My Name is HARRY ST JOHN.

My IP ref no is 20054858

I have made various representations to the EXa process and my most recent ones were numbered REP 1 -147,148 and 149. (Submission ref 36928) and then Rep 2 -107 and 108.

My Rep3
Below are a summary of further points and questions that arise from what has been said by various parties up to 1st July in response to the Exa Inspectors Questions.

National Grid Electricity Transmission Rep 2- 076

In their response to the EXa Inspectors questions, it is clear that NGET don't expect to complete their sub station, that would connect the whole project into the 400KV grid line near Cumnor/Farmoor, **until the end of 2029** assuming they manage to obtain planning consent for the substation from The Vale of White Horse planning committee.
The VoWH planners have stated that as yet no formal pre application discussions have started with NGET which is somewhat surprising given we are now in the second half of 2025.

Compare this timeframe to the Applicants one (in Rep2-025 para1.3.6) who estimate their project would be built and ready to connect up to the Grid by the new extended deadline of October 2028 when their Licence to connect expires - that seems mighty ambitious given they have yet to put funding in place to meet the build cost -c. £900 million, by the middle of next year to enable work to commence in early 2027.
There appears to be gap of at least a year between the Licence expiry and the NGET substation being commissioned - and NEGT may also have to exercise compulsory powers to acquire land for their substation - all which may delay matters still further.

N**o doubt the Inspectors will examine this glaring mismatch further.**

I am not sure if the Applicant has actually produced the Connection Licence extension document in evidence of the new date of October 2028. If they have not, one assumes they will be asked to produce it.

The applicants answers

In the Applicants response Rep2 -025 a number of answers are not given at all. Many are vague and or merely repeat material from earlier documents with little robust explanation. No doubt the Inspectors will hold the Applicants feet “closer to the fire” on anything missing.

Compulsory Acquisition issues (see paras in section 1.5)

On the question of lack of clear comparison of alternatives, the Applicant has produced little concrete evidence - for example the simple solution of just omitting some land from the scheme and compulsory acquisition - such as the land subject to restrictive covenants at Mill Farm Lower Road - in that case the potential overall reduction in private loss far exceeds any public benefit or significant loss of energy generation - given the enormous size of the remaining site where the three principal land owners are all willing parties and have signed up to lease or sell their land via binding agreements - as stated clearly by all the parties.

Their land will not need to be acquired compulsorily - no landowner would renege on the deals they have entered into for risk of being sued for specific performance and massive damages.

Their land alone is ample to deliver a viable power station envisaged albeit now slightly reduced as a result of the Notification of change issued recently.

So if the timeframes are tight, as it seems they are, it surely makes sense to avoid extended arguments and delays over whether or not CA powers should be granted in the DCO to acquire rights that are of very significant value to the adjacent owners.

The Applicant has partially recognised the problem and reduced the panel area immediately adjacent to Mill Farm **but about another similar area subject to the same restrictions remain and should be removed too.**

The Applicant do not appear to have made a reliable assessment the potential private loss faced by the owners of Mill Farm or any other properties similarly affected - if they had, they would have sent a professionally qualified RICS valuer to visit the property by appointment to assess the before and after values. No such inspection has been done or requested at Mill Farm.

As I have said previously, no clear evidence has been produced of the Applicants ability to pay for compensation to anyone entitled to make a compensation claim. The Inspectors have still no concrete evidence backed up with appropriate paperwork. The S o S will require such evidence to reach any decision.

here has to be compelling evidence that the public benefit of the project exceeds the private loss exercise of CA powers would incur - in the subject case, as the vast majority of the site will not actually be acquired under compulsion t**hen where is the compelling case to justify the use of CA powers for the actual benefit of the three principal landowners and the Applicant?** This is not what Parliament envisaged when agreeing to empower Ministers with powers of compulsion.

The applicant seeks to rely on landscape enhancement as a public benefit - a statement which truly beggars belief - given the comments of Historic England, ICOMOS, the host authorities LIRs and many hundreds of local residents. The removal of 100 hectares of land from the scheme is a clear admission of guilt.
Equally astounding is the claim that the scheme would significantly improve Biodiversity Net Gain and thus be a public benefit. Furthermore, claiming enjoyment of the local PROW system within the site would barely be impacted is equally totally ignoring reality or understanding of the facts. Granting a new but **permissive** right of way for 40 years might qualify but only as a marginal temporary benefit.

BMV and other related soil issues paras 1.9 and 1.11
The repeated obfuscation over the amount of BMV land - of which the site we now know contains over 41% before the proposed removal of around 250 acres around Bladon and south west of the Oxford airport runway **- the majority of the land proposed to be-taken out being grade 3b, which will result in the proportion of BMV land remaining in the scheme increasing to nearer 45%** - this represents a flagrant attempt to bypass well established Government policy to protect BMV in the long term national interest for food security. That approach has been directly contrary to National Policy, the public interest and a **potentially significant loss of public benefit.**

After 40 years under panels and inevitable lack of sunlight etc, nobody knows what state the soil might be in; the land drainage will certainly have been compromised as a result of cable trenching and panel table piles being driven deep into the ground and then removed 40 years later, let alone the panel and fence replacement exercise necessary around 25 years hence and all the heavy vehicles running up and down panel corridors for 40 years in all weathers.
In my experience reinstating land, the land Grading will be reduced permanently and soils are likely to take many years to recover maybe never.

Para 1.11.2
Blenheim are not party to the DCO document or conditions imposed - so how are they tied into the land and hedge management plan to deliver the land and hedge management in its various guises should the operator go bust or disappear or owners die?

In the same way the agreed lease between the applicant and Blenheim Estate may have a guarantee bond arrangement built in to ensure delivery of land reinstatement - should not the Examination be shown the relevant wording to enable the Inspectors to be confident that that work will be delivered - come what may in 40 years time when most of the protagonists involved in this examination will be either long retired or many cases long dead!

Para 1.11.3 and 1.11.9
All the currently arable land would need to be sown to grass before any solar farm infrastructure is installed. Establishing a robust grass crop of the type envisaged might take 6 to 12 months depending on the weather, ground conditions etc- if the scheme were approved in say late Spring 2026, the crop might just be sown immediately (but by whom?) to avoid an autumn sowing which is less reliable. Either way construction is unlikely to start until early 2027 but if conditions are unhelpful during 2026, the former arable land may only have a very thin and immature grass crop in a poor state to cope with the massive impact of numerous vehicles and SF structure erection, miles of fence erection, haul roads, compound buildings, and miles of cable trenching etc.

Paras 1.5.21 to 30 in Applicants response
Where is the evidence that professional RICS Red Book qualified valuers have assessed the likely levels of compensation that might arise? It seems more than likely that if any such work has been done it would have been a desk top exercise, as no formal inspections have been made as far as myself others are aware.

Which shareholder has advanced £11m to the applicant and on what basis for repayment ? Why doesn't this loan appear in the 2022 accounts?
The applicants have promised to provide audited accounts to the end of 2023 -surely that should be end of 2024 if we and especially the S of S are all to fully understand the current financial standing of the applicant.
Is PVDP an engineering company or an environmental consultant? They seem to infer both.

Both Solar Five Ltd and PVDP are controlled by Herr Gerstmann and his equal shareholder in Cyprus. It is a mystery why Herr Gerstmann has not volunteered to or been invited to give evidence on his companies financial standing and funding preparations. Given they hope to start construction in early 2027, if the scheme were to be approved, one would have expected them to have had serious discussions with lenders/investors by now and maybe even

in principle commitments in place from a number of potential lenders and/ or investors who are out there seeking renewable energy projects to back.

Latest Ministerial letter and Energy Select Committee report

I attach these two documents that were published either side of the 1st July Exa deadline, as some people may not have seen them. The Minister's letter makes specific reference to community benefit which the Government says it will make mandatory shortly. I hope this letter and report can be included in your evidence.

I would also draw the Inspectors attention to a very recent court decision in Scotland (also attached) - which is pertinent to the periods when wind farms are paid **not to generate electricity** when there might be too much electricity in the grid - via the Contracts for Difference system run by the Governments wholly owned company Low Carbon Contracts.
I am unclear whether, for the same reason, solar farms can be shut down if there is too much electricity in the grid - one can stop a wind turbine turning but can you stop PV panels generating when its sunny, especially if you do not have any battery storage available as is the case here? Perhaps the applicant could be asked to explain how that would all work in this project.

Conclusion
It remains clear that, despite the reduction of the site to allow for the closer setting of the WHS, this scheme is still way too large in the wrong place in planning terms, on the wrong sort of land - almost 45% of it being BMV land. In addition the compelling case for CA powers is clearly not proven. The applicant is of a questionable status in respect of the sort of funding anticipated.

In short the S of S should be recommended to refuse this application and therefore I respectfully ask the Inspectors to make such a recommendation
Harry St John
July 22nd 2025

Department for Energy Security & Net Zero

[redacted]
Minister for Energy

Department for Energy Security & Net Zero
55 Whitehall
London
SW1A 2HP

[redacted]
Chair, Energy Security and Net Zero Committee
House of Commons
London
SW1A 0AA

Our ref:
Your ref: ZA80520

30 June 2025

Dear [redacted]

I am writing to inform you of the publication today of the Solar Roadmap. Solar is one of the cheapest sources of power to build and it will be vital to maximise Britain's energy independence, protect bill payers, support high-skilled jobs and tackle the climate crisis.

The Clean Power Action Plan, published in December 2024, set a target for 45-47GW of solar power by 2030, up from around 18GW at present.

The Solar Roadmap begins with a statistical analysis of likely deployment scenarios. It projects that the Clean Power Action Plan ambition of 45-47GW is achievable, but that significant action will be required to facilitate the necessary deployment. It also illustrates the implications of 45-47GW of solar for the UK.

It estimates that ground mount solar alone could power around 9 million homes, that the sector as a whole could support up to 35,000 jobs. It projects that – even in these ambitious scenarios – solar would occupy up to only 0.4% of total UK land.

The Roadmap reaffirms Government's commitment for a **rooftop revolution**, including plans to support the rapid increase of solar deployment in the UK through Great British Energy, the Warm Homes Plan, and solar on new buildings. It includes actions in a variety of areas, such as streamlining the grid connection process for solar. The Roadmap sets out plans to make the **solar supply chain** resilient, diverse, and sustainable, making clear our determination to eradicate the abhorrent practices of modern slavery and forced labour. It also details support for the workforce to grow to meet future demand, and highlights the Government's proposals to make it mandatory for developers to provide **community benefit funds** for local areas hosting new infrastructure.

In order to monitor progress on the actions, a ministerially chaired Solar Council will be established. This Council will assess delivery of the actions contained in today's publications, and evaluate progress against the Government's Clean Power 2030 ambitions. It will also provide a forum for industry representatives to engage directly with Ministers, proactively raising challenges and/or opportunities as they arise.

I have also this morning tabled a Written Ministerial Statement setting out a slightly more detailed summary of the document. Scaling up solar generation will be critical to the success of the Government's clean energy mission. I hope today's publication will fire the starting pistol on five years of rapid deployment, reducing our dependence on volatile fossil fuels and improving our energy security.

Best wishes,

Minister for Energy

House of Commons

Energy Security and Net Zero Committee

Gridlock or growth? Avoiding energy planning chaos

Second Report of Session 2024–25

HC 868

Energy Security and Net Zero Committee

The Energy Security and Net Zero Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Energy Security and Net Zero and its associated public bodies.

Current membership

Bill Esterson (Labour; Sefton Central) (Chair)

Ms Polly Billington (Labour; East Thanet)

Sir Christopher Chope (Conservative; Christchurch)

Torcuil Crichton (Labour; Na h-Eileanan an Iar)

Wera Hobhouse (Liberal Democrat; Bath)

Anneliese Midgley (Labour; Knowsley)

Luke Murphy (Labour; Basingstoke)

Melanie Onn (Labour; Great Grimsby and Cleethorpes)

Mike Reader (Labour; Northampton South)

Bradley Thomas (Conservative; Bromsgrove)

Claire Young (Liberal Democrat; Thornbury and Yate)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 152. These are available on the internet via www.parliament.uk.

Publication

This Report, together with formal minutes relating to the Report, was Ordered by the House of Commons, on 1 July 2025, to be printed. It was published on 7 July 2025 by authority of the House of Commons.

Committee reports are published on the Committee's website at www.parliament.uk/CommonsESNZ and in print by Order of the House.

Contacts

All correspondence should be addressed to the Clerk of the Energy Security and Net Zero Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 0387; the Committee's email address is commonsesnz@parliament.uk. You can follow the Committee on X (formerly Twitter) [redacted]

Contents

Summary

We reviewed the Government's proposed updates to three of the National Policy Statements for energy infrastructure, published on 24 April 2025. The National Policy Statements will have a central role in the delivery of urgently needed infrastructure critical to the success of the energy transition. The Government's proposed updates come at an important point, following the publication of the Clean Power 2030 Action Plan, the completion of the National Energy System Operator's reforms to grid connections and when work is well underway to produce the Strategic Spatial Energy Plan and the Centralised Strategic Network Plan.

We have been immensely frustrated and disappointed by the disjointed engagement which the Government afforded us, severely limiting our ability to create added value, by test and challenge, which is the purpose of involving Select Committees in the scrutiny of National Policy Statements. The Government has failed to respect the value of Parliamentary scrutiny in this process.

Although we welcome the new strategic framework for energy infrastructure planning, we feel that the National Policy Statements should plainly acknowledge that this framework represents a significant departure from a market-based energy system. The relationship between National Policy Statements, the Land Use Framework and strategic plans needs more precise clarification, particularly regarding how the availability and prospects of a grid connection should be considered within the development consent process.

Rigorous public consultation and engagement will be essential for the Strategic Spatial Energy Plan and the Centralised Strategic Network Plan to have sufficient authority to fulfil their central roles. We commend the National Energy System Operator's commitment to engaging with diverse groups in the development of these plans. However, we have yet to see sufficient evidence in practice of the stated ambition to improve the outcomes of public engagement. Targeted, deliberative and meaningful engagement with communities who will host this infrastructure in the years to come is indispensable. We recommend that the draft Strategic Spatial Energy Plan should be published for consultation by the end of February 2026 to allow time for local people to be involved in such significant changes to their communities.

Although we support the presumption of consent for low carbon infrastructure with Critical National Priority status, we are not persuaded that the Government has sufficiently considered how aspects of this policy might affect the achievement of biodiversity targets.

We also have concerns about several particular issues:

- We are gravely concerned by reports that many ecological enhancements and landscape mitigations promised by developers are never delivered in practice. This indicates systemic failings, brings the planning system into disrepute, and questions whether the Government will be able to fulfil its ambitions to build critical infrastructure in a nature positive way.
- Whilst we accept that there are areas where it is unavoidable, we are surprised that the proposed guidance for onshore wind does not contain a stronger presumption against building on land with high ecological and climate value.
- We want to see guidance on the extent to which offshore wind developers are expected to damage their own business case in taking "all reasonable steps" to minimise inter-array wake effects.
- We are concerned that the current guidance on agricultural land classification and land type for solar farms is ambiguous and equivocal, particularly in relation to the use of Best and Most Versatile agricultural land. We are concerned that a lack of clear guidance is leading to unnecessary arguments about food security taking up disproportionate time and resources during examinations.

1 Our engagement with the Department

1. The process for considering National Policy Statements (NPS) is long-established though has not been extensively used since creation by the Planning Act 2008. The previous Government consulted on and passed National Policy Statements on energy prior to the 2024 General Election. It was a drawn-out process. On 20 September 2021, the Government laid the revised (draft) National Policy Statements for Energy Infrastructure before Parliament and, in his accompanying Written Statement,[1] Rt Hon Kwasi Kwarteng, then Secretary of State for Business, Energy and Industrial Strategy (BEIS), indicated that the public consultation, the appraisal of sustainability and parliamentary scrutiny should be concluded by 28 February 2022. The BEIS Committee had 23 weeks for its consideration. Consistent with the process adopted in 2022, on 4 June this year, the Department for Transport laid its own consultation in respect of the National Policy Statements on Ports which provided the Transport Select Committee also with 23 weeks for its consideration.[2]

2. The Government launched its public consultation on the revised (draft) NPS, supporting habitats and sustainability reports and associated appendices on 6 September 2021 which closed on 29 November 2021. The Business, Energy and Industrial Strategy Committee, designated by the Liaison Committee for the task, launched its inquiry on 3 November taking evidence on 7 December 2021 and 18 January 2022 and published its Report on 25 February 2022.[3]

3. The response, issued by the new Department of Energy Strategy and Net Zero (DESNZ) was published by our predecessor Committee on 27 April 2023.[4] The government re-consulted on the statements and eventually laid them, formally, in Parliament on 22 November 2023, along with a Written Ministerial Statement.[5] In the absence of objection from either House of

1 Draft Revised Energy National Policy Statements HCWS295, 20 September 2021
2 Proposed Revision of the National Policy Statement for Ports HCWS681, 4 June 2025
3 Business, Energy and Industrial Strategy Committee, Ninth Report of Session 2021–22, Revised (Draft) National Policy Statement for Energy
4 Business, Energy and Industrial Strategy Committee, Fourth Special Report of Session 2022–23, Revised (Draft) National Policy Statement for Energy: Government response to the Committee's Ninth Report of Session 2021–22
5 Transforming Great Britain's Electricity Network HCWS62, 22 November 2023

Parliament the statements were designated by the Secretary of State (then Rt Hon Claire Coutinho MP) on Tuesday 16 January 2024. In July 2024, after the General Election, the new Government launched a review of the energy National Policy Statements to ensure they aligned with the clean energy mission of the new administration.

4. The Department began a negotiation with this Committee early in 2025, amongst other things, to gauge our willingness to conduct its scrutiny concurrently with the public consultation run by DESNZ. We raised concerns, privately with the Department, about the length of time it was willing to give us to produce a Report. On 28 April, the Department wrote, notifying us that the public consultation had been launched and that the relevant period for the Committee would be eight weeks.[6] This meant the Committee, running its inquiry concurrently, would not be able to take the responses to the Government consultation into account as part of its evidence gathering. We had no way of knowing whether responses to our call for evidence would be as detailed as the responses made to the government consultation. We therefore raised our concerns with the Government that we would not be in a position to carry out our responsibilities in full, make a full set of recommendations and provide the Government with the best possible support in its development of its emerging policy.

5. We launched our inquiry into the National Policy Statements on 25 April 2025 and arranged two meetings on Wednesday 21 May with an eye to drafting and publishing a Report ahead of 23 June (eight weeks from the launch of the government consultation). It was, therefore, a surprise when the Department contacted us on 22 May[7] announcing that it had laid its initial proposals for the statements and that the relevant period would begin on 22 May rather than 28 April. We had already held oral evidence sessions and re-arranged our work programme to accommodate the unusually short timescale provided to us, so it wasn't practical for us to use this change to the deadline beyond having slightly more time to draft this Report.

6 Letter from the Minister for Energy to the Chair regarding parliamentary scrutiny of Energy National Policy Statements, 28 April 2025

7 Letter from the Minister for Energy to the Chair regarding parliamentary scrutiny of Energy National Policy Statements, 22 May 2025

6. **CONCLUSION**
We find it immensely frustrating that the Government chose to act in a way which appeared to acquiesce to our requests for additional time to consider its draft National Policy Statements on Energy but only after we had compressed our schedule and carried out two oral evidence sessions on the same day. Obviously, had we been afforded the courtesy of notification of the arrangements in advance, we could, and would, have waited until the end of the public consultation period before commencing using the information arising from that process to inform our oral evidence sessions and create the added value, by test and challenge, that the process was designed to encourage. In the event, the additional time, while it allowed a less rushed consideration of the evidence before us, did not provide significant opportunity to broaden, or deepen, the scrutiny we could bring to bear as it came too late for us to change the questions that we were able to put to our witnesses.

7. **CONCLUSION**
The Government has failed to respect the value of Parliamentary scrutiny in this process. It refused to listen to our concerns with its initial timescales until it was too late for us to utilise additional time effectively. The issues considered in the Report would have been better, and more comprehensively, examined and put to the test had the Government been open about the arrangements and told us, from the very start, that the deadline for producing our findings was to be 21 July, rather than 24 June.

8. **CONCLUSION**
These statements are very important in determining how energy infrastructure will be developed for the foreseeable future. The process was established, by the last Labour government, to provide Parliament with a voice and time to determine what to say. It is disappointing that the current Government has failed to create sufficient space in which an effective and helpful Parliamentary process could take place.

9. **RECOMMENDATION**
Given that the Government, in its Planning and Infrastructure Bill, is seeking to disapply the current requirement for the Secretary of State to respond to any resolutions made by a committee in either House of Parliament, we recommend that the Government, in future, ensures that:

a. Select Committees are provided with at least ten sitting weeks in which to consider future National Policy Statements and proposed amendments to an existing NPS,

b. this period should never commence before the conclusion of the department's related public consultation process, and

c. Parliament has a period of at least ten sitting days, in which consideration of the recommendations of a Select Committee can take place, before the NPS or amended NPS is designated by the relevant Secretary of State.

2 The new strategic framework for energy infrastructure planning

10. The Government's proposed updates to the Overarching National Policy Statement for Energy (EN-1) aim to support a coordinated approach to achieving Clean Power by 2030 and net zero by 2050 by endorsing several strategic plans. These include the Clean Power 2030 Action Plan,[8] published in 2024, as well as the Strategic Spatial Energy Plan and the Centralised Strategic Network Plan, which the National Energy System Operator (NESO) is due to publish in 2026 and 2027 respectively.[9]

11. Our evidence has highlighted broad support for these strategic plans.[10] However, we heard that the Government needs to consider the exact relationship that strategic plans will have with the National Policy Statements (NPS).[11] Existing guidance upholds the authoritative status of the NPS in national infrastructure planning with the statement that, although the Secretary of State should "consider" spatial plans, the NPS prevail in the event of any conflict between these documents.[12] Some have called for the Government to clarify the primacy of the NPS still further.[13] However, for the

8 Department for Energy Security & Net Zero (DESNZ), Clean Power 2030 Action Plan (December 2024).

9 National Energy System Operator (NESO), Strategic Spatial Energy Plan: Methodology (May 2025), p 12; Ofgem; Decision: Future Energy Pathways Guidance (February 2025), p 4. NESO has recently published its methodology for the SSEP and will consult on the CSNP methodology in the second quarter of 2025: NESO, Strategic Spatial Energy Plan: Methodology (May 2025); 'Strategic energy planning (SEP) publications, consultations and updates' (accessed 3 June 2025).

