

# Land South of New Stone House, Main Street, Wendlebury

14/00565/F

**Ward:** Ambrosden and Chesterton

**District Councillor:** Cllr Fulljames

**Case Officer:** Paul Ihringer

**Recommendation:** Approval

**Applicant:** INRG (Solar Parks) 10 Ltd

**Application Description:** Solar farm and associated works

**Committee Referral:** Major

## 1. Site Description and Proposed Development

- 1.1 The application site covers an area of just under 24 hectares of agricultural land (currently being used to grow oil seed rape) which is located to the immediate east of the M40 and part of the slip road serving Junction 9. The site's southern boundary abuts the railway line between Bicester and Oxford. The rest of the site is surrounded by fields. Excluding the access track, the southern edge of Wendlebury is approximately 250m from the application site.
- 1.2 Part of the western side of the development area lies inside a flood zone 2/3. Other notable features of the site are: a gas main running roughly east-west at the northern end of the site; overhead power lines running parallel and close to the railway line; a water course; a footpath (398/2) running along the site's western boundary; and a badger sett.
- 1.3 Planning permission is being sought for a large-scale (i.e. produces 5MW or more of energy) solar farm. As with other approved schemes within the District the projected life span of the solar farm is 25 years. A large proportion of the two fields that make up the majority of the site would be filled with solar arrays comprising 39,138 solar panels, which would be capable of generating 12.5MW of energy. The applicant estimates that at this level of production the needs of 3,000 households would be met. The arrays would have a height of 2.2m and would be aligned in rows running in an east-west direction.
- 1.4 A small part of a third field on the northern edge of the site will be used as a temporary construction compound. In addition to the arrays, 6 inverter/transformer cabins would be erected at various strategic positions within the site adjacent to a vehicular access track. The applicant has had to make allowances for the gas main, overhead power lines, water course, areas prone to flooding and badger sett when formulating the layout. It is also proposed to leave an ecological buffer between the railway line and the southern most arrays.
- 1.5 There would be two points of access onto the Oxford Road (road linking Wendlebury to the A34 and A41). The eastern access would be used solely for construction traffic. To prevent wildlife interfering with the equipment, and for security purposes, the site would be bounded by a 2m high security fence. In

order to mitigate the impact of the development on the village, the site's northern boundary would be landscaped with hedgerows and trees. A hawthorn hedgerow running down the eastern boundary would also help to obscure the site from the aforementioned footpath.

- 1.6 Before submitting the application, a public consultation exercise (part of the best practice guidance for member of the Solar Trade Association) was undertaken which included a 'community mail drop' to 172 residential and commercial properties surrounding the site. Aside from informing local people and the local ward Member of the proposal, it invited them to attend a drop-in session at the Wendlebury Village Hall. It is argued that where appropriate the scheme was amended to reflect the concerns voiced.
- 1.7 The only other planning history relating to this site, which is of particular relevance to this case, is the applicant's screening opinion (14/00004/SO refers) which concluded that an EIA was not required for the proposed development.

## **2. Application Publicity**

- 2.1 The application has been advertised by way of neighbour letter, site notice and press notice. The final date for comment was the 30<sup>th</sup> May 2014.

1 letter has been received. The following issues were raised

Material planning comments:

- Adversely affect the setting of the village
- Proximity to footpath will reduce usage and have negative health consequences

Non material comments:

- Purely for commercial benefit
- Will extend the perceived boundary of Bicester
- Wendlebury is a category C settlement - development contrary to policy

## **3. Consultations**

- 3.1 **Wendlebury Parish Council:** Comments as follows:

"Wendlebury PC has a number of concerns in relation to the proposed development reflecting our own survey of residents views. This is taken in the context that we are supportive of renewable energy and see Solar Power as a good thing. However due to the location of Wendlebury and the proposed location of the park we believe that the development would have a detrimental effect on the village and therefore we oppose the planning application made by INRG Solar Ltd.

### **Background**

For the sake of context it is worth reminding Councillors and officers of some facts about Wendlebury. We are small village of circa 185 households some 3

miles west of Bicester. We are a vibrant community and do everything we can to try and maintain our rural position. Notwithstanding this we are 'boxed' in by the M40 to the West, A41 to the North, the Chiltern Railway line (in the process of being duelled) to the South. We also suffer from frequent flooding to a number of properties in the village due to run off from the A41 and surrounding fields and the way a number of water courses feed through the main street.

### **Key concerns**

1. The proposed site is located in a field that has public footpath running along the boundary. This footpath provides a key route to gain access to the wider countryside (see our location above.) Whilst we fully appreciate the footpath will still be there, the rural outlook will be fully lost due to the fencing around the site. This once again adds to the feeling that the village is being hemmed in. At present it is only one of two footpaths out of the village that are not subject to crossing the major roads around us and the other footpath is shortly to change from a rural/field footpath to one at the side of a road as it forms part of Chiltern's Evergreen access to Merton Grounds. It therefore this becomes the only rural footpath for a village.

2. The PC believe that the solar park is a form of industrial development which requires a significant change of use and classification and this goes against policy in the draft local plan:-

a. SO12 " to focus development in Cherwells sustainable locations, conserving and enhancing the countryside and landscape and the setting of its towns and villages."

b. Policy ESD 5 " Impacts on the landscape, impacts on residential amenity, visual impacts on local landscapes"

c. Policy ESD 13 " Proposals will not be permitted if they would – Cause undue visual intrusion into the open countryside, be inconsistent with local character"

d. Policy Villages: Village Categorisation – Wendlebury is a Category C village only development allowed is conversions and in fill. How can a development of 150 acres on the boundary of the village be called a conversion no one else can develop within the village why should a solar farm owner be allowed to.

