

**Byers Gill Solar
EN010139**

8.30 Applicant's Response to Rule 17 Request

Planning Act 2008

APFP Regulation 5(2)(q)

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1. Introduction

1.1. Purpose of this document

- 1.1.1. This document has been produced by RWE (the Applicant) in response to the request made by the Examining Authority (ExA) under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010, in relation to examination of Byers Gill Solar (the Proposed Development). This request (referred to hereafter as the 'Rule 17 Request') was made on 10 December 2024 and requires the Applicant to submit its response by 20 December 2024.
- 1.1.2. This document sets out the Applicant's response to the Rule 17 Request and where applicable, signposts to other submitted documents which respond to specific aspects of the request.

2. Overview of Response to Rule 17 Request

2.1. Summary of Applicant's response

- 2.1.1. The Applicant understands that the Rule 17 Request has arisen due to concerns raised by Darlington Borough Council (DBC) and Bishopton Villages Action Group (BVAG) on landscape and visual matters, particularly in relation to the assessment of visual effects and the assessment of impacts to settlement character.
- 2.1.2. The Applicant maintains a position that:
- the viewpoints presented in its landscape and visual assessment (LVIA) [APP-030] at the point of DCO Application are representative and enable the worst case effects on visual receptors to be identified. That assessment of likely effects is adequate and in line with policy and guidance requirements.
 - there is no explicit requirement in policy or guidance to carry out a village setting assessment, however the Applicant voluntarily included such an assessment in its ES chapter [APP-030] following engagement with DBC after publication of the Preliminary Environmental Information Report (PEIR).
 - the residual concern of DBC in relation to the settings assessment is a matter of methodology and does not impact upon the conclusion of likely significant effects identified, including in relation to cumulative effects.
- 2.1.3. The Applicant has set out this position in a number of submissions made at earlier deadlines, including the response to the LIR [REP2-008] and the response to BVAG and DBC Written Representations [REP3-005], and at Issue Specific Hearing 4 (ISH4) and in response to post-hearing submissions [REP6-019, REP6-020, REP6-021].
- 2.1.4. The Applicant recognises that the ExA seeks further clarification on this matter, and therefore provides a response to the Rule 17 Request which seeks to address the concerns raised and provide necessary clarification. This has been carried out through:
- an addendum (Document Reference 8.31) to the viewpoint analysis provided in the ES [APP-135] which provides an analysis of the additional viewpoints suggested by DBC in their post-ISH4 submission [REP5-036];
 - a new ES appendix (Document Reference 6.4.7.8) which:
 - separates out the settlement setting assessment such that effects on character of the setting of the village and effects on the character of the village are presented as two separate judgements, as expressly request by the Rule 17 Request;
 - provides a description and summary of effects during early operation on visual receptors within the visual setting of each settlement (as recorded in the existing ES Chapter 7 [APP-030]);
 - an update to the ES Chapter 7 (Document Reference 6.2.7, Revision 2) which reflects the above and additionally brings in changes relating to comments made by DBC and BVAG, and updates any minor errata as previously identified in the ES Errata and Management Plans Proposed Updates document [REP5-030];

- an updated ES Chapter 13 Cumulative Effects (Document Reference 6.2.13, Revision 2) with amendments to clarify the relationship between the ES topic chapters, including landscape, and the cumulative assessment.
- a response to matters raised by DBC and BVAG at Deadline 6, within this document; and
- an analysis of DBC policy SH1 and its relationship to the overall planning balance as reflected in the Planning Statement [APP-163].

2.1.5. The additional analysis of viewpoints is supplementary to the existing ES, however it provides no new information compared to that which was considered in the LVIA as submitted at time of DCO application. The Applicant concludes that its viewpoints as selected remain representative and enable the worst case effects on visual receptors to be identified; the viewpoints suggested by DBC and analysed under this request do not change that position.

2.1.6. The further work undertaken in relation to settings assessment, as requested by DBC, results in the identification of markedly reduced effects on the character of the villages, and slightly greater or the same effects on their settings compared to that reported in the original ES Chapter 7 [APP-030]. No new visual effects have been identified as a result of this analysis; all effects on visual receptors within the visual settings of Brafferton, Great Stainton and Bishopton were reported in the original ES Chapter 7 [APP-030].

2.1.7. Having undertaken this exercise, the Applicant identifies no new or different significant effects compared to its original DCO Application, and maintains a position that the points raised by DBC and BVAG do not alter the strong case for consent of the Proposed Development as directed by national policy.

2.2. Documents provided in response to request

2.2.1. The table below provides an overview of how the Applicant has responded to the different components of the Rule 17 Request and directs the ExA to the appropriate section of this document, or to other documents, which provide the information requested.

Table 2-1 Overview of Applicant’s response to Rule 17 Request

Rule 17 Request Component	RWE Response
<p><i>the ExA requests that the Applicant:</i></p> <ul style="list-style-type: none"> • <i>using the worst-case views identified in the table at ‘2.0 Analysis of ES Viewpoints’ provided by DBC [REP5-036], identifies impacts, mitigation and likely effects of the Proposed Development on Landscape and Visual receptors and provides an updated version of ES Chapter 7 Landscape & Visual [APP-030], in a comparable format clearly identifying any differences in the assessment of magnitude of change;</i> 	<p>The Applicant has carried out the further assessment as requested, and submits the following updated documents:</p> <ul style="list-style-type: none"> • ES Appendix 7.4 Viewpoint Analysis Addendum (Document Reference 8.31) • ES Chapter 7 Landscape and Visual (Document Reference 6.2.7, Revision 2), tracked and clean versions <p>These assessments do not materially affect the conclusions reached in the first revision of these documents as submitted as part of the DCO</p>

