

Site Selection and Alternative Sites Assessment

SLD Wiltshire Ltd – Written Representation Submission

Introduction

1. This report produced by SLD with the input of its expert and legal advisors addresses the Applicant's approach to the assessment of alternatives, with a focus on site selection. SLD are of the view that there are critical flaws within the Applicant's approach which make it defective and which point against the grant of development consent. The assessment of alternatives is important as, in SLD's view, the considerable harms of the proposed development stem to a significant degree from its inappropriate location, and the failure to focus on key planning constraints when selecting that location (in favour of land ownership considerations). This approach indicates the failure to "avoid", the key first step in the mitigation hierarchy.
2. SLD has had regard to the following documents submitted in the Examination in producing this report:
 - a. Environmental Statement Volume 1, Chapter 4: Alternatives and Design Evolution [**APP-056**] (**the ADE**).
 - b. Environmental Statement Volume 3, Appendix 4-1: Site Selection Assessment Report [**APP-185**] (**the SSAR**).
 - c. The Relevant Representation of SLD (**the RR**).
 - d. The Applicant's Response to Relevant Representations (Part 1) [**PDA-009**] (**the AR**).
3. The main considerations arising out of the SSAR and this paper are the following:
 - a. The NPSs foreground the need to 'avoid' harms as part of the mitigation hierarchy. Compliance with the mitigation hierarchy is pertinent to the Applicant's reliance on the CNP Infrastructure presumption. However, it is also relevant to satisfying the s.85 CROW 2000 duty to seek to further

the purposes of conserving and enhancing the natural beauty of national landscapes.

- b. The Applicant's site selection process has distinct methodological flaws. Two key flaws are (1) the failure to apply a consistent methodology to the selection of Potential Development Areas; and, (2) the failure to consider combining parts of Potential Development Areas. These are not disagreements about judgments but logical flaws in the analysis.
 - c. The Applicant's site selection process also adopted an inconsistent approach to assessing Potential Development Areas, and (in particular) was overly generous to the site which became the site of the proposed development.
 - d. The Applicant has placed significant weight on the selection of land by reference to a limited number of agreements. It is apparent that those agreements have been consequential in the selection of land which is unsuitable for the proposed development.
4. The Applicant concluded that "there are no locations within the search area that are more suitable than the proposed location for the Scheme, based on the criteria identified (ADE, para 4.3.11). SLD and its advisers disagree and consider the preferred location is either the most, or one of the most, harmful locations considered. This also aligns with the position of Wiltshire Council which (in respect of the National Landscape) noted in **[PDA-014]** at RR-1328:

"This does call into question the general locational suitability for the scale and influence of the development being proposed, given there are no overriding locational requirements for the selection of the site, and considering the very great weight afforded to conserving and enhancing National Landscapes and their setting."

Legal and policy position

- 5. The principal policy on the assessment of alternatives is set out in NPS EN-1 in section 4.3. This part of the report does not repeat all of the contents of the policy, but addresses some in principle differences in position between the Applicant and SLD (as is reflected in the RR and AR).

6. As a starting point, para 4.3.9 of NPS EN-1 explains:

“As in any planning case, the relevance or otherwise to the decision making process of the existence (or alleged existence) of alternatives to the proposed development is, in the first instance, a matter of law. This NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option from a policy perspective. Although there are specific requirements in relation to compulsory acquisition and habitats sites, the NPS does not change requirements in relation to compulsory acquisition and habitats sites.”

7. The NPS goes on at para 4.3.15 to recognise that there is a requirement on an applicant in an Environmental Statement to include “information about the reasonable alternatives they have studied”. This is in line with the legal requirement to consider alternatives (referenced at para 4.3.17).¹ Paragraph 4.3.15 goes on to state:

“This should include an indication of the main reasons for the applicant’s choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility.”

8. The requirements in respect of an Environmental Statement reflect those set out in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/572) (**the EIA Regulations**). Both reg.14(2)(d) and Schedule 4, para 2 are relevant, the latter of which provides that Environmental Statements must include:

“A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.”

¹ As appropriate, the requirement to deal with alternatives in the flood and other contexts is addressed in the relevant section of this WR.

9. Thus, the requirement to include such information is a legal requirement going to the adequacy of the Environmental Statement. Adequacy is a threshold requirement before one addresses the question of the decision-maker reaching conclusions on that information. To conclude that an Environmental Statement is adequate in law, the information contained in the Environmental Statement must be such that to accept it would not disclose a demonstrable flaw or otherwise be irrational.² Related to this, the existence of an alternative may be a mandatory material consideration because it would be irrational not to take it into account.³
10. As Schedule 4, para 2 explains, the Applicant is expected to provide a description and the main reasons for selecting the chosen option, ranging across design, technology, location, size, and scale. Therefore, in relation to site selection, the Applicant is expected to demonstrate that the selection of the proposed development site was appropriately refined to take into account environmental, socio-economic, and community effects in light of the main alternatives, providing an explanation for the option chosen.
11. NPS EN-1 then goes on, from para 4.3.22, to address how the Secretary of State should approach giving weight to the existence of alternatives. Various parts of the policy are referred to below, but at this stage it is noted that the “consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner” (para 4.3.22(a)).
12. In the AR at SLD-011 (p.833) the Applicant referred to NPS EN-1 para 4.3.24 which provides:

“The Secretary of State should not refuse an application for development on one site simply because fewer adverse impacts would result from

² *R (Gathercole) v Suffolk CC* [2020] EWCA Civ 1179; [2021] PTSR 359 from para 46. In respect of a demonstrable flaw in the reasoning being a form of irrationality see *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin); [2019] 1 WLR 1649 at para 98.

³ *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 2161 (Admin); [2022] PTSR 74 (**Stonehenge I**) from para 242. The Applicant’s own position is that there are significant (in EIA terms) adverse effects from the proposed development, and relies upon the benefits and presumptions set out in NPS EN-1. To which, see para 283: “The submission of Mr Strachan that the SST has decided that the proposed scheme is ‘acceptable’, so that the general principle applies that alternatives are irrelevant is untenable. The case law makes it clear that the principle does not apply where the scheme proposed would cause significant planning harm, as here, and the grant of consent *depends* upon its adverse impacts being outweighed by need and the other benefits...”.

developing similar infrastructure on another suitable site, and should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals.”

