



## Appeal Decision

Inquiry opened on 18 October 2022

Site visit made on 2 November 2022

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 5 December 2022

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Appeal Ref: APP/M1005/W/22/3299953

Land north west of Hall Farm, Church Street, Alfreton DE55 7AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by KS SPV 61 Ltd against the decision of Amber Valley Borough Council.
  - The application Ref AVA/2020/1224, dated 10 December 2020, was refused by notice dated 7 December 2021.
  - The development proposed is a photovoltaic solar park and associated infrastructure.
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### Preliminary matters

1. The Inquiry sat for 6 days. Costs applications were submitted in writing on the last sitting day and following written responses, the Inquiry was closed in writing on 8 November 2022.
2. I carried out unaccompanied site visits to the appeal site and surrounding viewpoints and heritage assets on 17 October and 31 October. An accompanied site visit to various viewpoints and the tower at Wingfield Manor was carried out on 2 November.
3. Applications for costs were made against KS SPV 61 Ltd and the holding company Kronos Solar Projects GmbH by the Council and the Save Alfreton Countryside Rule 6 party. These applications are the subject of separate Decisions.
4. Prior to the Inquiry, the Council advised that it would not be defending reason for refusal no. 2 insofar as it refers to the proposed development not contributing to the preservation or enhancement of the setting of the Amber Mill and Toad Hole Conservation Area. I have considered the appeal accordingly.

### Decision

5. The appeal is dismissed.

### Main Issues

6. The main issues are as follows:
  - The effect of the proposed solar farm on the landscape quality and character and appearance of the area;

- The effect on the setting of St Martins Church, listed at Grade II\* and Alfreton Hall at Grade II; and
- The effect on other heritage assets including Wingfield Manor House (Grade I), Alfreton Park and conservation areas at Alfreton and South Wingfield.

#### The site and surroundings

7. The site comprises 75 hectares (ha) of agricultural fields and woodland north west of the town of Alfreton. According to the Agricultural Land Classification (ALC) for England<sup>1</sup> the land is mostly Grade 4 (poor) with some areas at Grade 3 (good). It is used primarily for pasture and silage. Alfreton lies on a distinct ridge and most of the site slopes down towards the Alfreton Brook to the north. The western edge of the site slopes to the north west. The site is crossed by several public footpaths and there are long ranging views from these towards Crich and Wessington<sup>2</sup>.
8. A group of farm buildings (Ufton Fields farm) including dwelling conversions lies on the western edge of the area proposed for solar panels. During the course of the application, a number of fields and parts of fields around the perimeter and around the farm buildings and on the eastern edge of the scheme between Wren Wood and Pond Wood were removed from the proposal, without affecting the potential output. The Council considered the development on the basis of the reduced area.
9. Hall Farm itself comprises a collection of buildings on the western edge of the town next to St Martins Church. The church lies at the highest point in the settlement and its square tower is conspicuous in the landscape. The farm and church are within the Alfreton Conservation Area though the adjacent associated Alfreton Hall is not.
10. The site is divided between 2 parishes, Alfreton to the east and South Wingfield to the west. The parish boundary also follows the historical western boundary of Alfreton Park, land associated with the Morewood family that lived at Alfreton Hall. The evolving pattern of footpaths, pleasure grounds and woodland associated with the 1724 Alfreton Hall and its subsequent extension can be seen on surviving maps from the Alfreton Park Enclosure map of 1812 through to Ordnance Survey maps in the 20<sup>th</sup> century<sup>3</sup>.
11. Extensive opencast coal operations took place in the 1950s on much of the parkland but areas of woodland were preserved. It appears that the land was restored to something very similar to its previous shape and form, sympathetic to the large and dominant extended Hall at the highest point next to the farm and church. Changes to hedge and fence boundaries do not now diminish understanding of its historical use as parkland. Demolition of the original 1724 hall in the 1960s due to subsidence has left the 19<sup>th</sup> century extension standing alone. It remains a substantial building on the ridge.

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<sup>1</sup> Detailed analysis of 6 samples has been provided by Liz Scott (see ID19 below). Parts of the site indicate an ALC level of 3b. Local detailed analysis can often vary and this is not inconsistent with the broader regional classification by Natural England. Level 3b would indicate **that the land would not be considered 'best and most versatile'**

<sup>2</sup> With reference to the Zone of Theoretical Visibility (ZTV) Fig 5 of the Landscape and Visual Impact Assessment (LVIA)

<sup>3</sup> See Mr Cox's and Ms Morris's appendices

## Policy background

12. The development plan for the area consists of saved policies of the Amber Valley Borough Local Plan (LP) adopted on 12 April 2006 and policies of the South Wingfield Parish Neighbourhood Plan 2020-2035 (NP), made on 20 January 2022. With respect to the latter, it was found that the version of the NP subject to referendum had omitted in error the text of policy NPP 11 '**Renewable Energy and Low Carbon Construction Method**'. A modification proposal has been made under Regulation 14 (a) (v) to modify the plan to rectify the omission. The weight that can be attributed to this policy was subject to debate at the Inquiry. Consultation is taking place for a period of 6 weeks from 13 October 2022.
13. The second reason for refusal refers to NPP 11 *Renewable Energy and Low Carbon Construction Methods* paragraphs 4 a) b) and c), however proposed policy NP 11 5 is supportive of suitably located and designed development proposals for the supply of renewable energy where it is demonstrated that adverse impacts have been addressed satisfactorily in respect of a) amenity of residents and visitors; b) natural environment designated sites and protected species; c) the significance of Wingfield Manor and other heritage assets; and d) loss of best and most versatile agricultural land. The policy was examined by the Inspector and its provisions are uncontroversial. It had been subject to consultation. I regard the omission as a procedural error that is likely to be rectified without objection. However the fact that the policy wording is not included in the NP lessens the weight that can be given to it.
14. The replacement Amber Valley Local Plan 2021 – 2038 is at an early stage of consultation and attracts very little weight.

## Reasons

### *Landscape character*

15. The majority of the site lies on the western edge of National Character Area (NCA) 38 *Nottinghamshire, Derbyshire and Yorkshire Coalfield* within which the effects of widespread industrialisation have influenced the landscape. Whilst identifying the potential for solar farms in the south of the area, Natural England identifies opportunities such as raising the overall quality of design and location of new developments, by amongst other things, ensuring that parklands are under management that maintains their historical value while enhancing the biodiversity and recreational benefits that they offer, and their settings.
16. A small part of the site lies in the neighbouring NCA 50, *Derbyshire Peak Fringe and Lower Derwent*. The NCA is described as a picturesque transitional area between the natural beauty of the Peak District National Park to the west and the largely urban, formerly mined Derbyshire Coal Measures to the east. Natural England advises that the area is often referred to as the 'Gateway to the Peaks' and is rich in semi-natural habitats, intimate and dramatic landscapes, views and vistas and as such, it is an important area for recreation.
17. The site lies within Derbyshire County Landscape Character Type (LCT) Coalfield Estatelands, which surround Alfreton. This is described as a heavily industrialised and urbanised landscape characterised by settlements, parkland, woodland and dairy farming. The most relevant key characteristics include a

gentle undulating landform, dairy farming dominated by pasture, plantation woodlands, tree belts and coverts, fields of medium size defined by hedgerows, extensive areas of existing and relict parkland, and occasional country houses with associated parkland trees. Extensive areas of amenity parkland at Shipley and Alfreton are referred to, that at Alfreton being the non-designated parkland associated with Alfreton Hall. The change in character between small fields used for grazing around Ufton Fields Farm and the expansive parkland, or estate, character on the east side of the site including significant woodland (**Pond Wood, Wren Wood, Long Plantation, Beech's Plantation and Highfield Plantation**) is quite apparent.

