

<b>1.1 APPEAL REFERENCE NO - APP/V2255/W/25/3360089</b> <b>SWALE REFERENCE - 23/502210/FULL</b>		
<b>PROPOSAL</b> Construction of a solar farm together with control building, switch room, substations and compound, point of connection equipment, store room, access track, security measures, associated infrastructure and works, landscaping and biodiversity enhancements.		
<b>SITE LOCATION</b> Land On Either Side Of Vigo Lane And Wrens Road, Sittingbourne, Kent, ME9 8LA		
<b>REQUIRED RESOLUTION</b>		
<b>REASON FOR REFERRAL TO COMMITTEE</b> To obtain the position of the Planning Committee in respect of amendments to the development that have been submitted within an appeal which has followed the refusal to grant planning permission.		
<b>Case Officer</b> Ian Harrison		
<b>WARD</b> Borden and Grove Park	<b>PARISH/TOWN COUNCIL</b> Borden	<b>APPELLANT</b> Industria Solar Vigo Ltd. <b>AGENT</b> Wardell Armstrong LLP
<b>PUBLIC INQUIRY DATES</b> 5 <sup>th</sup> – 8 <sup>th</sup> August 2025		
<b>BACKGROUND PAPERS AND INFORMATION:</b> Documents referenced in report are as follows: - <ul style="list-style-type: none"> <li>• Appendix A - Report to Planning Committee on 6 August 2024</li> <li>• Appendix B - Minutes from the 6 August 2024 Committee meeting</li> <li>• Appendix C - Landscape Strategy Plan for refused proposal</li> <li>• Appendix D - Landscape Strategy Plan for amended proposal</li> </ul> The full suite of documents submitted pursuant to the above application and appeal are available via the link below: <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=RUDWQ7TY0XI00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=RUDWQ7TY0XI00</a>		

## 1. INTRODUCTION

- 1.1 This application was initially reported to Planning Committee on 6 August 2024, with a recommendation that permission be granted. The original Committee report is attached at Appendix A.
- 1.2 The Planning Committee resolved to refuse the application for the reasons set out below. The minutes from the 6 August 2024 Committee meeting are attached at Appendix B of this report.

1. *The cumulative harm caused by the proposal is not outweighed by the public benefits of the scheme for the following reasons:*
  - i) *Owing to the location, extent and density of solar array and the presence and height of the lighting towers, the proposal would result in the industrialisation of the site and the magnitude of change would result in moderate adverse effects (at best) on landscape and visual character, both on site and the surrounding quintessential rural agricultural character and within the setting of the Kent Downs Area of Outstanding Natural Beauty (AONB). The proposed mitigation measures in the form of screening through planting contributes to the harm by reducing the openness of the landscape and therefore do not overcome the harmful landscape and visual effects and would not further the purpose of conserving and enhancing the natural beauty of the AONB. The proposal is contrary to Policies ST1 and DM24 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 and paragraphs 180 and 182 of the National Planning Policy Framework.*
  - ii) *Due to the resultant width of the Public Right of Way routes (PRoW) through the site with the proposed screening to the sides, the proposal would result in a feeling of enclosure to those routes and due to the location of the substation adjacent to PRoW ZR138, there would be a change in character and appearance from rural to industrial along this particular route. In addition, given the location of the construction compound and therefore the site access for construction across PRoW route ZR137, there are safety concerns for the users of this route due to potential conflict with construction traffic. These impacts on the PRoW network are likely to deter people, both local and tourists, from using the network which in turn has a harmful impact on amenity and wellbeing of PRoW users and the local economy. The proposal is contrary to Policies ST1, CP2, CP4, CP5, DM3, DM6, DM14 and DM24 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 and paragraphs 89, 96, 104 and 116 of the National Planning Policy Framework.*
  - iii) *The proposal would result in the loss of best and most versatile agricultural land which, albeit temporary, would render the site unavailable for farming for food production. The proposal is contrary to Policies ST1, DM31 and DM20(4) of Bearing Fruits 2031: The Swale Borough Local Plan 2017 and paragraph 180 of the National Planning Policy Framework.*
- 1.3 The applicant subsequently lodged an appeal (reference APP/V2255/W/25/3360089). The appellant requested that the procedure for the appeal be in the form of a Public Inquiry. Officers responded to this requesting that it be dealt with by written representations or hearing, however the Planning Inspectorate have decided that public inquiry is the appropriate procedure for this appeal. The appeal is currently scheduled to last 4 days and will begin on 5th August 2025.
- 1.4 The documents that have accompanied the appeal include amendments to the plans that were the basis of the Council's decision. The details of the amendments are set out in the next section of this report.
- 1.5 The Landscape Strategy Plan, which shows the layout of the proposed development when it was presented to committee in 2024 is provided in Appendix C and the amended Landscape Strategy Plan is provided at Appendix D.
- 1.6 Consistent with the reason for the refusal of the application, the Planning Inspector has identified three main issues to be addressed during the appeal:

1. the landscape and visual impact of the proposal,
2. the implications for the use of public rights of way next to and through the site,
3. the effect on the supply of agricultural land.

1.7 For reasons that will be set out below, planning officers have not carried out any further consultation ahead of this committee meeting.

## 2. PROPOSED DEVELOPMENT AND AMENDMENTS

2.1 The description of the original development was set out in section 3 of the Report to Planning Committee (06 August 2024).

2.2 In summary, the amendments to the proposed development include the following:

- Removal of development within areas 5 & 6 in the east of the site
- Moving the panels away from the internal and external boundaries
- Widening the space around the public rights of way through the site
- Additional landscaping across the site
- Fencing and development moved away from Wren's Cottage
- Straightening of a limited part of the northern boundary

2.3 The appellant's Statement of Case sets out that they seek to address the concerns raised during the application process by slightly off setting the panels from the boundaries and at the same time amend the internal layout slightly to allow for widening of the public rights of way.

2.4 The Statement of Case also states that fencing has been moved further away from Wren's Cottage and the northern edge of the panels is set a little further away from properties off Oad Street.

2.5 The Statement of Case further states that panels have also been reorientated across parts of the site to address concerns raised by National Highways in terms of potential impact from glint and glare, particularly on the M2 corridor adjacent to the site. A solution was agreed during the application for the use of temporary mesh screening. However, the appellant states that they now have agreement with National Highways that the development may proceed without the need for interim screening in the revised orientation.

2.6 The appellant advises that the amendments are made possible by the advancements in viable and available technology, which allows for a similar level of energy generation from fewer panels.

## 3. PROCEDURAL MATTERS

3.1 Planning Inspectorate guidance section 16 advises that where amendments are made to development proposals during appeal proceedings the Planning Inspectorate will consider whether, exceptionally, to accept them. As per the judgement in *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), which refined the "Wheatcroft principles" set out in *Bernard Wheatcroft v Secretary of State for the Environment* (1982), two tests will be considered.

- Substantive - whether the proposed amendment(s) involves a "substantial difference" or a "fundamental change" to the application. If the Planning Inspectorate's judgement is that the amendment(s) would result in a "different application", then it is unlikely that the amendment could be considered as part of

the appeal. It is also possible that a series of small incremental amendments to a scheme could result in a “substantial difference” or a “fundamental change”

- Procedural – whether, if accepted, the proposed amendment(s) would cause unlawful procedural unfairness to anyone involved in the appeal (i.e. since consultation is a statutory requirement at the application stage, if the scheme is amended at appeal, it may be unfair on interested parties and consultees whose views and comments were about the original proposals, not the amended proposals). The change need not be ‘substantial’ or ‘fundamental’ to require re-consultation. Even potentially beneficial changes may need to be subject to re-consultation, so that interested parties can consider whether that would be the case. The decision on whether to accept the amendment without re-consultation will be taken in the context that consultation is an important part of the planning system, the nature and extent of the changes and the potential significance to those who might be consulted.