10 See, for example National Grid (NPE0041), Energy UK (Q131 [Charles Wood]), the Royal Society for Protection of Birds (RSPB) (NPE0034) and Campaign to Protect Rural England (CPRE) (NPE0029).

11 See, for example Q131 [Charles Wood]; The National Infrastructure Planning Association (NPE0039); Q44 [Peta Donkin]; Q45 [Ali Leeder]; Mr Nicholas Margiotta (Retired at Not Applicable) (NPE0002); Institution of Engineering and Technology (NPE0004); Solar Energy UK (NPE0013); and the Nuclear Industry Association (NPE0019).

12 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), para 4.1.16.

13 The National Infrastructure Planning Association (NPE0039); Q44 [Peta Donkin]; Q45 [Ali Leeder].

reasons given below, even the present guidance, that the NPS prevail, no longer reflects the important role that strategic plans are intended to have in the future development of energy infrastructure.

12. The stated relationship between strategic plans and national planning policy is concerning for two main reasons. First, it is not clear how the regional capacity limits specified in strategic plans, the optimal areas for particular technologies, or the likelihood of a project securing a grid connection should be factored into decisions about development consent. Second, regarding electricity transmission infrastructure, there must be certainty about precisely what the National Policy Statements endorse from the Centralised Strategic Network Plan.

13. We explain these points below, beginning with the Clean Power 2030 Action Plan and the Strategic Spatial Energy Plan before turning to the Centralised Strategic Network Plan.

The Clean Power 2030 Action Plan and the Strategic Spatial Energy Plan

14. The Government's proposed updates to EN-1 endorse both the Clean Power 2030 Action Plan and the Strategic Spatial Energy Plan.[14]

15. The Government's Clean Power 2030 Action Plan established a national "Clean Power Capacity Range" for the deployment of low carbon electricity generation, storage and flexibility technologies needed by 2030.[15] For renewables, these are 43 – 50 gigawatts (GW) of offshore wind, 27 – 29 GW of onshore wind and 45 – 47 GW of solar.[16] The plan also contains regional capacity breakdowns which estimate, in megawatts (MW), the necessary volumes of solar, onshore wind and battery storage across different parts of the electricity transmission and distribution networks.[17] For example, for solar power generation connected to the transmission network, for 2030 these regional capacity breakdowns are only 100 MW in East Anglia and 200 MW in Southern England but 4000 MW in the Midlands and 2,100 MW in Central England.[18]

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14 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), paras 2.2.5, 2.3.1 to 2.3.6, 2.4.6, 3.2.3, 3.2.5, 3.3.16, 3.3.19, 3.3.22, 3.3.24, 3.4.5, 3.5.3, 4.1.2 and 4.1.15.

15 DESNZ, Clean Power 2030 Action Plan (December 2024), p 32.

16 DESNZ, Clean Power 2030 Action Plan (December 2024), p 32.

17 DESNZ, Clean Power 2030 Action Plan: Connections reform annex (Updated April 2025), pp 12 to 17.

18 DESNZ, Clean Power 2030 Action Plan: Connections reform annex (Updated April 2025), p 13.

16. Under the heading, "Meeting Clean Power 2030 and net zero",[19] the Government's proposed updates to EN-1 reinforce the "Clean Power Capacity Ranges" in the plan with the following wording:

> We need to rapidly increase deployment of all relevant infrastructure to meet the Clean Power 2030 Mission capacity ranges and decarbonise the power sector… Meeting the renewable capacities set out in the DESNZ 'Clean Power Capacity Range' is achievable but will require deployment at a sharply accelerated scale and pace.[20]

17. The proposed updates also endorse the Strategic Spatial Energy Plan (SSEP). That plan, being developed by NESO,[21] will map the quantities and types of electricity and hydrogen generation and storage infrastructure needed in the longer term to achieve net zero by 2050.[22] Similarly to the Clean Power 2030 Action Plan, the SSEP is expected to identify the capacity for different electricity generation and storage technologies within 15 to 20 zones across Scotland, England and Wales.[23] For example, in one zone, the SSEP might specify 10 GW of offshore wind energy and 500 MW of solar; in another zone it might specify 5 GW of onshore wind.[24]

18. The Clean Power 2030 Action Plan, the SSEP and the Centralised Strategic Network Plan are described as the Government's "strategic framework" which "should be considered by applicants … and used to inform developments of new energy infrastructure projects".[25] The Secretary of State is also required to consider these spatial plans in decision-making.[26]

Explaining the extent of departure from a market-based energy system

19. We heard concern from some that the endorsement of strategic plans within the National Policy Statements could mean a shift away from market-led development of energy infrastructure and that the role of the SSEP should be clarified. RenewableUK told us:

19 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), para 2.3.
20 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), paras 2.3.4 and 2.3.6.
21 NESO, Strategic Spatial Energy Plan: Methodology (May 2025).
22 NESO, Strategic Spatial Energy Plan: Methodology (May 2025), p 5.
23 Q96 [Julian Leslie]. For further information, including an illustrative map, see: NESO, Strategic Spatial Energy Plan: Methodology (May 2025), ch 3.
24 Q96 [Julian Leslie]; NESO, Strategic Spatial Energy Plan: Methodology (May 2025), p 78.
25 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), para 3.2.5.
26 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), para 4.1.15.

> The planning system must remain flexible and responsive to viable projects, not limited by evolving forecasts… Industry would strongly oppose a central plan determining outcomes, rather than the merits of an individual project and market opportunities.[27]

Similarly, Chandni Ruparelia, Chief Operating Officer at Island Green Power, warned of a "scramble for land" and suggested that the SSEP "might constrict market-led initiatives".[28] On the other hand, she explained that as "an enabling document" to help guide solar developers, the SSEP would be welcomed.[29]

20. Guidance in EN-1, which remains unchanged, purports to maintain the Government's commitment to a "market-based energy system":

> It is not the role of the planning system to deliver specific amounts or limit any form of infrastructure covered by this NPS. It is for industry to propose new energy infrastructure projects that they assess to be viable within the strategic framework set by government. This is the nature of a market-based energy system. With the exception of new coal or large-scale oil-fired electricity generation, the government does not consider it appropriate for planning policy to set limits on different technologies….[30]

21. Likewise, guidance on renewable energy infrastructure in the National Policy Statement for Renewable Energy Infrastructure (EN-3) still maintains that "it is for applicants to decide what applications to bring forward".[31] It is further stated that "the government does not seek to direct applicants to particular sites for renewable energy infrastructure".[32]

22. The current wording risks making this guidance inconsistent with the anticipated roles of both the SSEP and the Clean Power 2030 Action Plan. For example, the Government's commissioning of NESO to produce the SSEP explained that the reason for amending the National Policy Statements following production of the plan would be "to incorporate the SSEP or its spatial outputs".[33] Likewise, NESO's methodology for the SSEP confirms that "it is intended the SSEP will become part of the framework of planning

27 RenewableUK (NPE0036).
28 Q132.
29 Q132.
30 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), para 3.2.4.
31 DESNZ, National Policy Statement for Renewable Energy Infrastructure (EN-3) (April 2025), para 2.3.5.
32 DESNZ, National Policy Statement for Renewable Energy Infrastructure (EN-3) (April 2025), para 2.3.5.
33 DESNZ, Strategic Spatial Energy Plan: Commission to the National Energy System Operator (October 2024), p 6.

systems across GB".[34] Furthermore, Julian Leslie, NESO's Director of Strategic Energy Planning and Chief Engineer, accepted that the SSEP does indeed mark a shift away from a market-based energy system. He explained that the market to date has resulted in the grid connections queue being "seven or eight times" oversubscribed and that the purpose of the SSEP and the Clean Power 2030 Action Plan is to direct the market where to build:

> What we can do through the SSEP, as we have seen through the Government's clean power action plan, is to give that clarity to the market from a network point of view, so that they know what to build, where to build and when to build it, and also to size the market appropriately... If we left it to its own, we would have 70 gigawatts of batteries on the system, which is unbalanced.[35]

23. **CONCLUSION**
We welcome the new strategic framework for energy infrastructure planning which the Government proposes to endorse in the National Policy Statements. However, even with these changes, the National Policy Statements do not sufficiently reflect the highly important role that strategic plans are intended to have in guiding future energy infrastructure development to achieve the Government's 2030 and 2050 targets. The relationship between the plans and the Nationally Significant Infrastructure Projects regime is far from clear.

24. **CONCLUSION**
The Government's new strategic framework for energy infrastructure planning represents a significant departure from the existing market-led approach to development by industry. The National Policy Statements should define what is set centrally and what is expected from industry plainly and transparently, to give certainty and avoid ambiguity.

25. **RECOMMENDATION**
The Government should amend the National Policy Statements for energy infrastructure to clarify the precise relationship and hierarchy between these documents and the strategic plans which the proposed updates endorse.

34 NESO, Strategic Spatial Energy Plan: Methodology (May 2025), p 43.
35 Q95 [Julian Leslie].

Regional and zonal capacities in the Clean Power 2030 Action Plan and the Strategic Spatial Energy Plan

26. Uncertainty over the future relationship between strategic plans and the National Policy Statements centres upon the regional capacity breakdowns for different technologies specified in the Clean Power 2030 Action Plan. These are due to be supplemented by zonal capacities specified in the SSEP.[36]

27. The Government's Clean Power 2030 Action Plan and the "Clean Power Capacity Ranges" within it are referred to as "targets" in several passages within EN-1.[37] The same language is echoed in the proposed updates to EN-3 and the National Policy Statement for Electricity Networks Infrastructure (EN-5).[38] It has been argued that describing the "Clean Power Capacity Ranges" as "targets", rather than "hand rails", could lead to them being misinterpreted as caps on the need for certain types of energy infrastructure in particular areas, which would be incorrect.[39] This debate suggests that important questions remain unanswered. These include whether the precise electricity generation and battery storage capacities specified in strategic plans, on a national and regional basis, can be sufficient grounds to refuse applications for development consent which exceed or are inconsistent with them.[40]

28. The Secretary of State has previously suggested to us that the "Clean Power Capacity Ranges" should be seen as a "floor rather than a target".[41] However, we asked Julian Leslie for NESO's answer to what would happen if a proposed development were located outside the optimal areas for the technology in question or exceeded the capacity specified for that technology within the region. He reminded us that, to secure a grid connection, a developer must demonstrate that a project is "needed".[42] He explained that the need for a project will be determined by the Clean Power 2030 Action Plan and, beyond that, the SSEP, regardless of whether it is granted development consent.[43]

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36 See para 17.

37 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), paras 2.3.1, 3.2.6, 3.3.19, 3.3.75 and 4.2.4

38 DESNZ, National Policy Statement for Renewable Energy Infrastructure (EN-3) (April 2025), para 1.1.3; National Policy Statement for Electricity Networks Infrastructure (EN-5) (April 2025), para 1.1.2.

39 The National Infrastructure Planning Association (NPE0039); Solar Energy UK (NPE0013); Q45 [Ali Leeder]; Q65 [Peta Donkin].

40 These questions were posed by RenewableUK (NPE0036) and Solar Energy UK (NPE0013).

41 Oral evidence taken on 15 January 2025, Q354 [Rt Hon Ed Miliband MP].

42 Q97.

43 Q97.

Consideration of the availability of, and the prospects of securing, a grid connection

29. It is clear from our evidence that whether a renewable energy project is likely to secure a grid connection is already a contested issue with applications for development consent orders.[44] The conclusion of NESO's reforms to grid connections has caused us to consider how the issue will be addressed in future and whether existing guidance and procedures will allow for this to be done accurately, efficiently and fairly.[45] NESO's Gate 2 Readiness Criteria envisage some projects applying for development consent, and potentially proceeding through further stages of the process, before they have received a grid connection offer.[46]

30. We heard that the availability of a grid connection should be given significant weight in national planning policy, as one of the most decisive factors in determining location.[47] However, the same witnesses suggested that when a project may be *less likely to secure a grid connection* because it is incompatible with strategic plans, this should *not* be a relevant consideration.[48]

CONCLUSION
It seems to us that this would be inconsistent. The availability and prospects of securing a grid connection are issues that should cut both ways, weighing for, or against, the grant of development consent depending on the circumstances.

31. Under NESO's Gate 2 Strategic Alignment Criteria there are four grounds on which a project might be "needed", three of which are unconcerned with either the Clean Power 2030 Action Plan or the SSEP.[49] The proposed updates to EN-1 fail to reflect this complexity and explain how the application of these criteria should be recognised in the development consent process. For example, this might be relevant where a project is not aligned with the Clean Power 2030 Action Plan but is still likely to secure a grid connection because it is eligible for relevant "protections" or can be designated as "needed" instead.[50]

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44 The National Infrastructure Planning Association (NPE0039); CPRE (NPE0029); Q7 [Jackie Copley].
45 NESO, Connections Reform Final Methodologies (April 2025) (accessed 19 June).
46 NESO, Gate 2 Criteria Methodology (April 2025), pp 12 and 30 to 32.
47 RenewableUK (NPE0036); Solar Energy UK (NPE0013); Q68 [Ali Leeder]; Qq69–70 [Peta Donkin].
48 RenewableUK (NPE0036); Solar Energy UK (NPE0013); Q68 [Ali Leeder]; Qq69–70 [Peta Donkin].
49 NESO, Gate 2 Criteria Methodology (April 2025), pp 12 and 33 to 46.
50 NESO, Gate 2 Criteria Methodology (April 2025), pp 12 and 33 to 46.

32. **RECOMMENDATION**

We acknowledge the concern that strategic plans should not predetermine the outcome of any application for development consent. However, neither should the planning system be blind to the very existence of such plans and, most importantly, to their possible impact on the prospects of a project securing a grid connection. It would undermine the purpose of strategic plans if the Secretary of State were unable to take them into account in the planning balance.

- The National Policy Statements should clearly recognise, as a material consideration, the regional and zonal capacities for different technologies specified in the Clean Power 2030 Action Plan and the Strategic Spatial Energy Plan.
- The National Policy Statements should clearly recognise, as a material consideration, the optimal areas for different technologies identified in the Strategic Spatial Energy Plan.

33. **RECOMMENDATION**

There needs to be more coordination between the application processes for development consent and a grid connection, given that each is highly relevant to the other and both will be influenced by the Clean Power 2030 Action Plan, the Strategic Spatial Energy Plan, and the Land Use Framework. It is essential that developers are not left stuck in a situation in which they cannot progress planning consent without more certainty in relation to the prospects of securing a grid connection and vice versa.

- The Government and the National Energy System Operator (NESO) should review how the application processes for development consent and a grid connection will interact, to achieve greater coordination between them.

34. **RECOMMENDATION**

The National Policy Statements should give significant weight to the availability of a grid connection, as a paramount consideration in determining where electricity generation projects can be located. However, by the same token, where a project has not yet secured a grid connection, the prospects of doing so should also be a material consideration weighing for or against the grant of development consent. NESO may need to provide the Secretary of State with information to ensure that this question is considered accurately, fairly and efficiently within the development consent process.

- The Government should strengthen the existing guidance in the National Policy Statements to clarify that the Secretary of State should give significant weight to the availability of a grid connection.
- The National Policy Statements should clarify how the Secretary of State should assess the future prospects of a project obtaining a grid connection, with reference to NESO's recent reforms to this process.
- The Government and NESO should assess whether, and in what circumstances, NESO may need to provide the Secretary of State with information about the prospects of a project obtaining a grid connection and how far it is aligned with strategic plans.

The Centralised Strategic Network Plan

35. The Government's proposed updates to the National Policy Statements also endorse the Centralised Strategic Network Plan (CSNP) for electricity transmission infrastructure, which NESO is due to publish in 2027.[51] New guidance provides that, where the need for an electricity transmission project is "assessed and justified" through a CSNP, the Secretary of State will take the need for that project as established and not question it during the development consent process.[52] The updates also endorse NESO's assessment of alternative options to address network needs in creating the CSNP, "on the grounds of environmental impacts, community impacts, economic cost, deliverability and operability criteria".[53] The anticipated effect of these endorsements are explained in EN-1, paragraph 3.3.79, in the following terms (*emphasis added*):

> This NPS therefore accepts the proposed *strategic parameters* for proposed network infrastructure outlined in the CSNP. This *could mean, but is not limited to,* the choice of onshore overhead High Voltage Alternating Current lines, or the use of offshore High Voltage Direct Current cabling. Where *a strategic solution* is proposed in the CSNP, the choice of *strategic solution* does not need to be re-examined, and *alternatives to that choice do not need to be considered again in the consenting process*.[54]

51 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), para 3.3.78.
52 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), para 3.3.78.
53 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), para 3.3.79.
54 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), para 3.3.79.

36. It is clear from the proposed guidance that the "strategic parameters" for new electricity network infrastructure, to be determined by the CSNP, will be highly important. Responses to our call for evidence stressed that these must be "clearly defined and understood".[55] When we asked him about this, Julian Leslie explained that, through the CSNP, NESO "will do the high-level optioneering that makes the big, bold choices around offshore versus onshore, or overground versus underground, for the route length of the asset that is under discussion".[56] Charlotte Mitchell, Chief Planning Officer at National Grid Electricity Transmission, echoed this and explained that, after the creation of the CSNP, Transmission Owners would "engage communities in the detailed design of the proposals around routing and siting of the projects".[57]

37. In the CSNP high-level methodology principles,[58] NESO detailed the "strategic parameters" of new electricity transmission infrastructure precisely, as including the boundary capability provided,[59] whether the reinforcement is onshore or offshore, HVDC or AC,[60] mainly overhead lines or underground cables, its spatial envelope,[61] and connection to the network.[62] By contrast, we heard concern that the vague and interchanging references in paragraph 3.3.79 of EN-1 to the "strategic parameters" and the "strategic solution" "could lead to open interpretation and challenge through the consents process".[63] SP Energy Networks suggested that, at the moment, referring to the "strategic corridors", rather than to the "strategic parameters", would better reflect current discussions about the

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CSNP between NESO, Transmission Owners and other stakeholders.[64] In the longer term, they proposed that the National Policy Statements adopt the definition of "strategic parameters" eventually used in the CSNP, with "clear and unambiguous language" to ensure that "decision makers are absolutely clear as to what is being endorsed".[65]

38. The CSNP will introduce a three-year network planning cycle and determine which options should progress to detailed design and delivery. The Government's proposed guidance in EN-1, paragraph 3.3.80, says the following about how the CSNP will inform planning decisions and network design processes (*emphasis added*):

> Precise routing and siting decisions will need to be made as project design is refined and in accordance with appropriate surveys and consultations. Where indicative routes are shown in the CSNP, these are subject to change and should not be considered fixed for planning purposes. However, we expect that the final proposed route would be contained within the strategic parameters defined in the CSNP.[66]

However, it is not yet clear whether the CSNP will in fact include "indicative routes". Julian Leslie and Charlotte Mitchell did not state this in their oral evidence.[67] NESO has suggested that the CSNP may include one or more "indicative options" but maintains that these will be confirmed through detailed design and local engagement.[68] SP Energy Networks explained to us that "indicative routes" are typically understood to mean a route defined through "detailed design optioneering" and community consultation, which is not the intended purpose of the CSNP.[69]

39. Some witnesses suggested that, in endorsing the CSNP, the National Policy Statements should allow for adjustments to be made to the "strategic parameters" for electricity transmission projects at a later stage of the development process. For example, Ali Leeder explained that this might be justified where a better route outside the "strategic parameters" is identified through environmental surveys or consultation: for example, a route which is less harmful or more acceptable to the community.[70] This important consideration raises the question of whether alternative options ruled out by NESO in creating the CSNP can be reconsidered if new information comes to light.

64 [redacted]

40. **CONCLUSION**
We welcome the decision to endorse the Centralised Strategic Network Plan (CSNP) in the National Policy Statements. However, we are concerned that the proposed guidance in paragraphs 3.3.78 to 3.3.80 of EN-1 is not clear enough about what, precisely, it is from the CSNP that is being endorsed. This must be unambiguous, to avoid unnecessary argument about the issue during the development consent process.

41. **RECOMMENDATION**
The Government should review and, if necessary, amend the proposed guidance endorsing the CSNP in paragraphs 3.3.78 to 3.3.80 of EN-1, to make the language more consistent, unambiguous, and more in keeping with current understandings of the intended purpose of the CSNP. This may involve:

- reviewing the reference to the CSNP displaying "indicative routes" in paragraph 3.3.80;
- removing the reference in paragraph 3.3.79 to a "strategic solution", an undefined term distinct from "strategic parameters"; and/or
- replacing "strategic parameters" with "strategic corridors" until the CSNP is complete and a more precise definition can be adopted.

42. **RECOMMENDATION**
The National Policy Statements should clarify that adjustments may be made to the "strategic parameters" for new electricity transmission infrastructure set out in the Centralised Strategic Network Plan where this is justified following detailed design development, community consultations or environmental surveys.

