

**Case Officer:** Rebekah Morgan

**Applicant:** Oxford New Energy

**Proposal:** Development of a ground mounted solar farm incorporating the installation of solar PV panels, associated infrastructure and access, as well as landscape planting and designated ecological enhancement areas.

**Ward:** Launton And Otmoor

**Councillors:** Councillor Gemma Coton, Councillor Julian Nedelcu, Councillor Alisa Russell

**Reason for Referral:** Major development

**Expiry Date:** 16 January 2024

**Committee Date:** 06 June 2024

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**SUMMARY RECOMMENDATION: DELEGATE POWERS TO GRANT PERMISSION SUBJECT TO: CONDITIONS.**

**MAIN REPORT**

**1. APPLICATION SITE AND LOCALITY**

1.1. The application site comprises 43.78ha of agricultural land located approximately 3.5km to the east of Kidlington and approximately 4.5km north of the built-up area of Oxford. The site is comprised of agricultural land consisting of open fields and vegetative field boundaries. The northern edge of the site is bounded by the River Ray.

**2. CONSTRAINTS**

2.1. The following constraints are relevant to the application:

- The site is within the Oxford Green Belt
- There are Public Rights of Way (PROW) within the vicinity of the site
- The site is adjacent to a RSPB reserve – Otmoor
- Agricultural Land Classification: Grade 3b
- The constraints data identifies the potential presence of a range of protected and notable species on the site.
- The site is within an Archaeological Alert Area
- The site falls within Flood Zones 2 and 3
- The River Ray runs adjacent to the site
- There are Listed Buildings within close proximity of the site
- The site is within 2km of Sites of Special Scientific Interest
- The Site is within a Conservation Target Area
- The site is in close proximity to a Local Wildlife site – RSPB Otmoor
- The site is within a NERC Act S41 Habitat

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The application seeks consent for a 26.6 MW Solar Photovoltaic (PV) Array and battery storage for a temporary period of 40 years. The proposal includes the provision of ground-mounted photovoltaic solar arrays and associated infrastructure, access, landscape planting and ecological enhancements.
- 3.2. The drawings show the photovoltaic arrays would be mounted a minimum of 90cm from the ground with the top edge being a maximum of 2.8m from the ground. The panels would be set out in rows. They would be orientated to maximise solar gain. A temporary tract for construction traffic would access the site via a field entrance on a no through road, off the B4027, just before entering the village of Noke. The operational access to the site would be at the other end of the village.

### **4. RELEVANT PLANNING HISTORY**

- 4.1. There is no planning history directly relevant to the proposal.

### **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. The following pre-application discussions have taken place with regard to this proposal:

20/00653/PREAPP: Development of a ground mounted solar farm incorporating the installation of solar PV panels, associated infrastructure and new access.

The advice concluded that the development could not be supported at the time based on the submitted information. In particular, the following concerns were highlighted:

- The application is significant development within the Oxford Green Belt and is considered inappropriate development. Very special circumstances are therefore required if the principle of development is to be supported, but this has not been demonstrated through the pre-application submission.
- The proposal includes development within the Otmoor Conservation Target Area. This has not been justified and neither has it been demonstrated that the requirements of Policy ESD11 of the Local Plan will be met.
- The proposal includes development within Flood Zones 2 and 3. It needs to be demonstrated through an appropriate Flood Risk Assessment that the development is “essential infrastructure” and that the exception and sequential tests can be met.

### **6. RESPONSE TO PUBLICITY**

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records (amend as appropriate). The final date for comments was **14 June 2023**, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. The comments raised by third parties are summarised as follows:

#### **Objections**

- Impact on wildlife
- Impact on the enjoyment of walkers – loss of amenity

- Inappropriate location in the Green Belt
- Loss of agricultural land (Best and Most Versatile)
- Solar arrays are inefficient
- Change to industrial land is unacceptable
- Ecologically important area
- Impact on RSPB wetland
- Impact on migratory birds
- Impact on protected species
- Landscape impact and impact on the character of the area
- Impact on the Otmoor Conservation Target Area
- Traffic impacts
- Increased risk of flooding to Islip and Oxford
- Solar panels should be located on brownfield sites or roofs of existing buildings
- Detrimental to the openness of the Green Belt
- Impact on heritage assets
- Fails to protect the intrinsic character and beauty of the countryside (NPPF)
- Impact on public right of way through site
- Site cannot be screened from viewpoint 5
- Ecological mitigation measures outside red line boundary
- Benefit of scheme exceeds local demand
- Concerns regarding community benefit payment
- Low baseline values of agricultural land not justified
- Assessment on grid connection and availability should be considered impartially
- Minimal contribution to the district's renewable energy production
- Contrary to local and Government policy
- Insufficient justification of very special circumstances
- More suitable alternatives

#### **Support**

- The Pathway to Zero Carbon Oxfordshire report highlights the scale of change needed.
- Addresses climate change
- Support for the principle of the proposal
- Sensitively planned scheme that balances the Green Belt and needs of the area with the need to address climate change
- If executed with care, the land can still provide an ecological environment
- Solar is part of our children's future and needs to go somewhere