Rule 17 Request Component	RWE Response
<ul style="list-style-type: none"> assesses landscape character setting of villages/settlements separately in accordance with the examples of other Landscape and Visual Impact Assessments provided by DBC [REP5-036] and provides an updated version of ES Chapter 7 Landscape & Visual [APP-030], in a comparable format clearly identifying any differences in the assessment of magnitude of change 	<p>application, with no change to the likely significant effects as originally reported.</p> <p>The Applicant has carried out the further assessment as requested, provided in a new document:</p> <ul style="list-style-type: none"> ES Appendix 8.4 Effects on Settings of Settlements (Document Reference 6.4.7.8). <p>This additional assessment is also reflected in the updated:</p> <ul style="list-style-type: none"> ES Chapter 7 Landscape and Visual (Document Reference 6.2.7, Revision 2), tracked and clean versions <p>The settings assessment does not materially affect the conclusions reached in the first revision of these documents as submitted as part of the DCO application, with no change to the likely significant effects as originally reported.</p>
<ul style="list-style-type: none"> gives full consideration to DBC’s Post-hearing submission of oral case of Stephen Laws - Glenkemp Landscape Architects [REP6-033] as well as BVAG’s Post-hearing submission of oral case [REP6-036], particularly the points raised by Ms. Carly Tinkler CMLI in relation to Landscape and Visual effects under “Cumulative Effects”, and provides an updated version of ES Chapter 13 Cumulative Effects [APP-036] in a comparable format clearly identifying any differences in the assessment of magnitude of change 	<p>The Applicant provides a full response to REP6-033 and REP6-036 in Section 3 and Section 4 of this document respectively. This summarises the points raised by these Interested Parties within those submissions and provides a response to each point raised.</p> <p>The Applicant further considers that in respect of points raised through REP6-033 and previous submissions made by Glenkemp Architects on behalf of Darlington Borough Council (DBC), specific consideration of DBC policy SH1 in relation to settlement character assessment is necessary. This is provided in Section 5 of this document.</p>
<p>If any changes are made to the overall assessment of the Proposed Development under ES Chapter 7 - Landscape and Visual, the Applicant is then requested to also update ES Statement Chapter 13 Cumulative Effects [APP-036] as to take account of any changes resulting from the analysis described above. This is to be presented in a comparable form to Chapter 13 clearly identifying any differences in the assessment.</p>	<p>The updates to ES Chapter 7 Landscape and Visual (Document Reference 6.2.7, Revision 2) do not change the conclusions of ES Chapter 13 Cumulative Effects [APP-036], however the Applicant has confirmed this in an updated version of the chapter (Document Reference 6.2.13, Revision 2) alongside some minor amendments to aid understanding of the relationship between the cumulative assessment and other ES chapters.</p>

3. Response to Glenkemp Architects on behalf of DBC [REP6-033]

3.1. Introduction

3.1.1. This section provides the Applicant’s consideration of the submissions made at Deadline 6 by Glenkemp Architects on behalf of DBC [REP6-033].

Table 3-1 Applicant’s response to DBC Post-hearing submission of oral case [REP6-033]

Extract from REP6-033	RWE response
<p><i>DBC confirmed there were a number of landscape and visual receptors listed in item DBC 059 in the SoCG [REP4-015] on which there was still disagreement with regard to the significance of landscape and visual effects. DBC is of the opinion that agreement is unlikely to be reached on these matters due to a number of outstanding differences relating to issues discussed at earlier Hearings (such as worst-case views and village setting) but also differences of opinion on the impact of potential cumulative effects.</i></p>	<p>The Applicant acknowledges the differences in opinion between itself and DBC, which is reflected in the concluded matters relating to landscape in the SoCG with DBC submitted at Deadline 6 [REP6-004].</p>
<p><i>“It is acknowledged that the Applicant has included cumulative solar farms in the study area baseline which have consent or under construction.”</i></p>	<p>The Applicant’s notes DBC’s acceptance of this approach.</p>
<p><i>By way of example, DBC referred to photograph V2 on page 9 of the Supplementary Information to the DBC LIR on Landscape and Visual Amenity [REP5-036]. The photograph clearly shows the visibility of Whinfield Solar Farm (under construction) from the public footpath between Brafferton and High House. Photograph V3 on page 10 of the Supplementary Information illustrates what DBC believes to be the worst-case winter views of the Application Site, where visible on land to the south-west of Lovesome Hill Farm (south of High House Lane). The photograph confirmed that this part of the solar farm would be visible in residual winter views from this footpath. DBC is unclear whether these worst-case views were taken into account by the Applicant in the ES visual assessment. Table 7-7 in ES Chapter 7 [APP-030] refers to Viewpoint 3 to assess the change in view from the section of footpath</i></p>	<p>Description and assessments of the scale of effect at DBC viewpoints V2 and V3 are provided in the revised ES Chapter 7 Landscape and Visual (Document Reference 6.2.7, Revision 2) and addendum to Appendix 7.4 Viewpoint Analysis (Document Reference 6.4.7.4, Revision 2) submitted in response to the Rule 17 request.</p> <p>As set out in the Applicant’s responses to ExQ2 LSV 2.6 [REP5-031], the visualisations, descriptions and assessments of scale of effect at viewpoints inform and illustrate the LVIA – they are not the assessment outcomes. The scale of effect at a viewpoint reflects the degree to which views would change <u>at that location</u> as a result of the Proposed Development – it does not reflect the scale of effect at other places. Similarly the description relates to that location, rather than other nearby places.</p> <p>As DBC note, the relevant assessment is provided at Table 7-8, however this is not an assessment of effects on ‘other parts’ of the footpaths as DBC suggest; it is the</p>