- 3.2 The Planning Inspectorate have been asked to provide guidance as to whether the amended plans should be acted upon but it has been stated that the Inspector will not advise the parties whether the amended plans will be considered within the appeal until the first day of the Inquiry. It has however been suggested at a Case Management Conference that the Inspector will find that the substantive test is met. No comment has been made in respect of the procedural test.
- 3.3 The view of Officers has been that the degree of changes to the proposal would not meet the substantive test. Moreover, Officers advised the appellant that the Council would not undertake a public consultation exercise in respect of the amended plans since it would be illogical to do so in the scenario where it is not agreed that the amended plans should be considered within this appeal.
- 3.4 To address this, the procedural test, the applicant has undertaken their own public consultation exercise, involving correspondence being sent to all nearby properties, stakeholders and consultees. A website has also been created and can be found online at <https://app.placechangers.co.uk/campaign/476/overview> . The principles set out by the High Court in *Bramley Solar Power Residents Group v SSLUHC* [2023] 2842 (Admin) indicates that public consultation does not have to be undertaken by the Local Planning Authority and that consultation by an applicant can be adequate.
- 3.5 As a result of the above, the Council will have to prepare for the appeal in the context that either set of plans will be considered by the Planning Inspector.

#### 4. EFFECT OF AMENDMENTS TO THE PROPOSED DEVELOPMENT

- 4.1 The proposed amendments reduce the scale of the development and its coverage of the application site by removing development from the land within the site boundary on the eastern side of Wrens Road. The amendments also increase the space around the retained public rights of way through and adjoining the site. The proposed amendments therefore reduce the landscape and visual impact of the proposal, reduce the impacts on usage of public rights of way next to and through the site, and reduce the effect on the supply of agricultural land.
- 4.2 The applicant’s case is that the amended scheme would be able to achieve the same renewable energy generation output as the earlier iteration, given that technology has advanced and become increasingly viable since the application was initially submitted.

The energy generation benefits of the proposal were previously set out at paragraph 7.17.6 of the Committee Report.

- 4.3 Since the determination of the application, the December 2023 version of the NPPF has been replaced by the December 2024 version. As a result, Paragraph 157, which was referred to in the Committee Report, has become paragraph 161. Other than referring to a transition to “net zero by 2050” rather than “a low carbon future” and a few other minor alterations, the content of these paragraphs is generally similar.
- 4.4 Similarly, paragraph 163 of the earlier version of the NPPF has been replaced by paragraphs 168 and 169. The most recent NPPF states that the Local Planning Authority should “give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal’s contribution to a net zero future.” This gives clearer steer than the earlier version as to how weight should be afforded. Officers previously advised giving the benefit substantial weight.
- 4.5 As set out above, the previous recommendation of Officers was to grant planning permission. This remains the case with respect to the amended plans as the harms that were identified have been reduced in the ways that have been stated and the benefits are considered to remain comparable. The extent to which the differing balancing exercise and conclusion of the Planning Committee to Officers may have shifted as a result of the amended plans will be a useful consideration for the appeal, should the Planning Inspector agree to make their decision based on the amended plans. Whilst the Council is no longer the decision maker, it is requested therefore that the Planning Committee advises how it would have proceeded if the amended plans were before it to make a decision. This will strengthen the Officer position in preparing for and representing the Council at appeal.

## 5. CONCLUSION

- 5.1 To assist with the response to the appeal, Members are requested to make a resolution to advise how the proposed amendments and any associated alterations to the benefits and disbenefits of the proposals would affect their consideration of the proposals. It is recommended that the Committee advises how it would have proceeded if the amended plans were before it to make a decision based on the following two options:

a) It can be concluded that the amendments to the proposal are sufficient to make the proposal acceptable. If the Planning Committee choose this option then this would form the basis of the Council’s position at the appeal in relation to the amended proposals. The conditions recommended in the original Committee Report (Appendix A) would be provided to the Planning Inspectorate with minor updates where necessary to reflect the relevant updated drawings and documents.

OR

b) It can be concluded that the amendments do not address the previous concerns to an extent that the proposal should be found acceptable. If the Planning Committee choose this option, it is requested that the Committee advises how they have weighed the benefits and disbenefits of the proposals.