18. LCTs in the surrounding setting of the site include Wooded Farmlands to the west (described as a mixed farming landscape on undulating ground with a strong wooded character) and Wooded Slopes and Valleys (described as a landscape of small pastoral fields on undulating rising ground with woodlands on steeper slopes), and Coalfield Village Farmlands to the north (characterised by pastoral farming and localised arable cropping). However the site is better characterised as transitional between these neighbouring types. This is best understood on the high ground near the centre of the site looking west and north.
19. The proposed development would occupy a large part of the sloping fields on the west side of Alfreton. Many of the panels would be mounted to face the sun on slopes descending in the opposite northerly direction. This would accentuate the appearance of the rear of the panels which would present as a starkly industrial mass of metal ascending the hill. En masse, they would be a prominent feature seen from as far away as 4-5 km away to the west and north. From higher ground about 3 km away at Wessington, the large Ferrero (Thorntons) factory is visible south of Alfreton. The panels would extend the area of industrial development into an area close to the town that is currently open countryside. This would be even more apparent from further west at the Crich Memorial, where more extensive industrial development to the south of Alfreton is also visible. From here, the fields that characterise the countryside on high ground immediately west of Alfreton would be largely subsumed. Whilst it is proposed that new hedging would be planted, that would not succeed in hiding the extent of the solar farm, especially seen from higher ground. Moreover, hedges of sufficient height to mitigate for the height of the panels (up to 3m) would be out of character with the area, where traditional hedges are typically much lower. They would also tend to obscure the perception of the smaller fields that characterise the Coalfield Estate lands and Coalfield Village Farmlands LCTs.
20. However, the effect on character within 2 km of the development would be more significant. The site forms a large part of the southern slope of the small scale valley of the Alfreton Brook between the A61 and the B6013. The waste water treatment works is not a defining feature. The scale of the fields and woodland is almost intimate with a distinct sense of tranquillity. The ground also rises to the west towards South Wingfield across the valley of the River Amber. The consistent undulating valley sides carpeted with mainly small fields and groups of trees does not lend itself to introduction of the proposed large scale industrial installation that would rise well above the low hedges and dominate the topography.

21. Turning to whether the landscape is valued (in the terms set out in the National Planning Policy Framework (NPPF) at paragraph 174, the site does not form part of a designated landscape. The appellant's **assessment** concludes that the **site is of overall 'moderate' value**. I consider<sup>4</sup> that in terms of rarity, heritage, and perceptual factors, that assessment undervalues the site and its landscape setting. Rarity is the presence of rare elements or features in the landscape or the presence of a rare LCT. In Landscape Institute guidance it is combined with '**representativeness**' into a newly-named factor '**distinctiveness**'. The relic Alfreton Hall parkland and literary associations with D H Lawrence mentioned by many local people indicate to me that this factor should be higher than the '**low**' considered by the appellant<sup>5</sup>, if only because these ingredients do imbue a **strong 'sense of place' notwithstanding its acknowledged natural beauty** and views of Crich Memorial and to a lesser extent Wingfield Manor in addition. Heritage value in terms of landscape essentially derives from the association with Alfreton Hall and the Palmer-Morewood family, whose influence on Alfreton and its surroundings is well known and recorded, not least in the current brochure for the Hall as a wedding venue. The remaining protected woodland, field boundaries, remnant estate fencing, relationship to the farm and church and non-designated heritage asset status all indicate to me a **higher value assessment than 'moderate'**. In perceptual terms, the contrast with the immediately adjacent urban environment of Alfreton and apparent isolation from industry and busy main roads, indeed tranquillity, combined with the far-reaching prospect towards the Peak District, suggest a strong sense of detachment. This in combination with the evident wildlife, in particular birds such as skylark, means that the perceptual factor should be higher than '**moderate**'. Overall, there is strong evidence to conclude that the appellant has underestimated the landscape value of the appeal site and its setting. Moreover, there is a large body of evidence testifying to the enhanced value placed on the parkland and the appeal site by local people.
22. With regard to impact, the appellant acknowledges a major adverse effect, even after mitigation, on the Coalfield Estatelands LCT and on NCA 38, due to the scale of development proposed. Although only 2 fields of the scheme are within the '**boundary line**' of NCA 50 *Derbyshire Peak Fringe and Lower Derwent*, the **appellant's** assessment of a '**minor adverse**' impact here gives insufficient emphasis to the transitional nature of the landscape in the Amber valley and the visibility of the solar farm from the west and north. That impact level should be substantially raised. In considering this point I note that cross-referencing the Table 6 and the assessment of NCA 50 as '**medium-high**' landscape value in the **appellant's own** LVIA indicates a higher level of harm **than 'minor'**. The ability to appreciate the landscape value of NCA 50 as inextricably linked with that of NCA 38 arises from longer views of the scheme, and also because of the dip where the Alfreton brook meets the Amber river, clearly seen from, for instance, the Matlock Road.
23. None of the evidence leads to a conclusion that the landform or vegetation in the former parkland or neighbouring fields have been significantly altered by open cast working in the 1950s. I give this matter very little weight in assessing the landscape value of the site and its surroundings.

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<sup>4</sup> Having regard to the Guidelines for Landscape and Visual Impact Assessment 3<sup>rd</sup> edition (GLVIA) which provides a list of factors at Box 5.1, and the Landscape Institute's Technical Guidance Note TGN 02-21 *Assessing landscape value outside national designations*

<sup>5</sup> Acknowledged by the appellant in cross-examination

24. The proposed development would have a major adverse effect on the Coalfield Estatelands LCT and a localised major adverse effect on NCAs 38 and 50.

*Visual amenity*

25. Industrial development lies on the north side of Alfreton, including a large sewage treatment works and activity associated with the explosives industry. It will include a recently approved solar farm at Meadow Lane. On the south side, beyond the A38, there is an extensive area of warehousing and industrial manufacturing visible from high ground at Crich. A countryside gap of about half a kilometre (km) between Alfreton and South Normanton to the east is separated from the town by a railway line, is relatively featureless and has very few public footpaths. Alfreton Park and the surrounding fields comprise the only area of attractive open countryside easily accessible from the town. This adds to its value for local residents.
26. Local occupiers and users of public footpaths are **regarded as being of 'high sensitivity' when considering** the impact on visual amenity. The site is criss-crossed by several public rights of way of historic and distinctly rural character. FP18 and FP19 lead directly from the Alfreton Conservation Area, St Martins church and Hall farm towards Oakerthorpe and South Wingfield, Toadhole Furnace and Shirland respectively via footpaths 47, 48, 49 and 50.
27. Immediately on leaving the churchyard, users of both footpaths would notice the extent of the solar farm to the west and to the north west of Wren Wood due to its height of up to a maximum of 3m. Although its utilitarian industrial appearance would be mitigated over time by new screening hedging, this would be in stark contrast to the prevailing field boundary hedges which are much lower. The new vegetation would seriously restrict views beyond the former parkland towards Crich and NCA 50, which currently unfold for the walker on the popular FP18. Elements such as equipment storage containers and transformer stations would be visible, sometimes above the hedges. Metal deer fencing would be apparent as a new and discordant feature, the effect lessened by mitigation in time but remaining highly visible looking at the scheme from the north. The hedging would not be effective mitigation from this direction<sup>6</sup>. The CCTV cameras would project above on poles and would be seriously inharmonious and intrusive in this relatively unspoilt undulating rural environment.
28. Moreover, there would be inverters positioned throughout the scheme which would produce a humming noise when in operation. At several locations, these are close to public footpaths<sup>7</sup> where the noise, especially when the inverters are under load for instance in sunny weather<sup>8</sup>, would add to the visual impact of the panels **in the visitor's experience**.
29. Occupiers of dwellings at Fourlane Ends would notice panels on the ascending slope opposite but there would be intervening pasture and the solar farm would not seriously impact on their experience of the surrounding landscape, unless they wanted to walk into the area of panels. On the other hand, occupiers of dwellings at Ufton Fields farm would experience a significant change in the character and appearance of the area from tranquil open small scale grazing