As mentioned, the village suffers flooding and again we understand fully that the site would need to complete a full Hydrology survey. However there is the theory and practice on these matters that do not always match. The planning Committee will be aware that the PC is making representation to the Inspector examining the Local Plan. One of those areas of concern is the flood risk as previously described, but an unknown impact from the Railway line development and any possible future bypass road. These potential effects invalidate the historical Environment Agency modelling. The EA are currently reviewing the position in Wendlebury. The applicant acknowledges that the fields in question do form part of a flood plain, do flood and has applied an exemption test which we feel is not appropriate for the reasons outlined. It would seem to be inappropriate to consider this application until after the determination of the Local Plan.

3. We believe the current Environment Agency data is out of date and that this should be fully reviewed as part of the application process, or indeed the application delayed until this is brought up to date.

4. The visual impact we accept will be limited from the majority of the village. However, as you arrive, in the village from the Oxford end over the Motorway Bridge, the site will be in full view. In addition the impact will be huge when using the footpath as above.

5. The developer has offered some compensation to the village, however we feel this is not proportionate to the potential impact on the village. There is currently no offer for ongoing support over the 25 years of the proposed land lease and this again seems inappropriate.

6. We are concerned on the traffic movements during the construction phase as we already suffer from 'rat running' through the village. The applicant has consistently referred to NPPF and associated guidance to support his case for the delivery of renewable energy. The PC are conscious of the need for a balanced approach and are aware of the steer being provided by the Department of Energy and Climate Change in their reports published this month, which sets out a strategy for solar development using areas which are likely to have a greater impact than farm land, for example, brown field sites, top of factories, supermarkets, warehouses, and schools and hospitals etc. The draft Local Plan is silent on a solar strategy for Cherwell which incorporates these principles Should the Council not be better placed working on its own strategy, rather than responding to ad hoc applications that seek to take advantage of central government funding.

In summary we believe more suitable locations that would have less impact on a rural community could be found and would urge CDC to develop a formal policy to give guidance on such proposals.

### **Cherwell District Council Consultees**

#### **3.2 Landscape Officer:** comments as follows:

I have no objection to the principle of development, as long as the appropriate landscape mitigation planting is implemented and the existing structure of hedgerow and trees are protected during the course of the development.

#### Viewpoint 1 (edge of Wendlebury)

The walker receptor has a **high/medium** sensitivity. I judge that the development will not encroach onto the skyline of the backdrop of M40 landscape buffer, the level topography and the partial screening of the intervening hedgerow will the site to accept this scale of development, but the appropriate landscape mitigation is required. The site extends further to the east than what is shown by the annotation in the photograph, and will be completely screened by the dense belt of trees and shrubs immediately east of the PRow. The 2 m high deer fence will be visually prominent and will be screened by the proposed hedgerow, however individual hedgerow trees will be necessary to break up the linearity and provide interest for the viewer. An augmentation of this managed hedgerow with a new hedge will be welcomed.

For the Scale of Visual Effect a **Minor Adverse** weighting is judged from this viewpoint, reducing to **Negligible** over 10 years.

Viewpoint 2A (northern eastern edge of development)

A **High** sensitivity for the walker receptor, with a Magnitude of Change of **High**. Landscape visual amenity will be harmed for the walker receptor, however the site is visually contained by the M40 embankment and associated structural vegetation. The site does not provide a setting for surrounding views because of the effect of the level topography and landscaped buffer/embankment to M40 and field boundary vegetation. In principle the proposed hedgerow screen is appropriate, but will be somewhat of an oppressive experience for the walker receptor. With the badger sett constraint associated with the well-maintained hedgerow in the middle distance (in the photograph), a foraging/buffer zone could be appropriate for badgers. This zone with the existing hedgerow backdrop allowed to grow to 3 metres with its irregular outline with hedgerow trees planted will provide the appropriate visual amenity. However it is important to implement a new hedge line on either side of this zone, along the northeast boundary for the purposes of landscape mitigation. Refer to Construction Exclusion Zone below.

Viewpoint 2B

Similar recommendations to 2A

Viewpoint 3 (opposite side of railway track)

Agree with Pegasus

Viewpoint 4 (motorway bridge on Oxford Road)

An attractive setting with Arncote Hill in the distance, however the M40 motorway visual impact and noise detracts from the attractive view so the amenity value for walker receptor is lower because of this factor. Less important for Vehicle receptor due to fleeting viewing experience. I agree that the introduction of landscape mitigation here is difficult to achieve from this aspect, however the M40 structural landscape will mature and when in leaf will have improved screening/filtration of views.

Viewpoint 5 (opposite side of motorway viewing site's south west corner)

I do not agree that the walker receptor sensitivity is going to be High. I think it is **Low** because the site is already screened and contained behind the intervening M40 structural vegetation and influenced by the level topography. The Scale of Visual Effect is still **Negligible**.

Viewpoint 6 (opposite side of motorway viewing site's north west corner)

Similar comments to V5

Viewpoint 7 (Opposite side of motorway adjacent to the Oxford Road)

Similar comments to V5

Viewpoint 8 (south western edge of Merton)

The walker receptors sensitivity rating to the site is **Low** and therefore the Scale of Visual Effect is still **Negligible**.