Whether it is too early to endorse strategic frameworks still in development

43. We heard from several witnesses that it is too early to endorse the SSEP and the CSNP in the National Policy Statements, given that both plans are still in development. For example, Isobel Morris, Senior Policy Officer in Energy at the RSPB, in principle supported embedding strategic plans in the National Policy Statements but explained that she could not assess the environmental impacts of doing so until the plans are finalised.[71] Similarly, National Grid argued that, given their nascency, endorsement of the SSEP

71 [redacted]

and the CSNP in national planning policy should only become official when these plans are finalised and have undergone public consultation and environmental assessments.[72] They suggested that the Government use the streamlined procedure for making changes to the National Policy Statements, being introduced in the Planning and Infrastructure Bill, to review the proposed endorsement of these strategic plans when they are finalised.[73] On behalf of NESO, Julian Leslie agreed with this approach.[74] Likewise, Sir Bernard Jenkin MP, Chair of OffSET,[75] argued that the National Policy Statements should either be revised once these strategic frameworks are in place or "include a clear mechanism for integrating future strategic policies as they are adopted".[76]

44. NESO is also responsible for producing the Electricity Transmission Design Principles (ETDP), new guidance intended to clarify the types of assets which should be used in different environments and when visual mitigations such as underground or offshore routes are appropriate.[77] The ETDP are also at an early stage of development: Julian Leslie explained to us that NESO is currently "going through the fine detail" and is planning to "consult extensively" on them over the summer.[78]

45. The Government's proposed updates to EN-5 also endorse the ETDP by providing that, when they are published, "developers should have regard to the ETDP as relevant", in addition to existing guidance.[79] However, the above concerns, that it may be too early for endorsement of strategic plans to become official, apply with equal force to the ETDP. National Grid and SP Energy Networks both strongly advised that the ETDP should not have any endorsement in the National Policy Statements until their development is fully complete and the final version is published. This view, that endorsement of the ETDP now would be premature, was also shared by individuals who responded to our call for evidence.[80]

72 [redacted]

46. **RECOMMENDATION**
Endorsement of the Strategic Spatial Energy Plan, the Centralised Strategic Network Plan and the Electricity Transmission Design Principles in the National Policy Statements should not become official until these plans are finalised and have completed public consultation and environmental assessments. At that stage, the Government should review the proposed policy wording to do so and should implement any necessary changes through the streamlined procedure for amending the National Policy Statements being introduced in the Planning and Infrastructure Bill.

Speeding up electricity distribution infrastructure delivery

47. A further issue concerning the strategic framework for energy infrastructure planning raised with us was the types of electricity network infrastructure that should be consented under the Nationally Significant Infrastructure Projects (NSIP) regime, as opposed to other statutory frameworks.

48. Lawrence Slade, Chief Executive of the Energy Networks Association, suggested that some types of 132 kilovolt (kV) electricity distribution infrastructure ought to be entirely removed from the NSIP regime and instead consented under section 37 of the Electricity Act 1989.[81] He specifically highlighted 132kV wood poles.[82] We heard that the rationale for doing so is that the NSIP regime is an "overly complex and disproportionate process" for some types of electricity distribution infrastructure and that such reform would allow "more freedom and speed" to deliver the volume needed to achieve the Government's energy targets.[83]

CONCLUSION
We have not had the opportunity to consider the issue in detail. However, we believe that there is merit to these arguments, given that electricity distribution infrastructure is strategically important and can be much smaller in scale than transmission infrastructure.

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49. **RECOMMENDATION**

The Government should review whether some types of electricity distribution infrastructure should be removed from the Nationally Significant Infrastructure Projects regime and instead consented under section 37 of the Electricity Act 1989, to speed up delivery critical to Clean Power by 2030. These may include 132kV wood poles.

3 The role of community engagement in building public support for strategic plans

50. Public consultation and community engagement were important themes within the evidence that we received. Many witnesses underlined that public support will be essential to the success of both the Strategic Spatial Energy Plan (SSEP) and the Centralised Strategic Network Plan (CSNP).

51. Common sense would suggest that thorough public consultation is a prerequisite for strategic plans to have sufficient authority to fulfil their central role in the Government's new framework for energy infrastructure planning. Ofgem noted, in their approval of the National Energy System Operator (NESO)'s SSEP Methodology, that "securing buy-in from stakeholders through the public consultations you are planning will be crucial to building acceptability".[84] Graham Gunby, National Infrastructure Planning Manager at Suffolk County Council, emphasised that open consultation will be necessary to ensure that people are not left "mystified" as to why their local area has been chosen for energy infrastructure.[85] Regarding the CSNP, Suffolk County Council stressed that "it will be critical" for consultations "to include a process of geographical focus on areas, and communities, that are likely to host the proposed strategic connection solutions".[86] Only then can discussion of the "strategic solution" chosen in the plan, and possible alternatives, be "reasonably and appropriately removed from the examination of individual projects".[87]

52. On behalf of NESO, Julian Leslie explained to us that earlier engagement with local communities is one of the central purposes of the SSEP and the CSNP. It is hoped that consulting on "the general principles and strategic direction" of energy infrastructure development, at a much earlier stage, will allow the development consent process to be more focused on decisions

84 Ofgem, Approval of the Strategic Spatial Energy Plan Methodology (May 2025).
85 [redacted]
86 Suffolk County Council [redacted]
87 Suffolk County Council [redacted].

about individual projects.[88] We heard from Graham Gunby that this would be very useful in respect of electricity network infrastructure.[89] Our evidence indicates that presenting communities with only a single development proposal at a late stage of the process can lead to confusion, distress, opposition and resentment, particularly if alternative options appear to have been ruled out without explanation.[90] This is especially the case in relation to overhead lines for electricity network infrastructure.[91]

53. The need for more constructive discussions with communities about the need for new energy infrastructure, potential options to deliver this, and the trade-offs involved, was apparent from evidence to our predecessor Committee's inquiry, *A flexible grid for the future,* in 2023.[92] Sharon Darcy, Chair of the Linear Infrastructure Planning Panel, explained that community engagement is often "too technical, too late" and starts from the premise of opposition.[93] Calls for an information campaign, "to make the case for new renewable energy and grid infrastructure",[94] have further highlighted these points.[95] The UK Energy Research Centre underlined the significant challenges that arise in relation to community engagement over electricity network infrastructure:

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> Many campaigns argue for offshore or underground routes... Increased costs to ameliorate concerns of affected residents will be borne by all consumers, most of whom will be unaffected by the impact of particular transmission routes.[96]

CONCLUSION
The complex judgments involved in evaluating different options for electricity network infrastructure not only raise a strong argument for settling these strategic considerations at an earlier stage, but also heighten the need for affected communities to be involved in those decisions.

Social research

54. Social research into community views of electricity transmission infrastructure, published in 2024, highlighted that, when given relevant information and the opportunity to do so, many members of the public are open to reconsidering their initial preferences against alternative options.[97] The research, commissioned by the Department for Energy Security & Net Zero, was based on 2,359 survey responses from randomly selected households and workshops with around 11–12 community representatives in three case study areas.[98] The majority of survey participants initially reported a preference for underground and offshore routes (74% and 69% respectively).[99] However, when they were informed of the potential environmental impacts of those options, these numbers dropped dramatically. Only 33% of participants remained in favour of underground routes and only 26% remained in favour of offshore routes.[100] Similarly, after

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being informed that electricity bills fund the cost of building transmission infrastructure, 34% said that they were unwilling to add any additional costs to their bills to fund alternatives to overhead lines.[101]

NESO's proposed strategies for public consultation

Strategic Spatial Energy Plan

55. In May, NESO published its final methodology for the SSEP,[102] approved by both the Government and Ofgem.[103] The methodology identified transparent engagement with societal groups as a central "pillar" of the SSEP, crucial to its development and refinement, and outlined how NESO plans achieve this.[104] Details included the following:

a. There will be an Expert Advisory Group composed of five working groups, including an Environment Working Group, a Land Use Spatial Planning Working Group, and a Societal Interest Working Group.[105]

b. During the development of the SSEP, NESO will engage with "societal forums" representing 14 sectors or interest groups, with representatives on the Societal Interest Working Group.[106] The purpose of the societal forums is to contribute to the evolution of the SSEP by providing insights and feedback.[107] The Societal Interest Working Group will collate views across societal forums and advise on this engagement activity.[108]

c. The UK Energy Secretary will select a "pathway" to be used for formal consultation on the draft SSEP, in which NESO will engage with the same Expert Working Groups, sectors and interest groups as it plans

[redacted]

to during the development of the plan.[109] One purpose of formal consultation will be to re-test societal acceptance of the necessary trade-offs in the draft SSEP.[110] NESO suggested that consultation methods could include opinion surveys; targeted focus groups; outreach to prominent interest and campaign groups; webinars and "stakeholder meetings"; and visual representations of the plan as well as textual descriptions.[111]

d. Statutory and public consultation on the environmental effects of the draft plan, through the Strategic Environmental Assessment (SEA) Environmental Report, the Habitats Regulation Assessment (HRA) Report to Inform and the Marine Conservation Zone (MCZ) Assessment Report.[112]

e. Engagement with communities in the host areas identified in the draft SSEP as "best suited for energy infrastructure development".[113] NESO stated that it will use the governance structures and forums established during the development of the SSEP to help host communities to participate in the decision-making process.[114] It also committed to "facilitate conversations among political, societal, industry and community stakeholders" and "remain reactive and responsive to community and industry needs, continually evolving our engagement activities".[115]

Centralised Strategic Network Plan

56. To be as efficient as possible, NESO has proposed to replicate, for the CSNP, the methodology and stakeholder engagement strategy developed for the SSEP, by building upon existing relationships.[116] NESO's high-level methodology principles for the CSNP, published in December, committed to using a range of communication methods for stakeholder engagement, including "roundtables, workshops, events, online seminars, forums, and surveys".[117] The document committed to five "engagement principles" to

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ensure that stakeholder engagement is timely and transparent; proactive; meaningful; coordinated with other strategic planning activities; and tailored to different needs.[118]

Oral evidence on timelines and community engagement strategies

57. Julian Leslie outlined to us NESO's planned timelines for the creation of the SSEP and the CSNP. NESO expects to present the SSEP pathways to the Secretary of State by the end of 2025, to allow time for a 10-month consultation and engagement process on the final draft.[119] It will consult in more detail on the CSNP methodology in summer 2025.[120]

58. The timeline of "SSEP milestones" in NESO's SSEP Methodology provides that the draft SSEP, the SEA Environmental Report, the HRA Report to Inform and the MCZ Assessment Report will be published for public consultation in the second quarter of 2026.[121] As noted above, Julian Leslie told us that NESO has "built in a 10-month engagement and consultation process on the final SSEP".[122] If that is the case, public consultation would continue until at least January 2027. Yet NESO is due to publish the final SSEP by the end of 2026.[123]

CONCLUSION
It would be regrettable if this timeline meant that public engagement activities taking place towards the end of the consultation period have less, or even no, impact on the final outcome.

59. We asked Julian Leslie how NESO intends to overcome the common problem of community consultation failing to raise sufficient awareness of proposed developments at an early stage in the process.[124] He suggested that, rather than consulting individuals directly, NESO will mainly engage with representative organisations, such as Citizens Advice, environmental groups, consumer groups and local community groups.[125] This is because

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the SSEP is "a national plan on a national basis".[126] However, he maintained that NESO is "reaching as far and wide" as they can and stressed that they host webinars and publish information in a transparent and open way.[127]

60. **CONCLUSION**
The Strategic Spatial Energy Plan (SSEP), the Centralised Strategic Network Plan (CSNP) and the Land Use Framework (LUF) are valuable opportunities to build greater public understanding of the need for energy infrastructure and the trade-offs involved in choosing between different options and locations, at an early stage of the development process.

61. **CONCLUSION**
We welcome the National Energy System Operator (NESO)'s ambition for meaningful and comprehensive engagement with diverse communities, economic interests and societal groups throughout the development of the SSEP and the CSNP. At the very least, we expect the use of surveys, focus groups, roundtables, stakeholder meetings, events and webinars to engage with people directly. It is imperative that public consultation over these plans includes targeted engagement with communities who will see large volumes of infrastructure, clusters of projects, or energy infrastructure in their locality for this first time, as set out in the SSEP methodology.[128] Engagement with these communities should raise awareness of the infrastructure which they are likely to see in the years to come.

62. **CONCLUSION**
At this early stage, we have yet to see sufficient evidence of NESO's ambitions for societal engagement and public consultation being put into practice in the development of the SSEP and the CSNP. In the autumn, we expect to hear further details of: (i) NESO's consultation strategy; and (ii) how the societal forums and stakeholder working groups have been contributing to the development of these plans.

63. **RECOMMENDATION**
To protect the time allocated for public engagement and consultation on the draft SSEP, without compromising NESO's deadline to publish the final SSEP in December 2026, there can be no delay to:

- NESO's presentation of the SSEP pathway options to the Secretary of State;

126 [redacted]
127 [redacted]
128 NESO, [redacted] (May 2025), pp 8 to 9.

- The Secretary of State's selection of a pathway option; or
- NESO's preparation for the consultation and community engagement activities.

The draft SSEP should be published for consultation by the end of February 2026 at the very latest and earlier if possible. The Secretary of State should decide upon the chosen SSEP pathway in sufficient time to enable this.

4 Nature positive approaches to energy infrastructure

The environmental impacts of Critical National Priority status

64. The Government's proposed updates to the National Policy Statements reinforce the presumption of consent for low carbon infrastructure with Critical National Priority (CNP) status. This policy provides that the overarching need for CNP infrastructure must be given substantial weight and will in general outweigh any other residual impacts, including environmental impacts, not capable of being addressed by application of the mitigation hierarchy.[129] The Government proposes to update the policy with new guidance that the need to generate renewable electricity should take precedence over mitigating environmental impacts (*emphasis added*):

> Applicants must apply the mitigation hierarchy and demonstrate that it has been applied. They should also seek the advice of the appropriate SNCB or other relevant statutory body when undertaking this process. Applicants should demonstrate that all residual impacts are those that cannot be avoided, reduced or mitigated. *Measures that result in a material reduction in generation capacity for CNP infrastructure are unlikely to be considered to be appropriate as mitigation.*[130]

65. The new guidance, in italics, appears to provide that a proposed measure to mitigate environmental harm is unlikely to be acceptable if it would reduce the generation capacity of a renewable energy project. We have heard grave concerns that this change will discourage mitigation that would otherwise produce significant environmental benefits at the expense of a

129 Department for Energy Security & Net Zero (DESNZ), Overarching National Policy Statement for Energy (EN-1) (April 2025), paras 3.3.66 and 4.2.19. The mitigation hierarchy is the concept that adverse environmental impacts from development should first be avoided, then reduced, then mitigated and, only if none of these measures are possible, compensated: p 200.

130 DESNZ, Overarching National Policy Statement for Energy (EN-1) (April 2025), para 4.2.24.

small reduction in generation capacity. Isobel Morris gave the example of removing the corner of a very large offshore wind farm to preserve an important feeding route for seabirds at risk of extinction, such as puffins.[131] Altering the layout of a development or reducing the number of turbines in specific areas can be extremely effective in supporting the co-existence of nature and renewable energy infrastructure, on land and at sea.[132] The RSPB stressed that it is "standard practice for wind farms to plan for the 'upper limit' of turbines in early stages, with a widely-held presumption that this will be reduced once more environmental data has been obtained".[133] Likewise, Chandni Ruparelia suggested that adjustments to the boundary of a proposed site for the benefit of the environment are also common in the solar industry, even where this reduces generation capacity:

> We have an example of a project where we reduced our red line by about 1,000 acres because it was next to a national landscape. Understandably, we had those early conversations with Natural England. That was a decision that we took as developers. Yes, it will cut almost 200 megawatts of capacity from the project, but that is a fair decision to make given the guidelines within the NPSs already.[134]

Ali Leeder, Director at Aeos Infrastructure Planning, also confirmed that it is not uncommon for developers to accept reductions in electricity output as justified by environmental considerations.[135] Moreover, the policy could also deter innovative research into ways to mitigate environmental impacts whilst minimising electricity generation losses. For example, these include the use of predictive models to enhance the accuracy of bird migration forecasts and optimise the temporary curtailment of wind turbines to reduce bird collisions.[136]

66. Concerns about the effects of discouraging the mitigation of environmental impacts have been especially pronounced in relation to offshore wind.[137] The RSPB explained that, despite the international importance of the UK for global seabird populations, in the last 20 years seabirds in the UK have declined by 62% and by 70% in Scotland.[138] There are many reasons for this decline. However, we heard that offshore wind could be a contributing factor, due to collisions with rotating blades, the obstruction of routes to

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feeding grounds, reduced hunting areas and disturbance.[139] In England, the Government has set legally binding biodiversity targets under the Environment Act 2021 to halt overall species decline by 2030 and reduce the risk of species extinction by 2042.[140] Scotland, Wales and Northern Ireland all have their own biodiversity targets and strategies.[141] These are in addition to the UK's international commitments relating to biodiversity.[142]

67. On the other hand, others have suggested the word "material" in paragraph 4.2.24 of EN-1, cited at the beginning of this chapter, imposes limits on the types of mitigations which are unlikely to be considered appropriate. These included Ali Leeder, who nonetheless agreed that the meaning of "material" would "certainly be tested" in examinations and legal proceedings. She explained that, in her experience, "there are already lots of discussions that go on over the extent to which a reduction of output is justified due to environmental considerations".[143] Although it would not completely rule out mitigations that reduce generation capacity, the policy leaves significant room for doubt as to whether they would be justified.

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CONCLUSION

We have concerns about the effect of the proposed new policy, in paragraph 4.2.24 of EN-1, that measures to mitigate the environmental impacts of Critical National Priority (CNP) infrastructure are "unlikely to be considered to be appropriate" if they "result in a material reduction in generation capacity". The word "material" is ambiguous. We are not persuaded that the Government has sufficiently considered how this change of policy might affect the achievement of biodiversity targets in the UK or those adopted by the devolved administrations.

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69. **CONCLUSION**
National planning policy for CNP infrastructure should strongly encourage innovative strategies to reduce environmental impacts and, where appropriate, adjustments to site boundaries, layouts or the volume of electricity generation in specific areas for this purpose.

70. **RECOMMENDATION**
The Government should review whether the following sentence in EN-1, paragraph 4.2.24, is consistent with its own domestic and international biodiversity commitments, as well as those of the devolved administrations: "Measures that result in a material reduction in generation capacity for CNP infrastructure are unlikely to be considered to be appropriate as mitigation."

Integrating environmental protection into infrastructure development

71. In chapters 2 and 3 we explained our support for a more strategic approach to energy infrastructure development; our view that national planning policy should give effect to strategic plans more clearly; and our recommendation that these plans must be subject to thorough consultation.

72. The Government and the National Energy System Operator (NESO) have confirmed that the Strategic Spatial Energy Plan (SSEP) and the Centralised Strategic Network Plan (CSNP) will be subject to a Strategic Environmental Assessment (SEA), a Habitats Regulation Assessment (HRA), a Marine Conservation Zone (MCZ) assessment in England and Wales and a Marine Protected Areas (MPA) assessment in Scotland.[144] NESO has already published details of its expected timelines and strategies for these assessments.[145] This use of the Government's new strategic framework for energy infrastructure planning to strengthen and enhance environmental protection was welcomed across the evidence we that received.

73. Isobel Morris told us that "a strategic spatial approach is vital to saving nature when it comes to planning for energy".[146] She referred to a scientific study published by the RSPB in the last year which found that deploying

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ambitious levels of solar (90 GW) and onshore wind (35 GW) would require only 2.6% of UK land.[147] Importantly, this could be achieved whilst avoiding ecologically sensitive areas (including national parks) and Best and Most Versatile agricultural land, minimising losses to biodiversity and food production.[148] Her support for a more strategic approach to aligning nature protection with accelerating renewable energy development was a rare point of consensus with Sam Richards, CEO of Britain Remade. Questioning whether the current framework sufficiently protects the environment and halts biodiversity decline,[149] he called for a new approach to environmental protection which is more strategic and "front-loads" some of the concerns.[150] He suggested that this could allow the UK to build the energy infrastructure that it needs whilst directing more private sector funding into nature restoration.[151]

74. The Government itself recognised the value of integrating the pursuit of biodiversity and climate objectives in its Clean Power 2030 Action Plan:

> The real opportunity available to the UK is to deliver clean power by 2030 in a nature positive way, such as rewetting lowland peat soils at the same time as constructing new solar farms or creating new wildlife corridors alongside or underneath linear energy infrastructure.
>
> This approach is not so much about "balancing" energy and the environmental needs; it's about integrating them. It's about rebuilding our natural infrastructure at the same time as building the new energy infrastructure we need.[152]

Our evidence demonstrates wide support for this objective. Solar Energy UK told us that "the solar industry remains committed to placing land management and biodiversity enhancement at the core of project development".[153] We heard that this is evidenced by several studies by Solar Energy UK and independent experts, including Lancaster University and the University of York, which have reinforced "the industry's understanding

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of the positive impact that well-managed solar farms can have on biodiversity".[154] Similarly, Isobel Morris highlighted research by scientists from the RSPB and the University of Cambridge which found that solar farms which are well-managed so as to benefit nature, through a mix of habitats, have nearly three times as many birds compared to adjacent arable farmland.[155] The authors concluded that "solar farms can benefit biodiversity in arable-dominated landscapes, especially when managed with biodiversity in mind".[156]

75. We heard that the need for a more strategic approach to aligning environmental protection with accelerating renewable energy development is especially pronounced in the marine environment. Alan Law, Deputy Chief Executive of Natural England, told the predecessor Committee in November 2023 that there is a need for strategic planning to accommodate the competing demands of marine conservation and offshore energy infrastructure.[157] He also highlighted that strategic planning could help to reduce the impact of grid infrastructure on marine and coastal protected sites.[158] The Crown Estate highlighted the development of the Marine Delivery Routemap to balance the interests of competing sectors and map the best use of the seabed and coastline.[159] The RSPB called for a Marine Spatial Plan that identifies sites that should be protected for seabirds and other wildlife.[160] We are aware that evidence to the Environmental Audit Committee's recent inquiry, *Governing the Marine Environment,* criticised the current lack of strategic direction and the Government's apparent lack of progress in the Marine Spatial Prioritisation Programme.[161]

76. A 2023 report, by the National Infrastructure Commission, found that the current scheme-by-scheme approach to environmental assessment can result in developers taking up to three years to gather species data which is often duplicated by other developers gathering the same data in the

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same area.[162] Eleri Wilce, Head of Offshore Consents UK and Ireland at RWE Renewables, agreed with the need for more strategic approach and that project-by-project environmental impact assessments can lead to "significant delays and costs".[163] She suggested that surveys carried out centrally, such as by the Crown Estate in advance of seabed leasing, should be agreed with regulators and statutory nature conservation bodies, and made available to developers.[164]

77. **CONCLUSION**
We welcome a more strategic approach to energy infrastructure planning that integrates the pursuit of climate and biodiversity goals and enables the early consideration of nature protection on a habitat-wide basis. We are encouraged to see this ambition reflected in the Government's Clean Power 2030 Action Plan, the Strategic Spatial Energy Plan (SSEP) Methodology, the Land Use Framework (LUF) and the National Energy System Operator (NESO)'s high-level methodology principles for the Centralised Strategic Network Plan (CSNP). We recognise that these plans are still in development. However, the decision to subject the SSEP and the CSNP to detailed environmental assessments strengthens our conclusion that, if they realise this ambition, these strategic plans should be given weight in the determination of applications for development consent.