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<sup>6</sup> Most clearly indicated on the photomontages ID5, (year 10)

<sup>7</sup> Using Ms Miller's plan at page 19 of her proof

<sup>8</sup> 62 dB at 10m distance

land to a dominant industrial installation with associated noise from inverters. This is despite the appellant withdrawing parts of fields nearest to these dwellings. It has been demonstrated that in the worst case, inverter noise (32dB) heard at Ufton Fields could exceed background noise levels from traffic on the B6013, A615 and other sources (30dB). The difference would be less than 3dB and unlikely to be noticed often, but it remains the case that local occupiers would frequently encounter an inverter, or a pair of inverters on walking into the surrounding solar farm on footpaths 49 and 50 and this would reinforce their impression of a significant and detrimental change in the character and appearance of the area.

30. In many ways the most serious visual impact would be experienced from Lower Delves farm on the south facing slope below Shirland. Occupiers of dwellings and users of footpaths and the golf course here would have a direct view of the rear of an extensive area of solar panels facing up the slope. The suggested mitigation planting would do little here to conceal the extent of new deer fencing, CCTV and inverters. The magnitude of change to visual amenity in this small valley would be major, with major adverse significance of effect.
31. In conclusion on this issue, the proposed development would be significantly out of scale with the landscape of undulating small fields and would completely dominate an attractive valley landform. It would effectively prevent many locally important views towards the Peak District from a dense network of well used public footpaths on the edge of a settlement, occupiers of which greatly value the landscape and views into and from it. The proposed mitigation might reduce the impact on the upper contours where the ground is reasonably flat but would achieve little on the extensive west and north facing slopes. The new hedges would at the same time significantly change the character of the landscape and diminish the experience of the area for local occupiers and recreational users.
32. As such, the scheme would seriously conflict with the landscape and visual amenity protection aims of LP policies LS3 (a) and (b), EN7 (a)(b) and (e), EN35 (d) and SWPNP policies NPP3 1 (a) and NPP11 5 (a). The development would also conflict with the guidance in NPPF paragraphs 174 (a) and (b) and 158.

#### *The settings of listed buildings*

##### *St Martins church and Alfreton Hall*

33. The heritage significance of St Martins derives mainly from its architectural, communal and historic interest as an important building at the centre of the community. As the parish church of Alfreton it is prominent on the highest ground in the town with far reaching views to the north and west across parkland. The church is understood as part of a historic group of buildings and the surrounding landscape which includes Alfreton Hall, its park and the farm buildings between them. Mature trees have grown around the churchyard but these do not obscure the top of the large stone square tower and flagpole which can be discerned from some distance. The parkland forms an important part of the setting of the group and extends as far as Beeches Plantation to the west.
34. The solar farm would be more than 300m from the church at its nearest point on footpath 18 and considerably further on footpath 19 and would not be

especially distracting in views from the church, certainly after mitigation planting has matured. However people approaching the church and town from the west and north on footpaths 18 and 19 would pass through and alongside the solar farm at close quarters and this would initially remove the ability to properly appreciate the parkland origins of the landscape. New high hedging around these paths would dramatically change the experience, emphasised by new deer fencing, inverters and cameras.

35. It is almost certain that FP19 has ancient origins, leading to and from Alfreton, the church and Park Mill on the Alfreton brook. Approaching Alfreton, once past Wren Wood and Pond Wood, the church tower, set within and above trees, becomes much more clearly visible. This would be at a point where the Hall would also gradually become apparent, albeit including more modern buildings and trees in its curtilage. The harm to setting would result from the industrialisation of a large part of two approaches to the church and related assets and the effect on perception of the full extent of the Alfreton Hall parkland setting until this point is reached. The historic rural estate setting of the church and hall would be significantly diminished. With reference to the scale of effects on the significance of the church **in the appellant's appendix 10**, the degree of change in setting of this asset of high sensitivity would be minor/moderate and the level of harm to significance would be less than substantial, at the lower end of the scale.
36. Similar considerations apply to Alfreton Hall, except that there is a more obvious historic and long-standing relationship between the Hall and the surrounding non-designated parkland and this remains plain and evident because of the deliberate planting of woodland belts and the remnants of estate fencing around the remaining large fields. The ha-ha on the north side of the house remains, as does the extensive pleasure-ground to the south of the Hall with some exceptional specimen trees. This area is very popular with local residents who would clearly see the solar farm at the edge of the wooded section from the many interconnecting paths. The panels and supporting structure would effectively obscure the views through to the open fields and the historic landscape beyond. The 18<sup>th</sup> century hall was demolished in the 1960s leaving the 19<sup>th</sup> century extension, still a substantial building and a popular wedding venue that relies on its history for publicity and as an attractive location. Modern development within its curtilage to the east has detracted from its setting and the woodland to the west is one of the few areas where something of the original parkland and the history of the hall and Park can still be experienced. For this reason, I consider the intrusion of the solar arrays **into the hall's setting** would have a minor/moderate impact, again leading to a degree of less than substantial harm to heritage significance at a slightly higher level than that to the church.

#### *Alfreton Park*

37. There is substantial and credible **evidence of the park's extent and changes in woodland and field boundaries** since at least 1610 and records of changes in ownership since the 13<sup>th</sup> century. Estate surveys by the Palmer-Morewood family and later by Ordnance Survey reveal the evolution of field boundaries and footpaths since the early 19<sup>th</sup> century. The Historic Environment Record (HER) identifies the whole of Alfreton Park which includes the area north of the Hall including much of the appeal site. There is no evidence that open casting and subsequent restoration here has resulted in any perceptible change apart

from additional field boundaries. The Park is different in character from adjacent farmland by virtue of stands of broad mixed plantations, designed vistas, large, open fields and specific tree planting on the northern boundary.

38. The eastern part of the solar farm beyond the South Wingfield parish boundary would lie entirely within the western part of the area designated as Alfreton Park in the HER. I accept that the larger part of the park still remains as one cohesive design and that this is readily perceptible and enjoyed by visitors. The panels and associated containers and inverters would prevent any appreciation of the original extent of the park and its evolution over time, as well as completely obstruct many of the views out between woodland towards countryside around Shirland, South Wingfield and Crich. The intended mitigation planting would do no more than hide the panels and installations from immediate view whilst further removing any ability to perceive the historical extent of the park, unlike the existing hedges and fencing which is low and permeable in nature.
39. Deer, fencing, access tracks and cameras will add to the entirely incongruous impact of the solar farm which overall will largely vitiate the cultural identity of the park and its association with Alfreton Hall. The park should be assessed as a heritage asset of medium significance and the erasure of a large proportion of the open part of the park amounts to a substantial level of harm to this non-designated asset.