Extract from REP6-033	RWE response
<p>beyond the Application Site. The scale of effect at Viewpoint 3 is judged to be small/adverse. The viewpoint is referenced in Table 7-8 to describe the effects on other parts of the footpaths between Brafferton and High Grange/High House. However, there is no descriptive text for Viewpoint 3 which refers to the visibility of Whinfield Solar Farm, the change in view of Brafferton village or the long term visibility of solar panels on part of the Application Site, south of High House Lane.”</p>	<p>assessment of effects on users of the footpaths, including at viewpoint 3. Table 7-8 identifies effects on both of the footpaths between Brafferton, High House Farm and High Grange as receiving Large scale effects – clearly describing and assessing effects as being greater than the Small scale effects experienced at Viewpoint 3 – i.e. regardless of what viewpoint is illustrated, the assessment takes account of the maximum scale of change for users of each route.</p> <p>Visibility of Whinfield Solar Farm is set out in the viewpoint description for viewpoint 3, at the end of the baseline description (‘existing views’ column) in Appendix 7-4 [APP-135 and clearly illustrated by visualisations for view 3a looking north from viewpoint 3 [APP-071]. Views to Brafferton are not described as the village is not a notable part of the view from viewpoint 3 – as illustrated by the photograph for view 3c looking west from viewpoint 3 [APP-071]. The solar panels south of High House lane are included in the description of changes to the view from viewpoint 3 in Appendix 7-4 [APP-135] as being located “in fields to the southwest seen beyond and amongst intervening vegetation.”</p>
<p>“Table 7-8 in ES Chapter 7 describes the overall visual effect on the footpaths between Brafferton and High Grange/High House as large. This is due to the effect on views where the footpath will pass through the Application Site on a diverted route. There is no reference to the visibility to Whinfield Solar Farm in any of the descriptions in the ES and it is unclear if such effects have been taken into account. Even if this was the case, it is doubtful it would alter the assessment in Table 7-8 for these footpaths, given the scale of effect is judged to be large. However, this is not the key issue. The fact remains that potential cumulative effects have not been identified in the ES for this receptor. The descriptions in the ES would suggest that visual effects on this route would diminish as walkers travel further from Brafferton, when in fact, this isn’t the case if Whinfield Solar Farm is visible and becomes more visible towards High Grange/High House.”</p>	<p>As noted in the Applicant’s post-Hearing submissions for ISH7 Cumulative Effects Technical Note [REP6-021], Whinfield Solar Farm forms part of the future baseline. It is not the purpose of the ES to describe the effects of features included in the baseline, but to consider the effects of the Proposed Development. Considering the potential effects of the Proposed Development in the context of those features of the baseline (and future baseline) environment (in this case consented projects) ensures that they are taken into account as part of the LVIA. This is consistent with the guidance which is summarised at 1.3 of that Technical Note [REP6-021].</p> <p>Both of the footpaths between Brafferton and High Grange/High House pass close to Whinfield solar farm as they continue north and northeast away from Brafferton and are likely to have some visibility of Whinfield solar farm. Viewpoint 3 provides an example of a location where there are also notable views of the Proposed Development – effectively representing a ‘worst case’ for combined views of both solar farms. The more nearby visible presence of Whinfield solar farm and reduced visibility of the Proposed Development as the routes continue north and northeast from viewpoint 3 would mean that the Proposed Development would give rise to a reduced change to the views (i.e. less than Small scale), and does not warrant detailed description in considering the likely significant effects of the Proposed Development.</p>

Extract from REP6-033	RWE response
<p><i>“DBC is of the opinion that the potential impact of cumulative effects on Brafferton, due to Whinfield Solar Farm, is not fully assessed in the ES due to the limited extent of the setting shown in ES Figure 7.6.1 and also the omission of any assessment of visual effects generated by this cumulative development on receptors located within the setting.”</i></p>	<p>The revised assessment requested by the ExA as part of the Rule 17 request takes account of the wider setting identified by DBC – see revised ES Chapter 7 Landscape and Visual (Document Reference 6.2.7, Revision 2).</p>
<p><i>“Differences remain between DBC and the Applicant on the assessment of potential effects on landscape character area 7 Bishopton Vale. These arise due to differences in the assessment of cumulative effects of solar farms located in the character area. Further details are provided in paragraph 9.5 in the DBC LIR on Landscape and Visual Amenity.”</i></p>	<p>The Applicant notes that DBC is taking account of the effects of other developments in identifying greater effects than the LVIA [APP-030] on LCA7 Bishopton Vale. The Applicant does not agree with this approach and considers it contrary to the advice provided in GLVIA3 and PINS Advice Note 17 (and subsequent revised guidance) as set out in Cumulative Effects Technical Note [REP6-021].</p>
<p><i>“Differences also remain between DBC and the Applicant on the significance of cumulative visual effects on the main highway connecting the villages in the study area. DBC provides further explanation in paragraph 9.7 in the DBC LIR on Landscape and Visual Amenity [REP1-021].”</i></p>	<p>The Applicant’s assessment of effects on this group of local roads is provided in Annex C to the Cumulative Effects Technical Note [REP6-021].</p>

4. Response to Deadline 6 submission by Bishopton Villages Action Group (BVAG) [REP6-036]

4.1. Introduction

- 4.1.1. This section provides the Applicant’s consideration of the submissions made at Deadline 6 by Bishopton Villages Action Group (BVAG) [REP6-036]. Recognising that the Rule 17 Request asks for particular consideration of the points raised by Ms. Carly Tinkler CMLI in relation to landscape and visual effects, this section first provides a response to relevant landscape and visual points within the BVAG response. It then provides a separate response to other, broader matters raised.
- 4.1.2. Given the length of the response by BVAG [REP6-036], the Applicant has extracted relevant sections to respond to, focusing on the landscape and visual or cumulative matters in particular. Where a broader point is not responded to, it is considered that the Applicant has previously responded to this matter, or that it is not a relevant or material consideration requiring response.