13. The Applicant went on to conclude:

“Therefore, not combining the least constrained elements of various PDAs to create a less constrained array of sites does not mean that the DCO Application for the Scheme should be refused, there is the possibility that the less constrained elements of the other PDAs could be used for future proposals.”

14. Looking to para 4.3.24 it is correct that it says “simply” the existence of an alternative site which would give rise to fewer impacts is not enough. However, the word “simply” in para 4.3.24 is important; it recognises that the existence of an alternative site may become a reason to refuse in combination with other aspects of policy and law:

- a. As already addressed, a defect in the assessment of alternatives may go to the adequacy of the assessment and compliance with the EIA Regulations. Where the existence of that alternative with fewer impacts arises out of that defect, it will be part and parcel of an error within the very Environmental Statement itself going to its lawfulness if accepted.
- b. In respect of the impacts of the proposed development, the existence of an alternative may demonstrate a failure to comply with the mitigation hierarchy. In particular, it may demonstrate a failure adequately to consider or achieve avoidance of harm.
- c. Relatedly, in the context of the CNP Infrastructure presumption in section 4.2 of NPS EN-1, whether there has been proper compliance with the mitigation hierarchy goes to whether the presumption is applicable at all (para 4.2.14).
- d. The alternative may be a relevant planning consideration to be taken into account in the overall planning balance.

15. Each of these is not “simply” a refusal based on the existence of an alternative. Rather, it properly integrates the assessment of alternatives and the requirement to include that information in an Environmental Statement into any decision on consent in the context of the EIA Regulations and the relevant policy.
16. In the ADE the Applicant recognises the relevance of the duty introduced by s.245 of the Levelling-up and Regeneration Act 2003 into s.85 of the Countryside and Rights of Way Act 2000 for the Cotswolds National Landscape. SLD agrees that the duty is relevant as part of the alternatives assessment. However, SLD has concerns about the Applicant’s description of the approach to NPS EN-1 in the context of the s.85 duty set out in para 4.2.13 of the ADE:
- a. Para 4.2.13 bp1 states that the s.85 duty should be considered in the specific context of the CNP Infrastructure presumption, and that the benefits of such Infrastructure will meet the exceptional circumstances test for impacts on National Landscapes (referring to para 4.2.17 of NPS EN-1). In respect of this:
 - i. SLD consider this puts the cart before the horse; it assumes that the mitigation hierarchy has been complied with, and the test in para 4.2.14 of NPS EN-1 is met. SLD consider that the s.85 duty must be relevant to the question of whether the Applicant has complied with the mitigation hierarchy at all, and particularly the requirements of avoidance.
 - ii. That much is apparent from the two-stage approach to the duty set out in *New Forest NPA v Secretary of State for Housing, Communities and Local Government (New Forest NPA)*.⁴ The decision-maker must consider whether the proposed development conflicts with the purposes (here “conserving and enhancing the natural beauty of the area”); if the development does then the decision-maker must consider whether a grant of

⁴ [2025] EWHC 726 (Admin), in the context of the equivalent duty applying to National Parks. Adopted for National Landscapes in *R (CPRE) v Secretary of State for Housing, Communities and Local Government* [2025] EWHC 1781 (Admin) (**CPRE**) and *Wadhurst PC v Secretary of State for Housing, Communities and Local Government* [2025] EWHC 1735 (Admin).

consent would be in accordance with the duty to seek to further those purposes. That latter requirement requires the decision-maker “both to consider whether and to explain why they have decided that [consent] may justifiably be granted”.⁵

- iii. Thus, the CNP Infrastructure presumption is applicable to that latter step. That is because it is a presumption not about whether a proposed development has negative effects; but, rather, whether those negative effects are outweighed. Care should be taken in how NPS EN-1 is applied in the context of the s.85 duty.⁶
- b. Para 4.2.13 bp2 refers to para 5.10.6 and states that harm to landscape must only be “minimised” with “reasonable mitigation where possible and appropriate”. That paragraph, of course, should be seen in the context of para 5.10.5 that “[v]irtually all nationally significant energy infrastructure projects will have adverse effects on the landscape”. Insofar as the Applicant is suggesting that there is not a general requirement to comply with the mitigation hierarchy and avoid landscape harms where they can be (particularly in the context of the s.85 duty), that is mistaken. What para 5.10.6 is explaining is that some effects cannot be avoided (vis para 5.10.5), and it is those that must be minimised and mitigated.
- c. Para 4.2.13 bp3 explains that “measures which seek to further the purposes of the designation need to be sufficient, appropriate and proportionate to the type and scale of the development” (referring to NPS EN-1 para 5.10.7 and 5.10.8). SLD consider that “sufficient” is an important word in that it connotes the idea of doing enough to comply with (among other things) the s.85 duty and the statutory purposes.
- d. Para 4.2.13 bp4 refers to NPS EN-1 not distinguishing between the types of purpose that the Applicant may seek to further for National

⁵ *New Forest NPA* at para 61-63.

⁶ It is correct to note that Climate Action is Outcome 1 in the CNL Management Plan 2023-2025. However, Policy CC1 explains that provision for generating energy from low carbon sources should be “in a manner consistent with the purpose of [the] National Landscape”, and the s.85 duty applies specifically to the National Landscape duty (which is “conserving and enhancing the natural beauty of the area”). So that Outcome does not unseat the proper approach to s.85 set out in the body text.

Landscapes. The Applicant notes that this is in apparent opposition to the duty in CROW 2000 itself. It must be emphasised, however, that s.85 positively requires that a relevant authority “must seek to further the purpose of conserving and enhancing the natural beauty of the” National Landscape. That is the statutory obligation, derived from the very purpose for designating a National Landscape (s.82(1)); insofar as the Applicant is suggesting that NPS EN-1 provides for something different (or obviates the prioritisation in s.85 of “the purpose of conserving and enhancing the natural beauty”) that is wrong.