#### **General comments**

- Safety concerns about the entry and exit access road
- 'Lake effect' in respect of birds

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## **7. RESPONSE TO CONSULTATION**

7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

7.2. FENCOTT AND MURCOTT PARISH COUNCIL: no comments or objections received at the time of drafting the report.

- 7.3. HORTON-CUM-STUDLEY PARISH COUNCIL: **object** to the application on the grounds of ecological impacts; impact on Green Belt; lack of very special circumstances to justify development in this instance; landscape and visual harm; seasonal impact on solar energy limits output.
- 7.4. ISLIP PARISH COUNCIL: **object** to the application on the grounds of industrialisation of the Green Belt; visual impact; bird displacement; impact on natural resource of Otmoor; access roads may open up potential for further development; impact on views from surrounding villages; impact on rain infiltration; more suitable sites in District; Oxford refused a similar application; loss of productive farmland.
- 7.5. NOKE PARISH COUNCIL: **object** to the application on the grounds of landscape and biodiversity impacts, including impact on Conservation Target Areas; visual impact on local landscape; impact on heritage assets and their settings; impact on Green Belt; residential amenity impact.
- 7.6. ODDINGTON PARISH COUNCIL: **object** to the application on the grounds of adverse effects being far outweighed by benefits of production of renewable energy; contrary to relevant Policy; Green Belt impact; visual impact including from Rights of Way; impact on setting of heritage assets; views of open countryside blocked; energy generated is likely to be less than stated in submission; loss of productive agricultural land; increased biodiversity inconsistent with keeping sheep; impact on nearby RSPB reserve,
- 7.7. BECKLEY AND STOWOOD PARISH COUNCIL: **object** on the grounds of Green Belt impact; impact on nearby RSPB reserve; flood risk; impact on wildlife; loss of agricultural land; impact on views; impact on public rights of way; impact during construction; renewable energy output.
- 7.8. CAMPAIGN TO PROTECT RURAL ENGLAND: **object** on the grounds of Green Belt impact; loss of Best and Most Versatile agricultural land; restrictions on output of the grid connection affect provision of renewable energy potential of site; impact on heritage assets; views of open countryside compromised; impact on biodiversity of site.
- 7.9. BERKS, BUCKS & OXON WILDLIFE TRUST: **object** on grounds of impact on Otmoor SSSI, Impact on Otmoor Local Wildlife site, impact on RSPB reserve, lake effect whereby birds mistake large area of solar panels as a lake, collision with panels, confusion regarding reflections, attempts by birds and bats to feed from the panels. Potential for birds to collide with security fencing. Conditions suggested.
- 7.10. BRITISH HORSE SOCIETY: **comment** that they are concerned regarding the increase in HGV movements during construction and the impact on safety of local horse riders. Request submission of a CTMP with specific section on awareness of equestrian users on the adjoining road network and appropriate measures to ensure all drivers are educated on safe interactions.
- 7.11. ENVIRONMENT AGENCY: **no objection** with regard to biodiversity and ecology, required further information regarding flood risk. No further comments received following submission of further details.
- 7.12. HISTORIC ENGLAND: **comment** that the solar farm would cause less than substantial harm to the scheduled Islip Roman Villa and Grade II listed buildings at Manor Farm, harm results from the change to settings, loss of Roman archaeological remains. Harm is at minor end of scale. Authority to include this harm when carrying out balancing exercise of harm/public benefit. With regard to mitigation of harm to undesignated archaeological remains defer to advice of OCC Archaeology.

- 7.13. LONDON OXFORD AIRPORT: no comments or objections received at the time of drafting the report.
- 7.14. NATIONAL AIR TRAFFIC SYSTEMS: **no objection**.
- 7.15. NATIONAL GRID: no comments or objections received at the time of drafting the report.
- 7.16. NATIONAL PLANNING CASEWORK UNIT: no comments or objections received at the time of drafting the report.
- 7.17. NATURAL ENGLAND: **no objection** and no concern with regard to soil classification.
- 7.18. NATURE SPACE: **comment** that ecological report states that development is at risk of injuring or killing great crested newts and that a licenced approach will be taken either via District Licence scheme or Natural England.
- 7.19. OPEN SPACES SOCIETY: no objections or comments received at the time of drafting the report.
- 7.20. RAMBLERS ASSOCIATION: no objections or comments received at the time of drafting the report.
- 7.21. ROYAL SOCIETY FOR THE PROTECTION OF BIRDS: no objection subject to conditions.
- 7.22. SOUTH OXFORDSHIRE DISTRICT COUNCIL: **comment** that the landscape is sensitive in this area (Ancient Woodland, historic villages with Conservation Areas and listed buildings) and landscape assessment should consider wider landscape impact, including cumulative impact with other solar farms, and impact from views and fabric and character of landscape. Site is in close proximity to Oxford heights landscape character area and Wooded Hills and Valleys sub-area. Request careful management of traffic generated. Close proximity to Woodeaten Quarry, Woodeaton Wood and Otmoor SSSI's.
- 7.23. THAMES VALLEY POLICE (DESIGNING OUT CRIME OFFICER): no comments or objections received at the time of drafting the report.
- 7.24. THAMES WATER: **no comments** to make.
- 7.25. WESTERN POWER: **comment** that it is out of their area.
- 7.26. OCC ARCHAEOLOGY: **no objection** subject to conditions.
- 7.27. OCC HIGHWAY AUTHORITY: **no objection** subject to entering into a Section 278 agreement and conditions.
- 7.28. OCC LANDSCAPE/GREEN INFRASTRUCTURE: District Council Landscape Officer to be consulted on proposals and comments taken into account.
- 7.29. OCC LEAD LOCAL FLOOD AUTHORITY: **no objection** subject to conditions.
- 7.30. OCC RIGHTS OF WAY: no comments or objections received at the time of drafting the report.
- 7.31. CDC ARBORICULTURE: **no objection**, condition suggested.