Table 4-1 Landscape and Visual - Applicant’s response to BVAG submission [REP6-036]

Reference	Topic summary	RWE response
Carly Tinkler Glint and glare, page 16	<i>“It is not clear why the Applicant’s Glint and Glare Study and LVIA did not assess the effects of glint and glare on recreational receptors. Nor, why glint and glare effects were not considered in the RVAA. The question is, should such an assessment now be carried out, to assist with judgements about visual effects?”</i>	As noted in page 77 of the Applicants previous response to BVAG [REP3-005], glint and glare effects from solar panels are considered implicitly (as part of the experience of views toward the Proposed Development) in the LVIA. No further assessment is required.
Mark Smith Cumulative effects Page 19	<i>“Cumulative effects on route between Newton Aycliffe and Stockton-on-Tees.”</i>	The Applicant’s assessment of effects on this group of local roads is provided in Annex C to the Cumulative Effects Technical Note [REP6-021].
Carly Tinkler Cumulative Effects, page 20, page 21	<i>“Regarding cumulative effects generally, BVAG agrees with the ExA’s comment made during the hearing relating to the fact that assessed on their own, some effects may not be categorised as significant; however, if such effects accumulate, then in combination they may well become significant.</i>	The approach taken to the consideration of effects with other developments in the LVIA and cumulative effects assessment is fully explained from first principles in the Applicant’s Cumulative Effects Technical Note [REP6-021]. The Applicant remains of the opinion that GLVIA3 clearly directs that other developments are included in the baseline for each assessment scenario (not within

Reference	Topic summary	RWE response
	<p><i>Regarding cumulative landscape and visual effects, clarification from the Applicant would be welcomed as to why the assessment of cumulative landscape and visual effects did not follow GLVIA3.”</i> <i>“Mrs Fisher admitted that the approach was a departure from GLVIA3”</i></p>	<p>the consideration of effects) and as such, the approach used does follow the guidance provided in GLVIA 3 (specifically paragraph 7.13), with the exception of the treatment of consented schemes where GLVIA 3 indicates that consented schemes should be included in the baseline for the cumulative assessment, with operational schemes and those under construction in the baseline for the LVIA, and PINS Advice Note 17 indicates that consented schemes may be included in the LVIA baseline where their effects are known. The Applicant has set out the relevant guidance on the treatment of consented schemes in LVIA and cumulative assessments in section 1.3 of the Applicant’s Cumulative Technical Note [REP6-021], and the Applicant has followed the approach expressly endorsed by the PINS advice note in force at the time the LVIA was prepared. Further detail is provided in section 1.3 of that Technical Note.</p>
<p>Carly Tinkler Cumulative Effects, page 20</p> <p>Carly Tinkler Cumulative Effects, page 20 (cont.)</p>	<p><i>“Why has the LVIA applied a different significance threshold to that used in other ES chapters?”</i></p>	<p>It was stated by Carly Tinkler during ISH7 that GLVIA3 advises that ‘Moderate effects may be considered significant’, however the guidance does not explicitly state this. Rather GLVIA 3 (para 3.34) advises that:</p> <p><i>“When drawing a distinction between levels of significance is required (beyond significant/not significant) a word scale for degrees of significance can be used ... as well as a clear explanation of which categories are considered to be significant and which are not.”</i></p> <p>The LVIA methodology set out within Appendix 7.1 to the ES (APP-132) indicates at paragraphs 39-40 that although a table is provided in the methodology to illustrate how sensitivity and magnitude are combined to reach a judgement regarding the level of effect <i>“The table ... is not used as a prescriptive tool and illustrates the typical outcomes, allowing for the exercise of professional judgement.”</i> Secondly it is indicated that <i>“where the effect has been classified as Major or Major/Moderate this is considered to be equivalent to likely significant effects referred to in the EIA Regulations. Where ‘Moderate’ effects are predicted, professional judgement will be applied to ensure that the potential for significant effects arising has been thoroughly considered.”</i> What this means in practice is that under this methodology, an effect will only be classified as Moderate if the assessor has thought carefully about it and does not judge the effect to be significant. i.e. the assessor’s judgement of whether the effect is significant influences the level of effect identified, rather than vice versa.</p> <p>Bearing this in mind, under this methodology the effective meaning of a ‘Moderate’ level of effect is ‘the greatest level of non-significant effect’, and Major/moderate is ‘the lowest level of significant effect’. If the same assessor were to use a different methodology in which the term ‘Moderate’ was used to describe the lowest level of</p>

Reference	Topic summary	RWE response
		<p>effects that were deemed to be significant, it wouldn't change which effects were identified as significant. All that would have changed is the word used to describe that level of effect.</p> <p>It is not uncommon for differences of professional opinion to arise in relation to effects that are identified in an LVIA as falling just below the threshold of significance. In a judgement-based assessment discipline it is inevitable that one professional may decide an effect falls just below and another that it falls just above. In such a discussion the word used to describe the level effect is not of relevance, what matters is why one assessor considers the effect to be significant and why the other does not. In the case of Byers Gill Solar, those differences of opinion do not derive from the assessor undertaking the LVIA identifying effects as not significant because the methodology dictated the judgement.</p>
<p>Carly Tinkler Cumulative Effects, page 21</p>	<p><i>“Para. 13.5.46 of ES Chapter 13 (APP-036) concludes that ‘cumulative effects upon landscape character and changes to views would not be significant in EIA terms’. What significance threshold is that based on?”</i></p>	<p>This point is addressed at 1.5.3 of the Applicant’s Cumulative Effects Technical Note [REP6-021]. This identified that the question of the significance threshold used in the assessment of cumulative landscape and visual effects is addressed at paragraph 13.5.33 of ES Chapter 13 Cumulative Effects (Document Reference 6.2.13, Revision 2) which references Appendix 7.1 of the ES – i.e. the LVIA methodology applies.</p>
<p>Carly Tinkler Cumulative Effects, page 21</p>	<p><i>“Given the very large scale and extent of the proposed development in combination with other similar developments, it is likely that significant adverse landscape and visual effects could be experienced beyond the 3km study boundary applied for this exercise.”</i></p>	<p>As identified by the LVIA at 7.13.8 (Document Reference 6.2.7, Revision 2) effects arising from the Proposed Development, taking account of existing and consented developments, would reduce to Negligible beyond 1km. This point is not disputed by DBC.</p> <p>Any adverse effects arising beyond this distance would therefore arise as a result of the other developments and are not effects which arise from or are contributed to by the Proposed Development. Given this, such effects do not require consideration in determining this application.</p>
<p>Carly Tinkler Cumulative Effects, page 21</p>	<p><i>“BVAG’s opinion is that because the proposed development would give rise to significant adverse landscape and visual effects, then the cumulative landscape and visual effects must also be significant adverse (and likely to be a higher level of overall effect).”</i></p>	<p>This point is addressed at 1.5.4-1.5.5 of the Applicant’s Cumulative Effects Technical Note [REP6-021].</p>

