

APPEAL BY ENSO GREEN HOLDINGS J LTD

**LAND SOUTH OF RUNWELL ROAD
RUNWELL, WICKFORD**

**OPENING STATEMENT
ON BEHALF OF THE APPELLANT**

Introduction

1. The existential risk to human life, nature and the economy posed by climate change has led the UK Parliament, Chelmsford City Council (“CCC” or “the Council”) and Rochford District Council (“RDC”) (together “the Councils”) each to declare a climate change emergency in recent years.¹
2. To mitigate that emergency, clean energy needs to be deployed at “*unprecedented*” scale and at pace.² In fact, to meet the legally binding target of net zero by 2050, the UK will need to be entirely powered by clean energy by 2035 – just over 10 years from now.³ Clean energy also represents an important answer to other serious concerns facing this country, including energy insecurity and price rises, exacerbated by ongoing global conflicts.⁴
3. In that context, it is perhaps unsurprising that low carbon energy is a form of development that has received very powerful and consistent support in national policy and guidance in recent years. It is against that background that the Appellant proposes a new solar farm that would generate clean energy for distribution to the National Grid, together with a co-located battery energy storage system (“BESS”) to provide grid balancing services (“the Appeal Scheme”), at land south of Runwell Road (“the Appeal Site”).

¹ See CD4.11 for UK Parliament declaration and CDs 5.7 and 5.9 for local declarations

² CD4.17 Net Zero Strategy, pp. 19, 98 and 102

³ October 2021, ‘Net Zero Strategy: Build Back Greener’, p.19 CD4.17

⁴ March 2023, ‘Powering Up Britain’ CD4.20, April 2022 British Energy Security Strategy CD4.18

4. The National Planning Policy Framework (“NPPF”) tells decision-makers that applicants for renewable energy schemes should not be required to demonstrate a need, that even small-scale projects provide a valuable contribution, and that schemes should be approved if the impacts can be made acceptable. It is the Appellant’s case that here the impacts are indeed acceptable and very clearly outweighed by the stark benefits including, amongst other things, the provision of much needed clean energy and storage, large gains for nature and biodiversity, and green investment into the local economy. These are very special circumstances (“VSC”) justifying a Green Belt location.
5. In Opening, we address the main issues for the inquiry in the following order: landscape and visual; Green Belt; and finally, the planning balance.

Landscape and Visual

6. In assessing the landscape impacts of a solar scheme, it is important to keep in mind their particular nature; such developments are, perhaps uniquely, characterised by a low profile, light footprint, and reversibility.⁵
7. Landscape has been central to the design of the Appeal Scheme, with extensive green infrastructure provision and landscape mitigation and enhancement works proposed to reinforce the character of the local farmed landscape and to provide visual enclosure.⁶ This includes new native trees and hedgerows, reinstatement of historic field boundaries, a new native woodland belt, and enhancement of boundary margins and areas underneath solar panels with species-rich grassland.⁷
8. In terms of the effects on landscape character, it is agreed that the Appeal Site itself is not a valued landscape for the purposes of the NPPF.⁸ Both experts have noted that the Site has some qualities as undeveloped countryside, but have also noted detracting elements including the presence of large scale pylon towers and the audible and visual presence of the A130.⁹ Mr Cook considers the Appeal Site to be of medium value, susceptibility and

⁵ Mr Cook’s Proof at §4.36

⁶ Mr Cook’s Proof at §§3.16-3.20

⁷ As set out in the Detailed Landscape Design plan (Rev E). Mr Cook’s Proof goes through the proposed green infrastructure planting on a field-by-field basis at §§3.23-3.31

⁸ Mr Etchells’ Proof at §3.2.11

⁹ Mr Cook’s Proof at §2.33

sensitivity. This combined with a moderate magnitude of change (given the retention and enhancement of green infrastructure combined with the limited footprint of the built form) would result in an overall moderate adverse effect upon the character of the Appeal Site itself at year 1, with the potential for this to lessen as the landscape proposals begin to establish.¹⁰ Beyond the Appeal Site and its environs, the landscape character of the area would remain materially unchanged.¹¹

9. As to visual impacts, Mr Cook finds these would be limited due to the Appeal Site's substantial visual containment – a result of topography and surrounding vegetation, together with the low profile of the development proposed. The actual visual envelope from where the proposed scheme would be seen would be very limited and highly localised.¹² The main visual impacts would be from the public right of way (“PRoW”) that passes through the Site itself. To mitigate these impacts, the provision of a “green lane” of hedgerows of c. 17-19m in width, as well as native woodland buffer planting, are proposed.¹³ This planting would reflect the alignment of a historic field boundary that has been lost over time.¹⁴
10. It is common ground that no significant cumulative landscape and visual effects would arise together with other solar farms in the wider area.¹⁵
11. Following decommissioning, all built infrastructure would be removed, and the Appeal Site returned to an agricultural condition. However, the extensive tree and hedgerow planting would remain, resulting in a clear beneficial landscape legacy.¹⁶

Green Belt

12. While the Appeal Site lies within the Green Belt and substantial weight must be afforded to harm to the Green Belt arising, not all Green Belt impacts are equal. Impact on the Green Belt should be considered by having regard to both its openness and purposes.