#### *Wingfield Manor House*

40. Wingfield Manor House is a ruined 15<sup>th</sup> century palatial structure on a conspicuous rocky outcrop. It lies about 900m south of the centre of South Wingfield with extensive views in all directions. It is arranged round a pair of courtyards with a 22m high tower. Originally the home of Ralph, Lord Cromwell, Treasurer of the Exchequer, it was subsequently prison accommodation for Mary, Queen of Scots, three times and the site of English Civil War sieges twice. The Manor derives significance from its archaeological, architectural and historic interest and is an exceptional survivor. Its prominent setting in largely open rural surroundings once included extensive deer parks. As far as can be ascertained, these did not extend eastwards as far as Alfreton or the appeal site. The site does not fall within any of the key views towards Wingfield Manor identified in the NP, although solar panels would be visible from footpaths around the Manor in the context of the deer parks.
41. The centre of the solar farm would be about 3 km from the tower but the nearest panels (on the approach to Ufton Fields farm) would be around 2.25km away. There would be some visibility of the Manor from the site but such views are incidental and not **'designed'**. **Whilst it is appreciated that panels could** obstruct these where they occur, the amount of harm caused in terms of the ability to appreciate **the Manor's** heritage significance seen from the site would be minor.
42. In views from the tower, and from nearby footpaths (South Wingfield FP11, FP12 and FP14), clusters of fields containing solar panels would be apparent by virtue of the contrasting industrial, metallic glazed appearance on the side of the valley and extending onto the Alfreton ridge. The development would be distracting above the treeline from FP14<sup>9</sup>. However the overall contribution

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<sup>9</sup> Mel Morris Appendix 2 Panoramas 6 and 7

made to the heritage significance of the Manor by the undeveloped site, as part of extensive 360 degree views, is minor. Mitigation planting would reduce the impact in time, but the intrusion into the panoramic view from the tower would be noticeable and distracting. It would be seen as an addition to some other developments such as industrial units and wind turbines, but this is not a reason to justify further incursions. A prominent part of the rural surroundings would become industrial in appearance. Overall, the harm to the setting of this Grade I listed building and Scheduled Monument would be less than substantial but would attract important weight, leading to a moderate degree of harm to significance, and failing to preserve the setting of this remarkable heritage asset.

#### *The effect on conservation areas*

##### *South Wingfield CA*

43. The South Wingfield Conservation Area encompasses the Manor and its immediate surroundings together with the central part of the village, the church and corn mill in the Amber Valley to the east. Its character and appearance derives principally from the existence of the Manor and its high status and the historic dependent relationship between the village and its inhabitants and the occupants of the Manor. The development would be visible from several points on the ridge along which most of the village lies, as part of a generally pleasant rural outlook towards Alfreton generally free of large scale development. This would not prevent appreciation of the character and appreciation of the CA, however, and its character and appearance would be preserved.

##### *Alfreton CA*

44. Alfreton CA comprises the oldest part of Alfreton town centre including Church Street, Market Place, St Martins Church, the churchyard, vicarage, Glebe House and Hall Farm, excluding Alfreton Hall but including the gatehouse to the Hall (listed Grade II). The conservation area boundary extends as far as the point just north of the church where footpaths 18 and 19 meet and where extensive views can be appreciated to the north and west. The proposed construction access A to the proposed development would pass through Hall farm along Church Street which is bounded by vulnerable stone and brick structures and trees protected by virtue of being in the CA.
45. The existing farm access is used by farm traffic including tractors and trailers and for the movement of cattle. Construction of the development would cause additional temporary, but significant, noise and disturbance. However the suggested conditions could include measures to ensure that the access is suitably protected in physical terms and a Transport and Construction Management Statement would need to be approved by the Council, which would include limiting the size of vehicles and restricting timing of deliveries. I conclude on this matter that the character and appearance of the CA would be preserved.

#### *Other heritage assets*

46. The Peacock Hotel (Grade II) lies on the A615 to the west of the proposed development. It is a former coaching inn, dating from the early 17<sup>th</sup> century. Its heritage significance derives from its architectural and historical interest

and its prominent location as an overnight stop on an ancient route. There would be views of some solar panels from the building, more pronounced on the upper floors, separated from the hotel by bungalows and undeveloped fields. The hotel can be seen from the appeal site as part of a group including 20<sup>th</sup> century residential development. Whilst there would be a minor impact on its setting, the solar farm would not prevent full appreciation of its history and architecture.

47. I conclude on heritage matters that there would be harm to the settings of St Martins Church and Wingfield Manor House, **leading to a degree of 'less than substantial' harm to the heritage significance of these assets**. The heritage significance of the northern part of the non-designated Alfreton Park would be seriously compromised, affecting the ability to appreciate the setting of Alfreton Hall **and leading to a degree of 'less than substantial' harm to the heritage significance of the Hall**. The scheme would conflict with the heritage protection aims of LP saved policies EN24 c) and policy NPP5 4 of the NP. The harm to heritage significance should be weighed against the public benefits of the proposal.

#### Other matters

48. The impact of noise was not a reason for refusal but was raised by the Rule 6 party, Save Alfreton Countryside, with particular reference to noise and disturbance during construction and decommissioning and the effect of noise emanating from the completed development on pupils at Alfreton Park Community Special School. There would be solar panels in fields immediately adjacent to the existing school but the panels themselves do not emit any noise. The appellant acknowledges that inverters further away would produce noise. Specialist evidence was heard on the likely **'worst case'** noise levels that would be produced by a range of the most likely models of inverters during operation **with a 'noise reduction kit' in place**. This indicated that it is extremely unlikely that noise pressure levels from the inverters would exceed background noise levels at any time<sup>10</sup>. The nearby A615 and the A38 dual carriageway are responsible for most of the background noise.
49. Pupils at the school are amongst the most vulnerable in society with a range of special needs, where conventional assessment of noise pressure levels may not be sufficient to prevent a harmful effect. I do not doubt that where children have complex audio-sensory processing difficulties perhaps with a hypersensitivity to noise, they may be disturbed by unusual tonal elements or unexpected sounds, and that this can be very difficult to manage. There is no evidence to contradict the experience of school staff that some pupils have enhanced audio-sensory capabilities and susceptibility to sounds which most people cannot hear. Moreover the school may need to expand further towards the northern boundary, nearer the inverter noise source. An additional difficulty is envisaged when children use local footpaths through Alfreton Park for amenity and nature appreciation purposes. Noise from inverters, perhaps behind a hedge, could be difficult for children to process.
50. A planning condition could ensure that operational noise would never exceed background noise pressure levels at the school boundary, but this would not prevent difficulties for those with increased auditory perceptual capacity. Nor

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<sup>10</sup> 14 dB below the typical daytime background sound levels at the school

would it prevent difficulties when children use local footpaths through the scheme- something that would be hard to avoid. Noise during construction of the development in immediately adjacent fields would be temporary and could be mitigated but not entirely eliminated by measures in the Construction Environmental Management Plan, for instance by limiting hours of working. I conclude that there is reasonable evidence to indicate that the development would cause problems for children with audio-sensory processing difficulties during construction (and ultimately, removal) and when using local footpaths. The interests of vulnerable people are an important consideration but one that must be balanced against the public benefits of the proposal in the form of tackling climate change and the supply of renewable electricity. However without further information on who the affected children are, the nature of their disability and how they might be affected, it is difficult to judge whether the inverters proposed would have an unacceptable impact, what the extent of that would be and if so, whether there are means by which any harm could be successfully further mitigated. In this case, steps have been taken to move inverters away and provide noise-reduction kits. That is not to say that a conclusion can be firmly drawn that there would not be any harmful effect, especially when using local footpaths. These considerations weigh against the scheme.