78. **CONCLUSION**
Scientific evidence presented to us shows that, if well-planned and well-managed specifically to benefit nature, solar farms can increase biodiversity by creating mixed habitats for birds and other wildlife.

RECOMMENDATION
The Government should consider how guidance in the National Policy Statements could respond to such findings by positively encouraging such practices.

79. **RECOMMENDATION**
The Government should require developers to avoid building on land that has high ecological and climate value, such as peat and saltmarsh.

162 National Infrastructure Commission, "Delivering net zero, climate resilience and growth" (April 2023), pp 21–22.
163 [redacted]
164 [redacted].

80. **CONCLUSION**
Effective marine spatial planning will be essential to balance the protection of marine and coastal habitats with the accelerated development of offshore energy infrastructure.

RECOMMENDATION
We endorse the Environmental Audit Committee's recommendation that the Government clarify the objectives and timeline for outputs of the Marine Spatial Prioritisation Programme.

81. **CONCLUSION**
There is a clear, recognised need for a more strategically coordinated approach to environmental impact assessments in the offshore wind sector.

RECOMMENDATION
The Government should consider how guidance in the National Policy Statements could help to achieve this and confirm what further steps it is taking to reduce unnecessary costs and delays incurred due to the current project-by-project approach.

The poor enforcement of ecological enhancements and landscape mitigations

82. During our oral evidence we learned that, despite the apparent consensus around a nature positive approach to energy infrastructure development, evidence shows that many environmental mitigations promised by developers are never delivered. Jackie Copley, Campaigns Lead at CPRE – The countryside charity, highlighted a recent study by the Royal Town Planning Institute (RTPI) which found that only 53% of ecological features required as conditions of planning consent were subsequently present on sites in real life.[165] Although the study was concerned with housing developments, rather than energy infrastructure, the RTPI concluded that these findings suggest "a systemic issue across the planning and development system as a whole".[166]

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83. Our evidence suggests that several factors may lead to ecological enhancements not being enforced. Jackie Copley emphasised the importance of ensuring that local authorities and conservation bodies such as Natural England have enough resources: a problem noted by the RTPI, who explained that local authority enforcement teams have faced significant cuts over the past 14 years.[167] Graham Gunby explained that securing the necessary land rights is often a problem and that this can also be a barrier to the delivery of landscape, as well as environmental, mitigations. He gave the example of offsite plantings of trees and hedgerows which would mitigate the visual impacts of overhead lines. We heard that such landscape mitigations can often be arranged by developers making money available to local authorities so that they can pay landowners to host them, pursuant to statutory powers. However, where no nearby landowners are willing to do so, this can result in offsite ecological enhancements and landscape mitigations not being delivered at all:

> *Even though the moneys might be provided, it needs a landowner to agree to do it, which they often do not.* I have colleagues running around saying, "Where are the skylark plots going to go?" or "Where is the planting going to go?" We don't know, nobody wants to do it, and it is a problem.[168]

We heard that restrictions on the use of compulsory purchase powers may be an underlying cause of the problem. Graham Gunby suggested that, in applying for development consent, developers should be encouraged or required to identify specifically where offsite landscape and environmental mitigations will be placed. Others suggested a review to understand the enforcement challenges underlying the issue.[169]

84. **CONCLUSION**
We are gravely concerned by reports that many ecological enhancements and landscape mitigations promised by developers are never delivered in practice. This indicates systemic failings, brings the planning system into disrepute, and questions whether the Government will be able to fulfil its ambitions to build critical infrastructure in a nature positive way.

85. **CONCLUSION**
National planning policy should require developers to identify specific sites, both suitable and available, for offsite landscape and environmental mitigations in their development consent applications.

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86. **RECOMMENDATION**

The Government should establish what proportion of ecological enhancements and landscape mitigations for energy infrastructure are delivered in practice, the most common reasons for lack of enforcement, and potential solutions. This analysis should consider offsite, as well as onsite, mitigations and how national planning policy could put more responsibility on developers for ensuring that such commitments are fulfilled. We would suggest:

- Requiring developers to identify specific sites for landscape and environmental mitigations and negotiate with landowners in advance of applying for development consent.
- Allowing the compulsory acquisition of sites identified for landscape and environmental mitigations if voluntary agreements are not possible.

5 Renewable energy infrastructure

87. The Government has proposed several changes to the National Policy Statement for Renewable Energy Infrastructure (EN-3), which reintroduce onshore wind into the Nationally Significant Infrastructure Projects (NSIP) regime and set out new guidance on inter-array wake effects between offshore wind developments. In this chapter we comment on the new guidance and highlight specific issues relating to solar farms which we think merit further consideration.

Onshore wind

88. The proposed changes to EN-3 reintroduce onshore wind into the NSIP regime with new guidance for development consent applications relating to onshore wind projects. This gives effect to previous recommendations of both the National Infrastructure Commission and the Business, Energy and Industrial Strategy Committee.[170] Pursuant to a new Statutory Instrument, the Government is setting the threshold for onshore wind and solar projects to be consented under the NSIP regime, rather than by local planning authorities, at 100 megawatts (MW).[171] This is an onshore wind farm of around 13 or more turbines.[172]

89. We received two main criticisms of the new guidance. The first relates to the threshold at which onshore wind projects fall under the NSIP regime, rather than the local planning system. The second concerns the proposed guidance for onshore wind developments on peatland.

90. First, although the reintroduction of onshore wind to the NSIP regime has been strongly welcomed,[173] we have heard that there is currently disagreement within the industry over whether the 100 MW threshold is too

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high.[174] Eleri Wilce told us that RWE Renewables is "unlikely to put forward onshore wind projects in England that reach that 100 MW threshold".[175] She called for the threshold for onshore wind to be lowered to 50 MW, which she said would be "more realistic".[176] Charles Wood agreed that although 100 MW is an "ambitious target", it "may not be realistic until wind turbines are of a scale to deliver that on a smaller patch of land".[177] He highlighted further considerations that could be raised by the prospect of a 100 MW onshore wind farm:

> In terms of the 100 MW threshold, there needs to be a wider consideration of what that means and what that should look like. As the technology has developed, you are getting fewer wind turbines on farms to meet that target, but they might be taller; they might be larger; they might sound different or operate differently.[178]

Although we have heard different views on the issue, the suitability of the 100 MW threshold and the considerations which this might raise merit further analysis.

91. **RECOMMENDATION**
The Government should, in its response to this Report, provide any evidence which it has that the proposed 100 MW threshold for onshore wind developments to fall under the Nationally Significant Infrastructure Projects regime will aid in the development of onshore wind projects, or whether the threshold should be lowered.

92. The second issue on which the new guidance has been criticised concerns the proposed policy for building onshore wind farms on peatland. We were reminded that many of the upland areas in England where it is most windy contain peat.[179] The Climate Change Committee's Balanced Pathway for the Seventh Carbon Budget recommended that 37% of upland peat should be restored to a natural or rewetted condition by 2030, 48% by 2035, 60% by 2040 and 79% by 2050.[180] The RSPB emphasised that onshore wind developments can damage peatland by permanently removing peat and reducing its ability to absorb water, increasing the risk that it will dry out

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and release carbon into the atmosphere.[181] Jackie Copley also pointed out that degrading peatland in the pursuit of net zero is "counterproductive" if it accelerates the release of carbon into the atmosphere.[182] We were also informed that there is currently "no up-to-date mechanism for assessing carbon emissions from onshore wind construction in peat".[183] Although there is a carbon calculator used in Scotland for this purpose, a recent study by the Scottish Government's centre for climate expertise concluded that "accuracy is lacking" in all peat-related areas of the mechanism.[184]

93. The Government's proposed guidance for onshore wind provides that "onshore wind farm sites within England may be proposed on peatland", despite the climate impacts of disturbance.[185] Although applicants are encouraged to "seek and rule out other locations" before doing so, this appears to set a relatively low threshold.[186] There is only one oblique reference to the avoidance of deep peat, as merely an "example" of "good practice" rather than a strong expectation or requirement.[187]

94. The new policy refers to the NatureScot guidance, *Good practice during wind farm construction*,[188] which contains recommendations about development on peat. However, applicants are not directed to NatureScot's more detailed guidance, *Advising on peatland, carbon-rich soils and priority peatland habitats in development management*.[189] We heard that applying this guidance in England "could both protect the deepest and rarest peatland habitats from harm, and help to fund peatland restoration", for example by distinguishing between different types of peat and establishing a 1:10

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loss-to-restoration ratio.[190] It was highlighted to us that the Department for Environment, Food and Rural Affairs is also taking steps to protect peatland.[191]

95. **CONCLUSION**
Building renewable energy infrastructure on peatland is counterproductive to the achievement of net zero if this results in the release of accumulated carbon stores into the atmosphere. Given this context, and the Climate Change Committee's recommendations for peatland restoration in the Seventh Carbon Budget, it is surprising that the Government's proposed new guidance for onshore wind in EN-3 does not contain a presumption against building on deep peat, though we recognise that there are areas in which such development would be unavoidable. The weakness in the guidance also appears to undermine efforts of the Department for Environment, Food and Rural Affairs to protect peatland.

96. **RECOMMENDATION**
The Government should amend the proposed new guidance on onshore wind in EN-3 to:

- whilst recognising there are areas in which development on peat would be unavoidable, introduce a presumption against building onshore wind developments on deep peat; and
- require the downstream carbon emissions from building onshore wind on peatland to be reported in any environmental statement for this kind of development.

97. **RECOMMENDATION**
The Government should consider publishing an equivalent to Nature Scot's 2023 guidance, "Advising on peatland, carbon-rich soils and priority peatland habitats in development management".

Offshore wind

98. Wake effects occur where wind turbines create wind speed shadows behind them, resulting in a reduced wind resource for downstream turbines. The Government has proposed new guidance on inter-array wake effects in EN-

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3, to provide "greater clarity" on how offshore wind developers can consider and potentially mitigate them.[192] The guidance provides that developers should co-ordinate with each other:

> At the design stage there are therefore clear merits for applicants to make an assessment of inter-array wake effects between their proposed developments, and nearby offshore wind generating stations that are planned, consented or operational.[193]
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> [...]
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> Applicants should demonstrate that they have taken all reasonable steps to minimise as far as possible the impact of wake effects on other offshore industries...this could include explaining how the configuration of a proposed offshore wind project has been evolved during the design process to reduce the impact, or how an applicant has managed the planned layout of an offshore wind turbine array....[194]

Despite recommending an assessment of wake effects, the new guidance acknowledges that it may not be possible to entirely remove them and suggests that compensation may be necessary.[195]

99. RWE Renewables told us that wake effects should not be a topic for the planning system because they are already dealt with within the Crown Estate seabed leasing rounds.[196] They warned us that the inclusion of guidance on wake effects within the National Policy Statements risks undermining offshore wind development.[197] Eleri Wilce said that the wording must be "absolutely crystal clear" that "projects should not be expected to damage their own business cases in pursuit of wake mitigation".[198] The Government's proposed wording is perceived as "highly ambiguous" and in need of "some very important tweaks to create certainty and avoid lengthy legal reviews which could hold up projects from getting planning consent".[199] Charles Wood echoed these points and emphasised that any guidance should be updated as the offshore wind industry acquires more data and understanding of possible mitigation actions.[200]

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192 DESNZ, Planning for New Energy Infrastructure: Revised draft National Policy Statements for energy infrastructure (April 2025), p 11.

193 DESNZ, National Policy Statement for Renewable Energy Infrastructure (EN-3) (April 2025), para 2.8.176.

194 DESNZ, National Policy Statement for Renewable Energy Infrastructure (EN-3) (April 2025), para 2.8.232.

195 DESNZ, National Policy Statement for Renewable Energy Infrastructure (EN-3) (April 2025), para 2.8.233.

196 [redacted]

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100. **CONCLUSION**
The concerns that we have heard from industry about the Government's proposed new guidance on inter-array wake effects in EN-3 suggest that this may not have provided the clarity that was intended. This may especially be the case in relation to whether projects might be expected to damage their own business cases when taking "all reasonable steps to minimise" wake effects "as far as possible".

RECOMMENDATION
To provide greater certainty, the Government should amend the guidance to clarify precisely what is expected.

Solar farms

101. The Government's proposed updates to the National Policy Statements do not specifically address national planning policy for solar energy. However, given the importance of solar photovoltaic generation in the Clean Power 2030 Action Plan, we have chosen to consider this as well. We confine our comments to specific issues relating to land type, agricultural land classification and food security.

102. Evidence to our predecessor Committee's 2023 inquiry, *A flexible grid for the future,* underlined a lack of clarity within the National Policy Statements as to what precisely may justify the development of solar farms on Best and Most Versatile (BMV) agricultural land.[201] For example, this might include the availability of a grid connection or, under the Government's new strategic framework, alignment with the Clean Power 2030 Action Plan or the Strategic Spatial Energy Plan (SSEP). For example, Estelle Dehon KC, a public law barrister specialising in environment and planning law, suggested that paragraph 2.10.21 of EN-3, which remains unchanged, is especially unclear (*emphasis added*):

> *While land type should not be a predominating factor in determining the suitability of the site location* applicants should, *where possible*, utilise suitable previously developed land, brownfield land, contaminated land and industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land *avoiding the use of "Best and Most Versatile" agricultural land where possible.*[202]

201 Written evidence for the Committee's inquiry, *A flexible grid for the future*, Estelle Dehon [redacted] 2024.

202 DESNZ, National Policy Statement for Renewable Energy Infrastructure (EN-3) (April 2025), para 2.10.21.

The qualification in the first sentence ("While land type…location") appears contrary to the second sentence and the later requirement for the Secretary of State to "take into account the economic and other benefits" of BMV agricultural land in paragraph 2.10.137.[203] We also heard that the caveats "where possible" "will inevitably lead to confusion and inconsistent decision-making".[204] Responding to this call for evidence, the National Infrastructure Planning Association also suggested that paragraphs 2.10.20 to 2.10.26 of EN3 "do not go far enough" in reducing unnecessary argument about BMV agricultural land.[205] Agreeing that "terms like 'where possible' and 'necessary' are open to interpretation", they told us that paragraph 2.10.21 is "the main problem".[206]

103. Food security is at the heart of the current guidance on land type and BMV agricultural land, even though EN-3 makes no reference to it at all. One year on, there is still a lack of clarity in national planning policy as to how exactly food security should be taken into account where solar farms are proposed on BMV agricultural land. Ali Leeder told us that the issue is taking up significant time and resources during project examinations:

> I have been part of examinations for several large-scale solar farms. In all of them there has been an argument about the impact on food security, and a lot of discussion, written questions and evidence has been produced. In each case, the conclusion has been the same: that the impact of those particular schemes on BMV agricultural land was acceptable, and food security was not taken as a wider material planning consideration.[207]

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203 Written evidence for the Committee's inquiry, *A flexible grid for the future*, E [redacted] February 2024; DESNZ, National Policy Statement for Renewable Energy Infrastructure (EN-3) (April 2025), para 2.10.137.

204 Written evidence for the Committee's inquiry, *A flexible grid for the future*, Estelle Dehon [redacted] February 2024.

205 The National Infrastructure Planning Association [redacted].

206 The National Infrastructure Planning Association [redacted] The National Infrastructure Planning Association suggested that para 2.10.21 could be amended "to read something like: *'Land type should not be a predominating factor in determining the suitability of the site location. Where previously developed land, brownfield land or industrial land is reasonably available for development, applicants are encouraged to utilise this land in preference to best and most versatile agricultural land. Where the use of any agricultural land is proposed, poorer quality land should be preferred to higher quality ("Best and Most Versatile") land where poorer quality land is reasonably available for development. Whether land is reasonably available for development will depend on a range of commercial, economic and environmental factors which should be considered by the applicant as part of their site selection process.'*

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Similarly, on behalf of Island Green Power, Chandni Ruparelia agreed that food security "comes up in every single consultation and every single examination phase".[208] However, because the agricultural land section of EN-3 makes "no mention of food security", "the examining authority and planning inspectors have no basis or guidance to make decisions around this very topic".[209]

104. Several witnesses agreed that the National Policy Statements should state unambiguously where the Government stands on food security and BMV agricultural land,[210] or at least provide "strategic direction as to what the response should be" when the issue arises.[211] We were told by some that the evidence is now clear that, even under the most ambitious scenarios, solar farms will have a minimal impact on food security and the National Policy Statements should acknowledge this.[212]

105. On the other hand, others regarded the current guidance as "fundamentally inadequate for safeguarding high-quality agricultural land".[213] Richard Fuller, Member of Parliament for North Bedfordshire, criticised the lack of a presumption against the use of BMV agricultural land, the "vague and non-binding" requirement for the Secretary of State to "consider" the impact of this,[214] and the lack of alignment with a broader land use strategy.[215]

106. BMV agricultural land is defined as land in grades 1, 2 and 3a of the Agricultural Land Classification (ALC),[216] a document which has not been amended since 1988.[217] The Country Land and Business Association told us that the ALC "must be updated as a matter of urgency" to reflect the impacts of climate change, changes to farming practices and technological developments which could have changed these classifications.[218] They further suggested that there should be "a mechanism for assessing each farm on its own merits" through site verification, in recognition that "no

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map layer can ever be completely accurate".[219] Chandni Ruparelia also told us that the ALC is no longer accurate, pointing out that it also does not take into account current land use and the effect of soil degradation.[220] She called for greater clarity as to when site surveys are necessary to test land classification, explaining that this is often done on a precautionary basis.[221] Finally, Solar Energy UK asked for clearer recognition in EN-3 that BMV agricultural land "is not clustered in a single area but occurs in a patchwork across field parcels, often mixed with lower-grade land".[222] In such cases, "it would not be commercially or operationally viable to exclude entire parcels from consideration simply due to the presence of some higher-grade soils".[223]

107. **CONCLUSION**

We are concerned that a lack of clear guidance is leading to unnecessary arguments about food security taking up disproportionate time and resources during examinations. We are concerned that the current guidance on agricultural land classification and land type for solar farms, in paragraphs 2.10.20 to 2.10.26 of EN-3, is ambiguous, equivocal and seemingly contradictory, particularly in relation to development on BMV agricultural land. There is a compelling need for the National Policy Statements to contain an unequivocal and evidence-based statement of policy in relation to this issue, including the circumstances where BMV agricultural land should or should not be available for development.

108. **RECOMMENDATION**

The Government should review and amend this guidance to:

- The Government should reaffirm its commitment to developing solar on developed land, brownfield land, contaminated land and industrial land before agricultural land. The Government should also consider innovative ways to develop solar energy without agricultural land.
- Clarify more precisely how applicants and decision-makers should assess land type and agricultural land classification, including the use of BMV agricultural land.
- Refer explicitly to food security and explain how decision-makers should take this consideration into account.

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- Clarify when site surveys are necessary to verify agricultural land classification.
- Recognise that BMV agricultural land may not all be clustered in one single area but may instead be located in a patchwork of field parcels, mixed with lower-grade land.

109. **RECOMMENDATION**
The Government should review and update the Agricultural Land Classification, as a matter of urgency, to reflect how factors such as climate change, soil degradation, changes to farming practices and technological advancements might affect productivity.