- 7.32. CDC CONSERVATION: **no objection**; less than substantial harm with public benefit of providing green energy to the grid.
- 7.33. CDC ECOLOGY: **no objection** subject to conditions but comment that they are concerned regarding impact upon wetland or migrating birds and aquatic invertebrates. There is insufficient evidence to show that there will not be any impact. Location is undesirable in ecological terms.
- 7.34. CDC ENVIRONMENTAL HEALTH: **no comments** to make.
- 7.35. CDC DRAINAGE: **no objection** as the flood risk at the site has been considered and an acceptable surface water management plan developed that accommodates the small impermeable areas on the site. Acknowledged that the solar farm will provide significant sustainability benefits in generating renewable energy. The Surface Water Management Plan contains appropriate attenuation, and that as the proposal is for carbon free generation of power they are satisfied that the required Exception Test can be passed and all flood risk considerations will be appropriately managed.
- 7.36. CDC LANDSCAPE SERVICES: **object** on the grounds of landscape and visual harm; inappropriate development in the Green Belt; harm to the openness of the Green Belt.
- 7.37. CDC PLANNING POLICY: **object** in principle as inappropriate development in the Green Belt.
- 7.38. CDC PROPERTY AND ASSETS: no comments or objections received at the time of drafting the report.
- 7.39. CDC RIGHTS OF WAY: **no objections** subject to conditions.

## **8. RELEVANT PLANNING POLICY AND GUIDANCE**

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- PSD1: Presumption in Favour of Sustainable Development
- SLE1: Employment Development
- SLE4: Improved Transport and Connections
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD4: Decentralised Energy Systems
- ESD5: Renewable Energy
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDS)
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD 11: Conservation Target Areas
- ESD13: Local Landscape Protection and Enhancement

- ESD14: Oxford Green Belt
- ESD15: The Character of the Built and Historic Environment

#### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- ENV1: Development likely to cause detrimental levels of pollution
- C8: Sporadic Development in the countryside
- C25: Development affecting the site or setting of a schedule ancient monument.
- C28: Layout, design and external appearance of new development

#### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Cherwell District Council Climate Emergency Declaration & 2020 Climate Action Framework
- British Energy Security Strategy April 2022

## 9. APPRAISAL

### 9.1. The key issues for consideration in this case are:

- Principle of development
- Principle of development in the Green Belt
- Impact on the character and appearance of the area
- Highway safety and impact on Public Rights of Way
- Flooding/Drainage
- Heritage impact
- Ecology impact
- Residential amenity

#### Principle of Development

9.2. Paragraph 11 of the NPPF notes that the development plan is the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. Cherwell District Council has an up-to-date Local Plan which was adopted on 20th July 2015.

9.3 The NPPF provides positive encouragement for renewable energy projects. Paragraph 157 of the NPPF states that the planning system should support the transition to a low carbon future and should support renewable and low carbon energy and associated infrastructure. Paragraph 163 of the NPPF states that when determining applications for renewable and low carbon development local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to significant cutting greenhouse gas emissions; and approve such applications if its impacts are (or can be made) acceptable.

9.4 Policy ESD5 of the CLP 2015 states that renewable and low carbon energy provision will be supported wherever adverse impacts can be addressed satisfactorily. The

potential local environmental, economic and community benefits of renewable energy schemes will be a material consideration in determining planning applications.

- 9.5 In principle, therefore, there is policy support for development of this nature. However, the overall acceptability of development is dependent on other material considerations, including the principle of the development in the Green Belt.

Principle of development in the Green Belt

- 9.6 The site lies within the Oxford Green Belt and so the proposed development is assessed against Green Belt policy.

- 9.7 Paragraph 152 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 of the NPPF states that: *“When considering any planning application, Local Planning Authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.”*

- 9.8 Paragraph 156 of the NPPF states that when located in the Green Belt elements of many renewable energy projects will comprise inappropriate development and if projects are to proceed developers will need to prove *very special circumstances* such as the wider environmental benefits associated with increased production of energy from renewable sources. All development in the Green Belt needs to preserve the openness of the Green Belt and not conflict with the purpose of including land within it.