51. As for the whether the impact of the proposed development on the children at the school would constitute an infringement of their rights under the Equality Act 2010 and the public sector equality duty referred to by the SAC, this does not apply to private organisations such as the applicant company. The Council, and the decision maker are required to comply with the duty. The duty is to have due regard to the need to a) eliminate discrimination (direct or indirect), harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The duty is not a positive or absolute duty to advance equality, eliminate discrimination or foster good relations in every case at the expense of all other considerations; it is a duty to have due regard to the need to take these steps where possible. Essentially, the duty requires consideration of any negative impact the decision may have as regards equality principles and, where the negative impact is significant and mitigation is possible, steps should be taken to mitigate the negative impact and/or advance equality of opportunity. I am dismissing the appeal for other reasons and do not consider this matter further, beyond noting the potential for harm.
52. Many objectors refer to the abundance of wildlife on the site, in particular birds. The development would result in restoration of existing hedgerows and the introduction of new hedgerow planting. Grassland would be improved with the introduction of new meadow species. An area would be set aside for the local population of skylarks. Future management would be controlled by means of grazing or light cutting for the benefit of seed dispersion and wildlife. Bat and bird boxes would be provided across the scheme. Ecological concerns do not weigh against the scheme.
53. I have taken into account the impact of this development bearing in mind cumulative effects that may occur as a result of an approved solar farm at Meadow Lane and another withdrawn application at Alfreton North (Upper Delves Farm). The appellant has confirmed that Alfreton North is unviable

because its area is too small to reach the desired installed capacity. There is no proposal to resubmit any application for a solar farm on this site. Meadow Lane is on the north east side of Alfreton between a waste water processing plant and industrial development. There are very few places where it could be appreciated at the same time as the appeal development. Accordingly I do not find any unacceptable cumulative impacts would occur.

54. A signed and dated S106 Unilateral Undertaking (UU) has been provided with the objective of providing a community benefit fund of £10000 annually for 20 years, index linked, for the parishes of Alfreton and South Wingfield to provide improvements to recreational and leisure facilities '**including improvements to local walking routes and other recreational facilities and enhancements to public awareness information about local heritage assets to help address and compensate for recreational leisure and heritage impacts of the Development**'.
55. The benefit fund would not be addressing any specific projects or benefits for which a need has been identified. It is doubtful that even if suitable benefits had been put forward in the UU, they would approach being fairly and reasonably related in scale and kind to this particular scheme, which would have very significant impacts. The UU places obligations on others not party to the UU to form part of a decision-making panel to administrate the fund.
56. It has not been shown that the fund is necessary to make the development acceptable in planning terms. The appellant confirmed that the approach adopted here is standard and similar to that used at other schemes. I do not discount the benefits offered, but bearing in mind the 3 tests set out in Planning Practice Guidance<sup>11</sup>, the UU can only carry very limited weight.

## Conclusion

57. The production of up to 49.9 MW of renewable energy, sufficient for between 11500 and 13360 homes or more than 22% **of the Borough's total households**<sup>12</sup> is a very significant factor in favour, along with the associated reduction in carbon dioxide emissions and the contribution that would be made to addressing climate change. The development would lead to a significant and useful increase in solar renewable energy in the Amber Valley area, substantially helping the Council in its aim to support and encourage the generation of energy from renewable sources. The return of the land to arable production after 40 years means that it would not be taken out of production in the long term. The intention to continue to use the land for grazing in the meantime, as set out in the **appellant's** planning appraisal at page 21 and in other places, carries some weight.
58. Planning Practice Guidance advises that local topography is an important factor in assessing whether large scale solar farms could have a damaging effect on landscape: and that great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. Protecting local amenity is also an important consideration which should be given proper weight in planning decisions<sup>13</sup>.

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<sup>11</sup> Paragraph: 002 Reference ID: 23b-002-20190901

<sup>12</sup> 11500 as per officers report. Appellant advises this is equivalent to 13360 homes (E Robinson proof 8.2.7)

<sup>13</sup> Paragraphs 007 Reference ID: 5-007-20140306 & 013 Reference ID: 5-013-20150327

59. In this case, the solar farm would be mounted largely on sloping land with a very significant zone of visual influence extending for several km across attractive and locally valued countryside in a transitional character area with long reaching views. Whilst I have found that the character and appearance of the Alfreton and South Wingfield Conservation Areas would be preserved, there would be a substantial level of harm to Alfreton Park, a non-designated asset, and **a degree of 'less than substantial harm'** caused to the settings of Wingfield Manor, St Martins Church and Alfreton Hall.
60. The need for renewable or low carbon energy does not automatically override environmental protections. I have taken into account all the other matters raised including the proximity of a suitable grid connection, but in the overall balance, the harm caused to landscape character and visual amenity is decisive. The adverse impacts cannot be addressed satisfactorily on a site of this size and character, and the suggested planting mitigation measures would be seriously out of keeping and would largely worsen, rather than mitigate for the landscape and visual impact. Objectors point out that the panels could simply be replaced after 40 years but it is difficult to predict whether national energy strategy will still require large solar installations in 2062. I consider that 40 years **is a very significant period in people's lives during which the** development would seriously detract from landscape character and visual amenity.
61. For all the above reasons, the appeal must be dismissed.

*Paul Jackson*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

|   |                                |
|---|--------------------------------|
| Ned Westaway  | Of Counsel                     |
| He called:  |                                |
| Melanie Lloyd Morris BA<br>(Hons) DipArch Cons IHBC MRTPI | Mel Morris Conservation        |
| Deborah Evans MA CMLI<br>IHBC                             | DE Landscape and Heritage Ltd  |
| Michael Bamford BA(Hons)<br>MPLAN MRTPI                   | Planning & Design Practice Ltd |

### FOR THE APPELLANT:

|                                 |                            |
|---------------------------------|----------------------------|
| Celina Colquhoun                | Of Counsel                 |
| She called:                     |                            |
| Peter Cox MCIFA                 | AC Archaeology             |
| Ivor Matthew CMLI               | Laurence Associates        |
| Frank Bohne MBA                 | Kronos Solar Projects GmbH |
| Jo Miller BSc MSc MBA MCIEH MIA | Miller Goodall             |
| Emily Robinson                  | Laurence Associates        |

### FOR SAVE ALFRETON COUNTRYSIDE:

|                        |   |
|------------------------|---|
| John Campbell          | Of Counsel                              |
| He called:             |   |
| Richard Marsden        | Alfreton and District Footpaths Society |
| John Ydlibi            | CPRE The Countryside Charity            |
| <b>Josie O'Donnell</b> | Headteacher, Alfreton Special School    |
| Peter Milner FRICS     |   |