Conclusions and recommendations

Our engagement with the Department

1. We find it immensely frustrating that the Government chose to act in a way which appeared to acquiesce to our requests for additional time to consider its draft National Policy Statements on Energy but only after we had compressed our schedule and carried out two oral evidence sessions on the same day. Obviously, had we been afforded the courtesy of notification of the arrangements in advance, we could, and would, have waited until the end of the public consultation period before commencing using the information arising from that process to inform our oral evidence sessions and create the added value, by test and challenge, that the process was designed to encourage. In the event, the additional time, while it allowed a less rushed consideration of the evidence before us, did not provide significant opportunity to broaden, or deepen, the scrutiny we could bring to bear as it came too late for us to change the questions that we were able to put to our witnesses. (Conclusion, Paragraph 6)

2. The Government has failed to respect the value of Parliamentary scrutiny in this process. It refused to listen to our concerns with its initial timescales until it was too late for us to utilise additional time effectively. The issues considered in the Report would have been better, and more comprehensively, examined and put to the test had the Government been open about the arrangements and told us, from the very start, that the deadline for producing our findings was to be 21 July, rather than 24 June. (Conclusion, Paragraph 7)

3. These statements are very important in determining how energy infrastructure will be developed for the foreseeable future. The process was established, by the last Labour government, to provide Parliament with a voice and time to determine what to say. It is disappointing that the current Government has failed to create sufficient space in which an effective and helpful Parliamentary process could take place. (Conclusion, Paragraph 8)

4. Given that the Government, in its Planning and Infrastructure Bill, is seeking to disapply the current requirement for the Secretary of State to respond to any resolutions made by a committee in either House of Parliament, we recommend that the Government, in future, ensures that:

    a. Select Committees are provided with at least ten sitting weeks in which to consider future National Policy Statements and proposed amendments to an existing NPS,

    b. this period should never commence before the conclusion of the department's related public consultation process, and

    c. Parliament has a period of at least ten sitting days, in which consideration of the recommendations of a Select Committee can take place, before the NPS or amended NPS is designated by the relevant Secretary of State. (Recommendation, Paragraph 9)

The new strategic framework for energy infrastructure planning

5. We welcome the new strategic framework for energy infrastructure planning which the Government proposes to endorse in the National Policy Statements. However, even with these changes, the National Policy Statements do not sufficiently reflect the highly important role that strategic plans are intended to have in guiding future energy infrastructure development to achieve the Government's 2030 and 2050 targets. The relationship between the plans and the Nationally Significant Infrastructure Projects regime is far from clear. (Conclusion, Paragraph 23)

6. The Government's new strategic framework for energy infrastructure planning represents a significant departure from the existing market-led approach to development by industry. The National Policy Statements should define what is set centrally and what is expected from industry plainly and transparently, to give certainty and avoid ambiguity. (Conclusion, Paragraph 24)

7. The Government should amend the National Policy Statements for energy infrastructure to clarify the precise relationship and hierarchy between these documents and the strategic plans which the proposed updates endorse. (Recommendation, Paragraph 25)

8. It seems to us that this would be inconsistent. The availability and prospects of securing a grid connection are issues that should cut both ways, weighing for, or against, the grant of development consent depending on the circumstances. (Conclusion, Paragraph 30)

9. We acknowledge the concern that strategic plans should not predetermine the outcome of any application for development consent. However, neither should the planning system be blind to the very existence of such plans and, most importantly, to their possible impact on the prospects of a project securing a grid connection. It would undermine the purpose of strategic plans if the Secretary of State were unable to take them into account in the planning balance.

- The National Policy Statements should clearly recognise, as a material consideration, the regional and zonal capacities for different technologies specified in the Clean Power 2030 Action Plan and the Strategic Spatial Energy Plan.
- The National Policy Statements should clearly recognise, as a material consideration, the optimal areas for different technologies identified in the Strategic Spatial Energy Plan. (Recommendation, Paragraph 32)

10. There needs to be more coordination between the application processes for development consent and a grid connection, given that each is highly relevant to the other and both will be influenced by the Clean Power 2030 Action Plan, the Strategic Spatial Energy Plan, and the Land Use Framework. It is essential that developers are not left stuck in a situation in which they cannot progress planning consent without more certainty in relation to the prospects of securing a grid connection and vice versa.

- The Government and the National Energy System Operator (NESO) should review how the application processes for development consent and a grid connection will interact, to achieve greater coordination between them. (Recommendation, Paragraph 33)

11. The National Policy Statements should give significant weight to the availability of a grid connection, as a paramount consideration in determining where electricity generation projects can be located. However, by the same token, where a project has not yet secured a grid connection, the prospects of doing so should also be a material consideration weighing for or against the grant of development consent. NESO may need to provide the Secretary of State with information to ensure that this question is considered accurately, fairly and efficiently within the development consent process.

- The Government should strengthen the existing guidance in the National Policy Statements to clarify that the Secretary of State should give significant weight to the availability of a grid connection.
- The National Policy Statements should clarify how the Secretary of State should assess the future prospects of a project obtaining a grid connection, with reference to NESO's recent reforms to this process.

- The Government and NESO should assess whether, and in what circumstances, NESO may need to provide the Secretary of State with information about the prospects of a project obtaining a grid connection and how far it is aligned with strategic plans. (Recommendation, Paragraph 34)

12. We welcome the decision to endorse the Centralised Strategic Network Plan (CSNP) in the National Policy Statements. However, we are concerned that the proposed guidance in paragraphs 3.3.78 to 3.3.80 of EN-1 is not clear enough about what, precisely, it is from the CSNP that is being endorsed. This must be unambiguous, to avoid unnecessary argument about the issue during the development consent process. (Conclusion, Paragraph 40)

13. The Government should review and, if necessary, amend the proposed guidance endorsing the CSNP in paragraphs 3.3.78 to 3.3.80 of EN-1, to make the language more consistent, unambiguous, and more in keeping with current understandings of the intended purpose of the CSNP. This may involve:

- reviewing the reference to the CSNP displaying "indicative routes" in paragraph 3.3.80;
- removing the reference in paragraph 3.3.79 to a "strategic solution", an undefined term distinct from "strategic parameters"; and/or
- replacing "strategic parameters" with "strategic corridors" until the CSNP is complete and a more precise definition can be adopted. (Recommendation, Paragraph 41)

14. The National Policy Statements should clarify that adjustments may be made to the "strategic parameters" for new electricity transmission infrastructure set out in the Centralised Strategic Network Plan where this is justified following detailed design development, community consultations or environmental surveys. (Recommendation, Paragraph 42)

15. Endorsement of the Strategic Spatial Energy Plan, the Centralised Strategic Network Plan and the Electricity Transmission Design Principles in the National Policy Statements should not become official until these plans are finalised and have completed public consultation and environmental assessments. At that stage, the Government should review the proposed policy wording to do so and should implement any necessary changes through the streamlined procedure for amending the National Policy Statements being introduced in the Planning and Infrastructure Bill. (Recommendation, Paragraph 46)

16. We have not had the opportunity to consider the issue in detail. However, we believe that there is merit to these arguments, given that electricity distribution infrastructure is strategically important and can be much smaller in scale than transmission infrastructure. (Conclusion, Paragraph 48)

17. The Government should review whether some types of electricity distribution infrastructure should be removed from the Nationally Significant Infrastructure Projects regime and instead consented under section 37 of the Electricity Act 1989, to speed up delivery critical to Clean Power by 2030. These may include 132kV wood poles. (Recommendation, Paragraph 49)

The role of community engagement in building public support for strategic plans

18. The complex judgments involved in evaluating different options for electricity network infrastructure not only raise a strong argument for settling these strategic considerations at an earlier stage, but also heighten the need for affected communities to be involved in those decisions. (Conclusion, Paragraph 53)

19. It would be regrettable if this timeline meant that public engagement activities taking place towards the end of the consultation period have less, or even no, impact on the final outcome. (Conclusion, Paragraph 58)

20. The Strategic Spatial Energy Plan (SSEP), the Centralised Strategic Network Plan (CSNP) and the Land Use Framework (LUF) are valuable opportunities to build greater public understanding of the need for energy infrastructure and the trade-offs involved in choosing between different options and locations, at an early stage of the development process. (Conclusion, Paragraph 60)

21. We welcome the National Energy System Operator (NESO)'s ambition for meaningful and comprehensive engagement with diverse communities, economic interests and societal groups throughout the development of the SSEP and the CSNP. At the very least, we expect the use of surveys, focus groups, roundtables, stakeholder meetings, events and webinars to engage with people directly. It is imperative that public consultation over these plans includes targeted engagement with communities who will see large volumes of infrastructure, clusters of projects, or energy infrastructure in their locality for this first time, as set out in the SSEP methodology. Engagement with these communities should raise awareness of the infrastructure which they are likely to see in the years to come. (Conclusion, Paragraph 61)

22. At this early stage, we have yet to see sufficient evidence of NESO's ambitions for societal engagement and public consultation being put into practice in the development of the SSEP and the CSNP. In the autumn, we expect to hear further details of: (i) NESO's consultation strategy; and (ii) how the societal forums and stakeholder working groups have been contributing to the development of these plans. (Conclusion, Paragraph 62)

23. To protect the time allocated for public engagement and consultation on the draft SSEP, without compromising NESO's deadline to publish the final SSEP in December 2026, there can be no delay to:

- NESO's presentation of the SSEP pathway options to the Secretary of State;
- The Secretary of State's selection of a pathway option; or
- NESO's preparation for the consultation and community engagement activities.

The draft SSEP should be published for consultation by the end of February 2026 at the very latest and earlier if possible. The Secretary of State should decide upon the chosen SSEP pathway in sufficient time to enable this. (Recommendation, Paragraph 63)

Nature positive approaches to energy infrastructure

24. We have concerns about the effect of the proposed new policy, in paragraph 4.2.24 of EN-1, that measures to mitigate the environmental impacts of Critical National Priority (CNP) infrastructure are "unlikely to be considered to be appropriate" if they "result in a material reduction in generation capacity". The word "material" is ambiguous. We are not persuaded that the Government has sufficiently considered how this change of policy might affect the achievement of biodiversity targets in the UK or those adopted by the devolved administrations. (Conclusion, Paragraph 68)

25. National planning policy for CNP infrastructure should strongly encourage innovative strategies to reduce environmental impacts and, where appropriate, adjustments to site boundaries, layouts or the volume of electricity generation in specific areas for this purpose. (Conclusion, Paragraph 69)

26. The Government should review whether the following sentence in EN-1, paragraph 4.2.24, is consistent with its own domestic and international biodiversity commitments, as well as those of the devolved administrations:

"Measures that result in a material reduction in generation capacity for CNP infrastructure are unlikely to be considered to be appropriate as mitigation." (Recommendation, Paragraph 70)

27. We welcome a more strategic approach to energy infrastructure planning that integrates the pursuit of climate and biodiversity goals and enables the early consideration of nature protection on a habitat-wide basis. We are encouraged to see this ambition reflected in the Government's Clean Power 2030 Action Plan, the Strategic Spatial Energy Plan (SSEP) Methodology, the Land Use Framework (LUF) and the National Energy System Operator (NESO)'s high-level methodology principles for the Centralised Strategic Network Plan (CSNP). We recognise that these plans are still in development. However, the decision to subject the SSEP and the CSNP to detailed environmental assessments strengthens our conclusion that, if they realise this ambition, these strategic plans should be given weight in the determination of applications for development consent. (Conclusion, Paragraph 77)

28. Scientific evidence presented to us shows that, if well-planned and well-managed specifically to benefit nature, solar farms can increase biodiversity by creating mixed habitats for birds and other wildlife. (Conclusion, Paragraph 78)

29. The Government should consider how guidance in the National Policy Statements could respond to such findings by positively encouraging such practices. (Recommendation, Paragraph 78)

30. The Government should require developers to avoid building on land that has high ecological and climate value, such as peat and saltmarsh. (Recommendation, Paragraph 79)

31. Effective marine spatial planning will be essential to balance the protection of marine and coastal habitats with the accelerated development of offshore energy infrastructure. (Conclusion, Paragraph 80)

32. We endorse the Environmental Audit Committee's recommendation that the Government clarify the objectives and timeline for outputs of the Marine Spatial Prioritisation Programme. (Recommendation, Paragraph 80)

33. There is a clear, recognised need for a more strategically coordinated approach to environmental impact assessments in the offshore wind sector. (Conclusion, Paragraph 81)

34. The Government should consider how guidance in the National Policy Statements could help to achieve this and confirm what further steps it is taking to reduce unnecessary costs and delays incurred due to the current project-by-project approach. (Recommendation, Paragraph 81)

35. We are gravely concerned by reports that many ecological enhancements and landscape mitigations promised by developers are never delivered in practice. This indicates systemic failings, brings the planning system into disrepute, and questions whether the Government will be able to fulfil its ambitions to build critical infrastructure in a nature positive way. (Conclusion, Paragraph 84)

36. National planning policy should require developers to identify specific sites, both suitable and available, for offsite landscape and environmental mitigations in their development consent applications. (Conclusion, Paragraph 85)

37. The Government should establish what proportion of ecological enhancements and landscape mitigations for energy infrastructure are delivered in practice, the most common reasons for lack of enforcement, and potential solutions. This analysis should consider offsite, as well as onsite, mitigations and how national planning policy could put more responsibility on developers for ensuring that such commitments are fulfilled. We would suggest:

    - Requiring developers to identify specific sites for landscape and environmental mitigations and negotiate with landowners in advance of applying for development consent.

    - Allowing the compulsory acquisition of sites identified for landscape and environmental mitigations if voluntary agreements are not possible. (Recommendation, Paragraph 86)

Renewable energy infrastructure

38. The Government should, in its response to this Report, provide any evidence which it has that the proposed 100 MW threshold for onshore wind developments to fall under the Nationally Significant Infrastructure Projects regime will aid in the development of onshore wind projects, or whether the threshold should be lowered. (Recommendation, Paragraph 91)

39. Building renewable energy infrastructure on peatland is counterproductive to the achievement of net zero if this results in the release of accumulated carbon stores into the atmosphere. Given this context, and the Climate Change Committee's recommendations for peatland restoration in the Seventh Carbon Budget, it is surprising that the Government's proposed new guidance for onshore wind in EN-3 does not contain a presumption against building on deep peat, though we recognise that there are areas in which such development would be unavoidable. The weakness in the guidance also appears to undermine efforts of the Department for Environment, Food and Rural Affairs to protect peatland. (Conclusion, Paragraph 95)

40. The Government should amend the proposed new guidance on onshore wind in EN-3 to:

- whilst recognising there are areas in which development on peat would be unavoidable, introduce a presumption against building onshore wind developments on deep peat; and
- require the downstream carbon emissions from building onshore wind on peatland to be reported in any environmental statement for this kind of development. (Recommendation, Paragraph 96)

41. The Government should consider publishing an equivalent to Nature Scot's 2023 guidance, "Advising on peatland, carbon-rich soils and priority peatland habitats in development management". (Recommendation, Paragraph 97)

42. The concerns that we have heard from industry about the Government's proposed new guidance on inter-array wake effects in EN-3 suggest that this may not have provided the clarity that was intended. This may especially be the case in relation to whether projects might be expected to damage their own business cases when taking "all reasonable steps to minimise" wake effects "as far as possible". (Conclusion, Paragraph 100)

43. To provide greater certainty, the Government should amend the guidance to clarify precisely what is expected. (Recommendation, Paragraph 100)

44. We are concerned that a lack of clear guidance is leading to unnecessary arguments about food security taking up disproportionate time and resources during examinations. We are concerned that the current guidance on agricultural land classification and land type for solar farms, in paragraphs 2.10.20 to 2.10.26 of EN-3, is ambiguous, equivocal and seemingly contradictory, particularly in relation to development on BMV agricultural land. There is a compelling need for the National Policy Statements to contain an unequivocal and evidence-based statement of policy in relation to this issue, including the circumstances where BMV agricultural land should or should not be available for development. (Conclusion, Paragraph 107)

45. The Government should review and amend this guidance to:

- The Government should reaffirm its commitment to developing solar on developed land, brownfield land, contaminated land and industrial land before agricultural land. The Government should also consider innovative ways to develop solar energy without agricultural land.
- Clarify more precisely how applicants and decision-makers should assess land type and agricultural land classification, including the use of BMV agricultural land.

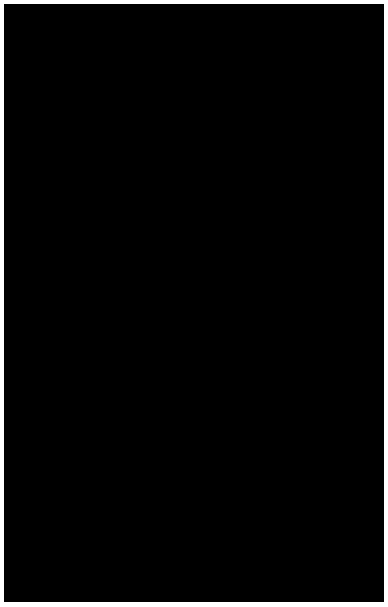
- Refer explicitly to food security and explain how decision-makers should take this consideration into account.
- Clarify when site surveys are necessary to verify agricultural land classification.
- Recognise that BMV agricultural land may not all be clustered in one single area but may instead be located in a patchwork of field parcels, mixed with lower-grade land. (Recommendation, Paragraph 108)

46. The Government should review and update the Agricultural Land Classification, as a matter of urgency, to reflect how factors such as climate change, soil degradation, changes to farming practices and technological advancements might affect productivity. (Recommendation, Paragraph 109)

Formal Minutes

Tuesday 1 July 2025

Members present



Gridlock or growth? Avoiding energy planning chaos

Draft Report (Gridlock or growth? Avoiding energy planning chaos), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 109 read and agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order 134.

Adjournment

Adjourned till Wednesday 2 July 2025 at 2.30pm.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Wednesday 21 May 2025

Sam Richards, Chief Executive Officer, Britain Remade; **Jackie Copley MRTPI**, Campaigns Lead, Campaign for Protection of Rural England; **Isobel Morris**, Senior Policy Officer - Energy, Royal Society for the Protection of Birds (RSPB) Q1–41

Peta Donkin, Board Member and Policy and Practice Lead, National Infrastructure Planning Association; **Ali Leeder**, Director, Aeos Infrastructure Planning; **Graham Gunby**, National Infrastructure Planning Manager, Suffolk County Council Q42–84

Wednesday 21 May 2025

Lawrence Slade FEI, Chief Executive, Energy Networks Associaiton; **Charlotte Mitchell**, Chief Planning Officer, National Grid Electricity Transmission; **Julian Leslie CEng FIET**, Director Strategic Energy Planning and Chief Engineer, National Energy System Operator (NESO) Q85–129

Charles Wood, Deputy Director, Policy (Systems), Energy UK; **Chandni Ruparelia**, Chief Operating Officer, Island Green Power; **Eleri Wilce**, Head of Offshore Consents UK & Ireland, RWE Renewables Q130–176

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

NPE numbers are generated by the evidence processing system and so may not be complete.

1 Brayshaw, Prof David (Professor of climate science and energy-meteorology, University of Reading); Chalvatzis, Prof Konstantinos (Professor of Sustainable Business, University of Exeter); Dent, Prof Chris (Professor of Industrial Mathematics, University of Edinburgh); Maycock, Prof Amanda (Professor of Climate Dynamics, University of Leeds); Sparrow, Assoc Prof Sarah (Associate Professor in Environmental Impact, University of Oxford); and Wallom, Prof David (Professor of Informatics, University of Oxford)

2 British Standards Institution

3 Association of Local Government Archaeological Officers (ALGAO)

4 British Energy Efficiency Federation

5 Campaign for the Protection of Rural Wales

6 Campaign to Protect Rural England (CPRE)

7 Campaign to Protect Rural England (CPRE) Warwickshire Branch

8 Comhampton Solar Action Group

9 Country Land and Business Association (CLA)

10 EPSRC Supergen Energy Networks Hub / University of Bath

11 Energy Networks Associaiton

12 Foster FRICS, Nigel (NPJ Foster FRICS)

13 Foster, Mr John

14 Friends of Carrington Moss

15 Gren Energy UK Ltd.

16 Hollingsworth, Mrs Sallie

17 Institution of Engineering and Technology

18 Lang, PS

19 Lawrence, Ms Monica

20 Li, Professor Furong (Research Chair - National Grid Electricity Distribution/Royal Academy of Engineering, University of Bath); Turvey, Professor Nigel (Professor in Practice, University of Bath); Shea, Dr Andy (Sector Lecturer in Building Physics, University of Bath); Gu, Professor Chenghong (Professor in Energy Systems, University of Bath); and Souto, Dr Laiz (Lecturer in Power Systems Engineering, University of Bath)

21 Makinson, Catherine (Chairperson, Lincolnshire Against Needless Destruction (L.A.N.D)); and Phillips, Peter

22 Margiotta, Mr Nicholas

23 Matthews, Anne

24 Mr Richard Fuller MP

25 National Grid

26 Nuclear Industry Association

27 Royal Society for the Protection of Birds (RSPB)

28 RWE

29 RenewableUK

30 Roadchef

31 Roberts, Mr Andrew

32 Royal Society for the Protection of Birds (RSPB)

33 SP Energy Networks

34 Sir Bernard Jenkin MP

35 Solar Energy UK

36 Suffolk County Council

37 The Carbon Capture and Storage Association (CCSA)

38 The Crown Estate

39 The MCS Foundation

40 The National Infrastructure Planning Association

41 Together Against Sizewell C

42 United Kingdom Without Incineration Network (UKWIN)

43 Wade, Mr Brian

44 West London Alliance; and West London Business

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2024–25

Number	Title	Reference
1st	Retrofitting homes for net zero	HC 453

OUTER HOUSE, COURT OF SESSION

[2025] CSOH 62

CA15/24

OPINION OF LORD SANDISON

In the cause

GLENFIDDICH WIND LIMITED

Pursuer

against

DORENELL WINDFARM LIMITED

Defender

Pursuer: Thomson KC, Ford, (sol adv); Brodies LLP
Defender: Borland KC, T Young; Pinsent Masons LLP

10 July 2025

Introduction

[1] In this commercial action the pursuer, which is the registered proprietor of Scaut Hill, Glenfiddich, claims that certain substantial payments are due to it in terms of a lease of that property which it entered into with the defender in November 2015. The lease was for the purpose of enabling the defender to construct and operate a windfarm there, which it did. It has operated the windfarm since March 2019. At times, the defender has not generated electricity from the windfarm (or not fully taken advantage of its generation capacity) despite having been able to do so. The principal dispute between the parties concerns the pursuer's claims that, in consequence of that lack of generation, the defender

obtained certain benefits, the value of which falls to be taken into account in calculating the sums due to the pursuer in terms of the lease. It seeks declarators as to what it says are its rights under the lease, and decree for the sums allegedly underpaid. The defender denies that, on a proper construction of the lease, the benefits said to have arisen in consequence of the non-generation result in payment obligations due to the pursuer by it. The matter came before the court for a diet of proof before answer to resolve the dispute.