¹⁰ Mr Cook's Proof at §5.4

¹¹ Mr Cook's Proof at §5.73

¹² Mr Cook's Proof at §6.6

¹³ Mr Cook's Rebuttal at §3.4

¹⁴ Mr Cook's Proof at §§6.23-6.24, Appendix 3,

¹⁵ Mr Etchells' Proof at §6.6.2

¹⁶ Mr Cook's Proof at §4.37 and §5.56

13. In all, there would be a local moderate adverse effect on openness.¹⁷ To assess this impact, the Planning Practice Guidance (“PPG”) identifies three particularly relevant factors.¹⁸

- a. First, openness is capable of having both visual and spatial aspects. The Appeal Scheme would have a relatively modest mass and footprint, being low-lying, with a very limited physical impact on the ground itself, and a significant proportion of the Site area remaining free from built development.¹⁹ In terms of visual openness, the Appeal Site benefits from a high degree of visual containment due to topography and vegetation in the intervening landscape.²⁰ There would be little visibility or change to the perceived sense of openness within the wider Green Belt.²¹
- b. Second, the PPG identifies duration and remediability as relevant to assessing effects on openness. The Appeal Scheme would not be permanent: it would be in place for a temporary period of 40 years of operation, after which it will be fully decommissioned, and land returned to its former undeveloped use.²²
- c. Thirdly, the PPG refers to the degree of activity, such as traffic, likely to be generated. This would be limited: once the construction period is completed after an approximately 6-month duration, there would be only infrequent, low intensity maintenance visits.²³

14. As to Green Belt purposes set out at §138 of the NPPF, it is common ground that four of five purposes would not be impacted.²⁴ The only conflict that would arise is with purpose (c), which is to assist in safeguarding the countryside from encroachment. Mr Cook finds there would be some limited harm in this regard. Such encroachment has arisen in all Green Belt solar farm appeals but has not been seen as a barrier to consent being granted.

15. In all, Mr Burrell concludes that the development would be inappropriate development in the Green Belt and would by definition result in harm. As to the nature and extent of this harm, the Appeal Scheme would result in moderate harm in both spatial and visual terms, together with some encroachment in conflict with purpose (c).²⁵ While all harm to the

¹⁷ Mr Cook’s Proof at §8.27

¹⁸ As agreed in the Overarching SOCG at §8.18

¹⁹ Mr Cook’s Proof at §§8.5-8.7, Mr Burrell’s Proof at §7.11

²⁰ Mr Burrell’s Proof at §7.12

²¹ Mr Cook’s Proof at §8.9

²² Mr Burrell’s Proof at §7.13

²³ Mr Burrell’s Proof at §7.14

²⁴ Main SOCG at §8.20

²⁵ Mr Burrell’s Proof at §7.23

Green Belt is afforded substantial weight in the planning balance, the harm brought about by the Appeal Scheme would be at the low end.²⁶

Heritage

16. There is no reason for refusal in respect of heritage, and the Council accepts that any harm to the Grade I Listed Church of All Saints would be less than substantial at the low end of the spectrum and outweighed by the public benefits of the Scheme (per the heritage balance at §208 NPPF).²⁷
17. Similarly, the Council does not allege any conflict with §209 NPPF in respect of non-designated heritage assets. However, there remains a difference of opinion as to the level of harm that would occur to the heritage significance of the WWII pillboxes and whether harm would occur at all to the Toby Carvery.
18. In terms of the pillboxes, Ms Stoten's evidence²⁸ is that the significance of the assets is largely derived from their physical form, which has historical and architectural interest. Setting contributes, but to a lesser degree, and the Appeal Site makes only a minor contribution to significance of the assets. The construction of the Proposed Development would leave the framework of the landscape in place, including the railway and hedgerows, but reduce visibility across intervening areas, resulting in a minor level of harm.
19. As to the Toby Carvery, Ms Stoten concludes²⁹ that the significance of the asset is primarily derived from its fabric, which has architectural, artistic and historic interest. Setting makes a contribution but to a lesser degree. The areas which contribute to the asset through setting comprise the current and historic grounds, and any wider historically associated and intervisible farmland to the north. Taking into account the minimal intervisibility and the lack of documented historic association, the Appeal Site is not considered to contribute to the significance of the asset through setting.