- 9.9 Policy ESD14 of the CLP 2015 states that development within the Green Belt will only be permitted if it maintains the Green Belt’s openness and does not conflict with the purposes of the Green Belt or harm its visual amenities.

- 9.10 The proposed development constitutes inappropriate development in the Green Belt as it is not one of the exceptions set out at paragraph 154 of the NPPF and substantial weight is given to such harm.

- 9.11 An assessment is required into the impact of the development upon the openness of the Green Belt and on the purposes of including land within it, and then whether the harm to the Green Belt 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 development.

- 9.12 In relation to the purposes of the Green Belt, paragraph 142 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the most important attribute of Green Belts is their openness and permanence. This built development would clearly have an impact upon the openness of the Oxford Green Belt. Furthermore, the proposal conflicts with one of the five purposes of including land within Green Belts as stated in paragraph 143 of the NPPF, in that the proposed development would encroach into the open countryside.

- 9.13 In their Planning, Design and Access Statement the applicant accepts...*that the proposal would cause ‘harm’ to the Green Belt by reason of inappropriateness and because of the reduction in openness it would involve. In addition, there would be a limited degree of inevitable ‘harm’ to the landscape, to which moderate weight is attached, and a very minor level of ‘harm’ to the significance of the Grade II Listed heritage assets at Manor Farm, through changes to their setting, to which limited weight is attached.*



9.14 In order to attempt to overcome the harm identified the applicant has presented a very special circumstances (VSC) case (VSC) which sets out the perceived benefits of the Development which are as follows:

- Assists in reducing carbon emissions and combating climate change and ensuring local energy security which would assist in the Council's commitment to renewable energy set out in the Climate Emergency and Climate Action Framework 2020
- *no suitable non-Green Belt sites in the District which could accommodate the proposal due to grid connection and land area constraints*
- Delivering benefits to the local community such as the new permissive footpath
- Ecological and arboricultural benefits which, it is argued, result in delivering significant biodiversity net gain.
- Promotes rural diversification and thereby supports rural businesses
- The agricultural land is not identified as best and most versatile.
- Non-permanent nature of the development and potential for some agricultural use during the lifetime of the development (sheep grazing).

9.15 The final VSC point that the applicant makes is that *there are a number of site-specific environmental considerations waying in favour of the development*. It is the veracity of this statement, assessed in the sections below, that will be the determining factor in the establishing whether the proposal's VSC case overcomes the harm identified, set against the background of recent case law. The preceding points, whilst adding various degrees of weight to the applicant's case, do not introduce arguments that are not normally made in respect of other similar schemes.

#### Impact on character and appearance of the area

9.16 Given the nature and scale of this type of proposal, it is inevitable that a solar farm development would result in some landscape harm. In this context, the NPPF and local development plan policy adopts a positive approach indicating that development will be approved where harm would be outweighed by the benefits of the scheme. There is a distinction to be made between impact on landscape, which should be treated as a resource, and impact on visual amenity, which is the effect on people observing the development in places where the development can be viewed, such as villages, roads, public rights of way and individual dwellings.

9.17 Paragraph 180 of the NPPF indicates that the intrinsic character and beauty of the countryside should be recognised. Although the NPPF does not seek to protect, for its own sake, all countryside from development, it does set out to protect valued landscapes. The concept of valued landscapes is not defined in the NPPF; the application site does not form part of any designated landscape. Although the value of a given area within a particular landscape may depend on the value attributed to it by an individual or groups of people.

9.18 Guidance in determining applications for renewable and low carbon energy projects is set out in the PPG. The PPG advises that "the need for renewable or low carbon energy does not automatically override environmental protection and that cumulative impacts require particular attention, especially the increasing impact that such developments can have on landscape and local amenity as the number of turbines and solar arrays in an area increases". It continues that "particular factors a local planning authority will need to consider include:

- Where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.
- that solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use;
- the proposal's visual impact, the effect on landscape of glint and glare (see guidance on landscape assessment) and on neighbouring uses and aircraft safety;
- the extent to which there may be additional impacts if solar arrays follow the daily movement of the sun;
- the need for, and impact of, security measures such as lights and fencing;
- the potential to mitigate landscape and visual impacts through, for example, screening with native hedges;
- the energy generating potential, which can vary for a number of reasons including, latitude and aspect.”

9.19 Policy ESD13 of the CLP 2015 states that development will be expected to respect and enhance local landscape character securing appropriate mitigation where damage to local landscape character cannot be avoided.

9.20 Given that landscapes will be valued by someone at some time, the term valued landscape must mean that they are valued for their demonstrable physical attributes, which elevate them above just open countryside but below those areas that are formally designated, such as National Parks, AONBs etc. However, there is nothing significant about the application site that would elevate it or the surroundings to that of the NPPF 'valued' landscape.