Viewpoint 9 (north of the site from Oxford Road)

I agree with Pegasus's results.

#### View from near Railway

When looking due northwest from the PRow, near the railway crossing the walker receptor will experience **High** sensitivity to the development. This sensitivity will reduce over time with establishing hedgerow proposed, but hedgerow trees should be planted in irregular spaces on the south east boundary. I recommend that medium-sized trees such as *Acer campestre* are planted.

#### Receptor Views from Meadow Walk Properties and New Stone House

Residents looking from upper floor windows will experience the development for longer than walker receptors so it is essential to ensure that the proposed landscaping mitigates these views. The proposed Oak trees are to be irregularly spaced and interplanted with native thickets of blackthorn and hawthorn to supplement the hedgerow planting on the entire northern boundary. The thickets must be allowed to achieve their mature height above the hedgerow planting and therefore improving the screening of the site for residents.

#### Construction Exclusion Zone

The Badger area with buffer is to be protected with similar protective fencing that is to be installed to the root protection areas (in accordance with BS 5837). The alignment of the fence is to allow for three badger routes and foraging

The proposed site (yellow) access goes through the Badger buffer zone and very close to the set. Will English Nature find this acceptable? Refer to the Solar Compound Site Fencing and Sections Drawing no B58140124\_02, in the Ecologist's report, which indicates this route.

#### Contractor's Access and Temporary Construction Compound

From Pegasus's Draft Protection Tree Plan that appears to be no means of access from the farm track to the construction to the site. There must be a clearly defined route to ensure that root protection areas and Badger area are protected from damage during the course of construction and future maintenance. The access track has mature hedgerow and trees (H1 and H2) and either side that must be protected, as per recommended in the arboricultural report Tree Survey, Arboricultural Impact Assessment and Draft Tree Protection Plan e.g. pre-construction pruning for facilitate and installation of protective fencing to BS 5837. I would advise against any height reduction to the hedges on the contractor access because these hedgerows provide good intervening screening from the highway north of New Stone House. It is inevitable that further compaction damage to roots will occur, especially in on wet ground. I recommend Pegasus consider the installation of protective track way to minimise the impact on root systems. A BS 5837 method statement is required. In fact the other access to the west of Manor Farm would be more appropriate if it was situated away from residences during the build. Please note that all hedgerow and tree works to be done outside the bird nesting season!

#### Cable Runs/Trenching

The applicant to confirm the route of the main cable (connection to the grid) and whether there are any trees and hedgerows within an influencing distance. An appropriate method statement is to be provided.

3.3 **Arboricultural Officer:** Verbal confirmation that he was happy with the assessment made by the Landscape Officer.

3.4 **Ecology Officer:** Comments as follows:

“I am satisfied that the submitted LEMP addresses my concerns regarding the badgers. It details construction and operational phase habitat management and mitigation. Note that this includes a restriction on the timing of construction to between the months of November and February inclusive, in order to avoid harm to great crested newts (and ground nesting birds). If construction works do not commence within one year of the permission date, an updated badger survey should be carried out as badgers frequently move between setts and the mitigation and fencing plan may need to be altered.

“Therefore adherence to the May 2014 LEMP by MWA and the need for an updated badger survey (with the results to be submitted to us for approval) if works do not commence within one year should be controlled by condition.”

3.5 **Environmental Protection Officer:** No comments received

### **Oxfordshire County Council Consultees**

3.6 **Highways Liaison Officer:** comments as follows:

#### **1.0 Access**

A concern over the proposed construction access is the limited vision splay to the west. TPA Drawing No. Fig. 2.2 shows a vision splay of 2.4m x 98m west of the construction access. From site visit, the vision splay is likely to be slightly less than 98m as the vision splay has been measured behind a tree on the verge, rather than to the front of the tree.

In accordance with Design Manual for Roads and Bridges, a vision splay of 2.4m x 215m is required for a new/ amended/ intensified access to the public highway where the speed limit is 60mph. If the majority of traffic on Oxford Road approaching the site travels at 50mph, the vision splay requirement would still be a minimum of 2.4m x 160m. A detailed traffic speed survey has not been carried out by the applicant to support the substandard vision splay proposed. Therefore, the proposed access visibility splay is unacceptable, particularly considering that large, slow moving vehicles will exit the site and sweep into the opposing carriageway when turning left out of the site.

Although the application form states no proposed changes to highway access, the proposed construction access will clearly need to be upgraded as it currently consists of a little used grass track, with vegetation on both sides and an apparent ditch to the east of the access.

The Pegasus ‘Tree Retention & Loss Plan’ indicates that facilitation pruning will be required at the construction access to allow access to the site. The

TPA swept path analysis of a 15.4m Articulated Vehicle for the construction access clearly shows grass verges and a ditch being overrun by heavy vehicles. Details are required of the proposed access amendments, in terms of layout, drainage, materials, surfacing and maintenance.

## **2.0 Drainage**

The development is considered very low impact regarding surface water drainage, however the developer still needs to be made aware of the requirements of the Flood and Water Management Act 2010. Surface water run-off from the site must not increase as a result of the development.