### INTERESTED PERSONS:

|                     |  |
|---------------------|--|
| Emma Stevenson      | Local resident   |
| Caz Moon            | Local resident   |
| Julia Williams      | GEW2 Ltd   |
| Dr Clare Price-Dowd | Local resident   |
| Paul Gibbons        | Local resident   |
| Laura Brown         | Local resident   |
| Paul Steven Jackson | Local resident and on behalf of Cllr Valerie Thorpe (deceased) |
| Liz Scott           | Local resident   |
| Martin Harrison     | Local resident   |
| Chris Handforth     | Local resident   |
| Nigel Mills MP      |  |

|                  |   |
|------------------|---|
| Jo Utting        | Local resident                            |
| Cllr Barry Lewis | Derbyshire County Councillor              |
| Amanda Stalker   | Parkside Stables                          |
| Jamie Selby      | Local resident                            |
| John Glasby      | Alfreton Park<br>Community Special School |
| Pam Crofts       | Local resident                            |
| Debbie Horabin   | Local resident                            |
| Diane Baggaley   | Local resident                            |
| David Nevins     | Alfreton Rambling Club                    |
| Andrew Mason     | Local resident                            |
| Peter Wood       | Local resident                            |

## INQUIRY DOCUMENTS

ID1 Appellant Opening

ID2 Respondent Opening

ID3 Photo from resident

ID4 Staunton Harold Hall

ID5A Alfreton South Photomontages A

ID5B Alfreton South Photomontages B

ID5C Alfreton South Photomontages C

ID6 Photo from the tower of Wingfield Manor taken in 2015

ID7 Appeal Decision - Land at Higher Farm, Fifehead Magdalen, Dorset

ID8 Appeal Decision Hangmans Hall Farm, Twenty Acre Lane, Sutton Cheney

ID9 R V Thanet District Council v Kentish Projects Limited

ID10 Extract from GLVIA 3rd edition

ID11 Addendum Noise Note 19th October 2022

ID12 Revised Layout Description April 2021

ID13 Revised Layout Description September 2021

ID14 2264.M4.001.0 R Alfreton Module Array Layout South updated

ID15 Land North West of Hall Farm Conditions 28-10-2022

ID16 Unilateral Undertaking updated 27-10-2022

ID17 Clarification on layout

ID18 ABRS+ Inquiry Statement

ID19A Soil Samples Interim Report

ID19B Email regarding Soil Samples

ID19C Location of sample no. G078827.01

ID19D Location of sample no. G078827.02

ID19E Location of sample no. G078827.03

ID19F Location of sample no. G078827.04

ID19G Location of sample no. G078827.05

ID19H Location of sample no. G078827.06

ID19I Soil Samples Full Analysis Report

ID20 Updated Unilateral Undertaking

ID21 Kronos' Note on fence and hedge layout and hedge trimming

ID22 Submission from Amanda Stalker



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## Costs Decisions

Inquiry opened on 18 October 2022

Site visit made on 2 November 2022

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 5 December 2022

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Costs application A in relation to Appeal Ref: APP/M1005/W/22/3299953  
Land north west of Hall Farm, Church Street, Alfreton DE55 7AH

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Amber Valley Borough Council for a full award of costs against KS SPV 61 Ltd and Kronos Solar Projects GmbH.
  - The inquiry was in connection with an appeal against the refusal of planning permission for a photovoltaic solar park and associated infrastructure
- 

Costs application B in relation to Appeal Ref: APP/M1005/W/22/3299953  
Land north west of Hall Farm, Church Street, Alfreton DE55 7AH

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Save Alfreton Countryside for a partial award of costs against KS SPV 61 Ltd and Kronos Solar Projects GmbH.
  - The inquiry was in connection with an appeal against the refusal of planning permission for a photovoltaic solar park and associated infrastructure.
- 

### Preliminary notes

1. The applications were made in writing and responded to in writing.

### Costs Application A

#### Decision

2. The application for an award of costs is refused.

#### The submissions for Amber Valley Borough Council

3. The application for a full award of costs is on the basis of unreasonable behaviour by the appellant in pursuing an appeal where the development is clearly not in accordance with the development plan and other material considerations relied upon are manifestly inadequate to justify the scale or location of the development sought. The appellant unreasonably prioritised grid connection and the maximisation of development within the legal limits of the Town and Country Planning Act 1990 (49.9 MW (DC)) at the expense of adequate advance consideration of the potential impacts of the development.
4. The appellant missed impacts on Wingfield Manor and seriously downplayed the impacts on Alfreton Park and the settings of Alfreton Hall and the Church of St. Martin. The LVIA was clearly defective and contrary to guidance in a number of respects, in particular on account of the lack of any visualisations of what the

development would actually look like. It appears that the appellant in fact procured at least three TGN 06/19-compliant sets of photomontage visualisations as early as September 2020 (although a greater number were apparently requested) but failed to provide these to their landscape consultant – and failed to refer to these in its evidence before the inquiry. Those images (that were updated by the appellant on the Friday before day 1 of the inquiry) show greater impacts than recognised in the LVIA. It was at best unjustifiably sloppy of the appellant to withhold them from its own landscape consultant).

**This was rightly recognised as a “shortcoming” by Mr Bohne** for the appellant in cross-examination. It meant that evidence showing the true extent of the impacts was left out of consideration at the application stage and only appeared late in the **appellant’s case at the appeal stage**.

5. Despite the obvious unsuitability of the site in landscape and heritage terms, the appellant unreasonably did not revisit or reconsider the proposal, either in terms of its scale or location. It was suggested that the appeal site is the only location on which renewable energy benefits of the scheme may be delivered, but no evidence was provided to support that contention. No viability evidence was provided.
6. The layout plan is in a basic form, apparently following an approach (or **“philosophy”**) used by the appellant in other cases. So, for example, it was clarified that the panels will be 2 metres apart, regardless of gradient or aspect. The schematic form is consistent with a lack of proper care or thought as to how the development can be made most efficiently to work in its landscape context.
7. With particular regard to noise, the appellant unreasonably failed properly to explain or assess what it actually proposed (central inverters – as opposed to string inverters) in its submission to the Council of 28 April 2021. Whether or not that was advertent, it was misleading.
8. For these reasons, the Council submits that this is an appeal that should simply not have been pursued. It was unreasonable in planning terms for it to do so and it has put the Council to substantial expense in having to respond to the appeal and to organise the planning inquiry to ensure that it is heard. The aim **of the costs regime is that parties provide “all the required evidence”, that they “behave in a reasonable way and follow good practice” and “the presentation of full and detailed evidence to support their case”**. The appellant simply failed in these regards.