Table 4-2 Applicant's response to other points made in BVAG submission [REP6-036]

Reference	Topic summary	RWE response
Andy Anderson, EIA, page 1	Mr Anderson makes various points regarding the EIA and Environmental Statement, referring to it as an 'advocacy' document and suggesting that the Applicant has ignored local knowledge.	<p>These matters were raised by Mr Anderson at OFH3 specifically in relation to the heritage assessment. The Applicant responded to such matters as raised by Mr Anderson in page 8 of its Deadline 6 document [REP6-020].</p> <p>In response to the broader point now raised, the Applicant confirms that its EIA as a whole has been undertaken in accordance with the relevant guidance and legislation, and presents an assessment undertaken by competent experts of the effects of the Proposed Development on the environment. The list of competent experts was submitted as part of the application as Environmental Statement Appendix 1.1 Competent Expert Evidence [APP-104].</p> <p>The ES is <u>not</u> an 'advocacy' document. The ES presents objective evaluation of the project, produced in line with industry guidance from the Institute of Environmental Management and Assessment (IEMA) and PINS Advice Note 7. The preliminary environmental information was subject to public consultation, and feedback received from members of the public and statutory bodies was taken into consideration in undertaking the full EIA and developing the design of the Proposed Development. This is evidenced in the Consultation Report [APP-017], which demonstrates that through that consultation process the Applicant has taken on board local knowledge provided by consultee comments. The Applicant has therefore incorporated, rather than ignored, relevant local knowledge into the development of the DCO application.</p>
Andy Anderson, Overplanting page 2	Mr Anderson queries the rate of overplanting of 1.6, with reference to the East Yorkshire Solar Farm document Note on Scheme Efficiency (Document Reference: EN010143/APP/8.35).	The Applicant responded to such matters as raised by Mr Anderson in its Deadline 6 document [REP6-020], on pages 5-6.
Andy Anderson, Heritage Assets and Harm page 3	Mr Anderson raises various points relating to the term 'negligible' harm in the heritage assessment, and an apparent contradiction in ES Appendix 8.2.	The Applicant responded to such matters as raised by Mr Anderson in pages 6-7 of its Deadline 6 document [REP6-020]. In addition to clarifying the Applicant's use of negligible within the assessment, the Applicant's response confirms that the error in ES Appendix 8.3 (not 8.2 as stated by Mr Anderson) is recognised and will be updated in a revision to the ES Errata and Management Plans Proposed Updates [REP5-030] at Deadline 7. This minor discrepancy does not impact on the outcome of the assessment.

Reference	Topic summary	RWE response
<p>Andy Anderson, Heritage significance of Scheduled Monument Bishopton Motte and Bailey page 4-6</p>	<p>Mr Anderson suggests that the Applicant has underplayed the level of significance of the Scheduled Monument at Bishopton. Mr Anderson concludes the ES is an advocacy document.</p>	<p>The Applicant responded to such matters as raised by Mr Anderson in page 8 of its Deadline 6 document [REP6-020]. This confirms that the highest level of significance has been afforded to the scheduled monument as per its statutory protection under the Ancient Monuments and Archaeological Areas Act 1979. The response confirms that the description of the significance of the asset has not been challenged by Historic England, by either Archaeological Advisor (at Durham County Council or the Tees Archaeology Team) or by the Conservation Officers at Darlington Borough Council or at Stockton-on-Tees Borough Council.</p>
<p>Andy Anderson, archaeology and geophysical surveys, page 6-7</p>	<p>Mr Anderson raises concern that the Scheduled Monument was excluded from geophysical survey, given cable routes are defined within the DCO application.</p>	<p>The Applicant responded to such matters as raised by Mr Anderson in page 9-10 of its Deadline 6 document [REP6-020]. This confirms that the methodology for assessing the potential for archaeological remains, their significance and the mitigation proposals for any remains which could be affected by the proposed development have been produced in consultation with the Archaeological Advisors at Durham County Council and the Tees Archaeology Team. Both the Applicant and the Archaeological Advisors are satisfied this is in line with all relevant best practice.</p>
<p>Andy Anderson, homes and principle of development, page 7</p>	<p>Mr Anderson raises concern that it is not guaranteed that the Proposed Development would generate power for 70,000 homes and it could be used for other purposes, such as Cleve Hill Solar which is set to be used by Tesco and Shell.</p>	<p>The Applicant responded to such matters as raised by Mr Anderson in page 11 of its Deadline 6 document [REP6-020]. The Applicant clarifies that its statement says (emphasis added) <i>'The solar farm, located across Darlington and Stockton-on-Tees, would provide enough low-carbon energy to meet the equivalent annual needs of over 70,000 homes.</i> The Applicant does not claim that the energy generated by the Proposed Development would be guaranteed to be used in housing.</p>
<p>Andy Anderson, Alternatives, page 7</p>	<p>Mr Anderson considers that other options should be considered for the Proposed Development such as less damaging locations or off-shore wind and that 'real alternatives' have not been explored sufficiently.</p>	<p>The Applicant responded to such matters as raised by Mr Anderson in page 10 of its Deadline 6 document [REP6-020]. The Applicant is satisfied that its consideration of alternatives is compliant with relevant regulations and national policy.</p>
<p>Andy Anderson, Ecology, page 8</p>	<p>Mr Anderson considers that the ES has been insufficient in respect of ecological assessment. Mr Anderson raises concern that birds may be more affected than concluded by the Applicant and that infrared lighting would impact cold-blooded animal species. Mr Anderson raises concern that an ecological clerk of works would not be independent.</p>	<p>The Applicant responded to such matters as raised by Mr Anderson in page 10 of its Deadline 6 document [REP6-020]. The Applicant is satisfied that it has undertaken a sufficient ecological assessment and responds to the specific points on birds and lighting in that document. In respect of the ecological clerk of works, the appointed person would be appropriately qualified and subject to their own professional standards and ethics, requiring them to report ecological matters</p>