## **3.0 Rights of Way**

Wendlebury Public Footpath 2 runs along the Eastern boundary of the site. The plans show that a 2m high fence will be installed and a 3m landscaped buffer zone planted between the solar farm and the footpath. There will be some loss of amenity to the footpath as the fencing will create an enclosed corridor, although this is mitigated to some extent by the 3m planting zone between the path and the fence. The Design and Access Statement mentions that the view of the solar farm will be screened from the footpath (by the planting) but this means that views from the path will also be hindered. There will need to be regular maintenance carried out to keep the new planting from encroaching onto the footpath.

The footpath itself runs along the edge of the field but not right up against the boundary. The distance from the boundary varies along the length of the path. The definitive route of the footpath will need to be accommodated and the plans will need to be amended accordingly.

## **4.0 Impact of glare/ reflection on M40**

I note in the Design and Access Statement that the proposed solar modules will have a blue/ black appearance to absorb sunlight, reducing glint and glare to a minimum. The site is partly visible from the M40, as the southern field is less well screened by boundary trees etc. Presumably any concerns over reflections from solar panels distracting drivers would be raised by and discussed with the Highways Agency.

## **5.0 Construction Impact**

A construction traffic management plan (CTMP) has been submitted, however contractors have not yet been appointed, and some matters, e.g. wheel washing facilities, are not yet confirmed. Given the proximity of the site to the A34 and children's nursery, construction traffic and delivery vehicles are proposed to operate outside the network peak, i.e. 1000-1600 on weekdays. An updated CTMP must be submitted for consideration and approval once contractors are appointed, and prior to commencement of development.

Pre- and post- condition surveys of the highway will be required, to ensure that damage caused by heavy vehicles is repaired to the specification and satisfaction of the Highway Authority. This will need to be included in the S278 Agreement.

It is expected that there will be a maximum of eight large vehicle movements per day using the site over a maximum 3 month period, with additional construction staff vehicular movements. The use of 'works traffic' signage and



banksmen to direct construction vehicles in and out of the site will not be adequate in light of the above comments on the inadequacy of the proposed access vision splays.

The routing plan used by constructions vehicles must be that shown on TPA drawing no. Figure 2.1, in the construction traffic management plan. Construction traffic must not travel through Wendlebury village.

### **6.0 Conclusion**

Whilst many highway and transport matters can likely be dealt with by appropriately worded planning conditions, the concern over the inadequate vision splay for the site and risk of collisions on the highway is such that I recommend that the application should not be approved in the interests of highway safety.

### **3.7 Archaeology Officer: Comments as follows:**

“The site is located in an area of archaeological potential where a number of Iron Age and Roman settlement sites have been recorded. Although no archaeological sites have been identified within the development area and the ground disturbances related to this application are fairly limited there is a possibility that this development could impact on previously unknown archaeological deposits.

“A condition requiring a staged programme of archaeological investigation will therefore be required on any resultant planning permission.”

### **Other Consultees**

**3.8 Highways Agency:** No comments received

**3.9 Environment Agency:** Objected to the flood risk assessment as originally submitted. Following the receipt of additional information, the Environment Agency withdrew its objection subject to the imposition of two conditions.

**3.10 Natural England:** No comments received

## **4. Relevant National and Local Policy and Guidance**

### **4.1 Development Plan Policy**

Adopted Cherwell Local Plan (Saved Policies)

C2: Development affecting protected species

C4: Creation of new habitats

C7: Landscape conservation

C28: Layout, design and external appearance of new development

### **4.2 Other Material Policy and Guidance**

National Planning Policy Framework

Planning Practice Guidance

Planning Practice Guidance for Renewable and Low Carbon Energy (Jul. 2013)

UK Solar PV Strategy Part 1: Roadmap to a Brighter Future (Oct. 2013)

UK Solar PV Strategy: Part 2 (Apr. 2014)

Submission Cherwell Local Plan (January 2014)

The Proposed Submission Local Plan was published for public consultation in August 2012. A further consultation on Proposed Changes to the draft plan was undertaken from March to May 2013. On 7 October 2013, the Draft Submission Plan was approved by the Council's Executive. The Plan was endorsed at Full Council on 21 October 2013 as the Submission Local Plan.

The Plan has now been formally 'Submitted' to the Secretary of State for Communities and Local Government for Examination, and therefore carries more weight than has been previously attributed that can be attached to the Plan will increase. However, it will not form part of the statutory Development Plan until the Examination process is complete and the Plan is formally adopted by the Council. The following Policies are considered to be relevant:

ESD5: Renewable Energy

ESD13: Local Landscape Protection and Enhancement

## 5. Appraisal

5.1 The key issues for consideration in this application are:

- The Principle
- Landscape Impact
- Impact on the Historic Environment
- Highway Safety
- Residential Amenity
- Ecology
- Flood Risk
- Other Matters

### **The Principle**

5.2 The National Planning Policy Framework (NPPF) gives positive encouragement for renewable energy projects. One of the core planning principles set out in paragraph 17 is to *“support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy)”*.