9.21 The planning application was supported by an Landscape and Visual Impact Assessment (LVIA) which concluded the following:

*Overall, the proposed development will result in limited impacts at a localised level. The scale and form of proposed development is likely to result in impacts which are limited to the site area and its immediate context. In the wider landscape, potential views of the proposals are generally filtered by intervening vegetation. Those from elevated positions will be reduced by additional landscape planting along internal field boundaries within the site and along its boundaries.*

9.22 In order to ensure the accuracy of the conclusions reached in respect of the landscape and visual effects of the solar farm, the Council had the LVIA assessed by an independent landscape consultant who specialised in critiquing such reports. The 33 page report identified a number of areas of disagreement in particular: with the methodology; an absence of commentary on certain aspects; and differences in the level of harm attributed.

9.23 They consultant reached the following conclusion:

*Overall, it is considered that the overall landscape effects assessed are slightly understated due to not considering the potential impacts of the proposed planting scheme on the perceptual qualities of the open farmland landscape and in part due to a potential misapplication of the methodology criteria.*

- 9.24 The consultant concluded that the harm of the solar farm to the landscape character is likely to be more pronounced on completion than stated: *At Year 1, the changes to landscape character and the perceptual, aesthetic and functional aspects of the landscape would be most pronounced for this landscape character type (i.e. seemingly falling into the threshold of 'Medium' magnitude in LVIA Table A.3).*
- 9.25 When assessing the development through time the consultant *consider that a higher magnitude of effect would be expected at Year 1 when the methodology is applied as stated and the impact of planting is considered in the context of the perceptual and functional qualities of the site as open farmland. We would agree that this has the potential to reduce over time, in particular noting the 40 year lifespan of the solar park itself. However as noted, the creation and enhancement of landscape features needs to be weighed against the loss of open qualities.*
- 9.26 The impact on the landscape as a result of the planting which would not only change the appearance of the open landscape when viewed from a distance, but it is also argued that the *amenity from the public footpath through and adjoining the site needs to be taken into consideration.*
- 9.27 It is therefore argued that by attempting to screen soften the impact of the solar farm from elevated long range views from public rights of way (PROWs) the proposal would change the open agricultural nature of this part of the landscape whilst also affecting the amenity of people using the footpath surrounding and within the development. As part of their Landscape rebuttal letter, the applicant's agent maintains that *the proposed landscape strategy is considered to be entirely in-keeping with prevailing local landscape character and existing visual experiences, at a local level, when navigating local public rights of way.*
- 9.28 The landscape consultant is broadly supportive of the conclusions reached in the LVIA and accepts that there will be differences in approach when it comes to the methodology employed and the conclusions reached. This point was picked up by the applicant's agent who pointed out that the Landscape Institute guidelines state that it is up to the individual landscape consultant to develop their own methodology for undertaking a Landscape & Visual Impact Assessment. There is however an acceptance by the applicant's agent that the methodological areas of difference relate to the age of the LVIA (produced in 2022) and the subsequent changes to the guidelines.
- 9.29 In conclusion, the proposed solar farm would have an adverse impact on the landscape. The harm identified is going to be most significant in the short-term as the development would be very evident from the footpaths on higher ground overlooking Otmoor. The harm would however reduce through the lifetime of the proposal as the planting becomes more established.

Highway safety and impact on Public Rights of Way

- 9.30 Paragraph 114 of the NPPF states that in assessing specific applications for development, it should be ensured that:
- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
  - b) safe and suitable access to the site can be achieved for all users;
  - c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and

d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

9.31 In addition, paragraph 115 highlights that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

9.32 The construction phase would require approximately 12 HGV movements per day which whilst on a lightly trafficked road had the potential to result in a safety risk on an S-bend stretch in the road at the construction access point. Following the receipt of additional information in respect of the proposed visibility splays, in respect of the access taken from Noke Village Road, the Local Highway Authority withdrew its objection of the proposal subject to a legal agreement (Section 278) and appropriate conditions. The proposal is therefore considered to be acceptable in respect of highway safety terms.

9.33 In respect of the public rights of ways, the County raised no objections subject to compliance with a number of standard measures and conditions. They had also sought to upgrade an existing and proposed a section of footpath to be converted into a bridleway to enable more riding access to Otmoor. They later withdrew this request once they accepted that it would impinge upon the Ecology Enhancement Area.

#### Flooding/drainage

9.34 Government guidance contained within the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. It explains that *'when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:*

- a) *within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) *the development is appropriately flood resistant and resilient;*
- c) *it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) *any residual risk can be safely managed; and*
- e) *safe access and escape routes are included where appropriate, as part of an agreed emergency plan.'*

9.35 The NPPF continues by stating that *'major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate.'*

9.36 Policy ESD6 of the CLP 2015 echoes the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.

9.37 Policy ESD7 of the CLP 2015 requires the use of Sustainable Urban Drainage Systems (SuDS) to manage surface water drainage systems. This is with aim to manage and reduce flood risk in the district.