Reference	Topic summary	RWE response
		truthfully. The local planning authority would have authority to take enforcement action should the Proposed Development not be delivered in accordance with the DCO.
Andy Anderson, Design Approach Document, page 9	Mr Anderson identifies that Diagram A in the Design Approach Document does not include for CCTV and lighting.	The cross-section in question is of a panel area and buffer to the hedgerow, intended to demonstrate how planting would screen panels from view for pedestrians. CCTV poles would be located within the perimeter fence, and a typical CCTV pole is provided in ES Figure 2.16 [APP-054] . Infra-red lighting is to be installed only where key electrical infrastructure is located such as BESS.
Andy Anderson, public confidence in the planning process and RWE websites, page 9-10	Mr Anderson highlights concerns that the Proposed Development is misrepresented as having planning permission on the RWE website, which undermines trust in the planning system	The Applicant has previously responded to this point in REP3-005, page 7. The webpage referenced presents all projects being proposed by RWE, some of which do not have planning permission. It is a promotional page not relevant to the status of individual projects, and presents planned / potential commercial operation dates across the project portfolio. The project specific website (Home - JBM - Byers Gill DCO (byersgillsolarfarm.co.uk)) makes the status of the Proposed Development clear and is regularly updated as the application progresses through the examination process.
Andy Anderson, decommissioning, page 10	Mr Anderson raises concern that decommissioning hasn't been seriously considered in the application, and that extensions to the 40 year operation are likely to be sought, quoting the Applicant's website for partners which refers to an 'option to extend if necessary' in reference to leases.	Decommissioning of the Proposed Development forms part of the DCO application and the consent being sought through it. It has therefore been scoped into the EIA reported in the ES. The Option for Leases agreed with the landowners hosting the panel areas are limited to a maximum of 40 years; a new Option to Lease and Lease would have to be agreed to increase this timeframe, alongside a new planning consent.
Carly Tinkler sheep-grazing, page 14	Ms Tinkler requests examples of where sheep-grazing on operational solar sites in the UK is currently practiced.	The Applicant responded to this matter as raised by Ms Tinkler as ISH6, in page 15 of its Deadline 6 document [REP6-020], providing a dozen examples of operational solar farms with sheep or other animals being grazed.
Carly Tinkler effect on soils page 14-15	Ms Tinkler raises a number of concerns that the Applicant's agricultural land and soils assessment is not sufficient or accurate, and concerns that benefits relating to the return to agricultural use are overstated by the Applicant.	The Applicant responded to these matters as raised by Ms Tinkler as ISH6, in page 15-16 of its Deadline 6 document [REP6-020], providing additional evidence from the laboratory, NRM, that the Applicant used for soil analysis

Reference	Topic summary	RWE response
Carly Tinkler glint and glare, page 16-18	Ms Tinkler raises various concerns relating to glint and glare assessment in relation to landscape and equestrian users.	A response regarding the landscape aspects of Ms Tinkler's concerns is provided in Table 4-1. The Applicant refers Ms Tinkler to its previous response to Written Question ExQ2 LUS 2.4 [REP5-031] in relation to glint and glare assessment of equestrians and public rights of way.
Mr Sean Anderson, socioeconomics, page 18	Mr Anderson raises concern that RWE has not adequately considered socioeconomic impacts of the Proposed Development nor provided sufficient demonstrable benefits to the local community.	The Applicant has carried out a socioeconomic assessment as reported in ES Chapter 9 Land Use and Socioeconomics [APP-032]. The benefits of the Proposed Development, including on the local community, are set out in section 3.3 of the Planning Statement [APP-163], and include biodiversity net gain, enhancements to PRow and community benefits such as a Community Benefit Fund.
Effects on human health, well- being, and quality of life, page 23- 24	The BVAG response highlights that a number of Interested Parties raised concern about the potentially negative impact of the Proposed Development on their health, wellbeing and quality of life, and suggest that it is not sufficiently considered in the DCO application.	As set out in the Comments on Relevant Representations [REP1-004], section 2.14, a standalone chapter assessing effects of the Proposed Development on human health was scoped out of the ES, as it is anticipated that there would be limited impacts on human health during the construction and operation of the Proposed Development. Aspects of human health are considered in the ES within the context of other topics, namely: Landscape and Visual [APP-030] and Land Use and Socioeconomics [APP-032].
Andy Anderson, agricultural land use, page 24-25	Mr Anderson raises concern about use of best and most versatile (BMV) land within the Proposed Development, stating that 100% of the land for the Proposed Development is good quality agricultural land. Mr Anderson considers the ALC survey to be subjective and notes that Grade 2 land within the Order Limits is located near villages and could be removed to have additional benefit of reducing harm to neighbouring settlements.	The Applicant responded to such matters as raised by Mr Anderson in page 17-18 of its Deadline 6 document [REP6-020].