²⁶ Mr Burrell's Proof at §7.24

²⁷ Section 2 of the Heritage SoCG (CD8.9)

²⁸ At Appendix 3 to Mr Burrell's Proof

²⁹ At Appendix 4 to Mr Burrell's Proof

Flood Risk

20. Again, there is no reason for refusal in this regard. Although a small part of the Appeal Site lies within Flood Zones 2 and 3a, the Proposed Development is within the “essential infrastructure” category as set out in the PPG, and Mr Burrell is clear that both the sequential test and exception tests are passed.³⁰
21. The Council has queried whether the sequential test is passed. However, Ms Hutchinson states that the Council does not intend to argue that the proposal is unacceptable on flood risk and drainage grounds.³¹ Mr Burrell will explain that in terms of considering alternative potential sites, the Appellant has suggested a reasonable search area centred on the Rayleigh substation where the Appellant has an agreement with the National Grid to connect during 2027.³² National policy is entirely clear that a critical pre-requisite for a solar farm project is that the development has available export grid capacity.³³ There are no sequentially preferable areas in terms of flood risk within the search area.³⁴
22. In the recent Thoroton appeal, Inspector Woolcock accepted that a 2km grid connection was a reasonable basis for undertaking a realistic alternative site assessment with respect to a solar farm sequential test.³⁵ Inspector Woolcock also noted that while the PPG provides that considering reasonably available sites could include a series of smaller sites, “*given the likely difficulties in obtaining planning permission for a number of separate sites, and the practicalities of coordinating multiple sites so as to utilise the identified grid capacity in the grid connection offer, this would not be a reasonable alternative to the appeal scheme*”. The same considerations apply in this case.

³⁰ A separate note has been prepared by the Appellant to further assist the Inspector in this matter as requested at the CMC (CD9.13)

³¹ Ms Hutchinson’s Proof at §5.16

³² Mr Burrell’s Proof at §11.93, referring to §§5.5 and 5.6 of the Flood Risk SOCG

³³ Mr Burrell’s Proof at §11.94

³⁴ Mr Burrell’s Proof at §11.97

³⁵ CD6.37, see §77-88. See also the treatment of the sequential test with respect to a solar farm in Fobbing, CD6.30 at §§50-52

Benefits and Balance

23. Turning to benefits and the balance. Mr Burrell finds that, applying s.38(6) of the Planning and Compulsory Purchase Act 2004, the proposal complies with the statutory development plan when read, as it must be, as a whole.³⁶ In particular, the Appeal Scheme complies with each of the policies referenced in the reason for refusal, namely Chelmsford Local Plan Policy DM19 on Renewable and Low Carbon Generation, Policy DM6 on New Buildings in the Green Belt, and Policy DM10 Infilling in the Green Belt, Green Edge and Rural Area.
24. The key question in respect of both local and national policy is whether the scheme passes the VSC test, with the benefits clearly outweighing the harms.³⁷ In that regard, successive Governments have consistently provided powerful support for the rapid deployment of solar technology.³⁸ To meet the 2035 target of an energy system run entirely on clean energy, solar capacity will have to increase to 70GW, a five-fold increase from the 14GW of solar we had in 2022.³⁹ Mr Burrell will explain that deployment is simply not keeping up with the pace required, with key targets becoming ever harder to reach. The new Labour Government has reaffirmed the scale of the net zero challenge and the need to address it immediately.⁴⁰
25. An important aspect of recent policy for this Inquiry is the new National Policy Statements (“NPS”) EN-1 and EN-3, designated earlier this year. EN-1 states there is now a critical national priority (“CNP”) for nationally significant low carbon infrastructure, and that (a) the Secretary of State will take as a starting point that such schemes will meet the test of VSC and (b) it is unlikely that consent will be refused on the basis of impacts to issues such as landscape and Green Belt.⁴¹ The NPPF at §156 also provides expressly that VSC may include the wider environmental benefits associated with increased production of energy from renewable sources.

³⁶ Mr Burrell’s Proof at §§8.21-8.22. Mr Burrell notes having regard to *R. (on the application of William Corbett) v The Cornwall Council* [2020] EWCA Civ 508 (CD6.8) that even if there were to be a conflict with part of a policy, or even one policy in the Development Plan, this would not automatically lead to conflict with the development plan taken as a whole. Mr Burrell has provided a detailed assessment of compliance with all relevant local plan policies at Appendix 1 to his Proof.