- 5.3 Paragraph 93 notes that *“Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development”*. This positive attitude to renewable energy is reiterated in paragraph 14 which states that any adverse impacts of approving an application, which is considered to be sustainable, would have to significantly and demonstrably outweigh the benefits.
- 5.4 Paragraph 97 goes on to state that local planning authorities should *“recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources”* and that they should:
- *have a positive strategy to promote energy from renewable and low carbon sources;*
  - *design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts*
  - *consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure the development of such sources; and*
  - *identify opportunities where development can draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.”*
- 5.5 Furthermore, paragraph 98 of the NPPF advises that when determining planning applications, local planning authorities should:
- *not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions;” and*
  - *approve the application, unless material considerations indicate otherwise, if its impacts are (or can be made) acceptable...*
- 5.6 The NPPF also recognises the need to accord with European legislation. Paragraph 2 states that planning policies and decisions must reflect, and where appropriate, promote relevant EU Obligations and Statutory requirements. EU Directive 2009/28/EC necessitates member countries to increase renewable energy generation.
- 5.7 Given that of the adopted Cherwell Local Plan (CLP) was written in the mid 1990s there is little mention of the renewable energy in the Council’s Development Plan. By contrast the Submission Cherwell Local Plan (January 2014) (SCLP) makes specific mention to renewable energy and reflects the positive approach of the NPPF. Policy ESD5 sets out a list of criteria against which applications renewable energy should be assessed - they reads as follows:

- Landscape and biodiversity including designations, protected habitats and species and Conservation Target Areas
- Visual impacts on local landscapes
- The historic environment including designated and non designated assets and their settings
- The Green Belt, particularly visual impacts on openness
- Aviation activities
- Highways and access issues and;
- Residential amenity

5.8 Paragraph B.199 which supports Policy ESD5 also seeks to direct solar farms away from the district's highest quality agricultural land. Using DEFRA's Agricultural Land Classification, land is put in to one of six categories (1, 2, 3a, 3b, 4 and 5). Grade 1 and 2 land, the most fertile, is considered to be too good to be used for renewable energy.

5.9 The recently published Planning Practice Guidance (PPG) reiterates this point but goes further by directing developers to look at previously developed and non-agricultural land over greenfield land, when bringing forward large scale solar schemes. Paragraph: 013 Reference ID: 5-013-20140306 of the PPG states that:

*Particular factors a local planning authority will need to consider include:*

- *encouraging the effective use of land by focussing large scale solar farms on previously developed and non agricultural land, provided that it is not of high environmental value;*
- *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...*

\* Officer's emphasis

5.10 Although the second bullet point is somewhat ambiguous, Inspectors for two recent appeals (Inspectorate references: APP/V2255/A/14/2212592 and APP/D3505/A/13/2204846) have concluded that the word necessary requires a developer to provide a sequential test to support their application, which demonstrates that there are not any more suitable alternative sites (brownfield and then greenfield) within the vicinity. The Inspectors also concluded that the search area should not be confined by district boundaries.

5.11 In respect of both appeals, the Inspector was very dismissive of the lack of evidence provided by the developer to justify the use of a greenfield as apposed to a brown field site and agricultural land of an inferior quality. The Inspectors set a very high bar in respect of what was needed to demonstrate that the proposal was *necessary*. Both appeals were dismissed.

5.12 Caution should obviously be exercised with the interpretation of new guidance, as it may later become established practice that a less onerous exercise be required by Inspectors dealing with subsequent appeals. Indeed the applicant

produced another post PPG decision (Inspectorate reference: APP/D0840/A/14/2212325) where the Inspector evidently did not require the applicant to go through the *necessary* test. It is unfortunate that the PPG does not set out clear guidelines as to best practice.

5.13 At this point it is worth acknowledging that in the cases of the two failed appeals, referred to above, the quality of land was identified as Best Most Versatile (BMV) agricultural land. As the land that is currently being considered is amongst the poorest agricultural land in this part of the District (Grade 4) it would be unreasonable to expect the applicant to demonstrate, in great detail, that there are not any more appropriate greenfield sites within the vicinity.

5.14 In fact, although ceding to a request for a sequential test, the applicant does not elaborate on the reasons why other greenfield sites were discounted other than alluding to potential problems with access to the grid at sites surrounding Bicester. There is no commentary as to why brownfield sites have not been considered although it is commonly argued that such sites are invariably earmarked for housing particularly given the Council's current five year housing land supply position. The applicant does however emphasise the perceived benefits of the site. Positive features, it is argued, that are not common to all other possible sites include:

- The site not located in the Green Belt (unlike a large part of the south west of the district)
- No landscape designation
- No ecological designation
- No heritage constraints
- Most of the site in a flood zone 1 (appropriate mitigation for the parts of the site in zone 2/3 have been agreed with the EA)
- Well contained by existing built forms (M40, railway line, A41 and Wendlebury itself)
- The grid capacity in the area allows a scheme of this size (generating capacity is maximised).

5.15 The rest of this report will evaluate the relative merits of the site and will feed into planning balancing exercise.

#### **Landscape Impact**

5.16 This is not a sensitive part of the district and is not constrained by any landscape designations. The largely flat site is also bounded on two sides by the M40 and a railway line. This obviously informed the Landscape Officer's (LO) relatively positive assessment of the development, along side the fact that views into the site are already limited and that the applicant has put forward a mitigation strategy which will address the key view points that are still of a concern.

5.17 One of the principal issues for the local residents, articulated by the Parish Council (PC) is that the solar farm would have adverse implications for walkers using the footpath (appears to be relatively well used). It is argued that it is one of only two footpaths around the village that does not require walkers to cross a major road (although they do have to negotiate the railway line) As the LO observes although the proposed hawthorn hedge (572m long) will mitigate the

visual impact for walkers it would result in an *oppressive experience* (the footpath would be flanked by hedgerows either side).

- 5.18 This reservation aside, officers concur with the LO that the principle of the development is acceptable and that furthermore it will be less visually intrusive than a number of other solar farms approved by the Council.