Relevant terms of the lease

[2] The definitions section of the lease entered into between the parties contains the following provisions:

> "'**Constraint Benefit'** means a relief, payment, reduced charge or avoided charge received by the Tenant from the Transmission System Operator in relation to a cessation, reduction or constraint in the export of electricity from the relevant Facility to the Transmission System;"
>
> "'**Gross Income'** means in respect of each Rent Year (or part of a Rent Year as the case may be) the aggregate of (i) CfD 1 Revenue; (ii) CfD 2 Revenue; (iii) PPA 1 Revenue; (iv) PPA 2 Revenue; (v) Benefits Revenue; (vi) Constraint Benefit; and (vii) Loss of Revenue Claim in respect of that Rent Year (or partial Rent Year as the case may be), declaring for the avoidance of doubt that:
>
> …
>
> (C) the formulae calculating each of the CfD 1 Revenue, CfD 2 Revenue, PPA 1 Revenue and PPA 2 Revenue are not intended to calculate actual revenues due to the Tenant in respect of amounts due to the Tenant pursuant to the Initial CfD or the Extension CfD or in respect of the sale of Electrical Output and no account shall be taken of, or adjustment made in respect of any actual income received by the Tenant under the Initial CfD or the Extension CfD or any actual income received by the Tenant in respect of the sale of the Electrical Output;
>
> (D) the declaration at (C) above is without prejudice to the calculation of Benefits Revenue, Constraint Benefits and Loss of Revenue Claims;
>
> …"

[3] It may be convenient to explain at this point that CfD revenue is, in essence, income flowing to the defender in respect of the windfarm's generation of electricity under the UK's Contracts for Difference scheme designed to incentivise investments in renewable energy projects in the UK (ie, subsidy) and that PPA revenue is income flowing to the defender in consequence of the sale of electricity which had been generated in terms of a Power Purchase Agreement, a type of contract for the onward sale of electricity which the defender in fact entered into with its related company EDF Energy Limited (EDFE). This dispute is not concerned with either of those types of revenue.

[4] The definitions section in the lease also includes:

> "'**Loss of Revenue Claim'** means in respect of a Facility, all amounts received by the Tenant pursuant to a claim by the Tenant against any person for any reason for the loss of or reduction in revenue of the Tenant from that Facility, including any compensation amounts payable in accordance with Clause 5.1.9 and including a claim for loss or reduction of revenue pursuant to a turbine availability, energy production or power output warranty contained in a turbine supply agreement or turbine maintenance agreement, but expressly excluding:
>
> > (a) all amounts received by the Tenant in respect of all claims for loss of or reduction in revenue (including liquidated damages) due to delay in commissioning under a turbine supply agreement, balance of plant agreement or other construction phase agreement; and
> >
> > (b) all amounts received by the Tenant (including, but without limitation, pursuant to insurance claims) in respect of the repair, replacement or renewal of any Generating Assets (or other equipment (including cables) installed by the Tenant on the Site) and irrespective of whether or not the Tenant applies such amounts for the repair, replacement or renewal of such Generating Assets or other equipment;"
>
> "'**Minimum Annual Rent'** means **SIX MILLION POUNDS (£6,000,000) STERLING** per annum index-linked to the date payment of each instalment of the same falls due in terms of this Lease;"

[5] The substantive provisions of the lease concerning the payment of rent include the following:

"**Subsequent Rent Years Rent**

3.3.6 in respect of each subsequent Rent Year except the Last Rent Year (subject to any deduction or deductions due in accordance with Clauses 3.3.3, 3.3.5 and/or 3.3.7) the greater of:-

(a) the Minimum Annual Rent in respect of the relevant Rent Year; or
(b) the Gross Income Rent for the immediately preceding Rent Year;

Provided always that (i) where the Gross Income Rent for the immediately preceding Rent Year has not been certified as at the first Quarter Day of the relevant Rent Year then the first instalment due on the first Quarter Day of the relevant Rent Year shall be one quarter of the Minimum Annual Rent and thereafter on or prior to the next Quarter Day in the relevant Rent Year the Tenant shall make a balancing payment of the difference (if any) between what was actually paid on the said first Quarter Day and what would have been paid on the said first Quarter Day if the Gross Income Rent had been so certified, together with Interest thereon from the first Quarter Day until the date of payment and (ii) for each CfD Expiry Rent Year, for the purposes of Clause 3.3.6(b) the Gross Income Rent for the immediately preceding Rent Year shall be whatever the Gross Income Rent for such immediately preceding Rent Year would be if there was deducted from the calculation of Gross Income in respect of such immediately preceding Rent Year an amount equal to the aggregate of (a) all Aggregate Difference Amounts payable under the Initial CfD in respect of such immediately preceding Rent Year; and (b) all Aggregate Difference Amounts payable under the Extension CfD in respect of such immediately preceding Rent Year;

3.3.7 in respect of each subsequent Rent Year except the Last Rent Year the sum (if positive) calculated by deducting (i) the greater of (a) the Minimum Annual Rent for the relevant Rent Year and (b) the Gross Income Rent calculated in respect of the Gross Income for the immediately preceding Rent Year (the '**Preceding GIR'**) from (ii) the Gross Income Rent calculated in respect of the Gross Income for the relevant Rent Year (the '**Current GIR'**) provided always that (I) if the Current GIR is less than either the said Minimum Annual Rent or the Preceding GIR, no sum shall be payable by the Tenant pursuant to this Clause 3.3.7 and (II) if the Preceding GIR is greater than each of the Current GIR and the said Minimum Annual Rent the difference between (A) the Preceding GIR and (B) the greater of (1) the said Minimum Annual Rent and (2) the Current GIR shall be deducted from the rent payable under Clause 3.3.6 and/or Clause 3.3.8 in respect of the immediately succeeding Rent Year and (where necessary to permit the deduction of the full amount of any such difference) deducted from the rent

payable under Clause 3.3.6 and/or Clause 3.3.8 in respect of each of the subsequent Rent Years; provided that any such deduction or deductions shall not result in the rent payable in any subsequent Rent Year being less than the Minimum Annual Rent;"

"**Interest**

3.3.10 Interest shall be payable on any rent (or any payment due by the Landlord to the Tenant) that has not been paid within 7 days of becoming payable, to accrue from the date the same became payable."

Witnesses

Pursuer's proof

[6] **Colin Reilly** (46), the pursuer's finance director, spoke to a witness statement provided by him and dealing with the sums which would be due to the pursuer should particular constructions of the lease be accepted by the court. In cross-examination, he stated that he had not been a director of the pursuer when the lease was entered into and could not comment on the factual matrix known to the parties at that time. He spoke to various items of correspondence which had passed between the parties or their representatives after the dispute had emerged, as part of a line of questioning which seemed designed to (and quite effectively did) demonstrate that the pursuer had, over time, struggled to articulate the exact legal basis of the case it wished to make against the defender. He confirmed that it was common knowledge in the energy industry that Power Purchase Agreements of the sort which had been entered into between the defender and EDFE to facilitate the sale of the energy being generated by the former would be likely to involve a charge being made by the "offtaker" (as the party performing the function of EDFE in the arrangement is known) for the services being provided, although the amount of the charge would depend on various factors likely to be known only to the parties to the PPA in question.

[7] **Thomas Bent** (56), an energy consultant, was led as an expert witness by the pursuer. He spoke to a report previously prepared by him and to a written record of the points of agreement and disagreement between him and the expert instructed by the defender composed on 17 February 2025, after they had met and discussed matters. There followed an extensive cross-examination which, insofar as it did not concern matters which were uncontentious as between the experts and parties, was largely taken up in elucidating and challenging the witness's views on how it might be appropriate to characterise various aspects of the system whereby energy supply and consumption in the UK is managed, all as set out in something called the Balancing and Settlement Code (BSC), which will afterwards be described. However, there was no dispute as to the terms of the BSC, nor any dispute that it is, as one would expect given its importance and complexity, operated in practice exactly according to its terms. The issue in this case is how the lease falls properly to be construed against that factual background, so far as it was or ought to have been known to the parties at the time of contracting. The views expressed by Mr Bent (and, equally, by the defender's expert Mr Evans) beyond the uncontroversial matters were simply expressions of opinion as to how the processes of the BSC might best be characterised, elicited with a view to enabling submissions to be made as to whether what had happened did or did not correspond with descriptions contained in the controversial provisions of the lease. The opinions expressed by the experts as to how the processes of the BSC might best be described were not matters upon which they possessed any special knowledge or experience, and had no greater value than had they been expressed by someone plucked at random from the street to whom the BSC processes had been described. This is not a criticism of either expert. Both were indeed highly knowledgeable and experienced in the matters of fact to which they spoke, and both gave their evidence carefully and with great

propriety. The difficulty is that they were both conscripts in an expert arms race on which the parties had unnecessarily embarked, reflecting an unfortunate contemporary tendency to adduce the evidence of skilled witnesses in relation to matters not properly calling for, or addressed by, such evidence. That approach grossly and unnecessarily complicated the presentation and consideration of the merits of the case.

[8] I have in any event carefully considered everything said and reported upon by the expert witnesses, but have been unable to escape the conclusion that, beyond the agreed matters of fact, their evidence was, if not entirely incompetent as being directed in essence at the issue of law for the court's sole determination, at the very least quite irrelevant to the decisions which require to be made. I have accordingly not set it out at length in this opinion, which already risks being overly long and complex.

Defender's Proof

[9] **Gareth Evans** (45), an energy markets adviser, was the expert instructed by the defender. He spoke to his own report and to the joint record of the experts' positions. The remarks which I have just made in relation to the evidence of Mr Bent apply equally to that of Mr Evans.

Background

[10] The rent clauses of the parties' lease provide for an index-linked minimum annual rent of £6,000,000 but otherwise make extensive and complex provision for rent payments to be calculated by reference to the annual gross income received by the defender out of the operation of the windfarm. The pursuer maintains that the defender has failed to declare to it all of that gross income for the rent years ending on 31 March 2022, 2023 and 2024 and consequently has underpaid rent for those years.

[11] In order to understand the nature of the dispute, it is necessary to know something of the operation of aspects of the UK electricity market. The following account of that background is taken from the facts acknowledged in the pleadings, the joint minute of admissions entered into by the parties, and the uncontroversial description of those aspects given by the experts. It should be noted that it is not intended, in particular, to describe the operation of that market in any detail beyond that necessary for the resolution of the current disputes. The description given is a simplified account of what happens, but is sufficient for that purpose.

[12] The defender, as operator of the windfarm, is a generator of electricity. That electricity can be traded in advance of its generation to buyers. In this case, that has been achieved by way of the Power Purchase Agreement (PPA) which has been put in place between the defender and a related company, EDFE, which is a supplier of energy to consumers. By way of the PPA, the defender agreed in advance of generation to provide EDFE with a certain volume of electricity. EDFE, in turn, entered into contracts with its customers on the basis of that expected supply from the defender. The defender also entered into a metered volume reallocation notice (or MVRN) with EDFE, the nature and significance of which will afterwards be considered.

[13] If the UK's energy system is to operate effectively, it requires to have rules for situations where the amount of electricity generated or used by a participant in the wholesale electricity market differs from that which that party had purchased or sold in forward markets. Those rules are set out in the Balancing and Settlement Code (BSC). Both the defender and EDFE are parties to the BSC and are bound by its terms.

[14] The Transmission System Operator (TSO) (currently a company called National Energy System Operator Limited) is the operator of the UK electricity transmission system.

Its primary role is to balance the high voltage electricity network in real time, ensuring that supply meets demand, and alleviating any transmission or delivery issues. It endeavours to balance the system in the most efficient and economic manner possible. This may require it either to increase, or alternatively to constrain or curtail, the overall generation of electricity. It achieves that by a system of "offers" and "bids". An "offer" describes the situation when a generator declares itself willing to produce a greater volume of electricity than it had contracted to provide, for a proposed consideration. A "bid" is when a generator offers, in response to a request by the TSO, to reduce the amount of electricity it will produce, again for a proposed consideration. Essentially because wind is a free resource and the operation of windfarms is a heavily subsidised industry, the economics of the situation are such that the operator of a windfarm may well only be prepared to submit a bid to reduce its electricity generation on terms that involve it being paid to do so.

[15] The process of offers and bids happens in advance of the time of generation or non-generation, in respect of half-hour periods. The TSO considers the offers and bids it has received in respect of such a period and, again in advance of time, decides which to accept. The present case concerns the consequences of various bids made by the defender which the TSO accepted. Once the period in question has ended, actual generation is compared to what the relevant generator had previously agreed to produce in that period, and a balancing or settlement process to deal with the imbalance which has been created as the result of the TSO's acceptance of an offer or bid begins.

[16] When an electricity generator ceases or curtails the generation of electricity using its plant as a result of the acceptance of its bid from the TSO, various processes are carried out by other bodies which assist in the operation of the BSC. Firstly, a successful bidder's BSC account will receive something called Period BM Unit Cashflow, a sum of money which can

be either positive or negative and will reflect the consideration forming part of the accepted bid. The defender accepts that what it receives in this connection falls to be regarded as part of its gross income for the purposes of the lease, and it has accounted for those receipts and paid rent accordingly. (It may be added that, even when the BSC expresses itself in English rather than in mathematical formulae, it tends not to do so very straightforwardly; "Period" refers to the half-hour periods in which the system operates; "BM" is shorthand for "balancing mechanism"; "Unit" refers to the generating unit in question, in this case the windfarm; and "Cashflow" more simply refers to the flow of cash between the system and operator of the unit.)

[17] It is a further element of the process which happens in consequence of an accepted bid which is the principal cause of dispute in this case. Where the TSO has accepted a bid from a party to the BSC, that party will be allocated electricity from the system in order to meet the supply obligations which it has already entered into but which it can no longer meet in consequence of having curtailed its own generation. That allocation is of something labelled Period BM Unit Balancing Services Volume, and is a surrogate for the electricity which would otherwise actually have been generated but for the instruction from the TSO to constrain generation. (The jargon not previously explained refers to the volume of electricity allocated as a part of the services used to keep the system in balance.) The volume of electricity which is allocated is determined in accordance with formulae set out in the BSC. The further wrinkle which arises in this case is that, because the defender and EDFE have entered into an MVRN, the energy which would otherwise, for the purposes of the BSC, be regarded as flowing to the defender's windfarm energy account as Period BM Unit Balancing Services Volume was in fact credited to EDFE's account instead, as something called (more straightforwardly in this case) Credited Energy Volume. EDFE can trade in

the energy credited to it as a result of the defender having curtailed its generation in exactly the same way as it can trade in energy actually generated and contributed to the system by the defender. One important consequence of that is that, in terms of the PPA between the defender and EDFE, the latter is obliged to, and has, paid the former for energy credited to its account as a result of the operation of the imbalance mechanisms in the BSC in just the same way as it is obliged to, and has, paid it for energy actually generated by it.

[18] It is only necessary further to know for present purposes that the TSO does not itself execute the payment of Period BM Unit Cashflow, the allocation of Period BM Unit Balancing Services Volume or the crediting of energy to the accounts of offtakers such as EDFE. Rather, the administrative activities required to give effect to the decisions made by the TSO in relation to accepted bids and offers are carried out by separate corporate entities created to perform those functions in accordance with the provisions of the BSC. There have been no changes to the terms of the BSC which are relevant to this dispute since its inception in 2001.

[19] In essence, the pursuer contends that the system produces for the defender a benefit which relate to the cessation, reduction or constraint of the export of electricity from the windfarm to the transmission system, thus falls to be regarded as what the lease calls a constraint benefit, and as such is part of the gross income which has to be declared and form part of the rent calculation. Alternatively, the pursuer maintains that the benefit received falls to be treated as a loss of revenue claim under the lease, as a claim made by the defender or those empowered by it to do so when there is a loss of or reduction in revenue because electricity is not being generated by the windfarm, with similar consequences for the gross income and thus rent calculation. A further dispute concerns warranty claims, ie payments received by the defender under warranties it enjoyed from the supplier of its generating

apparatus in respect of its quality. Those payments are also said to be the fruits of loss of revenue claims under the lease which ought to have been declared as part of gross income for the rent year in which they were received, rather than in respect of the years in which the claims came into existence.

Submissions for the pursuer

[20] On behalf of the pursuer, senior counsel submitted that it had established that the sums paid by the defender by way of rent were substantially below those properly due. The defender was due in terms of Clause 3.3.6 of the lease to pay, for each of the disputed rent years, a sum equivalent either to the Minimum Annual Rent of £6,000,000, or else calculated by reference to the preceding year's Gross Income Rent, whichever was higher; and in any event, under Clause 3.3.7, an additional rent for each rent year calculated as the difference between the rent paid under Clause 3.3.6 for that year, and the Gross Income Rent for that rent year, if greater.

[21] "Gross Income", from which the Gross Income Rent was calculated, was made up of various different headings. What might fall into two of those ("Constraint Benefit" and "Loss of Revenue Claim") was disputed. More particularly, the disputes were: (1) whether the defender had received reliefs from the TSO during periods of constraint which fell within the definition of "Constraint Benefit", or if not which constituted a "Loss of Revenue Claim", under the lease and, if so, how any such relief fell to be valued; and (2) whether a Loss of Revenue Claim was to be accounted for in the year in which it was paid or in the year in which it was accrued.

[22] The evidence established that the defender had been given a volume of energy comprising

> "…relief...[from] the Transmission System Operator in relation to a cessation, reduction or constraint in the export of electricity from the [defender's windfarm] to the Transmission System"

(ie, a constraint benefit within the meaning of the lease) which had a real and very substantial value. The pursuer's evidence on the quantification of its claims, if they were made out in principle, was unchallenged.

[23] The pursuer's case in outline was that, under the provisions of the BSC, a volume of electricity was credited for the benefit of the defender as a result of a decision that only the TSO was empowered to make. It was the TSO which gave mandatory directions to which the other parties involved in the operation of the BSC had no choice but to give effect. The volume of electricity credited for the benefit of the defender had a material financial value. One analysis was that what EDFE paid the defender for in terms of the PPA, during periods of constraint, was Period BM Unit Balancing Services Volume. The alternative analysis was that what EDFE paid the defender for, during such periods, was Credited Energy Volume, which it received into its own account. EDFE only had that Credited Energy Volume because of the diversion of that valuable asset to it by dint of the MVRN. On this view of things, it was difficult to conceive of a more obvious case of diversion of a benefit. The lease could not sensibly be interpreted as meaning that the defender could avoid the definition of constraint benefit (and thus avoid the consequences of its receipt of such a benefit for the purposes of Gross Income and Gross Income Rent) by deciding, at its own hand, to enter into an MVRN.

[24] Under the lease, the parties agreed that (subject to the Minimum Annual Rent) the rent was to be calculated by reference to the gross income received by the defender. Gross

income was defined in the lease. The core of the dispute was whether what had happened in consequence of the TSO's acceptance of bids made by the defender amounted to the conferring of a constraint benefit (as also defined in the lease) on it. The pursuer maintained that it did.

[25] In construing the lease, the court was invited to have regard to the general principles of contractual construction described in *Lagan Construction Group Ltd* v *Scot Roads Partnership Project Ltd* [2023] CSIH 28, 2024 SC 12, *Ashtead Plant Hire Co Ltd* v *Granton Central Developments Limited* [2020] CSIH 2, 2020 SC 244, 2020 SLT 575 at [9] - [17], [19] - [21], and *HOE International Limited* v *Andersen* [2017] CSIH 9, 2017 SC 313 at [23] to [26]. Commercial common sense required to be given proper weight when a contract was construed, adopting a sensible, commercial interpretation. The existence of a system of constraint, and of the BSC, had to be taken as matters of context which informed the proper construction of the lease.

[26] Reference was also made to *Aberdeen City Council* v *Stewart Milne Group Ltd* [2011] UKSC 56, 2012 SC (UKSC) 240, 2012 SLT 205 at [18], [21] - [22] and [2010] CSIH 81 at [10]. To the extent, if any, that the lease failed to achieve its apparent purpose, then the court should have regard to whether this was oversight. If the clear objectives of the parties were at risk of being defeated, the court should demur from a construction that enabled that. Provided that undue violence to the words in the contract could be avoided, they should be given effect to so as to achieve the parties' objective.

[27] The court required to look at the lease and consider what the parties intended was to happen during periods of constraint, and the extent to which payments, reliefs, reduced charges or avoided charges were received by the defender from the TSO. There was nothing particularly complicated about the language used in the lease. In essence, it said that when

the TSO directed that the windfarm be turned off, and in consequence provided things of value, rent was to be paid by reference to those things. The fundamental point was that the application of the provisions of the BSC, during constraint, very obviously gave rise to the receipt of payments and reliefs "…in relation to the cessation, reduction or constraint in the export of electricity from the relevant Facility to the Transmission System". At the time the parties entered into the lease, the BSC was in place. Its existence was referred to in the lease. It was not surprising that the definition of constraint benefits referred both on the one hand to payments (apt to cover the Period BM Unit Cashflow) and on the other to reliefs (apt to cover the Period BM Unit Balancing Services Volume or its analogues). It would not make sense to conclude that the parties intended that during periods of constraint, the defender would receive from the TSO a volume of electricity from which it could then generate income (amounting to £36.695m in the 2023 rent year and £40.631m in the 2024 rent year) and in respect of which it would pay nothing at all to the pursuer by way of rent. That would create a massive windfall to the defender that was absurd and irreconcilable with the contract as a whole.

[28] The parties had been applying a broad brush in defining constraint benefits. They identified as falling within the ambit of the concept not just payments, but also reliefs, reduced charges and avoided charges. A "relief" was not difficult to understand in the context against which the lease was entered into. A quantum of energy was applied to relieve the defender from the situation in which it had not itself generated that quantum of energy, in respect of a cessation, reduction or constraint which had occurred at the direction of the TSO. The defender's entire approach to construction of the lease essentially required the court to find that, in the definition of constraint benefits there, the parties did not have in mind the application of the very scheme for provision of constraint payments and reliefs

which actually existed at the time of contracting. That would be a most remarkable thing for the parties to have agreed. It would have taken very clear language to allow the conclusion to be reached that, although the parties wished to include the receipt of payments and reliefs from the TSO in relation to constraint in the calculation of Gross Income and Gross Income Rent, they only had in mind some unknown and unspecified *ad hoc* or *ex gratia* payments or reliefs from the TSO, but not the payments and reliefs provided for under the purpose-built scheme established by the BSC, and pursuant to which the very system of balancing, including constraint, was operated.