The response by KS SPV 61 Ltd and Kronos Solar Projects GmbH

9. The 8 aspects of the evidence set out above **and the Council’s assertions about them do not come remotely close to being ‘unreasonable behaviour’ and are simply a re-run of the Council’s case**. It is frankly absurd to suggest that in the case of this renewable energy scheme, where the significant public benefits of which are supported UK wide as well as on a local basis and which were accepted by the Council, that these considerations **are somehow ‘manifestly inadequate’ as sufficient consideration to outweigh the harm** identified by the Council.
10. The grid connection is fundamental to the prospects of and indeed location of all solar PV schemes. The appellant **followed consultants’ advice but as with any large development schemes there are always checks and balances and**

constraints. The Pegasus photomontages were carried out and provided to the Council. The landscape consultant did not need them to carry out his professional assessment and they do not show greater impacts than recognised in the LVIA. It is not clear why this is unreasonable conduct and how it led to unnecessary expense. The assertion that the site is obviously unsuitable in landscape and heritage terms is contested and it is not clear why this could be unreasonable conduct and how it led to unnecessary expense. The appellant is **not required to show that the appeal site is “the only location on which renewable energy benefits of the scheme may be delivered”** as suggested by the Council, nor is it required to demonstrate viability. The Council complains about the layout plan but it does not explain why it is not good evidence of the approach required in these circumstances. It is clearly important for it to be **correct and to show where the ‘hard lines’ are as well as to assess on a worst case scenario**. There is nothing unreasonable at all about such an approach. Finally, the noise evidence provided by the appellant was to deal with the Rule 6 party issues. The Council asked Ms Miller about potential impacts on users of the footpath. Ms Miller reminded the Council that it can impose a condition (like the one it suggested should be imposed at the application stage) which allows for further noise mitigation measures to be provided if necessary to the **transformer/inverter boxes. It is almost as if the Council ‘conveniently’ forgets** its powers and the assessment that its own officer gave to the question of noise. There is no unreasonable behaviour in any event.

#### Reasons

11. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG says that appellants are at risk of an award of costs against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
12. The availability of a suitable grid connection for a solar project is clearly a major, indeed a well known consideration before further detail design work is carried out and the evidence by Mr Bohne bears this out. The proximity of a major substation nearby was a factor in siting the Meadow Lane scheme and that at Delves farm (now withdrawn). No unreasonable behaviour can be attributed here.
13. The heritage impacts are a matter of judgement and I have found in favour of **the Council’s arguments in some respects** and agree with the appellant’s point of view on others. The LVIA was comprehensive and whilst more detailed photomontages were later provided, they did not add a great deal that would not have been obvious from the other plans provided and at the site visit. The Derbyshire County Council **landscape architect advised that the LVIA ‘has been prepared in accordance with the appropriate guidelines and does adequately reflect the landscape context within which the development would take place and should be considered’**. That there was disagreement about the sensitivity of the landscape and the significance of effect was not unexpected and was fully explored at the Inquiry. The Council were in no doubt about the true

extent of the impacts when they decided to refuse planning permission. No unreasonable behaviour can be attributed here.

14. That the appellant considered the benefits of the proposal to outweigh the disadvantages is not unreasonable in itself and that view was sincerely held. It has not been shown how that position justifies an award of costs when an element of judgement is necessary.
15. The appellant is under no obligation to demonstrate that the chosen location where the benefits may be delivered is the best one, nor to show that one site may be more viable than another. It is not unreasonable, in fact it is in principle desirable, to seek to maximise output in terms of MW by retaining the ability to select a different solar panel manufacturer, inverter manufacturer or adjusting the layout up to the date of installation. The important point was that the worst case solution was put before the Inquiry in terms of panel density. I do not consider the lack of precise detail in the layout of panels, whilst perplexing, to represent unreasonable behaviour. Whilst it was difficult to assess the exact relationship between fencing and hedges, for instance, due to the diagrammatic approach adopted, the basic arrangement in each field was clear to see. A more detailed and thoughtful layout was produced during the **Inquiry at the Inspector's request**. This was helpful in clarifying the appellant's intentions but did not make the lack of further detail in the original layout unreasonable in terms of considering a costs award. The Council could have requested this additional information at the application stage if it was in any doubt.
16. As noted above in respect of panels, the final choice of inverter is left to commercial considerations at the appropriate time. Having received numerous detailed objections on noise grounds, the Council's **Environment Unit** had no complaint about noise impact and suggested suitable conditions. The Council does not claim costs on these grounds. The more general point that it is symptomatic of a sloppy approach to all the items in contention is not borne out. It is the purpose of the planning Inquiry to draw out points of difference.

## Conclusion

17. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated. For the above reasons, the application fails.

## Costs application B

### Decision

18. The application for a partial award of costs is allowed in the terms set out below.

### The submissions for Save Alfreton Countryside

19. Approximately ten minutes before the Appellant called its noise witness, Jo Miller, to give evidence on Friday 21<sup>st</sup> October 2022, it served upon the Rule 6 Party (SAC) evidence which the latter had called for as early as its Statement of Case in July 2022. Specifically, the appellant provided an addendum noise note from Ms Miller which, for the very first time, provided data on the

- frequency of the likely noise output from the inverter/transformers to be used on the appeal site and an analysis of their possible effects on receptors at Alfreton Park Community Special School. This was highly technical information requiring a degree of expertise to understand, analyse and interpret. KS must have known that SAC did not itself have that expertise and, moreover, that it would be unlikely to have the resources to engage a noise or acoustic expert to sit behind counsel and provide input on the hoof at the Inquiry. To that extent, SAC was put to an instant disadvantage in cross-examination. The appellant therefore put SAC in the invidious position of having to deal in cross-examination and on the spur of the moment with technical information presented as late as it possibly could have been.
20. SAC did seek the assistance of an acoustic expert, Mr Graham Parry, to help understand and interpret its contents as well as to provide guidance on any **shortcomings. This he did, which included criticism of the failure of Ms Miller's** evidence to provide any frequency data or analysis of perceptible levels of noise depending upon the frequency emitted. In fact, SAC were alive to that **shortcoming in any event and the point was made in Ms O'Donnell's proof of** evidence that the original noise assessment did not address frequency **variables. The same remained true when Ms Miller's evidence was received.**
  21. It is striking that, given noise was expressly canvassed as a key concern in **SAC's Statement of Case, the appellant did not engage Ms Miller until** extremely late on in the process, on her evidence in or around mid-August 2022, and the noise assessment was ultimately produced on 26 September 2022, only one week before proofs of evidence were due to be exchanged.
  22. Indeed (assuming the appellant read the Planning Officer's Report as Ms Miller did), a specific point was made in the objections to the original application concerning pure tone noise and that particular frequencies have adverse effects **on the School's children. The appellant knew, or ought to have known, that this data was central to addressing SAC's concerns as to noise. It is unfathomable,** against that background, that the appellant failed to produce any frequency data or analysis at all until the day arrived for it to call its noise witness. That was, on any view, an ambush.
  23. It was only by chance that Ms Miller had provided Mr Parry with details of her proposed addendum note earlier in the week (as a professional courtesy) and that he had sent a copy in draft to SAC on the morning of the opening of the Inquiry. He was under no obligation to do so. It is accepted therefore that SAC knew something was coming. That said, it was a rough draft and the frequency data provided therein was different from that ultimately provided in the final addendum. Further, Appendix C was entirely new.
  24. As was made clear in cross-examination, no criticism is made of Ms Miller for this. She could only provide the data at the point it was provided to her and she made the point that it takes time to obtain this information from manufacturers. That may be right, but the lateness of the disclosure can only be explained by a failure by KS to ask for this information in a timely fashion in the first place.
  25. Had it done so at the point the issue was first raised, either upon the original **objections or following receipt of SAC's statement of case, or even by the time it received SAC's proofs of evidence, it is inconceivable that such information** would have been disclosed so late. Its failure to produce this evidence until the

moment came for noise to be addressed in evidence at the Inquiry was, plainly, unreasonable behaviour. That behaviour has resulted in SAC going to the additional and unnecessary expense of re-engaging Mr Parry and incurring his further fees to review the addendum noise note and, specifically, the frequency data belatedly provided on 21 October 2022 (itself amended). It would not have been necessary to seek his further assistance had this information been provided at the appropriate time viz. upon exchange of proofs of evidence. For those reasons, SAC seeks its additional costs of consulting with Mr Parry in the sum of £342 inclusive of VAT.

