenity to residential or commercial properties. For residential accommodation, the scheme shall ensure that the low frequency noise emitted from the substation is controlled so that it does not exceed the Low Frequency Criterion Curve for the 10 Hz to 160 Hz third octave bands inside residential accommodation as described in *The DEFRA Proposed Criteria for the Assessment of Low Frequency Noise Disturbance 2005*. The equipment shall be maintained in a condition so that it complies with the levels and mitigation measures specified in the approved acoustic report, whenever it is operating. After installation of the approved plant no new plant shall be used without the written consent of the local planning authority.

ANNEX B - APPLICATION PLANS

Drawing 1 Existing site plan date stamped 19/05/14.
 Drawing 2 Construction Plan date stamped 19/05/14.
 Drawing 3 Operational Site Plan date stamped 19/05/14.
 Swept Path Analysis turning left off Badsell Road received by email 25/03/14.
 Capel Grange Block Plan date stamped 03/02/14.
 Flood risk addendum and hydrology management report date stamped 19/05/14.
 Existing and Proposed Elevations (21/05/14) date stamped 22/05/14.
 Existing and Proposed Floor Plan.

ANNEX C - DOCUMENTS SUBMITTED AFTER THE SITE VISIT

(Including those requested by the Inspector and provided by appellant in the letter dated 4 June 2015, along with comments from the parties on the permitted scheme)

- | | | |
|----------|--------|---|
| Document | 1 | A list of plans/drawings that comprise the appeal application as determined by the Council. [plans/drawings on file] |
| Document | 2 | A list of other plans/drawings that were considered by the Council to be illustrative material not forming part of the appeal application. [plans/drawings on file] |
| Document | 3 | Details of recently permitted scheme for part of the appeal site. |
| | 3.1 | Decision Notice. |
| | 3.2 | Approved plans and drawings. |
| | 3.2.1 | Construction Plan [on CD] |
| | 3.2.2 | Existing and Proposed Elevations [on CD] |
| | 3.2.3 | Operational Site Plan [on CD] |
| | 3.2.4 | Block Plan |
| | 3.2.5 | Existing Site Plan [on CD] |
| | 3.2.6 | Substation Details [on CD] |
| | 3.2.7 | Existing and Proposed Floorplan [on CD] |
| | 3.2.8 | Application Form [on CD] |
| | 3.2.9 | Environmental Statement Volume 1A [on CD] |
| | 3.2.10 | Environmental Statement Volume 1B [on CD] |
| | 3.2.11 | Environmental Statement Volume 2 [on CD] |
| | 3.3 | Committee report. |
| | 3.4 | Supporting documentation including LVIA. [on CD] |
| | 3.5 | Overlay plan showing appeal scheme and permitted scheme. |
| Document | 4 | Details of schemes under construction. |
| | 4.1 | Decision notice and layout plan for Sherenden Road scheme. |
| | 4.2 | Decision notice and layout plan for Knells Farm scheme. |
| | 4.3 | A location plan for these schemes showing local roads. |
| Document | 5 | Draft conditions. |
| | 5.1 | The suggested conditions submitted by the Council. |
| | 5.2 | The appellant's submitted suggested alterations. |
| Document | 6 | Supplementary written statement on behalf of the appellant. |
| Document | 7 | Supplementary written statement on behalf of the local planning authority. |



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). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

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.