[29] Without the system allocating energy to make up for that which had not been generated at the behest of the TSO, the defender would not have been able to enter into trades with EDFE in respect of the energy which it had expected to generate without adverse consequences. It would not have been able to enter into a PPA under which EDFE agreed to pay sums to it calculated by reference to that energy. Given the existence of the MVRN, the amount of energy which the system made available to make up for the consequences of curtailment had been received, not by the defender, but by EDFE as Credited Energy Volume. If the court were to conclude that meant the defender had not received a valuable relief directly then, in the alternative, it was difficult to conceive of a clearer case of diversion by the defender of something that it lay within its power to deal with. It was obvious having regard to the terms of the BSC that the only reason that EDFE was in receipt of that credited energy was because the defender had elected to use an MVRN to deliver it into its hands. It was the entering into of the MVRN, a matter of choice for the defender, that achieved that result. Although the pursuer was aware when it entered into the lease that a PPA had been or was to be concluded with EDFE, it did not know that a MRVN was also to be used. A helpful analogy might also be drawn with the "redirection" of earnings in the

field of taxation, as discussed in *Advocate General for Scotland* v *Murray Group Holdings Ltd* [2017] UKSC 45, 2018 SC (UKSC) 15, 2017 SLT 799.

[30] The parties' clear objective was to rentalise the value of the benefits received by the defender, or at its direction, during periods of constraint. The parties could not sensibly be taken to have intended that, simply by the defender's decision to divert a valuable asset to EDFE by dint of the MVRN the rent payable under the lease would be materially diminished. The defender's construction of the lease would cause fundamental harm to the parties' objectives as there set out.

[31] The pursuer adopted a fallback position to the effect that, in any event, the benefits generated in the event of constraints required by the TSO could properly be regarded as Loss of Revenue Claims under the lease. Claims were made by the defender or those empowered by it to do so when there was a loss of or reduction in revenue. That loss or reduction in revenue arose because electricity was not being generated. That situation fell within the intent of the parties to ensure that payments or amounts received by the defender in respect of revenue that was not attracted by the production of electricity (regardless of the vehicle by which those sums reached the defender) was included in the calculation of the rent due. A Loss of Revenue Claim was a component of Gross Income under the lease. Following the acceptance of a bid by the TSO, an amount of electricity was made available by the TSO. It could fairly be said that that amount of electricity was something that could be "claimed" by the defender as a result of the acceptance of the bid. It was claimed because there was a loss of revenue by the defender from the windfarm as a result of the TSO instructing that it be shut down. The value of that claim was what it could be sold for. As a further alternative, a payment made by EDFE to the defender under the terms of the PPA

satisfied the definition of a claim against a person made by reason of the loss of or reduction in revenue of the defender from the windfarm.

[32] The next question was how to value constraint benefits for the purposes of the lease. It was first necessary to determine how the disputed revenue fell to be valued in principle in terms of the lease (assuming that it did at all). It was then necessary to determine the amount of the defender's gross income in each of the disputed rent years, and to calculate the Gross Income Rent in the disputed rent years on that basis. The final stage of the analysis was to determine if there had been any underpayment by the defender in each of the disputed rent years and what if any sums were due, having regard to two Clauses 3.3.6 and 3.3.7. Should any sums be brought out as due by that exercise, it would finally be necessary to determine any interest that fell due under Clause 3.3.10.

[33] Dealing firstly with the question of how the energy made available by the system in consequence of a period of constraint was to be valued, the lease did not prescribe any means or mechanism for the valuation of constraint benefits. It followed that a reasonable way of valuing such a benefit had to be devised. An obvious way of doing that was to determine how much the conferral of the benefit in question allowed the defender to realise under its PPA with EDFE.

[34] Although EDFE charged a management fee in respect of its arrangements with the defender, there was no evidence that the pursuer was aware, actually or constructively, of the existence far less the level of that fee at the time it entered into the lease. There was, in addition, no evidence to the effect that the particular fee charged by the defender was objectively a "reasonable" fee. It was not possible to construe the lease as meaning that the pursuer agreed that the sums to be included within the definition of constraint benefit were to be reduced by an unknown amount, arising from a private bargain between the defender

and EDFE, such that anything less than 100% would be rentalised. The definition of gross income was not drafted such that the defender was entitled to deduct any expenses in order to reduce its rental liability.

[35] If the valuation exercise required to proceed on the basis that what was being valued was a Loss of Revenue Claim, the actual payment from EDFE to the defender was the appropriate mode of valuation, since the definition of such a claim turned on amounts received by the defender.

[36] Turning to the dispute about the rent years in which successful warranty claims had to be accounted for, it was agreed as background fact that, during the 2022 rent year, the defender had received £1,628,958 in respect of such claims, relating to claims made in preceding years, and that during the 2023 rent year, it received £2,054,009, again relating to claims made in preceding years. It was not disputed between the parties that sums paid to the defender under warranty claims qualified as Loss of Revenue Claims. The proper construction of the definition of a loss of revenue claim was that it comprehended amounts *received* by the defender pursuant to a claim. In order to satisfy the definition, a claim not only had to have been made, but an amount had to have been received pursuant to that claim. It followed that a loss of revenue claim in respect of any rent year had to refer to amounts received during the course of that rent year, regardless of when the right to make such a claim had accrued. Neither the mere existence, nor the making, of a claim under a warranty constituted in itself an event giving rise to a loss of revenue claim. It followed that the gross income for the 2022 rent year included the sum of £1,628,958 in respect of warranty claims received in that year, and for the 2023 rent year included the sum of £2,054,009 similarly received.

[37] Details of the calculation of the pursuer's pecuniary claims was provided, bringing out a claimed Gross Income for the 2022 rent year of £66,180,764 and consequent Gross Income Rent of £9,745,075. As the defender had only paid £8,496,981 for that year, the additional rent due under Clause 3.3.7 was £1,248,094. For the 2023 rent year, Gross Income was claimed by the pursuer to be £73,555,264, bringing out a Gross Income Rent of £12,399,895. As the defender had only paid £9,480,725 for that year, the additional rent due under Clause 3.3.7 was £2,919,170. For the 2024 rent year, the defender had paid £10,406,641, which was the minimum annual rent under the lease. It ought to have paid rent by reference to the Gross Income Rent for the preceding year in terms of Clause 3.3.6, amounting to £12,399,895. The additional sum of £1,993,254 was accordingly due for that rent year.

[38] In terms of Clause 3.3.10, interest at the rate of 4.5% above the published base rate of The Royal Bank of Scotland plc from time to time was payable on any rent that had not been paid by the defender to the pursuer within 7 days of becoming payable, to accrue from the date the rent became payable. Mr Reilly had given unchallenged evidence of the interest due, in terms of which the interest that was payable as at 5 March 2025 was £1,121,966.66, and which continued to accrue at the pactional rate thereafter.

Submissions for the defender

[39] On behalf of the defender, senior counsel invited the court to grant decree of absolvitor. The relevant principles of contractual interpretation were well known, and might be summarised in four points:

(i) In interpreting a contract, the court was striving "to ascertain the intention of the parties by determining what a reasonable person, having

the background knowledge of the parties, would have understood from the language selected by them": *Network Rail Infrastructure Ltd* v *Fern Trustee 1 Ltd* [2022] CSIH 32, 2022 SLT 997 at [28].

(ii) The "[p]arties' intentions are most obviously gleaned from the language they have chosen in the contract. The court should not search for drafting infelicities in order to justify a departure from the natural meaning of that language. It should identify what the parties have agreed, not what it thinks common sense may otherwise have dictated": *Lagan Construction* at [10]; *FES Ltd* v *HFD Construction Group Ltd* [2024] CSIH 37, 2025 SC 51, 2025 SLT 134 at [24]. That process would inevitably involve asking what was the natural and ordinary meaning of the words used by the parties in the document which contained their agreement: *Wood* v *Capita Insurance Services Limited* [2017] UKSC 2, [2017] AC 1173, [2017] 2 WLR 1095 at [10] - [14]; *Midlothian Council* v *Bracewell Stirling Architects* [2018] CSIH 21, 2018 SCLR 606 at [19].

(iii) This meant that particularly "where a contract is a complex and sophisticated one prepared and negotiated by skilled professionals…it may be interpreted principally by textual analysis": *Lagan Construction* at [10].

(iv) That the natural meaning of the words of the contract had produced a bad bargain did not justify the court rewriting it: *Scanmudring A/S* v *James Fisher MFE Ltd* [2019] CSIH 10, 2019 SLT 295, at [82]; *National Commercial Bank Jamaica Ltd* v *NCB Staff Association* [2024] UKPC 2 at [32].

[40] The court should treat *Aberdeen City Council* v *Stewart Milne Group Ltd* with considerable care. Its ratio was unclear. Subsequent case-law had re-emphasised that the

processes of implication of terms and of construction of a contract should be seen as quite separate tasks and regarded *Stewart Milne* as having been decided on the basis of implied terms: eg *Marks & Spencer Plc* v *BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72, [2016] AC 742, [2015] 3 WLR 1843 at [30] and [75] - [76]. *Stewart Milne* was decided before *Wood* and all of the subsequent Inner House authorities applying the latter case. An argument premised on *Stewart Milne* had been rejected in *Paterson* v *Angelline (Scotland) Ltd* [2022] CSIH 33, 2022 SC 240, 2022 SLT 1395 at [15], [26] and [32] - [35]. Nor was the present case analogous to the circumstances of, or contractual wording in, *Stewart Milne*, where the express wording of the contract had driven the result.

[41] It was common ground that the lease was negotiated at arms' length by experienced and sophisticated business people and reputable firms of solicitors for both parties. Accordingly, the court should principally adopt a textual analysis of it. There was no scope for resort to generalised argument along the lines that parties must have intended the lease to capture all income or that there was something wrong with the defender monetising something not falling within its terms. There was no suggestion by the pursuer that any term fell to be implied into the lease. It was, in truth simply, complaining about a bad bargain. The evidence before the court was that arrangements under a PPA for delivery of volumes of curtailed energy to a third party offtaker like EDFE, and reciprocal payment therefor, was a standard practice. The pursuer accepted that it was aware before the lease was entered into that the defender would be entering into a PPA. It claimed not to have realised that the defender would be paid in terms of the PPA when it was not generating electricity, and was asking the court to fix its own unilateral error by bringing such revenue within the terms of the lease.

[42] The parties had chosen not to define "Gross Income", at least in relation to energy generated, under reference to the actual revenue or income received by the defender. The pursuer sought to subvert that choice by having actual income received by the defender under the PPA in respect of non-generation included within the rent calculation. Constraint benefits and loss of revenue claims represented separate revenue or income streams deriving from sources distinct from the CfD or PPA. A constraint benefit was something received by the defender from the TSO, not something received from EDFE under the PPA.

[43] The pursuer faced three insuperable difficulties. Firstly, no energy credited to any accounts under the provisions of the BSC was a relief within the definition of a constraint benefit in the lease. Secondly, any energy which had been credited pursuant to the BSC had been credited to EDFE, not the defender. Thirdly, the defender had not received anything from the TSO.

[44] It was useful to consider what the word "relief" normally meant in a legal context. In *Taylor (HM Inspector of Taxes)* v *MEPC Holdings Ltd* [2003] UKHL 70, [2004] 1 WLR 82 at [14] Lord Hoffman had drawn a distinction between a primary liability and a secondary right of relief. That distinction was part of the ordinary meaning of the word and was also present in the most common area where the word was used in a legal context, being in the law concerning cautioners and other obligants who had a right of relief. Reference was made to Bell's *Dictionary* (7th ed), pp 904 - 905; and to Stroud's *Judicial Dictionary* (7th ed), pp 2343 - 2344.

[45] Period BM Unit Balancing Services Volume was a unit of energy used in multiple formulae in the BSC. It was simply one part of the computation of the primary cashflows ultimately received by the defender. One element in a whole series of calculations could not sensibly be isolated and described as a relief from something that never actually happened

in the real world and which the BSC was designed to avoid happening. Only one cashflow could be said to come from the TSO under the BSC in the event of a constraint, namely Period BM Unit Cashflow, which had always been included by the defender as a constraint benefit in its gross income certificates under the lease. It did not require to include anything else as a constraint benefit in those certificates.

[46] The difference between Period BM Unit Cashflow, on the one hand, and Period BM Unit Balancing Services Volume, on the other, was that the former had the characteristics of a straightforward monetary transaction between the TSO and the defender. The latter was a volume of energy which never belonged to the TSO. It was not described in the BSC as a relief from anything. In a situation of curtailment or constraint, the defender received only two revenues: (i) Period BM Unit Cashflow, which was ultimately derived from the bid accepted by the TSO; and (ii) payments under the PPA received from EDFE. Period BM Unit Balancing Services Volume was, in essence, an accounting tool, an adjustment which required to be made under the BSC so that market participants' commitments were not undermined. It was part of a system designed to avoid market participants dealing with virtual amounts of energy being penalised by actions that required to be taken in the physical world which were initiated by the TSO as part of its function of keeping energy generation and consumption in balance across the network.

[47] For Period BM Unit Balancing Services Volume to be brought within the concept of constraint benefit, it would have to be translated into a monetary amount for the purposes of calculating Gross Income Rent under the lease. The pursuer sought to do this by referring to sums received by the defender under the PPA from EDFE (albeit by a calculation which artificially ignored the management fee charged by EDFE). However, the PPA was irrelevant. It had nothing directly to do with Period BM Unit Balancing Services Volume or

the BSC. The implication of the pursuer's approach was that the single payment received from EDFE under the PPA had to be treated differently depending on whether or not it related to metered output or a situation of curtailment, despite the amounts being essentially identical in both situations. The divergent treatment of the same basic revenue stream was illogical and led to absurdity.

[48] In any event, Period BM Unit Balancing Services Volume was neither received by the defender nor given by the TSO and consequently could not fall within the definition of constraint benefit under the lease. If one identified where the volume of energy represented by curtailment ended up, it was plain that it ended up in the energy account of EDFE. Thus, if it had to be characterised as being received by anyone, it was received by EDFE. It was not given by the TSO to anyone. The TSO did not have it in the first place, and so it could not be given by the TSO to the defender or received by it. The administration of the relevant part of the BSC was carried out entirely separately and independently from the TSO. If the BSC was to be analysed as providing some form of relief to the defender, that relief could only sensibly be characterised as coming from the entities in charge of administering the BSC. The TSO played no part in performing any of the calculations in the BSC that were relevant in the present case. For all of these reasons, the court was invited to find that as a matter of fact and law nothing beyond Period BM Unit Cashflow qualified as a constraint benefit for the purposes of the lease.

[49] Nor did the circumstances relied upon constitute a loss of revenue claim. The pursuer did not identify how the energy credited in consequence of the provisions of the BSC could be said to constitute an "amount" of money such as to fall within the definition of the concept of a loss of revenue claim in the lease, or what claim was said to have been made by the defender in respect of it - including against whom it was made, for what, how it was

made and when - or the loss or reduction of revenue with which such a claim was said to have been concerned. Viewed sensibly, the definition of a loss of revenue claim was referring to a monetary amount received by the defender pursuant to a claim made by it against a person relating to loss of or reduction in revenue. The credited energy was not a monetary amount and could not fall within the definition. The defender had made no claim for it, whether against the TSO or anyone else. The pursuer's loss of revenue claim was obviously ill founded, and the court should reject it.

[50] Finally, nothing that would otherwise have qualified as a constraint benefit had been diverted in any legally relevant way. If something had indeed been diverted, but did not constitute a constraint benefit, then its diversion was legally irrelevant. The pursuer did not even attempt to indicate what element of gross income any diverted benefit would represent on this hypothesis. Its argument came to no more than the assertion that because EDFE paid the defender for credited energy under the PPA, those payments ought to be treated as rent under the lease. There was no basis on any proper principle of interpretation for that sort of approach to be taken to the detailed and carefully negotiated terms of the lease. The parties had set out the composition of gross income and the various definitions of the elements referred to therein without in any way attempting to catch actual amounts payable under the PPA.

[51] The warranty payments should be allocated to the rent year for which they replaced lost revenue. There was little to provide express guidance on this issue from the terms of the lease, but as warranty claims fell under the category of loss of revenue claims, the essential purpose of which was to cover actual amounts received by the defender for the loss of or reduction in revenue, they should be allocated to the period in which the revenue lost was sustained. In each rent year, the calculation of rent under the lease depended on whichever

was the greater of the Minimum Annual Rent for that rent year and the Gross Income Rent for the preceding rent year. It would seem absurd that the Gross Income Rent for a given rent year could be altered by reference to the value of warranty claims which had been accrued in a different year. The court should prefer an interpretation that avoided such absurdity.

[52] If the court was not with the defender on the interpretation issues, the quantum of any claim should be based on the System Imbalance Price, which is what the defender would have avoided having to pay. (The System Imbalance Price is calculated on the basis of the cost incurred by the TSO in balancing the system, taking into account accepted bids and offers, and is applied to the difference between the contracted and actual generation for each period to produce an imbalance charge made on each affected market participant.) The pursuer had led no evidence that would permit the court to perform the necessary calculation. Secondly, if it was legitimate to approach the quantification issue under reference to sums received by the defender under the PPA, then that should reflect the actual payments received by the defender. The definitions of constraint benefits and loss of revenue claims both referred to actual receipts by the defender. It was agreed that the defender did not receive a gross amount from EDFE, but rather an amount net of the EDFE management fee. There was no proper basis for excluding the amount of the management fee from the valuation exercise. A management charge was an entirely standard feature of PPAs.

Decision

[53] It is necessary for the proper disposal of this case once again to consider the nature of the principles of contractual construction in the law of Scotland. Explanations of those

principles have been essayed, with varying degrees of emphasis on different aspects of the construction process depending on the facts under consideration, in several recent cases in the Inner House of this court. The division of the court which decided *Ashtead Plant Hire Co Ltd* was composed of three former commercial judges, each with extensive judicial and wider professional experience of the various problems thrown up by the task of construction in many different contexts. In such circumstances, it is hardly surprising that the opinion issued in that case represents, by some considerable margin, the most considered, thoughtful and thus useful exposition of the approach to be adopted to the often delicate task of the construction of commercial contracts available in the recent Scottish jurisprudence; an exposition which, moreover, fully has regard to and accurately reflects the import of the wider UK authorities of great weight, in particular *Rainy Sky* (which itself forms part of a stable and continuous legal tradition also reflected in *Arnold* and in *Wood*, as the latter case expressly acknowledges). Taking as read the basic, now uncontroversial but often in itself unilluminating proposition that the ultimate aim of contractual construction is to determine what a reasonable person with all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, the two key themes of *Ashtead* are, firstly, that a contract must invariably be construed *contextually*, that language is inherently ambiguous, and in no serious field of discussion is it possible to reach an intelligent view on the meaning of a particular passage without placing that passage in context ([10]); and secondly, that in interpreting a contractual provision the court should adopt a *purposive* approach, meaning that it should have regard to the fundamental objectives that reasonable persons in the parties' position would have had in mind. Put another way, the substance of the parties' agreement, construed objectively, should prevail over niceties of wording ([11]).

[54] From *Ashtead* and *Rainy Sky* one may draw the further basic proposition that where contractual wording is capable of having more than one meaning, that which makes better commercial sense (ie that which better reflects how a reasonable person in business would be likely to conduct his or her affairs in a particular situation) according to the fundamental purposes of the contract may properly be preferred, even if a more natural meaning which produces a reasonable result is also available. A reasonable person in business will not ordinarily enter into bargains that operate in an arbitrary manner (*Ashtead* at [12], [16]; *Rainy Sky* at [21]).

[55] There are, of course, limits to what can be achieved by the exercise of construction. If all the matters which require to be considered lead very clearly to a conclusion that a particular meaning is the one at which the reasonable person being figured would arrive, the court must give effect to that conclusion, however surprising or unreasonable the result might be. It is not and never has been the law that a court can decide and apply what bargain it considers the parties ought to have made if acting sensibly as opposed to ascertaining the true nature of the bargain which in fact they did make.

[56] Sometimes that proposition is expressed by saying that where the parties have used unambiguous language, the court must apply it (eg *Rainy Sky* at [23]), or more elaborately that "Loyalty to the text of a commercial contract, instrument, or document read in its contextual setting is the paramount principle of interpretation." (*Society of Lloyds* v *Robinson* [1999] WLR 756, per Lord Steyn at 763). In placing a focus on the language under examination, however, it is necessary to bear in mind that "language is a very flexible instrument" (*Co-operative Wholesale Society Ltd* v *National Westminster Bank plc* [1995] 1 EGLR 97, per Hoffmann LJ). Lord Steyn, immediately after the sentence from *Society of Lloyds* just quoted, added that

> "Words ought … to be interpreted in the way in which a reasonable commercial person would construe them. And the reasonable commercial person can safely be assumed to be unimpressed with technical interpretations and undue emphasis on niceties of language."

His Lordship had already written extrajudicially that "speaking generally commercially minded judges would regard the commercial purpose of the contract as more important than niceties of language" (Contract law: Fulfilling the reasonable expectations of honest men (1997) 113 LQR 433 at 441), all as noted in *Rainy Sky* at [25]. The language used in a contract is always, obviously and by necessity, highly significant in determining the true nature of the bargain, but can never in itself constitute the alpha and omega of the construction process.

[57] Several passages in the "celebrated" speech of Lord Hoffmann in *Investors Compensation Scheme Ltd* v *West Bromwich Building Society* [1998] 1 WLR 896 further emphasise the inherent difficulties in adopting an overly narrow linguistic approach to the task of construction:

> "(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co Ltd* [1997] AC 749.
>
> (5) The 'rule' that words should be given their 'natural and ordinary meaning' reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had…" ([1998] 1 WLR 913C - E).