17. The Applicant also refers to the Government’s published guidance on Protected Landscapes: “Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes” (December 2024) (**the PD Guidance**). SLD agrees this guidance is relevant. The Applicant also correctly identifies at para 4.2.17 the requirement in that guidance “as far as is reasonably practicable” to avoid harm and contribute to the conservation and enhancement of the natural beauty, special qualities and key characteristics of protected landscapes. SLD agrees this requirement of avoidance “as far as is reasonably practicable” is not only important generally, but particularly relevant to the assessment of alternatives.
18. Insofar as para 4.2.18 and 4.2.19 seek to set up an opposition between the PD Guidance and NPS EN-1 (and the obligation to decide applications in accordance with policy in s.104 PA 2008), that is mistaken. Of course, s.85 must be applied within the framework of s.104 decision-making, however that does not modify the express duty.⁷ Any apparent opposition only arises if one assumes that there is no obligation to avoid negative landscape effects. But that is neither what NPS EN-1 nor the PD Guidance provide for.
19. Thus, SLD agree that s.85 is relevant to the question of avoidance, and for the reasons already addressed above avoidance is important to the assessment of alternatives (and, ultimately, the application of the CNP Infrastructure presumption).

⁷ See *CPRE* from para 48. Section 85 is still the duty, but it is part of the evaluative judgment on whether to grant consent (see para 51).

Defects in the SSAR methodology

20. In its RR, SLD identified two key defects in the SSAR methodology. As a result, SLD conclude that the methodology contains demonstrable flaws in logic which cannot properly be accepted in an exercise of planning judgment. When considering these methodological errors, it is useful to refer to Appendix D to this report (or Figure 25 of the SSAR).

Redrawing of PDAs

21. This was summarised by SLD in its RR **[RR-4495]** at para 2.1.4.1 where a logical flaw is identified in how the Applicant selected its Potential Development Areas (**PDA(s)**). It is apparent from the SSAR that:

- a. The Applicant initially began by identifying the area of search and unconstrained land within it (Stages 1 and 2 described at para 3.1.1-3.1.3). This involved:
 - i. Identifying individual parcels or combinations of proximate parcels which overall could provide around 1,100ha of land (para 2.2.6). As part of that process the search area was incrementally increased from 5km to 20km (para 2.2.7).⁸ T
 - ii. Identifying unconstrained land, applying various criteria: ALC Grades 1, 2, and 3a; Flood Zones 2 and 3; nationally designated landscapes; internationally and nationally designated ecological and geological sites; national and local archaeological designations and built heritage; proximity to sensitive human receptors; and the Bath Green Belt (Table 2-1) (**the Stage 2 constraints**).
- b. Planning constraints were then applied to select the land (Stage 3 described at para 3.2.1 onwards). Those constraints had regard to: previously developed land (para 2.4.3), topographical gradient of less

⁸ SLD note in passing that it is unclear what the driving consideration behind this incremental increase was. At least 1 PDA identified under the initial constraints is within a 10km radius, and 2 PDAs identified against the initial constraints are predominantly within a 15km radius. It is also unclear why the part of PDA 4 closest to PDA3 within the 15km radius was not selected to be included in PDA 4 (grouping of parcels is not explained in para 3.2.5; see below).

than 3% (para 2.4.13), minimum size of parcel of at least 40 hectares (para 2.4.16), or other difficulties of “proximity to other available sites” or “irregularity of shape” (para 3.2.4) (**the Stage 3 constraints**). Four PDAs were identified applying these Constraints (para 3.2.5 onwards).

- c. The PDAs were then assessed against a range of planning considerations (para 3.2.7 onwards). These are the Annex A Assessment Indicators and Evaluation Criteria (**Annex A criteria**) (para 2.5.1). The Applicant rejected these four PDAs.⁹
- d. The Applicant then identified new areas. Importantly, to do this, the Applicant modified the Stage 2 constraints so that they were looser (Stage 5, para 3.3.1): development land was now included as unconstrained land if it was land with an ALC grade of 3 and/or if it was in Flood Zone 2 or 3 (para 2.6.1) (**the Stage 5 constraints**). This search was also “undertaken with the help of land agents” (para 2.6.2, see further below). Six more PDAs were identified (para 3.3.6 onwards). Critically, however, PDAs 1-4 were not redrawn against the Stage 5 constraints.
- e. The PDAs were then assessed against the Annex A criteria (para 3.3.8 onwards). At this stage PDAs 5-9 were rejected but PDA 10 (the proposed development) was identified as preferred (para 3.2.23). Two further areas were also identified and not assigned PDAs but rejected against a high-level set of criteria (para 3.3.25) (informal PDA 1-2 (**iPDA**)).
- f. The Applicant noted that a number of the PDAs at Stage 5 had pockets of land with gradients in excess of 3%; this was as a result of land agent involvement (**the 3%+ constraint**). This caused the Applicant to identify new areas which again relaxed the Stage 2 constraints so that they were looser (Stage 6, para 3.4.1): development land was now included as unconstrained land if it was land with a gradient of 5% or less (para 2.7.2) (**the Stage 6 constraints**). Applying those constraints two more PDAs

⁹ This is challenged below but not pertinent to the analysis of the Applicant’s particular error here.

were identified (para 3.4.5 onwards). Critically, PDAs 1-10 were not redrawn against the Stage 5 constraints.

- g. The PDAs were then assessed against the Annex A criteria (para 3.4.7 onwards). At this stage PDAs 11-12 were rejected. A further area of land was also identified (para 3.4.12 onwards) but rejected against a high-level set of criteria (iPDA 3).