#### **Impact on the Historic Environment**

- 5.19 Wendlebury does not have a conservation area and none of the nine listed buildings within 1km of the site would have their settings unduly affected by the proposed development. The scheduled ancient monument to the north east of the village (Alcester Roman site) is more than 1km from the closest solar array, and would therefore remain unaffected. The County's Archaeology Team have however requested that a condition be imposed to ensure that any Iron Age and Roman remains, which have been found in the locality, are properly assessed. Based on this assessment, it is concluded that the proposed development accords with the relevant NPPF guidance contained within section 12 of Delivering sustainable development.

#### **Highway Safety**

- 5.20 The Highways Liaison Officer (HO) originally objected to the proposal on the grounds that the proposed vision splays did not comply with the guidance contained within *Design Manual for Roads and Bridges*. As result, the applicant agreed to undertake a traffic speed survey which demonstrated that the speed traffic travelled at was significantly slower than the 60mph speed limit and that the vision splays originally put forward were in fact acceptable.
- 5.21 The applicant is willing to restrict traffic movements during peak hours which will not only address the HO's point about the nearby nursery, but would also reduce pressure on the road during normal commuting hours (the PC argue that the road through Wendlebury has become a 'rat run'). The developer is also happy to ensure that construction traffic does not pass through the village but heads west along the Oxford Road to the junction with the A34.
- 5.22 Although the HO refers to the potential glare affecting drivers on the motorway, the Highways Agency has not commented on the application.

#### **Residential Amenity**

- 5.23 Given the distance from the southern end of the village any harm to the residential amenities of the development will be minimal, although there may be some disturbance during the construction phase (3 months) including 8 HGV movements per day. The Landscape Officer concluded that the residents living in the closest properties at the southern end of the village would have long range views of the site from first floor windows. He was however satisfied that the proposed planting scheme which included a number of oak trees would largely screen the development. The development therefore accords with Policy C31 of the CLP.

#### **Ecology**

- 5.24 The Council's Ecologist main focus of attention was the badger sett which is located in the centre of the site. Following the submission of additional information she was satisfied with the proposed mitigation strategy which included a circular exclusion zone (60m diameter) around the sett. A number of

other species are likely to be affected by the development and applicant's landscape and ecology management report recommends a number of mitigation and enhancement strategies that met with the Ecology Officer's approval. Notwithstanding this assessment, the Council has yet to receive the comments of Natural England.

### **Flood Risk**

- 5.25 The PC is concerned that the Environment Agency (EA) has not properly updated its records to take into account the perceived increase in the potential risk of flooding that they believe that the village is exposed to. When discussing the application with the EA officer dealing with the application it was conceded that the modelling used was out of date. However, he did go on to say that given the low risk nature of the development, he could not justify requiring the applicant going to the expense of carrying out such work to support their flood risk assessment (FRA).
- 5.26 The originally submitted FRA was considered to be inadequate as it failed to demonstrate that peak discharge rates did not pose a problem to surrounding areas of land and also that the arrays would not increase the flood risk potential of the surrounding land in respect of the part of the site located in a flood zone 3. Following the receipt of additional information and discussions with the applicant's specialist advisor, the EA removed its objection.
- 5.27 Notwithstanding the above, it is a requirement of the NPPF for the applicant to carry out a sequential and exceptions test to justify why part of a flood zone (2/3) should be incorporated into the development. Paragraph 101 of the NPPF states that:
- "The aim of the sequential test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding..."*
- 5.28 Paragraphs 102 and 103 goes on to state that if it is not possible to locate development in zones with a lower probability of flooding the exceptions test can be applied if appropriate. The exception test has to demonstrate that the most vulnerable elements of the development is located in the areas of lowest flood risk and that the development is appropriately flood resilient and resistant.
- 5.29 The applicant asserts that there are a number of locational benefits including a viable grid connection, site orientation; access to good highway infrastructure and minimal environmental constraints. When all the factors are taken into account it is argued that the New Stone House Farm site remains the only viable option within the area to deliver a 12.5MW development. It is also argued that only flood resilient equipment is positioned in the flood zones 2/3 (all the inverters are located elsewhere in the site) and that the development would not pose a risk to visitors to the site.
- 5.30 Although not all the justifications put forward are site specific e.g. sunlight intensity levels will be similar across the district, officers have no reason to dispute the point about connectivity to the grid which it is argued *is becoming the key limiting factor in the growth of renewable energy*. Officers, with informal

guidance from the EA, have concluded that the applicant has passed the sequential and exceptions tests.

### **Other Matters**

- 5.31 The PC makes a number of valid points when questioning the acceptability of the scheme. However, it is incorrect in stating that the Council does not have a renewable energy policy; Policy ESD5 of the SCLP clearly set out the criteria by which applications for solar farms should be assessed. The advice given is very generic replicating the positive thrust of the NPPF.
- 5.32 The PC is correct, however, in stating that Council policy does not replicate current Government thinking on the promotion of brownfield sites. This change in attitude post dates Policy ESD5. As the renewable energy industry is both dynamic and, very often, controversial, it is quite possible that Government guidance in this area will change quite regularly. As the PPG is in an electronic format, amendments can be made to Government guidance more readily than before; clearly differentiating it from local plan policy or even a supplementary planning document which are updated much less frequently.
- 5.33 The PC is mistaken in its use of the SCLP policy relating to village categorisation. This policy relates to residential development and not renewable energy and is therefore of no relevance to this case.