> "'doing violence' to the natural meaning of the words … is an over-energetic way to describe the process of interpretation. Many people, including politicians, celebrities and Mrs. Malaprop, mangle meanings and syntax but nevertheless communicate tolerably clearly what they are using the words to mean. If anyone is doing violence to natural meanings, it is they rather than their listeners" ([1998] 1 WLR 913G).
>
> [The judge in the Court of Appeal] "said that the [first instance] judge's construction was not an 'available meaning' of the words. If this means that judges cannot, short of rectification, decide that the parties must have made mistakes of meaning or syntax, I respectfully think he was wrong." ([1998] 1 WLR 914F).

[58] The passage in *Mannai Investments* there referred to is in the following terms:

> "It is a matter of constant experience that people can convey their meaning unambiguously although they have used the wrong words. We start with an assumption that people will use words and grammar in a conventional way but quite often it becomes obvious that, for one reason or another, they are not doing so and we adjust our interpretation of what they are saying accordingly. We do so in order to make sense of their utterance: so that the different parts of the sentence fit together in a coherent way and also to enable the sentence to fit the background of facts which plays an indispensable part in the way we interpret what anyone is saying. No one, for example, has any difficulty in understanding Mrs. Malaprop. When she says 'She is as obstinate as an allegory on the banks of the Nile,' we reject the conventional or literal meaning of allegory as making nonsense of the sentence and substitute 'alligator' by using our background knowledge of the things likely to be found on the banks of the Nile and choosing one which sounds rather like 'allegory.' Mrs. Malaprop's problem was an imperfect understanding of the conventional meanings of English words. But the reason for the mistake does not really matter. We use the same process of adjustment when people have made mistakes about names or descriptions or days or times because they have forgotten or become mixed up. If one meets an acquaintance and he says 'And how is Mary?' it may be obvious that he is referring to one's wife, even if she is in fact called Jane. One may even, to avoid embarrassment, answer 'Very well, thank you' without drawing attention to his mistake. The message has been unambiguously received and understood." ([1997] AC 749 at 774 D - G; [1997] 2 WLR 945 at 967G - 968B).

[59] The process of construction, if undertaken properly and responsibly, is rarely simple - at least in the kind of cases which are brought for the adjudication of the senior courts. It is "essentially one unitary exercise" (*Rainy Sky* at [21]), a "composite exercise, neither uncompromisingly literal nor unswervingly purposive" (*Arbuthnott* v *Fagan* [1995] CLC 1396, per Lord Bingham of Cornhill at 1400). It is an "iterative process by which each

suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated": *Wood* at [12], citing *Arnold* at [77] and *In re Sigma Finance Corp* [2009] UKSC 2, [2010] BCC 40 at [12], and it matters little whether one commences the exercise with an examination of the "factual background and the implications of rival constructions or a close examination of the relevant language in the contract", so long as the indications furnished by each are balanced in the final analysis. It is not necessarily the case that that the language of a contract falls to be favoured in that balance when the product of professional drafters, as is made clear when *Wood* at [13] is read as a whole. The circumstances in which a contract was produced, insofar as they are truly known in any particular case, constitute no more than one element in the mix of factors which a proper process of construction requires to consider delicately in order to come to the legally correct conclusion. Unfortunately, because of the deceptive simplicity of concentrating on the "natural and ordinary" meaning of the language used in a contract, there is a constantly-present temptation to overlook, or pay insufficient attention to, the context in which the language in question appears and the purpose which it was intended to serve. That is a temptation which, it might be thought, not all of the Scottish cases cited to me have entirely succeeded in avoiding. The risk of a lapse into what was called in *Ashtead* at [16] a "brutal literalism" must always be recognised, not only because it is an approach apt to produce arbitrary results but because it represents, inherently, an inadequate discharge of the judicial responsibilities requisite in carrying out the task of contractual construction.

[60] I turn finally in the review of apposite authorities to *Aberdeen City Council* v *Stewart Milne Group Ltd*. It is, after all, the only authority cited to me in this case in which the UK Supreme Court sitting on a Scottish appeal opined on a matter of contractual

construction. For my own part, I do not find the case a difficult one to understand, although I may have gained some advantage in that regard by dint of having throughout the litigation been senior counsel for the successful party. Far from being an outlier in the field, the case is very firmly located in the mainstream of the principles of construction already discussed. It will be recalled that, put simply, the dispute concerned a sale of land by a local authority to a developer, with provisions for a uplift on the initial sale price when the developer disposed of or otherwise dealt with its interest in the land in question at a point in time when, it was anticipated, its value would have been enhanced. The contract was a relatively complex one which had been negotiated and drafted with the assistance of capable professional advisors. In due course the developer disposed of the land at less than its then open market value to a related company (a situation not expressly dealt with by the uplift provisions) and claimed that no further price was payable. Lord Hope of Craighead DPSC at [22] found the position "quite straightforward". The *context* showed that the intention of the parties (though not what they had actually said) *must be taken to have been* that the base figure for the calculation of the uplift was to be the open market value of the subjects at the date of the event that triggered the obligation. The language of the contract did not say that that was their intention; it simply provided the background material from which that deduction could be made. The deduction was supported by a consideration of what commercial sense would indicate one might have expected parties circumstanced as they were to have intended. In those circumstances, the only remaining question in Lord Hope's view was whether the actual language used prevented the conclusion that the parties' plain (but unexpressed) intention was that which the context indicated, and he determined that it did not.

[61] A few points may be made about Lord Hope's observations. Firstly, his Lordship stressed the centrality of context in determining the proper construction of the contract. Secondly, the outcome indicated by context was checked against the language actually used, albeit that outcome was so clearly indicated by the context that the remaining question was reduced to one of whether the language used prevented that outcome. Thirdly, the case is illustrative of the points forcefully made by Lord Hoffmann in *Investors Compensation Society* and *Mannai Investments* set out above concerning the inherent limitations of language as determinative of the proper construction of contracts and notices. In the course of the argument in *Stewart Milne*, Baroness Hale JSC observed (as noted by Lord Clarke JSC at [31]) that the case was not one where there were two alternative "available" constructions of the language used. On the contrary, the successful construction was not "available" by reference to that language but was, rather, as Lady Hale put it, a case in which, *notwithstanding the language used*, what the parties must have intended was clear.

[62] None of these features of *Stewart Milne* places it in some unusual category amongst cases dealing with contractual construction. Nor can it sensibly be contended that it was not, after all, a construction case but was, rather, one concerned only with the implication of terms. Lord Hope's judgment is clearly reasoned, and his conclusions expressed, in terms of the law and principles of contractual construction. Not only did Lady Hale, Lord Mance and Lord Kerr JJSC formally concur with that judgment, but Lord Clarke at the start of [32] expressly noted that he entirely agreed with those conclusions. Only at [33] did his Lordship explain that an alternative way of arriving at the same result was to analyse the situation in terms of the principles governing the implication of terms (at which Lord Hope's judgment had already hinted). All of the other members of the court agreed with that observation. The notion of an implied term had never arisen at any stage in the progress of

the case through the court hierarchy and had not been argued before the Supreme Court or raised in argument by any of the members of that court. All that was ultimately being said by Lord Clarke was that the case could equally validly be analysed by the implied terms route as by the construction route, that both kinds of analysis were aimed at discovering the answer to the same question - what did the contract mean? - and that he personally (for reasons upon which he did not elaborate, perhaps precisely because the matter had never been argued) preferred the former route. Nothing in that remotely detracts from the validity of the contractual construction route explained at length by Lord Hope, with which analysis all of the other judges, Lord Clarke not excepted, agreed. *Marks & Spencer* v *BNP Paribas* does not suggest otherwise; indeed in that case Lord Clarke accepted that:

> "… both (i) construing the words which the parties have used in their contract and (ii) implying terms into the contract, involve determining the scope and meaning of the contract. On that basis it can properly be said that both processes are part of construction of the contract in a broad sense." ([2015] UKSC 72, [2016] AC 742, [2015] 3 WLR 1843 at [76], see also Lord Carnwath JSC at [62])

[63] The jurisprudential undergrowth thus cleared, one may proceed to examine the facts of the present case. The pursuer's principal case is that the defender received a "constraint benefit", the value of which it ought to have accounted for in the calculation of its gross income within the meaning of the lease, and which would thus have fed through into the rent payable for the rent years in issue. It will be recalled that a constraint benefit is one of the elements going to make up that gross income and that the definition of a constraint benefit in the lease is as follows:

> "'**Constraint Benefit**' means a relief, payment, reduced charge or avoided charge received by the Tenant from the Transmission System Operator in relation to a cessation, reduction or constraint in the export of electricity from the relevant Facility to the Transmission System;"

[64] The defender disputes that anything amounting to a constraint benefit within that definition materialised during the rent years in question. Looking firstly at the context in which the language used in the lease falls to be considered, it is apparent, from the very appearance of the concept of constraint benefit as an element within the bundle of things going to make up gross income, that as a matter of principle, at least, gross income was intended to comprehend not only receipts from the actual generation of electricity but to certain kinds of support or advantage that might transpire in relation to a cessation, reduction or constraint in the export of electricity from the windfarm to the transmission system.

[65] The superficial purpose of the clause in the lease defining a constraint benefit is, of course, to indicate just what kinds of support or advantage would qualify for inclusion in the sums going to make up the relevant gross income. In itself, that way of describing the purpose of the clause under examination adds little or nothing to the exercise of construction, but when one considers the matter slightly more deeply, it is noteworthy, and indeed significant, that counsel for the defender was unable, just like his counterparts in *Rainy Sky* and *Stewart Milne*, to explain on any principled basis what purpose the parties to the lease, as presumably commercially sensible entities, might have had in excluding from the concept of constraint benefit any consequence conferring material value on the defender which flowed from the application of constraint by the TSO on the operation of the windfarm.

[66] The defender's argument was, rather, focussed on the language of the clause defining a constraint benefit. When considering the language of the clause, it would be easy, but wrong, to overlook that the name given to the concept being described is exactly that - "constraint benefit". At its lowest, that choice of name indicates that what the parties

are thereafter trying to describe is a benefit flowing from a constraint on the windfarm's generation. The defender, however, submits that the language of the definition requires that it should (a) receive (b) a relief (c) from the TSO before a constraint benefit can exist for the purposes of the lease, and that none of those conditions is satisfied on the facts of what happened. Those arguments must now be considered and weighed in the balance as part of the construction exercise.

[67] It is appropriate to consider the definition of constraint benefit as a whole rather than artificially to treat it as three separate and unrelated parts. Had there been no MVRN in place, then the constraint imposed by the TSO would have resulted in the calculation of Period BM Unit Balancing Services Volume and a commensurate allocation of energy to the defender's account for the purposes of the BSC, which energy it could (and would) have dealt with by selling it. That energy would have been received by the defender into its account and it is not difficult to see it as a relief, not in the narrow and technical sense concerning primary and secondary obligations favoured by the defender but in the more natural and ordinary sense as a form of assistance provided in order to eliminate or mitigate the effects of a situation otherwise productive of difficulty or inconvenience. The energy which would have been allocated to the defender's account in the situation currently being figured would have been provided to assist it out of the difficulty or inconvenient situation in which it would otherwise have found itself as a result of having been prevented by TSO's decision to constrain its electricity production from generating electricity which it could then sell and indeed had already agreed to sell into the market.

[68] The only difficulties which would arise with the language of the definition of constraint benefit applying in that situation would be the fact that the allocated energy might on one view not be regarded as having been received "from" the TSO, in the sense

that the energy in question never belonged to or was under the direct control of the TSO (as opposed to simply being energy available in the BSC system for use in addressing imbalances resulting from constraint decisions), and also because its actual allocation to the defender would have occurred, not at the hands of the TSO itself, but rather by the actions of one of the companies charged with the administration of the consequences of the TSO's constraint decisions for the purposes of the BSC. However, I do not consider that those issues would prevent energy so credited to the defender as being regarded for the purposes of the lease as a constraint benefit. If a literal approach was taken to the construction of the definition of constraint benefit, there could never be any such thing at all, since the only element of the BSC with which the TSO is for present purposes concerned is choosing whether to accept or reject bids and offers and making the consequent constraint decisions. Accordingly, nothing that the defender might receive would ever come from the TSO if a narrow approach to the word "from" were to be adopted. The parties, contracting as they did against a knowledge of the terms of the BSC (which remain in relevant regards meantime unchanged), cannot be supposed to have defined by dead letters as one potential element of gross income something that could never actually come into existence. The defender's position, taken both before and during the litigation, that Period BM Unit Cashflow does qualify as a constraint benefit, seems to me tacitly to acknowledge as much, since that does not come "from" the TSO in any more literal sense than does Period BM Unit Balancing Services Volume. Rather, it is clear that the word "from" in the definition of constraint benefit is used in the sense of indicating a place or position where (or, as here, a legal person by whom) some action or motion is originated and which goes thence. That is a natural meaning of the word, if not the most ordinary one in modern usage.

[69] Although the defender does not concede as much, I would accordingly conclude that any energy credited to it in terms of the provisions of the BSC as a result of a constraint decision taken by the TSO would qualify as a constraint benefit within the meaning of the lease. That conclusion does not, however, in itself resolve the dispute in the present case, since no energy was so credited to the defender. Rather, the energy which the system made available as a relief (in the sense already discussed) for the consequences of the TSO's constraint decision was credited to the energy account of EDFE. That occurred solely because, in addition to entering into a PPA with EDFE, the defender also executed a MVRN, the effect of which was to direct that energy which would otherwise have been credited to the defender in terms of the BSC should instead be credited to EDFE. A MVRN is not a necessary concomitant of a PPA, but equally is by no means an unusual expedient to which the parties to a PPA may have resort. It is common ground that the pursuer did not positively know that the defender would enter into a MVRN when the lease was concluded.

[70] Returning to the definition of constraint benefit, a relief was made available in relation to a constraint which on a proper construction came from the TSO in the sense already discussed. The relief itself was not received by the defender, but the defender did receive something as a direct result of the relief having been - by its own choice - conferred on EDFE rather than upon it. In terms of the PPA, it received payment from EDFE in respect of the relief which EDFE had received as a result of the TSO's constraint decision. Is that a situation falling within the definition of constraint benefit for the purposes of the lease? In my opinion it is not necessary to consider or apply any supposed special rule of law dealing with the diversion of benefits. Rather, the question can be answered by the continued application of familiar principles of construction. It is difficult to see why the defender's voluntary interposition of EDFE into the arrangements which would otherwise have

pertained ought to make a difference to the amount of rent payable by the defender, especially since it did itself receive substantial benefit from the situation which it had created; this was not a case in which any benefit flowing from the constraint decision was diverted wholly and permanently away from it. Just as Lord Clarke observed at the end of [33] in relation to the functionally somewhat analogous situation which pertained in *Stewart Milne*, the parties could not sensibly have intended that that benefit should be left out of account in the calculation of the sums due to the pursuer as rent under the lease. The proper construction of the definition of constraint benefit is that it encompasses a benefit which accrues to the defender and arises in consequence of a constraint decision made by the TSO. That construction accords with the context and purpose of making benefits flowing to the defender as a result of the TSO's constraint decisions matters of which account falls to be taken in computing the gross income of the defender from the operation of the windfarm and thus the rent payable under the lease. It makes commercial sense. It does not, in the words of Lord Hope in *Stewart Milne*, do undue violence to the language used in the lease - it covers a situation where there remains a receipt on the part of the defender which flows from a relief made available in terms of the BSC in consequence of a constraint decision of the TSO.

[71] It would be possible to arrive at the same conclusion by considering the issues in terms of the law of implied terms. One can assume from the background circumstances that the parties to the lease, or an officious bystander, would have said that the situation now under consideration would result in the existence of a constraint benefit if asked about it at the time when the lease was entered into. Alternatively, one can say that a term treating that situation as resulting in the existence of such a benefit is necessary to make the contract work or to give it business efficacy. As had already been pointed out, this is simply an

alternative route to discovering the true nature of the bargain which was made. I would prefer, however, to rest my conclusion on the principles of construction already explained, essentially because I consider that the nature of that bargain does emerge tolerably clearly from the terms of the lease rather than having to be implied therein.

[72] I turn to the more minor elements of the dispute. Firstly, I deal with the alternative and subsidiary submission by the pursuer, that the defender falls to be regarded as having received the benefit of a loss of revenue claim in consequence of the arrangements set in train in terms of the BSC as a result of the TSO's constraint directions. The definition of a loss of revenue claim, so far as material, is:

> "'**Loss of Revenue Claim**' means in respect of a Facility, all amounts received by the Tenant pursuant to a claim by the Tenant against any person for any reason for the loss of or reduction in revenue of the Tenant from that Facility … including a claim for loss or reduction of revenue pursuant to a turbine availability, energy production or power output warranty contained in a turbine supply agreement or turbine maintenance agreement … [subject to certain specific exclusions concerning commission delays and equipment repair]".

[73] I do not consider that this clause can properly be construed as covering any payment flowing from a constraint decision made by the TSO. Its context, purpose and language combine to indicate clearly that it was intended to cover situations where the defender has made a claim against a person, and consequently received a payment, because of something for which that person is legally responsible having had an adverse effect on its revenue, not simply on its generation. The BSC arrangements, taken along with those made under the PPA, mean that the defender's revenue has not been materially adversely affected because of something for which someone else is responsible. No claim has required to be made against anyone and thus no payment has been received in consequence of any such claim. In any event, the fact that I have determined that the payments made to the defender by EDFE in respect of the energy credited to its account as a consequence of the TSO's

constraint decisions and the existence of the MVRN qualify as constraint benefits means that there is no need for, and no commercial sense supporting, a further clause covering the same subject-matter.

[74] Secondly, the question arises of what value is to be ascribed to the constraint benefit received by the defender for the purposes of inclusion in the gross income calculations. Since, on my analysis of the relevant provisions of the lease, that benefit consisted of the receipt of the payments made to the defender by EDFE for the energy credited to it in consequence of the BSC and the MVRN, *prima facie* the amount of those payments represents that value. That, after all, is the gross amount of what was received by the defender as the benefit flowing to it from the constraint imposed by the TSO. It is entirely consistent with the basic notion that what is being looked for is something (in this instance called a constraint benefit) which is in a meaningful sense part of the gross income flowing to the defender out of the operation of the windfarm. Although Declaration C attending the definition of gross income in the lease makes it clear that the concepts of CfD and PPA revenue are not intended to be the production of a calculation of actual income streams, Declaration D states that that is without prejudice to the calculation of, *inter alia*, constraint benefits - implying at least that actual income is what is to be relevant to that element of gross income. The defender's somewhat faint suggestion that the System Imbalance Price should be used to represent the contribution of constraint benefit to gross income is entirely unrealistic; it is the contribution required to or from the BSC system to enable the smooth operation of the balancing mechanism and is of no utility in the assessment of the value of the benefit received by the defender in consequence of the TSO's constraint decisions.

[75] The pursuer maintains that the 6.5% management fee deducted by EDFE in accordance with the terms of the PPA from what might otherwise be the price payable for

the volume of energy credited to it in consequence of the operation of the BSC and the MVRN ought not to be an allowable deduction from the assessed value of the relevant constraint benefit in the hands of the defender. However, the amount net of that management fee is what was actually received as gross income by the defender in respect of the non-generation of energy by it in consequence of the TSO's constraint decisions. If it had been suggested, and made out in the evidence, that the arrangements entered into between the defender and EDFE were uncommercial and artificially depressed the defender's relevant receipts to a level materially below that reasonably attainable in the market for the volumes of energy in question, then further delicate consideration might have been required as to the precise construction of the concept of receipt in the definition of a constraint benefit. As it is, however, no such claim was made. Indeed, the pursuer's expert, Mr Bent, who had relevant experience in PPAs, was asked in cross-examination about charges typically made in such arrangements, and indicated that, beyond a residual 2% or so fee for financial risk to which an offtaker would be exposed, the quantum of further charges would depend on the nature of the services being provided. He did not suggest that a total fee of 6.5% was likely to be excessive or uncompetitive, or even that it merited further examination. In these circumstances, the value of the constraint benefits received by the defender remains the amount actually received by it from EDFE in respect of the energy credited to it in consequence of the TSO's constraint decisions.

[76] The final issue in dispute is whether warranty claims fall to be accounted for in the rent year(s) to which they relate or the rent year in which the amount which they produced was actually received by the defender. It is common ground that warranty claims are a subset of loss of revenue claims, and the pursuer in essence argues that because the definition of those claims refers to amounts received by the defender pursuant to a claim,

the point of receipt is the relevant juncture for accounting purposes. However, standard accounting practice proceeds, for good reason, on an accruals basis, recognising revenues and expenses when they are earned or incurred, regardless of when cash is exchanged, thus giving a more accurate view of overall financial performance in a given period. The parties to the lease must be taken to have contracted against that background and some indication in the lease that cash accounting was to be used instead for loss of revenue claims would be required in order to displace a tacit understanding that the standard practice would be that which would be followed. The fact that the definition of loss of revenue claims deals with "amounts received" is not such an indication; it merely recognises that a claim that does not ultimately result in an amount being received is not one that is contributing in any way to the gross income of the defender and is thus not one of which any account need be taken in the calculation of gross income. I recognise that delay in ascertaining the defender's gross income for any particular rent year is liable to be inconvenient when the amount of that income may well govern the amount payable in the next rent year, but the parties made detailed provision for such an eventuality in the proviso to Clause 3.3.6, thus neutralising any difficulty that might otherwise have existed in that regard. It follows that amounts received in satisfaction of warranty claims fall to be accounted for as gross income in the rent year(s) to which the relevant claim relates.

Disposal

[77] Given that my decisions on the various issues in dispute present a pattern which was not anticipated in the detailed calculations presented to me by the pursuer, I shall give parties the opportunity to consider their positions and either agree the precise terms of the

orders required to give effect to those decisions or to make their respective submissions in that regard at a By Order hearing shortly to be fixed.