22. As is apparent from the above, once identified against the constraints applying at the relevant stage, PDAs were not redrawn against subsequently applied constraints. That means when the PDAs were compared against the Annex A criteria, the actual area enclosed by the PDAs were not chosen on anything close to a like-for-like basis. The table below summarises the position across the PDAs and the iPDA:

PDA or iPDA	Constraints applied
PDA 1-4	Stage 2 constraints + Stage 3 constraints
PDA 5-10	Stage 2 constraints + Stage 3 constraints - Stage 5 constraints - 3%+ constraint
iPDA 1-2	Stage 2 constraints + Stage 3 constraints - Stage 5 constraints
PDA 11-12	Stage 2 constraints + Stage 3 constraints - Stage 5 constraints - Stage 6 constraints
iPDA 3	Stage 2 constraints + Stage 3 constraints - Stage 5 constraints - Stage 6 constraints

N.B. a “+” in this table indicates where a constraint tightens the parameters for selection of a PDA; a “-” indicates where a constraint loosens the parameters.

23. What will be immediately apparent from the above is that PDA 1-4 were assessed against the tightest set of criteria and yet were those PDAs which the Applicant considered (applying its own PDA identification criteria) the most promising for development. However, by failing to redraw them against the loosened constraints, those PDAs were compared against the Annex A criteria from a materially different (and more constrained) starting point to PDAs 5-12.

24. The Applicant's response to the above concern set out in AR at SLD-009 is that "the PDAs identified at each stage have been consistently assessed against the same criteria". The Applicant goes on to state:

"On this basis, it is not necessary to redraw the original PDAs against the more permissive constraints identified at stage 5, because those areas of land have already been assessed. Instead the Applicant sought to look at more land at stage 5 than had previously been discounted and assess that land against the same criteria that was used to assess the original PDAs."

25. This is to misunderstand SLD's point and is the same error as is made in the SSAR. It assumes, without evidence or analysis, that the assessment against the Annex A criteria could not change if additional land were included within PDAs 1-4. That is particularly striking here because much of the Stage 3 constraints were focused on size of parcel, shape and proximity; Figure 7 of the SSAR makes clear the extent of the exclusion of otherwise unconstrained land in that regard (as it concerns land "not suitable due to proximity, shape and or size"). These are constraints pre-eminently effected by the availability of more land due to the loosening of other constraints.

26. Thus, taking just the first PDA as an example, the Applicant says of PDA 1 the "major constraints identified in using PDA1 for the Scheme are size and land use" (para 3.2.9). This is inherently a function of the area of land chosen for the PDA and, as will be apparent from Figure 25, significant unconstrained land around PDA 1 has not been included within it because there was no redrawing against the loosened criteria. Similarly, as this example is considered further below, the flaw in the process is apparent in respect of PDA 6 and PDA 11; these PDAs are in extremely close proximity to one and other,¹⁰ and aside from the staged process with no redrawing of PDAs, there is no reason why these should not have been drawn as one combined PDA.

27. The reality is there has been no proper assessment of the PDAs applying a consistent approach to identification, due to a logical error in how the Applicant

¹⁰ Subject to scaling, they appear to abut north of Broughton Gifford, and abut across the highway west of Broughton Gifford.

identified the alternatives to assess. Given the importance of avoidance as part of the mitigation hierarchy, SLD consider this a demonstrable flaw in the assessment of alternatives for the proposed development. Further, with three PDAs 3.8km or more away from a National Landscape,¹¹ and given the importance of the National Landscape and the s.85 duty, the availability of these redrawn PDAs is obviously a material consideration.

Combining of PDAs

28. This was identified in SLD's RR at para 2.4.1.3 where an obviously material step was not taken in how the Applicant selected its PDAs. In the SSAR:

- a. There is no explanation of how the component parcels were collected together into each PDA (e.g. para 3.2.4 for PDAs 1-4). This matters as, for example, the eastern two parcels of PDA 4 (near Bratton and Aston Common) are both more proximate to the western portion of PDA 3 (northeast of Edington) than the eastern portion of PDA 3 (at Lydeway) is to any other part of PDA 3.¹² Making reasonable adjustments removing the outlier parcels of PDA 3 and PDA 4, these proximate parcels would be well in excess of 1,100ha.
- b. The Applicant frequently recognised as an option the combination of its PDAs. For PDA 3 and 4, for example, this is noted at paras 3.2.13 and 3.2.17. Some potential for combination was recognised for a majority of the PDAs. However, the potential for such combination was not explored across the range of PDAs where it was recognised.
- c. Where it was explored, this was again constrained by the phased approach to identifying PDAs. For example, while seemingly a combination of PDA 5 and PDA 6 was considered from a land area perspective, for both it was concluded that "sufficient land was not available to accommodate the Scheme as a whole, even when combined with other sites being considered" (paras 3.3.8 and 3.3.11). Setting aside

¹¹ PDA3 abuts the North Wessex Downs National Landscape with its small disconnected portion at Lydeway (southeast of Devises). Were the PDA redrawn this contact with the National Landscape could be avoided by omitting the portion.

¹² For this reason, the explanation in the AR at SLD-011 that the approach was based on proximity and availability is difficult to understand.

that the combined area of these two PDAs is 990ha (and thus over 100ha in excess of PDA 10 for the proposed development), seemingly the abutting PDA 11 identified at Stage 6 was not considered. These three PDAs have a combined area of 1,482ha.

29. Indeed, SLD consider that PDAs 5, 6 and 11 are a remarkable example of flawed approach to alternative sites assessment. In circumstances where a redrawn PDA covering all three zones would be 1,482ha, there would be near to 300ha of additional space to mitigate effects locally (noting the figure of 1,100ha identified by the Applicant – which itself includes 100ha for mitigation, para 2.2.6). As is also apparent from Annex D of the SSAR, of the total of two reds for PDA 5, one red for PDA 6, and two reds for PDA 11, all of these relate to inclusion of certain areas within the PDAs and can inherently be avoided by excluding land. Up to 400ha of land would be available for exclusion as avoidance and/or mitigation.

30. Having recognised that combination of PDAs was feasible, and undertaking some limited combination assessment, the Applicant clearly understood the materiality of combinations of PDAs. That is obviously the case; combining PDAs provides the maximum opportunity to select land to minimise the impacts of a proposed development (by excluding or using for mitigation and enhancement those portions which cause unacceptable harm). Such a combination-based approach would also have resolved the concerns (identified above) about the initial drawing of the PDA lines. That this was the case, but not undertaken by the Applicant, is a significant flaw in the assessment.