### **The Planning Balance**

- 5.34 Although the Government is promoting brownfield sites over greenfield sites, it does not mark the end of large solar development on agricultural land. This was made clear in a letter from Gregory Barker, the Minister of State for Energy and Climate Change, to local authorities (22 April 2014) when he acknowledges that *'There is still a place for larger-scale field-based solar in the UK's energy mix'*.
- 5.35 It is however clear, in changing the focus for future solar development, that the Government requires decision makers to scrutinise, more closely, proposed schemes in the countryside.
- 5.36 The application site, aside from partially being located in a flood zone 2/3, does have a number of positives running in it's favour distinguishing it from other possible sites: the landscape impact would be negligible; there are no highway safety issues and there is relatively easy access to the A34; there is no impact on any heritage assets; there are no residential amenity concerns; the site is not located in the Green Belt; and there are no ecological issues that cannot be resolved by condition. Most significantly of all, it will not result in the loss of BMV agricultural land.
- 5.37 Furthermore, whilst the PC has indicated that the majority of people they have canvassed opposed the scheme, it is perhaps noteworthy that unlike some other solar farm proposals in the District, there has been limited opposition to the proposal. Aside from the PC's comments, there has been just a single letter of objection from the general public, at the time of writing.
- 5.38 On balance, although officers are mindful of the more restrictive Government guidance, it is nonetheless concluded that the development accords with Government guidance contained within the National Planning Policy Framework, the Planning Practice Guidance, Policies C2, C4, C7, C28 and C31



of the adopted Cherwell Local Plan and Policies ESD5 and ESD13 of the Submission Cherwell Local Plan (January 2014). This application is therefore recommended for approval.

#### **Consultation with applicant**

- 5.39 There were a number of issues that arose throughout the application process, most notably in connection with highway safety, flood risk and ecology. The applicant was made aware of the concerns raised by the various consultees and this allowed sufficient time for an appropriate solution to be found.

### **6. Recommendation**

**Approval**, subject to no late objections from Natural England or the Highways Agency and the following conditions:

- 1 That the development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the planning application forms and the following plans and documents:

BRS.4671\_01-1d  
BRS8140124\_01 P2  
BRS8140124\_02 P2  
BRS8140124\_03 P1  
BRS8140124\_04 P1  
BRS8140124\_05 P1

Design and Access Statement produced by Pegasus  
Landscape and Visual Impact Assessment produced by Pegasus  
Ecological Assessment - Phase 1 Habitat Survey produced by Michael Woods Associates  
Confidential Badger Annexe produced by Michael Woods Associates  
Flood Risk Assessment and subsequent additional information produced by Clive Onions Ltd  
Sequential and Exceptions Assessment Report produced by Pegasus Group  
Heritage Assessment produced by Cotswold Archaeology Ltd  
Construction Transport Management Plan produced by Transport Planning Associates  
Statement of Community Engagement produced by Pegasus Group  
Waste Audit Statement produced by Pegasus Group  
Arboricultural Report produced by Pegasus Group  
Agricultural Assessment produced by Kernon Countryside Consultants Ltd  
Landscape and Ecological Management Plan produced by Michael Woods Associates

Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority, and in accordance with Government guidance contained within the National Planning Policy Framework.

- 3 The permission shall expire no later than 25 years from the date when electricity is first exported from any part of the array to the electricity grid network ('First Export Date'). Written confirmation of the First Export Date shall be provided to the Local Planning Authority no later than 1 calendar month after the event.

Reason - In order to safeguard the amenities of the area and protect the rural character of the landscape and to comply with Policies C7 and C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 4 Not later than 24 months before the end of this permission, a decommissioning and site restoration scheme shall be submitted to and approved by the Local Planning Authority, such scheme to include the management and timing of any works and traffic management plan to address likely traffic impact issues during the decommissioning period. The approved scheme shall be fully implemented within 12 months of the expiry of this permission

Reason - To ensure the environment is protected during decommission in accordance with Policy ENV1 of the Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 5 Details of the perimeter fence, containers for electrical equipment and CCTV equipment shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the approved details.

Reason - In order to safeguard the amenities of the area and protect the rural character of the landscape and to comply with Policies C7 and C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 6 The recommendations set out in the approved Landscape and Ecology Management Plan (LEMP) produced by Michael Woods Associates shall be carried out in full.

Reason - To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy C2 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 7 If works do not commence within one year of the date of decision an updated badger survey shall be undertaken and shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all works on site shall be carried out in accordance with the recommendation

contained with the report.

Reason -To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy C2 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 8 Prior to the commencement of the development hereby approved, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-

- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
- (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
- (c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 9 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 10 Prior to the commencement of the development hereby approved, a schedule of landscape maintenance for a minimum period of 5 years, to include the timing of the implementation of the schedule and procedures for the replacement of failed planting shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the landscape maintenance shall be carried out in accordance with the approved schedule.

Reason - In the interests of the visual amenities of the area, to ensure the

creation of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 11 a) No retained tree shall be cut down, uprooted, damaged or destroyed, nor shall any retained tree be pruned in any manner, be it branches, stems or roots, other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. All tree works shall be carried out in accordance with BS3998: Recommendations for Tree Works.

b) If any retained tree is cut down, uprooted, destroyed or dies, another tree shall be planted in the same place in the next planting season following the removal of that tree, full details of which shall be firstly submitted to and approved in writing by the Local Planning Authority.