5. Appraisal of DBC Policy SH1

5.1. Context

Relevance of Policy SH1 to the Proposed Development

- 5.1.1. In paragraph 4.4 of its Local Impact Report [REP1-023], DBC identified its Local Plan policy SH1 Settlement Hierarchy to be of relevance to the Proposed Development. It is identified specifically with reference to the landscape and visual aspect of the LIR, as reflected in the DBC Landscape and Visual Amenity appendix [REP1-021]. Whilst a detailed appraisal of how policy SH1 interacts with the Proposed Development has not been provided by DBC, REP1-021 makes it clear that DBC consider that the policy *'seeks to protect and enhance the character of rural villages including their setting.'*
- 5.1.2. The Applicant has carried out an assessment of relevant local policies in its Policy Compliance Document (PCD) [APP-164]. This detailed assessment is then reflected in the overall consideration of the planning balance, as set out in the Planning Statement [APP-163]. The PCD was produced as part of the Applicant's voluntary participation in the Early Adopter's Programme (EAP) and an early scoping exercise was undertaken in drafting the document to identify which adopted and emerging local policies were of relevance to the Proposed Development.
- 5.1.3. Through the above exercise, the Applicant did not include Policy SH1 from the Darlington Local Plan in the PCD, as it was not considered to be of relevance to the Proposed Development. The policy is identified within the Local Plan as a 'strategic policy' and is primarily concerned with the spatial distribution of development in Darlington, identifying a hierarchy of settlements which determines the scale and form of development that would be acceptable in principle in each type of settlement. As set in the policy supporting text, it is focused on distribution of employment, housing, services and local infrastructure. The policy does not specifically consider the spatial distribution of nationally significant infrastructure in relation to settlements, and nor would the Applicant expect it to, given that this is not the typical remit of a Local Plan (see hierarchy points below). The Applicant therefore did not consider that Policy SH1 was of material relevance to the Proposed Development and did not include it in the PCD.
- 5.1.4. A draft of the PCD which included the local policies 'scoped in' as relevant to the Proposed Development, was shared with the host local authorities for comment in August 2023. No comment was received from DBC and subsequently no further changes were made to the policies included in the PCD. The Applicant was therefore not aware that DBC considered policy SH1 to be of relevance until the LIR was provided at Deadline 1 of Examination on 13 August 2024. The Applicant notes that policy SH1 appears to be primarily considered of relevance by DBC due to its reference to protecting the character of rural villages, rather than any matter of settlement hierarchy in relation to the Proposed Development. The Applicant highlights that DBC policy ENV3 Local Landscape Character, which also deals with the

character and distinctiveness of settlements, was scoped into the PCD and therefore formed part of the appraisal presented at time of DCO application.

Consideration of Policy SH1 in other solar schemes in Darlington

5.1.5. The Applicant has reviewed four consented solar energy schemes within DBC’s boundaries and in proximity to the Proposed Development (as depicted in REP6-027) in order to understand whether policy SH1 was applied in the application or determination of each case.

5.1.6. Table 5-1 provides a summary of this exercise:

Table 5-1 Assessment of Policy SH1 and solar schemes within DBC's boundaries

Scheme	Developer Planning Statement	DBC Officer Report
Gateley Moor (22/00727/FUL)	Policy SH1 not included in assessment	Policy SH1 not included in assessment
Whinfield (21/00958/FUL and DM/21/02816/FPA)	Policy SH1 not included in assessment	Policy SH1 not included in assessment
Burtree Lane Solar (22/00213/FUL)	Policy SH1 not included in assessment	Policy SH1 not included in assessment
Long Pasture (22/01329/FUL)	Policy SH1 not included in assessment	Policy SH1 not included in assessment

5.1.7. Table 5-1 confirms that policy SH1 was not included in the planning policy assessment undertaken by either the developer of each scheme or by DBC in their determination of these solar energy schemes. The Applicant considers that this finding strongly supports its position that policy SH1 is not relevant to solar energy development with the borough and it remains unclear as to why DBC consider it relevant to this particular scheme.

Policy Hierarchy

5.1.8. As above and as set out at Deadline 6 in response to DBC [REP6-019, page 7], the Applicant maintains a position that Policy SH1 is not of relevance to the Proposed Development and refutes that a separate assessment of effects on village settings are required by policy SH1. However, should it be determined by the ExA that policy SH1 is a relevant and important matter in considering the DCO application, the Applicant considers that the weight afforded to the policy must be limited, given the primacy of the National Policy Statements (NPSs) as directed by Section 104 of the Planning Act 2008 (the Act).

5.1.9. Under Section 104 of the Act, the SoS is directed to determine a DCO application with regard to the relevant NPS, the local impact report, matters prescribed in relation

to the Proposed Development, and any other matters regarded by the SoS as important and relevant. It is considered that other national and local planning policy may be regarded by the SoS as ‘important and relevant’ to the Proposed Development.