31. The Applicant's response to the above concern set out in AR at SLD-011 where it maintained that the approach adopted is "proportionate". The Applicant went on to state:

"Whilst the Applicant acknowledges it may be possible to combine land from a number of PDAs; it would not be proportionate to assess all sites in various combinations. Instead, the Applicant has sought to group land together into PDAs based on proximity of land parcels and their availability, to ensure that each PDA assessed would be deliverable."

32. Ultimately, whether the assessment is “proportionate” is a matter of judgment. However, SLD consider that the proportionality must be considered in the context of, among other things: (1) the Applicant itself recognising the feasibility and relevance of this approach; (2) this being a 500MW scheme NSIP scheme; (3) the existence of significant adverse effects of the proposed scheme; (4) the requirement in the mitigation hierarchy for avoidance (and its relationship with the application of the CNP Infrastructure presumption); and, (5) the s.85 duty in respect of the Cotswolds National Landscape. Indeed, particularly in the context of (3), (4), and (5), it is obviously the case that the limited additional range of alternatives achieved by combining PDAs is a material consideration. SLD consider such an approach clearly would have been proportionate to consider.

Defects in the SSAR assessment

33. Aside from the methodological concerns addressed above, SLD disagrees with the outcome of the alternative sites assessment itself. The Applicant’s SSAR concludes “there are no more suitable locations within the 20km search area than the proposed location for the Scheme based on the criteria identified” (para 4.1.7). SLD consider this view is incorrect and, based on the evidence of its experts, considers that the site of the proposed development is one of the most harmful locations considered, if not the most harmful.

34. This is a position that SLD has consistently made the Applicant aware of, including in correspondence reaching back to 26 November 2024 (see Appendix A).

35. SLD note at various points in the SSAR there is reference to the use of land agents and the proffering of “entire land parcels suggested by land agents” at Stage 5 of the analysis (para 2.6.3). SLD has been consistent in its concerns that the proposed development site was chosen with an undue focus on land ownership considerations, without proper engagement with the planning constraints applying to the site. Indeed, that it “was considered desirable to compile a site in as few land ownerships as possible to minimise legal complexities and project costs” (para 2.6.2) puts at the forefront the question of ownership without having regard to the wide range of unconstrained land identified at Stage 5 of the Applicant’s analysis (see Figure 14 and the extent

of unconstrained land with the small portions of “Land Identified by Land Agent Enquiry” marked).¹³ Practicalities of delivery are no substitute for avoidance and mitigation of environmental effects.

The Applicant’s analysis

36. SLD consider that an unduly favourable approach was taken to PDA 10 which now results in the significant adverse effects of the proposed development. This is important; as a result of the defective approach to site selection, the Applicant has failed to avoid various harms and comply with the mitigation hierarchy.

37. SLD and its consultants have reviewed the RAG (red-amber-green) evaluation contained in Annex D to the SSAR. SLD’s reassessment results in the following adjustments:

Topic	PDA 10 (Lime Down)	Comments
Ecology and Diversity	No change (amber)	
Landscape and Visual	Downgrade from amber to red	As SLD identify, there are obvious and significant harms arising out of the proximity of the proposed development to the Cotswolds National Landscape. It is doubtful how such positioning can properly meet the requirements of “avoidance”, or be properly seen to comply with s.85 CROW 2000. The National Landscape skirts the site to both the north and west. Despite the alterations the Applicant has made in response to the CNLB’s objections, solar infrastructure would still be readily

¹³ That is particularly notable given (1) the large number of landowners required to be dealt with as a result of the cable route due to the 22km cable; and, (2) the average size of farms in Wiltshire being approximately 80ha (see the Government’s online factsheet for “Agricultural Facts: Southwest Region”). On that basis, a scheme comprised of approx. 12-15 farms but much closer to the substation may have actively reduced the number of landowners required to engage (and, in any event, it is difficult to understand why 12-15 landowners would be disproportionate in the context of this proposal.

		<p>visible from the National Landscape. The CNLB also objected to the Applicant's decision to route HGVs through the National Landscape, adversely affecting the area's tranquillity. For consistency, PDAs 3, 9, and 10 are all immediately adjacent to National Landscape and classified as red.</p>
Land use	Downgrade from green to amber	<p>The PDA is in the Cotswolds, one of England's most important destinations for visitors. It is equivalent to five individual NSIPs, highly fragmented and close to eight villages, virtually surrounding Norton. Further reference is made to the adjacent Cotswold National Landscape. The Applicant refers to selection by reference to willing landowners. However, this first puts results in environmental considerations as a secondary matter, and also (as was identified at ISH1) such agreements may not have been effective to secure the life of the proposed development in any event.</p>
Cultural Heritage	No change (amber)	
Access for Construction Traffic	Downgrade from amber to red	<p>The Applicant has substantially underestimated traffic flows and the local road network (despite modifications) would be unsuitable for use by heavy flows of HGVs and abnormal loads. Many parts of the</p>

		network are under 5.5m wide which is below the minimum width for HGVs to pass each other safely. Pedestrians are required to walk in the carriageway giving rise to additional road safety concerns. The Applicant proposes routing heavy traffic through various small towns and villages, along with the National Landscape. All other sites have good or reasonably good access for construction traffic.
Flood Risk	No change (amber)	SLD has serious concerns about the vulnerability of the area to flooding and the potential impact of the scheme. SLD will demonstrate that the scheme would increase the risk of flooding. However, the Amber rating has been retained in this analysis since PDA 10's high vulnerability to flooding would not have been known at the time of the SSAR.
Field Shading	No change (amber)	
Grid Connection	Downgrade from amber to red	<p>In its application for Green Hill Solar Park, IGP (the owner of the Applicant) expressed the following (in Green Hill document [APP-042]):</p> <ul style="list-style-type: none"> • A clear preference for "identifying land as close to Grendon Substation (the National Grid) as possible". (Para 5.6.6)