26. While SAC does not comment on the substantive merits of the **Council's claim** for a full award of costs, if the Inspector makes such a finding, it must follow that SAC has also been put to substantial and needless expenditure in having to respond to the appeal. In such circumstances, SAC also requests a full award of costs for the reasons advanced by the Council.

The response by KS SPV 61 Ltd and Kronos Solar Projects GmbH

27. The application is on the basis that SAC states it needed to consult with its own noise expert. This is despite the fact that Ms Miller, the appellant's noise expert, had quite rightly consulted with and provided information to Mr Parry the SAC noise expert and who never appeared or provided any further evidence to the inquiry. Ms Miller's understanding and that of the appellant was that there was no issue with her evidence, at least from Mr Parry the actual noise expert. Mr Parry of course, beyond the initial critique attached to the SAC Statement of Case which suggested a fuller noise assessment should be provided at this stage, did not provide any evidence and in particular did not provide any evidence which contradicted or challenged Ms Miller's evidence.
28. Ms Miller was in communication with Mr Parry and the SAC was not. To that end, despite the fact that Ms Miller had provided a draft of the Addendum note to Mr Parry (which contained the same information albeit in a rough draft) Mr Parry had not apparently discussed this with SAC or its representatives. That is not the fault of the appellant nor is there any good reason for it to have assumed that any party who seeks to rely upon expert evidence is only going to do so in part and/or that the appellant should not expect if it provides a response to that expert evidence, that the expert will not address that response.
29. Ms Miller had confirmed with Mr Parry not only that her assessment was appropriate and agreed but also, with regard to the frequency data in particular, Mr Parry had accepted there was little data available. What she was able to find to base her assessment on was subsequently not understood to have been questioned or challenged, following her provision of the rough draft to Mr Parry. Mr Parry did not at any point suggest that there was any missing information from the noise assessment. It was also in fact Ms Miller who raised the issue that frequency data had not been addressed and she was trying to obtain such data.
30. It was therefore a surprise to Ms Miller (and the appellant) that her evidence was challenged in cross examination in the way that it was. This appears from the questions however not to have been based upon Mr Parry's advice as a noise expert but on assumptions made by the members of the R6 party based upon research and experience of children with the sorts of issues reflected by

- the pupils at Alfreton School. The suggestions put forward in cross examination were counter in fact to human physical biology (as explained by Ms Miller).
31. The appellant did not object to this line of questioning despite the fact that the SAC did not call any expert noise evidence or indeed any person with specific expertise in respect of the issues raised by them. The inquiry did hear from the teachers and family members. The appellant was clearly aware of the fears and concerns of the members of the SAC and indeed other interested or third parties and it is important that those concerns were expressed however these concerns were not based upon expert evidence. Ms Miller provided unchallenged evidence that the predictions showed that the noise emitted by the scheme would be below the level of audibility and below the existing background noise.
  32. This is not to detract from the understanding that when those with a sensitive auditory condition such as autistic children or adults actually hear a noise they may react to it differently to others who are less sensitive but the point is that they must hear it first. The submissions of SAC are unfortunately not based upon that fundamental understanding. It is of course acknowledged that there is much more to understand about the human condition and those who are sensitive to noise let alone those who have autism, but in the absence of any actual expert evidence which contradicted Ms Miller's it is not clear how the SAC can reasonably complain about the evidence that the appellant put forward. It would have been wrong if Ms Miller had not consulted Mr Parry and indeed sent her draft assessment that led to the Addendum.
  33. That hardly paints the picture that the appellant has acted unreasonably. To the contrary the appellant recognised the fear and concerns expressed and sought to address those fears and concerns by providing clear and comprehensive expert noise evidence. That the SAC was expected to deal with that even if it had decided not to properly engage its original expert further is clearly a reasonable approach for the appellant to have taken. It cannot have simply been the SAC's position that evidence put forward (especially expert evidence) would go unchallenged or unaddressed. The SAC cannot complain that the appellant was supposed to assume that the SAC had decided not to engage its expert further or be in communication with that expert.
  34. This of course provides a clear context to the **SAC's** overall stance which was in effect to object first and to try to find a way to support that position later whatever the evidence showed.

#### Reasons

35. PPG advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG says appellants are at risk of a procedural award of costs against them if, for example, they delay in providing information or other failure to adhere to deadlines; only supply relevant information at appeal when it was requested but not provided at application stage; or they introduce fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
36. **The appellant's** noise witness Ms Miller provided a comprehensive proof of **evidence addressing the SAC's main points of concern including** significant

mitigation measures which would have been necessary to discharge a noise condition. The proof also specifically addressed noise at Alfreton Park Community Special School with reference to Building Bulletin 93- Acoustic Design of Schools: Performance Standards (BB93) which includes guidance and acoustic criteria for children with special hearing or communication needs.

37. The note submitted to the Inquiry on Friday 21 October<sup>1</sup> addresses the issue of spectral noise from inverters/transformers which the appellant indicated would be suitable for the appeal development and the impact of noise from these sources on the school and Ufton Fields farm. It also summarises action taken to **address Graham Parry's assessment for SAC** of 29 November 2021 and summarises discussions with Mr Parry on tonal matters, one of the main points of contention. Appendix B suggests that all the predicted 1/3 octave band levels are very low, well below the background level and barely audible. All this information was intended to be helpful, but important parts were new. Given the clearly stated position of SAC in their statement of case and the written evidence of the headteacher and Mr Glasby, SAC would have wanted to obtain further specialist advice in response to this note and the appellant would have known that they would have been placed at a disadvantage receiving this additional information at such a late stage.
38. It is suggested that Mr Parry had sight of the draft note a day earlier but did not contact SAC, but the timings are unclear. The difficulties assessing the impact of noise and specifically tonal noise on children with special needs were well aired by witnesses well in advance of the Inquiry. Notwithstanding the uncertainties surrounding the actual level of harm caused, the appellant could not have been unaware that this was a central issue for the SAC which Ms Miller was there to address. Providing the addendum so late placed the SAC at a disadvantage. It cannot have come as a surprise that Ms Miller was directly addressed on this point in cross-examination. Whilst prepared with every good intention, it amounted to fresh and substantial evidence at a late stage necessitating extra expense, which is unreasonable behaviour.

#### Conclusion and costs order

39. I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG has been demonstrated.
40. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that KS SPV 61 Ltd (Kronos Solar Projects GmbH) should pay to Save Alfreton Countryside the costs of the appeal proceedings described in the heading of this decision related to dealing with the Additional Noise Data addendum (ID11) with their consultant Mr Parry; in the amount of £342 including VAT.
41. The applicant is invited to submit to KS SPV 61 Ltd (Kronos Solar Projects GmbH) to whom a copy of this decision has been sent, details of those costs.

*Paul Jackson*

INSPECTOR

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<sup>1</sup> Inquiry Document 11