- 9.38 The northern part of the site lies within flood zones 2 and 3, which are considered to be at the highest risk of flooding, although the majority of the site is within flood zone 1. The site is also within 20 metres of a watercourse and there are a number of ponds in the vicinity.
- 9.39 A Flood Risk Assessment has been submitted with the application, explaining that all essential infrastructure would be located within flood zone 1 and all solar panels would be raised 0.90m above ground level, thus rendering the panels to be free from flooding. A number of mitigation proposals are included in order to reduce the risk of flooding to the flood zone to an acceptable level, including spacing between the piles supporting the panels and using the largest reasonably practical mesh in the securing fencing. A swale will be used to capture and store additional surface water run-off, with an attenuation device provided should percolation testing prove infiltration rates to be poor, attenuating runoff from the site to pre-development greenfield runoff rates.
- 9.40 Given the limited possibilities to connect to the grid, Officers have no reason to dispute the assertion that the proposed solar farm could not be located elsewhere.
- 9.41 The CDC Drainage Officer has confirmed that as “essential infrastructure” for the carbon-free generation of power, they are satisfied that the Exception Test can be passed and that all flood risk considerations will be appropriately managed. Officers agree that the sustainability benefits of the development to the community, through the generation of renewable energy and anticipated reduction in the impact of climate change would outweigh the flood risk in this location. Further, the FRA demonstrates that the development would be safe for its lifetime.
- 9.42 The Environment Agency is largely content with the scheme following the submission of additional details. Two queries were raised regarding the volume of compensatory storage and the design of the perimeter fencing, although since re-consulting the Environment Agency with the response to these, no further comments have been received at the time of writing. Officers consider the further detail submitted to be acceptable.
- 9.43 The proposed development is therefore considered to provide sustainability benefits to the community whilst remaining safe for its lifetime and avoiding the risk of flood risk elsewhere, in accordance with the above Policies.

#### Heritage Impact

- 9.44 The site lies around 600 metres east of a Scheduled Ancient Monument (SAM) known as Islip Roman Villa. The farmhouse and agricultural buildings at Manor Farm in Noke are Grade II listed and positioned to the south of the site. There are a number of other listed buildings further afield surrounding the site, and the Islip Conservation Area lies to the west.
- 9.45 Historic England has advised that the principal significance of the SAM Islip Roman Villa is the below-ground archaeological remains and the important historical information that they contain. There are no above ground remains, although the terracing into the hillside can be appreciated. The northern rural view of the valley of the River Ray, of which the site forms a part, contributes to the setting of the Scheduled Ancient Monument as it illustrates the deliberate siting of the villa on the high ground, and the agricultural surroundings and estate of the villa. The site also forms a part of the setting of the Grade II listed buildings at Manor Farm and plays a role in forming the agricultural character and appearance of the area that explains the development of the surrounding villages and farms, some of which are both designated and non-designated heritage assets.

- 9.46 Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*
- 9.47 Likewise, Section 66 of the same Act states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Therefore, significant weight must be given to these matters in the assessment of this planning application.
- 9.48 Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 205 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*
- 9.49 The NPPF goes on to explain that any harm to, or loss of, the significance of a designated heritage asset (from its alteration, or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of Grade II listed buildings should be exceptional, and assets of the highest significance such as Scheduled Monuments, should be wholly exceptional.
- 9.50 Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use. Policy ESD15 of the CLP 2015 echoes this guidance.
- 9.51 Saved Policy C25 of the CLP 1996 states that in considering proposals for development which would affect the site or setting of a Scheduled Ancient Monuments, the Council will have regard to the desirability of maintaining its overall historic character, including its protection, enhancement and preservation where appropriate.
- 9.52 The applicant has undertaken an archaeological assessment of the site, indicating that there is a concentration of archaeological remains in the southern part of the site. The remains found are of a pattern of enclosures, trackways and field boundaries that possibly begin the late iron age, together with quarry pits and evidence of crop processing. Pottery is dated to the 3<sup>rd</sup> or early 4<sup>th</sup> Century, suggesting connection with the later phases of the villa, where similar dated pottery has been found. Historic England has confirmed that they consider the remains to form a part of the setting of the Roman villa, and that they make a minor contribution to its significance, although they are not of national significance.
- 9.53 Historic England has advised that the proposed solar farm would represent a minor change to the northern view from the villa, constituting less than substantial harm to the SAM, but that this is at the minor end of the scale of harm. The loss of archaeological remains would be harmful, although would constitute very minor harm to the significance of the SAM. Temporary harm would be caused during the construction period. Historic England also advise that less than substantial harm would be caused to the setting of the Grade II listed buildings at Manor Farm, although again, this is at the low end of the scale. This is echoed in the response from the Conservation Officer.

- 9.54 Officers are in agreement with the conclusions drawn by both the Conservation Officer and Historic England in that less than substantial harm would be result to the SAM and Grade II listed buildings at Manor Farm through development within their setting. In such cases, as the NPPF advises, this harm must be weighed against the public benefits of the proposal.