		<ul style="list-style-type: none"> • That “[d]istance from the PoC was a factor to consider since the transmission of electricity to the grid becomes less efficient and the connection becomes more costly over longer distances.” (Para 5.6.7) <p>This is also recognised at paragraph 2.10.24 of NPS EN-3 which states: “...the connection voltage, availability of network capacity, and the distance from the solar farm to the existing network can have a significant effect on the commercial feasibility of a development proposal.” SLD understand following ISH1 the Applicant will provide statistics related to this.</p> <p>This draws attention to the very high cost of undergrounding 400kV cables (£10m to £24m per kilometre) which has to be funded by generating income from additional solar infrastructure, adding to the environmental impact of the scheme.</p> <p>The manufacture of the cables and the civil engineering involved in its construction would generate embedded carbon emissions and would adversely shift the carbon balance of the scheme as a whole.</p>
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		<p>Finally, there is the added disruption. In the case of PDA 10, the need to use compulsory powers to cross the land of some 40 farm businesses. In addition, the crossing of two intercity railway lines, the M4 motorway, a high-pressure oil pipe, two A Class roads, numerous unclassified roads and watercourses. The diagram in Appendix E illustrates the re-evaluation of the RAG ratings for Grid Connections for PDA 1, 10 and 12.</p> <p>See also further analysis related to grid connection cable in Appendix F.</p>
Topography	No change (green)	<p>The Applicant's approach to assessing the effects of variations in gradient is flawed. All of the sites are on gently undulating land and variations of a few percentage points would make little or no difference to the construction costs or levels of energy generation. In their application for Green Hill Solar Park, IGP (the owner of the Applicant) stated "All land with a 5% or less gradient... is considered to be very flat and optimal for solar generation...." The re-evaluation assumes those PDAs with over 10% of land over 5% gradient are amber. The remainder green. Upgrade PDAs 5 and 8 from amber to green.</p>

		In the SSAR the Applicant refers repeatedly to the importance of south-facing land and irradiance levels. A review of contours reveals that PDA 10, taken as a whole, is horizontal and cannot be sensibly described as south-facing. Also, being the most northerly of all the PDAs, PDA 10 would have the lowest level of irradiance of the 12 PDAs evaluated.
Site Size	Downgrade from green to amber	The Applicant accepts that PDA 10 “is smaller than the approximate size required for a 500MW scheme (including buffers)”. The restricted site size has reduced the area of land available for mitigating the adverse effects of the Scheme.

38. Two important things result from this reanalysis. The first is that, properly considered, a number of reds are identified for PDA 10, making it the least desirable site. The second is that, comparing a weighted analysis of the Applicant’s conclusions (Appendix B) to a weighted analysis conducted appropriately by SLD (Appendix C), it is apparent that PDA 10 measures as the most constrained. On either basis, and applying the Applicant’s own approach to selection based on these outcomes, PDA 10 was and is not appropriate for this development. It is for that reason that there are such significant negative effects of the proposed development addressed through the remainder of SLD’s Written Representation.

Design evolution

39. The consequences of the Applicant’s approach are now well-apparent at Examination stage. Due to the substantial limitations of the proposed development, numerous attempts have been made by the Applicant to

unsuccessfully remedy its flaws. While of course SLD recognise that a scheme will go through a design evolution, taking into account further work and consultation responses, the changes made by the Applicant goes far beyond this. Among other things:

- a. The deletion of plans for panels on individual fields to reduce the impact on the CNL, the Fosse Way and properties.
- b. The addition of access roads and the rerouting of HGVs and Abnormal Indivisible Loads owing to unexpected obstacles.
- c. Fifteen variations to the site boundary to accommodate road alterations.
- d. The requirement to reconsult on the alignment of the 400kV cable.
- e. The relocation of the BESS and substations.

40. The Applicant's approach to design evolution has lacked an overarching vision. Avoidance of planning harms, and appropriate mitigation, should be integrated at an early stage and not left as an afterthought.

Conclusion

41. For the above reasons, SLD has significant concerns about the approach to the assessment of alternatives in this case. There are demonstrable flaws in logic in the methodology of the assessment, and the omission of obviously material considerations. There is also a clear failure properly to assess the environmental effects of PDA 10, and as a result a selection of a manifestly inappropriate site for the proposed development. These errors underpin many of the significant negative environmental effects of the proposed development.

Author

Sir Michael Pitt is the former Chair and CEO of the Planning Inspectorate, former CEO of Cheshire Council, former CEO of Kent Council, former Chair of the Legal Services Board, and a former fellow of the Institution of Civil Engineers. In writing this report, Sir Michael has had input from a number of expert disciplines providing support to SLD in its Written Representation. He has also had input from the SLD legal team.

Appendix A

Enclosed in SLD's letter (sent by email) to the Applicant – 26 November 2024

Initial concerns relating to proposals for Lime Down

1). **The Cotswolds** rank with the Lake District and Yorkshire Moors as the most beautiful landscapes in England. Lime Down would be the first and only NSIP solar park in the Cotswolds (as defined by Natural England). The Cotswolds are of national importance, admired throughout the world and valued by tourists and locals alike for their unspoilt countryside and Cotswold stone villages.

2). Historic England has designated **The Fosse Way** as an ancient monument. It would become engulfed by solar infrastructure if Lime Down were approved. As an up to date footpath and bridleway, the Fosse Way contributes to a network of local and regional communications, including the Palladian Way, Whitewalls Way, North Wessex Way and the Athelstan Pilgrim Way.

3). The proposal for Lime Down impinges directly on **Bradfield Manor**, designated by Historic England as a Grade One listed property.

4). Lime Down would be too highly dispersed, involving the shoehorning of solar infrastructure in between **nine Cotswold villages** and the despoiling of approximately 50 sq km of Cotswolds landscape.

5). **Norton village** would be surrounded by solar infrastructure and life in Norton would be intolerable. Lime Down would impact recreational and travel routes between Norton and other locations, significantly harming residents' recreational amenity. It would also cause substantial harm to the landscape and views, and entirely deprive residents of the rural feeling and setting of their lives. The landscape would become industrialised and the setting and enjoyment of this village would be fundamentally harmed.