³⁷ Mr Burrell’s Proof at §§8.15-8.16

³⁸ CD4.17 Net Zero Strategy, pp. 19, 98 and 102

³⁹ CD4.18

⁴⁰ Mr Burrell’s Proof at §9.3, §§9.48-9.52

⁴¹ CD4.3 at §§4.2.2-4.2.17

26. Against that policy background, a number of Green Belt solar and BESS schemes have been granted permission at appeal in recent years, including at *Chelmsford*, *Fobbing*, *Honiley Road*, *Great Wymondley*, *Basildon*, *Sherbourne*, *Kemberton*, and *Rayleigh*.⁴²
27. The Proposed Development here would provide some 24.6MW of electricity, the equivalent annual electrical needs of approximately 6,098 family homes in England.⁴³ Mr Burrell is clear that in light of the ongoing national climate and energy security crises, substantial weight should attach to both the climate change and the energy security benefits.⁴⁴
28. In addition, there is the benefit of the battery storage with a capacity of up to 57MW. NPS EN-3 confirms that electricity storage “is *essential for a net zero energy system*”, storing electricity when it is abundant for periods when it is scarce, as well as providing a range of services to help maintain the resilience and stability of the grid.⁴⁵ It goes on to note that the need for electricity storage is rising and will be critical to maintaining energy security. It is agreed with the Council that this attracts further significant positive weight.⁴⁶
29. There are many other powerful benefits the scheme would bring about. UK Parliament declared a climate change emergency in 2019, as did CCC (in 2019) and RDC (in 2023).⁴⁷ The Appeal Scheme’s ability to provide a positive, deliverable action on these statements of intent is a material consideration which it is agreed should be afforded additional significant positive weight in the planning balance.⁴⁸
30. Furthermore, it is well established that grid connections are a scarce resource in the UK and a major barrier in the transition to net zero, as is clear from recent Government strategies such as the Connections Action Plan.⁴⁹ There are advantages of connecting directly into the National Grid (Transmission) Network rather than the Distribution Network, including avoiding delays in securing a connection agreement via the Distribution

⁴² Chelmsford (CD6.12), Fobbing (CD6.30) and Honiley Road (CD6.34), *Basildon* (CD6.22), *Sherbourne* (CD6.31), *Kemberton* (CD6.26), and *Rayleigh* (CD6.28)

⁴³ Mr Burrell’s Proof at §2.7 and §11.7

⁴⁴ Mr Burrell’s Proof at §

⁴⁵ CD4.4 at §§2.9.9-2.9.10

⁴⁶ Need SOCG at §4.1

⁴⁷ See CD4.11 for UK Parliament declaration and CDs 5.7 and 5.9 for local declarations

⁴⁸ Need SOCG at §4.1

⁴⁹ CD4.21, pg 50. See also March 2023 Energy Security Plan CD4.20, pg 50.

Network Operator.⁵⁰ It is agreed this attracts moderate positive weight.⁵¹ Mr Burrell considers that the lack of alternative sites available to deploy the grid connection offer at Rayleigh substation represents a further benefit that attracts significant positive weight.⁵²

31. An additional benefit of the scheme is the good design and use of best available technology, in particular the use of bi-facial tracker panels which significantly increase productivity compared to traditional fixed arrays.⁵³
32. The wider environmental benefits would include creation of new habitats, soil regeneration, and green infrastructure enhancements. There would be a significant biodiversity net gain (“BNG”) of 138% in habitat units and 85% in hedgerow units.⁵⁴ The BNG would be far in excess of the new 10% statutory requirements (which do not apply here in any event), and in line with other appeal decisions that alone must attract substantial or significant weight.⁵⁵
33. There would also be economic benefits arising, including construction jobs and business rate contributions.⁵⁶ The Scheme would also allow for the diversification of an agricultural business.⁵⁷
34. These extensive benefits must be weighed against any adverse impacts arising. Policy, including the NPPF at §163, tells us that there are likely to be some harms arising from renewable development, and these do not make a scheme automatically unacceptable. Mr Burrell is clear that taking all considerations in the round, the balance lies strongly in favour of a grant of permission and VSC do arise: against the background of the increasing urgency of the climate crisis, set against the relatively limited impacts, the benefits very clearly outweigh the harms.
35. Accordingly, in due course, the Inspector will be invited to grant permission, subject to appropriate conditions.

⁵⁰ Mr Burrell’s Proof at §11.40

⁵¹ Need SOCG at §4.1

⁵² Mr Burrell’s Proof at §§11.51-52, referring to CD6.12 at §92

⁵³ Mr Burrell’s Proof at §11.46

⁵⁴ As agreed in the Overarching SOCG at §8.24

⁵⁵ Mr Burrell’s Proof at §11.55

⁵⁶ *Bramley* (CD6.14, §79) significant weight, *Copse Lodge* (CD6.22, §124) moderate weight

⁵⁷ Need SOCG at §4.1

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