#### Ecology Impact

- 9.55 Paragraph 180 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 9.56 Paragraph 186 states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 9.57 Paragraph 191 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 9.58 Policy ESD10 of the CLP 2015 seeks to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 9.59 The eastern edge of the site lies within the Otmoor Conservation Target Area (CTA). The principal aim of a CTA is to focus work to restore biodiversity at a landscape scale through the maintenance, restoration and creation of UK BAP priority habitats. CTAs are considered to represent the areas of greatest opportunity for strategic biodiversity improvement in the District and as such, development will be expected to contribute to the achievement of the aims of the target areas through avoiding habitat fragmentation and enhancing biodiversity.
- 9.60 Policy ESD11 of the CLP 2015 states that where a development is proposed within or adjacent to a CTA biodiversity surveys and a report will be required to identify constraints and opportunities for biodiversity enhancement. Development that would prevent the aims of a CTA being achieved will not be permitted. Where there is potential for development, biodiversity enhancement will be secured.
- 9.61 The above polices are supported by Government guidance contained within the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.62 The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005),

although this remains extant. The PPG states that Local Planning Authorities should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

9.63 Natural England Standing Advice states that an LPA need only ask an applicant to carry out a survey if it's likely that protected species are present on or near the proposed site.

It also states that LPA's can also ask for:

- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
- an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')

9.64 The Standing Advice sets out habitats that may have the potential for protected species. The site consists predominantly of open agricultural fields, bounded by mature trees and hedgerows. The site is partially within and adjacent to the Otmoor CTA and contains some NERC Act Section 41 habitat as coastal and floodplain grazing marsh. The site is within 2km of the Otmoor and Woodeaton Quarry and Woodeaton Wood SSSI's, and in close proximity to the RSPB Otmoor Local Wildlife Site. A number of ponds have been identified in the vicinity and part of the site with within 20 metres of a watercourse. A number of protected and notable species have been identified in the area. The site is therefore considered to have the potential to be a suitable habitat for a range of protected and notable species.

9.65 In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England would be likely to grant a licence for the development.

9.66 In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.

9.67 An Ecological Appraisal has been undertaken at the site. In summary, the survey identified a number of habitat features including an orchard, pond, hedgerows, semi-natural broad-leaved woodland and a river. In terms of protected and notable species the survey has identified that the site is suitable for use by protected species, although subject to provisions within the security fencing to allow movement and recommendations regarding the timing of works, the survey concludes that the development would not cause harm to badgers, brown hare, hedgehog, harvest mouse, otter, water vole, dormouse, bat, reptiles, invertebrates and birds, with the exception of the loss of nesting sites for 6 breeding pairs of skylarks. There is a risk of development injuring or killing great crested newts, although this is considered to be low. The applicant would need to apply for a licence from Natural England for these works or apply via the District Licence scheme. Biodiversity enhancements are proposed as part of the development and a metric has been submitted to support this.



- 9.68 Natural England, the Environment Agency and the RSPB have raised no objection to the proposal on ecological grounds. The Council Ecology Officer has raised no objection, although has expressed concern regarding the proximity of the site to the Otmoor Local Wildlife Site, the RSPB nature reserve and the Otmoor SSSI, which are among the most valuable ecological sites in the District. The CDC Ecology Officer clarified on 15 February 2024 that in light of the lack of definitive evidence that harm would arise as a result of the development, and as there is no obligation to consider alternative locations on ecological grounds, no objection was raised.
- 9.69 BBOWT has maintained their objection the scheme following the submission of an amended Ecological Appraisal, referring to guidance from Natural England and the RSPB advising that utility scale solar development should avoid, or not be built on or near, protected areas. The concern arises from indications that very large, unbroken expanses of solar panels can mimic water surfaces, resulting in the “lake effect” whereby birds, bats and insects mistake the solar panels for a body of water. There is also concern regarding the noise and pollution during construction of the solar farm, and for birds to collide with the proposed fencing. BBOWT consider that there is not yet sufficient evidence that a solar farm can be installed in close proximity to a wildlife site of such value without harm being caused to certain species and have therefore applied a precautionary principle.
- 9.70 Whilst the concerns of BBOWT are acknowledged, given that an ecology assessment has been carried out, together with recommendations for mitigation of harm, and the lack of objection from Natural England, the Environment Agency, the RSPB and the CDC Ecology Officer, and without evidence to confirm that harm would be caused to protected species as a result of a possible “lake effect”, Officers do not consider that the refusal of the application on this ground could be sustained at Appeal.
- 9.71 The applicant has explained that there are no bodies of water within the site, and so it is highly unlikely that low flying wildfowl collide with 2.1 metre tall fencing, given that they would have to have just taken off or be landing on the water. The panels would also be bounded with a pale or silver border and anti-reflective film that has been shown to reduce the attractiveness of the panels to insects. Further, the site would only be lit by infrared security lighting, which is not visible to birds or mammals. Skylark plots would also be provided to enhance breeding territories.
- 9.72 Officers are in agreement with the points raised by the applicant, and do not consider the height of the fence to pose a threat to birds. The scope of permitted development with regard to fencing should also be borne in mind. The limited lighting of the site is welcomed, as are the precautions with regard to insects, and these features can be controlled via condition.
- 9.73 With regard to construction noise and disturbance, Officers consider that this is likely to be similar to that of the authorised use of the site for agricultural purposes, of which there is no control at present. However, a Construction Environment Management Plan can be secured via condition to ensure that the development does not result in harm in terms of environmental pollution.
- 9.74 To conclude, Officers are of the opinion that the development will not result in harm to protected species or their habitat, based on the evidence available at the time of writing. Biodiversity enhancements are proposed as part of the scheme, supporting the aims of the Conservation Target Area designation. The proposal therefore accords with the above policies in terms of ecological impact.