6). Solar infrastructure would be too close to and visible from the adjacent **Cotswold AONB**.

7). The local area is susceptible to serious **flooding** and there are concerns relating to the risk of **aquifer and groundwater pollution**.

8). The chosen location of Lime Down is highly exposed and **fails to take advantage of existing barriers** such as major roads, railway lines and landscape features.

9). Access for HGVs and other **construction traffic** to major roads and J17 of the M4 would be poor and involve the use of narrow unsuitable country lanes, damage to

verges and heavy lorry traffic passing through rural settlements. The need for substantial road improvements would cause additional environmental damage.

10). The location of Lime Down would involve the construction of 20 km length of disruptive and very expensive 400V **underground cabling**, including tunnelling under the M4 motorway. Proposing the solar park at this northerly location reduces the cost effectiveness and efficiency of solar panels.

Appendix B

The Applicant's Ranking of Potential Development Areas

(The Applicant's Evaluation Criteria are defined in Annex A of the SSAR)

Topic Area	Potential Development Areas											
	1	2	3	4	5	6	7	8	9	10	11	12
Ecology & Biodiversity	A	A	A	A	A	A	G	A	A	A	A	A
Landscape & Visual	G	A	A	A	A	A	A	A	R	A	A	A
Land Use	A	R	R	A	R	R	R	R	A	G	R	A
Cultural Heritage	A	A	R	R	R	A	R	R	R	A	A	R
Access for Construction Traffic	A	G	A	A	G	G	G	G	G	A	A	G
Flood Risk	A	A	A	A	A	R	R	R	A	A	R	G
Field Shading	G	G	G	A	A	G	G	A	A	A	G	G
Grid Connection	A	A	A	R	G	G	G	A	A	A	G	A
Topography	G	G	G	G	A	A	G	A	A	G	G	G
Site Size	R	A	G	A	A	A	A	A	G	G	A	R
Number of reds	1	1	2	2	2	2	3	3	2	0	2	2
Number of ambers	6	6	5	7	6	5	2	6	6	7	5	4
Number of greens	3	3	3	1	2	3	5	1	2	3	3	4
Weighted Score G=3, A=2, R=1	22	22	21	19	20	21	22	18	20	23	21	22