In this condition a "retained tree" is an existing tree which shall be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) shall have effect until the expiration of five years from the date of the completion of the development.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 12 Prior to the commencement of the development hereby approved, an Arboricultural Method Statement (AMS), undertaken in accordance with BS:5837:2012 and all subsequent amendments and revisions shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all works on site shall be carried out in accordance with the approved AMS.

Reason - To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 13 Except to allow for the means of access and vision splays the existing hedgerow along the northern boundaries of the site shall be retained and properly maintained at a height of not less than 3 metres, and if any hedgerow plant dies within five years from the completion of the development it shall be replaced and shall thereafter be properly maintained in accordance with this condition.

Reason - In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- 14 The existing hedgerow along the western boundary of the site shall be retained and properly maintained at a height of not less than 3 metres, and if any hedgerow plant dies within five years from the completion of the development it shall be replaced and shall thereafter be properly maintained in accordance with this condition.
- Reason - In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.
- 15 Within the first available planting season following the occupation of the building, or on the completion of the development, whichever is the sooner, the existing hedgerow within the site boundary shall be reinforced by additional planting in accordance with a detailed scheme which shall firstly be submitted to and approved in writing by the Local Planning Authority. Thereafter, any plant/tree within the hedgerow which, within a period of five years from the completion of the development dies, is removed or becomes seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species in accordance with BS 4428:1989 Code of practice for general landscape operations (excluding hard surfaces) or the most up to date and current British Standard). Thereafter the new planting shall be properly maintained in accordance with this condition.
- Reason - In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.
- 16 Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details.
- Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.
- 17 An updated Construction Traffic Management Plan shall be submitted and approved in writing by the Local Planning Authority once contractors are appointed, and prior to commencement of development.
- Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.
- 18 The routing plan used by constructions vehicles shall be in accordance with Figure 2.1 of the Construction Traffic Management Plan produced by Transport Planning Associates dated April 2014.
- Reason - In the interests of highway safety and to comply with Government

guidance contained within the National Planning Policy Framework.

- 19 Prior to the commencement of the development hereby approved, full details of a scheme to prevent any surface water from the development discharging onto the adjoining highway shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the drainage scheme shall be implemented and retained in accordance with the approved details.

Reason - To ensure satisfactory drainage of the site in the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.

- 20 No materials, plant, temporary structures or excavations of any kind should be deposited / undertaken on or adjacent to the Public Right of Way that may obstruct or dissuade the public from using the public right of way whilst development takes place.

Reason - To ensure the public right of way remains available and convenient for public use.

- 21 No changes to the public right of way direction, width, surface, signing or structures shall be made without prior permission in writing from the Local Planning Authority.

Reason: To ensure the public right of way remains available and convenient for public use.

- 22 The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (Clive Onions Consulting, Ref: 13015/14, Version 2, 01/04/2014), swale design document (Clive Onions Consulting, Ref:13015/14, 28/05/2014) and email from Clive Onions, dated 29/05/2014, and the following mitigation measures detailed within these documents:

1. Limiting the surface water run-off generated by the 1 in 100, with an appropriate allowance for climate change, critical storm event so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site. The existing Greenfield run-off for this event is calculated to be 241 l/s.
2. The bottom of the fence used on the north eastern side of the site boundary will be placed 200mm above ground level, as outlined in Figure 4 of the FRA. The fence will also use a coarse mesh, approximately 150mm x 150mm.
3. The Inverter/Transformer cabins will be located outside of the floodplain or raised above the flood level.
4. Access tracks on site will be permeable.
5. Swales will be utilised on site as outlined in the swale design document.
6. The fence on the north eastern side of the site boundary will be located at least eight metres from the Wendlebury Brook.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason - To prevent the increased risk of flooding and in order to comply with Government guidance contained within the National Planning Policy Framework.

- 23 No development shall take place until a scheme for the provision and management of a 08 metre wide buffer zone alongside the Wendlebuy Brook shall be submitted to and agreed in writing by the local planning authority.

Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the local planning authority. The buffer zone scheme shall be free from built development including lighting, domestic gardens and formal landscaping; and could form a vital part of green infrastructure provision. The schemes shall include:

1. plans showing the extent and layout of the buffer zone
2. details of any proposed planting scheme (for example, native species)
3. details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan

Reason - To conserve and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible and in order to comply with Government guidance contained within the National Planning Policy Framework.

- 24 Prior to the commencement of the development and any archaeological investigation, a professional archaeological organisation acceptable to the Local Planning Authority shall prepare a first stage archaeological Written Scheme of Investigation, relating to the application area, which shall be submitted to and approved in writing by the Local Planning Authority.

Reason - To safeguard the recording and inspection of matters of archaeological importance on the site in accordance with Government guidance contained within the National Planning Policy Framework.

- 25 Prior to any demolition on the site and the commencement of the development and following the approval of the first stage Written Scheme of Investigation referred to in condition [a], a programme of archaeological evaluation, investigation and recording of the application area shall be carried out by the commissioned archaeological organisation in accordance with the approved first stage Written Scheme of Investigation.

Reason - In order to determine the extent, character and significance of the

surviving remains of archaeological interest and to safeguard the recording and inspection of matters of archaeological importance on the site in accordance with Government guidance contained within the National Planning Policy Framework.

- 26 No external lighting shall be installed within the site area unless agreed in writing with the Local Planning Authority.

Reason - In order to safeguard the amenities of the area and to ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy C2 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

### **Statement of Engagement**

In accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way as set out in the application report.