#### Residential Amenity

- 9.75 Paragraph 191 of the NPPF advises that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the

likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

- 9.76 These provisions are echoed in Policy ESD15 of the CLP 2015 which states that: 'new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space'.
- 9.77 Saved Policy ENV1 of the CLP 1996 seeks to ensure that the amenities of the environment, and in particular the amenities of residential properties, are not unduly affected by development proposals which may cause environmental pollution including noise and light pollution and traffic generation.
- 9.78 The Council's Environmental Health Officer considered the inverter noise specification and concluded that the residents of the closest properties would not be unduly affected.
- 9.79 The closest property to the site is Logg Mead House, which is approximately a minimum of 120m to the north of the proposed development. The development is screened from this property by line of trees running along the north edge of the application fields. Officers are satisfied that with the additional proposed planting any harm to residential amenity is going to be negligible and the development would therefore comply with the aforementioned local plan policies and the NPPF.

## **10. PLANNING BALANCE AND CONCLUSION**

- 10.1. Planning applications are required to be determined in accordance with the Development Plan unless material considerations indicate earlier. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development and need to achieve the economic, social and environmental objectives in mutually supportive ways.
- 10.1. Economic objectives – The location of the proposed development is in an area where a solar farm development would be economically viable (where there is a gap in the grid capacity) and would provide economic benefits during the construction phase. The development would not result in the loss of Best Most Versatile (BMV) agricultural land (the importance of protecting BMV land was re-emphasised in a recent ministerial statement which made the point 'food security for our national security').
- 10.2. Social objectives – The applicant is proposing to incorporate a permissive footpath into the scheme. The development would not result in significant detriment to the living amenities of nearby residents.
- 10.3. Environmental objectives – The solar farm, which would only be in place for 40 years, would provide up to 26.6 megawatts of installed electrical generation capacity, delivering significant environmental benefits by reducing carbon emissions. The development would thereby assist with delivering the Council's commitments under the Climate Emergency and Climate Action Framework 2020. There would be biodiversity enhancement which will be of benefit to the Conservation Target Area. There would be harm to the visual amenities of the area particularly when the site is viewed from higher ground. Although this would lessen though time, the planting around the development result in some harm to the open nature of this part of the landscape. There would be less than substantial harm (albeit at the lower end of the scale) to the setting of the nearby scheduled ancient monument.

- 10.4. The relevant pros and cons of the scheme set out above help to establish whether the VSC case is so compelling that outweighs the harm that would result to the openness of the Oxford Green Belt. In order to establish whether such a high bar has been overcome it is important to assess the development in respect of recent case law, whilst accepting the limitations of drawing too many parallels given the number of variables that characterise each individual site.
- 10.5. The applicant cites the solar farm, allowed at appeal, at Rowles Farm (13/01027/F – appeal reference APP/C3105/A/13/2207532) which is approximately 2km from the application site. Despite its proximity and the presences of PROWs running through the site, this is perhaps not a quite an appropriate comparison given that the landscape impact is largely restricted to the confines of the site.
- 10.6. A recent appeal recovered by the Secretary of State (SoS) for determination (Hertsmere Borough Council appeal reference N1920/W/22/3295268) gave *very significant positive weights* to a solar farm which would generate 49.9MWs. The attribution of such weight is consistent with other appeal decisions. In this case, the appeal was dismissed as the Inspector/SoS found that the scheme would have a significant impact on the landscape's character as well as the settings of a number of listed buildings. Whilst there are parallels with the scheme under consideration, the landscape harm resulting from the Otmoor site is not considered to be significant. Also, whilst a negative, English Heritage accepts that the *less than substantial harm* to the SAM is at the lower end of the scale.
- 10.7. Another recent appeal recovered by the SoS for determination (North Herts Council appeal reference APP/X1925/V/23/3323321) is perhaps a closer comparison in respect of landscape harm, when the Inspector concluded that there would be *moderate adverse impact on the landscape character area, both following construction (year 0) and when planting had become established (year 10)*. In respect of a nearby SAM the SoS, concluded that there would be a moderate level of harm to its setting. The SoS disagreed with the Inspector's recommendation and approval was granted. This decision reflects the current perception that unless there is relatively significant harm identified, the positive of additional renewable energy is normally sufficient to overcome conflict with green belt policy.
- 10.8. Whilst this is still a very balanced decision, it is therefore nonetheless concluded that the VSC case outweighs the harm to the openness of the Oxford Green Belt and that therefore when considered as a whole, the economic, social and wider environmental benefits of the scheme outweigh any adverse effects on the landscape and the setting of the SAM. The proposal. is therefore considered to represent a sustainable form of development and it is recommended that planning permission be granted.

## **11. RECOMMENDATION**

**GRANT PERMISSION, SUBJECT TO CONDITIONS (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY)**

CONDITIONS

To be provided as part of the written update

CASE OFFICER: Rebekah Morgan