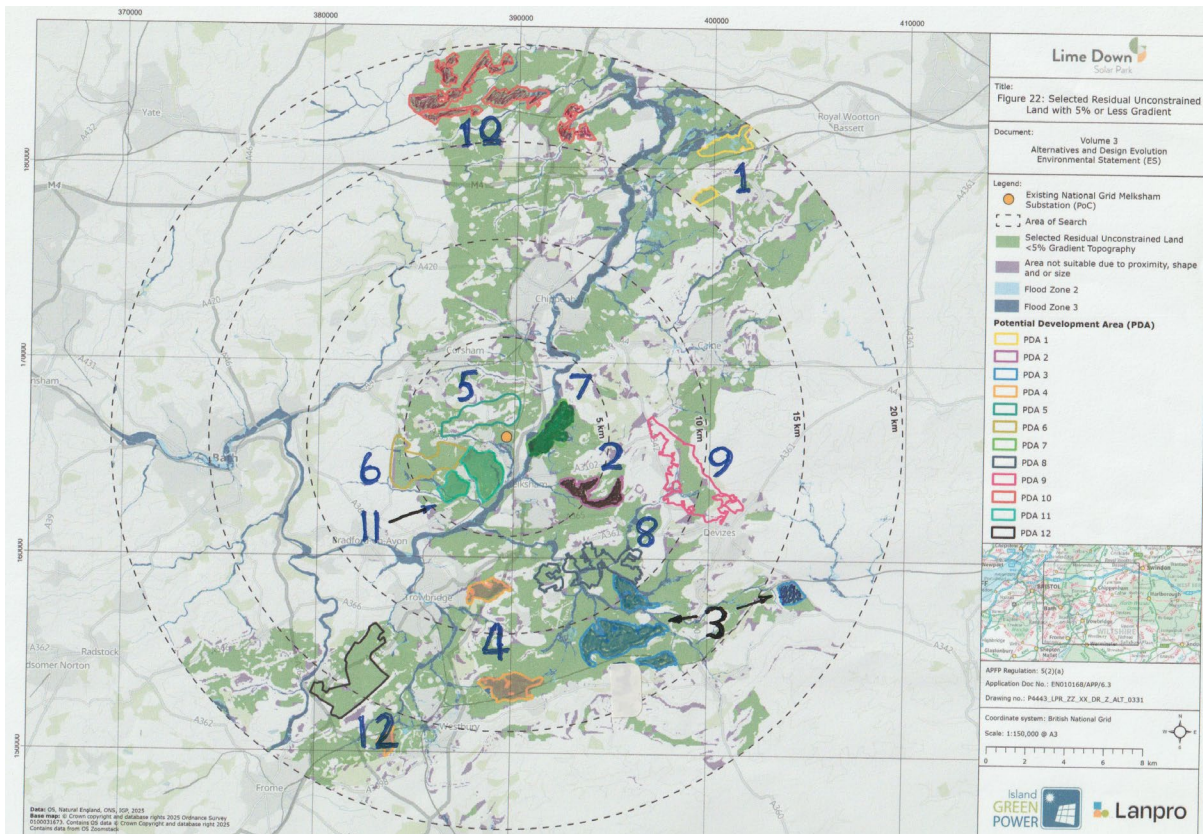
Appendix C

A Re-evaluation of the Ranking of Potential Development Areas

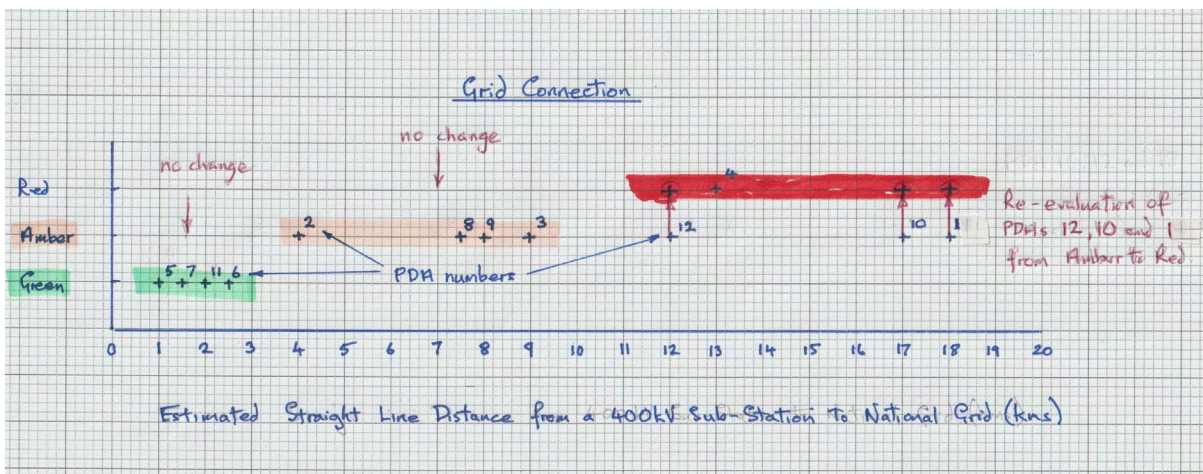
Changes are shown in red

Topic Area	Potential Development Areas											
	1	2	3	4	5	6	7	8	9	10	11	12
Ecology & Biodiversity	A	A	A	A	A	A	G	A	A	A	A	A
Landscape & Visual	G	A	R	A	A	A	A	A	R	R	A	A
Land Use	A	R	R	A	R	R	R	R	A	A	R	A
Cultural Heritage	A	A	R	R	R	A	R	R	R	A	A	R
Access for Construction Traffic	A	G	A	A	G	G	G	G	G	R	A	G
Flood Risk	A	A	A	A	A	R	R	R	A	A	R	G
Field Shading	G	G	G	A	A	G	G	A	A	A	G	G
Grid Connection	R	A	A	R	G	G	G	A	A	R	G	R
Topography	G	G	G	G	G	A	G	G	A	G	G	G
Site Size	R	A	G	A	A	A	A	A	G	A	A	R
Number of reds	2	1	3	2	2	2	3	3	2	3	2	3
Number of ambers	5	6	4	7	5	5	2	5	6	6	5	3
Number of greens	3	3	3	1	3	3	5	2	2	1	3	4
Weighted Score G=3, A=2, R=1	21	22	20	19	21	21	22	19	20	18	21	21

Appendix D



Appendix E



Appendix F

Connecting to the National Grid

1. The Application proposal requires the construction of an approximately 22km long 400kV underground cable. This is in addition to the various lengths of 132kV and 33kV cable required to connect Areas A-E of the proposed development to the 400kV substation. Such a cable is a very significant civil engineering operation with environmental implications in the short, medium, and long term.
2. The Application proposes one of the longest, if not the longest, 400kV grid connections of granted and proposed NSIP solar schemes. This is important as:
 - a. Such a cable increases the inefficiency of the proposed development. SLD understand from ISH1 that losses in both a single outgoing, and also an incoming and outgoing cycle (related to the charging of the BESS) will be provided at Deadline 1A. SLD will comment on these figures when they become available.
 - b. Such a cable is also expensive. On a provisional analysis, and considering the specific constraints on the cable in this case, SLD provisionally expect the cable to cost over £300 million¹⁴ and be likely more than a third of the cost of the proposed development. While viability is ultimately a matter for the Applicant in terms of cost (subject to some defined issues not dealt with in this paper), the extent of the cable requires the proposed development 'work harder' to be profitable. SLD consider this goes part of the way to explain the size of the scheme, the inclusion of the BESS, and other considerations aimed at maximising profit (at the cost of environmental effects).
 - c. Such a cable length has significant environmental effects in its own terms. This is addressed further below.

¹⁴ Using National Grid's 2025 proposal for an underground 400kV cable from Norwich to Tilbury at an estimated cost of between £10.2m and £24m for guidance.

3. The proposed cable route in this case is a particularly constrained one. It requires complex engineering solutions, including various forms of tunnelling (including horizontal directional drilling) to pass two mainline railways, a high-pressure oil pipeline, the full width of the M4 motorway, two major roads (the A4 and A420), numerous secondary roads, and drainage systems. These limitations are difficulties which require to be examined carefully and weighed in the balance in understanding the harms that arise from the scheme.
4. The length also exacerbates the environmental, social and economic effects of the scheme:
 - a. As is assessed in the evidence of SLD, including the ecology and transport sections, the environmental effects of the cable route are significant. This includes the considerable number of HGVs required for the cable route, which even on the Applicant's numbers exceed 10,000. The detail of this is set out in SLD's various other submissions as part of its written Representation.
 - b. Importantly, the effect on those individuals that are the subject of the cable route is substantial. On the whole they are farmers and agricultural operatives for whom the works will be extremely disruptive, affecting both the growing of crops but also the use of their land in the proximity of the cable. The anxiety and the effects of waiting for the determination of the true cable route within the cable corridor is particularly problematic (and has a direct effect on farming choices on land within the cable route corridor). Of particular concern is the concrete jointing bays provided for in the route. The ExA have already heard the concerns of many on the cable route at OFH1, and SLD has been the recipient of a large number of concerned comments.
 - c. As is assessed elsewhere by SLD, the length of the cable is a substantial contributor to the embedded carbon of the scheme.
5. Overall, the length of the cable route is an additional and (given the PDAs available in the site selection report, to which see the main paper) unnecessary addition to the Scheme which results in considerable harm for limited additional benefit (i.e. benefit independent of the PV itself). This is a matter which should

have been given particularly focused attention in the site selection process, and is something which should be examined with particular rigour throughout the DCO Examination.