- 5.1.10. As set out in the Planning Statement [APP-163], the Overarching NPS for Energy (NPS EN-1) states at paragraph 4.2.6 that substantial weight should be given to the overarching need case for low carbon or ‘Critical National Priority (CNP)’ infrastructure, as a starting point for determination of energy infrastructure applications. It states at paragraph 4.1.7 that *“For projects which qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases.”*
- 5.1.11. Paragraphs 4.2.15 to 4.2.17 of NPS EN-1 expand on this further, identifying that:
- “Where residual non-HRA or non-MCZ impacts remain after the mitigation hierarchy has been applied, these residual impacts are unlikely to outweigh the urgent need for this type of infrastructure. Therefore, in all but the most exceptional circumstances, it is unlikely that consent will be refused on the basis of these residual impacts.”*
- 5.1.12. The exceptional circumstances to this presumption of consent are outlined to be those that present an unacceptable risk to, or interference with, human health and public safety; defence; irreplaceable habitats; the achievement of net zero; and flood and coastal erosion risk.
- 5.1.13. The SoS is directed explicitly in paragraph 4.2.16 and 4.2.17 to treat CNP infrastructure as if it has met any tests within the NPSs or other planning policy which require a clear outweigh of harm, exceptionality or very special circumstances. This includes those relating to Green Belt, Sites of Special Scientific Interest (SSSI), nationally designated landscapes and to heritage assets.
- 5.1.14. Thus, the exceptional circumstances present a particularly high threshold in relation to landscape and visual effects, in which only development within nationally designated landscapes could be a reason for refusal. The Proposed Development is not in a designated landscape.
- 5.1.15. The Applicant considers that any appraisal of the Proposed Development under local policy must be considered within the context of the national policy position and the primacy of the NPSs as outlined above.

5.2. Appraisal of Compliance with Policy SH1

- 5.2.1. Policy SH1 defines two settlements in Darlington within or adjacent to the Order Limits as ‘rural villages’, Bishopton and Brafferton. All other areas outside of defined Development Limits within the Local Plan are categorised as ‘countryside’. Thus, Great Stainton village is not a defined settlement under SH1 and is not considered further in the policy.

5.2.2. In relation to the defined Rural Villages, the policy states that

“The character of the Rural Villages, including their relationship to and setting within the surrounding countryside, will be protected and where possible enhanced. Development in these villages will make efficient and sustainable use of existing buildings and infill opportunities. On the edges of Rural Villages, housing development will meet clearly identified local needs, recognising that an element of open market housing may be required to deliver essential affordable units.”

5.2.3. The supporting text, regarding Rural Villages, states:

“The Rural Villages are generally of a very small scale and offer limited, and in some cases, no service provision. Sustainable development opportunities within the defined Development Limits of these villages will be supported, including infill development and the conversion of existing buildings. New housing development on the edge of Rural Villages (outside the defined Development Limits) will be required to meet local and other functional needs, i.e. through the delivery of ‘exception(s) sites’ (affordable housing schemes), allowing for an element of open market housing where this helps the viability and deliverability of an exception(s) site as a whole. Housing development that meets a functional need includes that which provides essential accommodation for those involved in land management or other countryside activities. The development of new services will be supported, however, the growth of Rural Villages as a sole means of generating additional demand for services will not be supported where such growth would have an adverse impact on the character of the village, or on the viability of a service in a nearby village.”

Village character

5.2.4. In relation to character of the villages, the Proposed Development would result in significant adverse effects on the character of the setting of Bishopton village and Great Stainton village (although the latter is not relevant to policy SH1), and would not result in significant adverse effects on Brafferton. However, the Applicant has demonstrated through the Design Approach Document how the mitigation hierarchy has been applied to avoid and reduce adverse effects, and these effects are therefore residual. Whilst this aspect of the Proposed Development may be considered non-compliant with policy SH1, the Applicant refers to NPS EN-1 and its explicit statements regarding the likelihood of visual effects from energy NSIPs:

“Virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape, but there may also be beneficial landscape character impacts arising from mitigation (5.10.5)

Projects need to be designed carefully, taking account of the potential impact on the landscape. Having regard to siting, operational and other relevant constraints the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate. (5.10.6)

All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. (5.10.13)”

- 5.2.5. The Applicant therefore considers that there is, to some extent, a policy conflict between the local policy, requiring unqualified 'protection' of village character, compared to the position of the NPS which recognises that nationally significant energy projects are inevitably going to have some residual visual impacts. Given the primacy of the NPS in decision-making, and that the Proposed Development is CNP infrastructure, the Applicant considers that the limited residual impacts on the character of the setting of Bishopton village is substantially outweighed by the need for the Proposed Development such as stated at paragraph 4.1.7 of NPS EN-1. The Applicant refers to its conclusions as presented in Section 6 of the Planning Statement [APP-163], which are unchanged through specific consideration of policy SH1.

Type of development

- 5.2.6. The remainder of Policy SH1 and its supporting text relates to the scale and type of development, referring to infill development, housing and services. The Proposed Development does not constitute any of these types of development and therefore these aspects of Policy SH1 are not relevant.

5.3. Conclusion

- 5.3.1. The Applicant does not consider SH1 to be a relevant policy for the Proposed Development and this is supported by decisions made by DBC on other solar farm development determined in the borough under the Town and Country Planning Act 1990. The Applicant further does not believe that policy SH1 requires a separate village character setting assessment as suggested by DBC in their LIR and subsequent representations.
- 5.3.2. Notwithstanding the above, the Applicant has sought to engage with DBC on landscape and visual matters through carrying out setting assessment within the ES, and in response to the Rule 17 Request, has now separated this assessment and carried out a further viewpoint analysis. The Applicant considers this exercise, which does not identify any new or additional significant effects, or change the overall level of significance originally reported, demonstrates that the assessment carried out in the ES remains accurate as a worst case assessment of the likely landscape and visual effects of the Proposed Development and related cumulative landscape and visual effects.
- 5.3.3. Having undertaken the assessment requested by DBC and the ExA, therefore, the position remains as at point of DCO application that there are residual significant landscape and visual effects. With reference to the conclusions of the Planning Statement [APP-163], the Applicant set out at Issue Specific Hearing 1 (ISH1) [REP1-006] that these residual effects occur after the application of the mitigation hierarchy; the Applicant is not aware that there has been any suggestion that the mitigation hierarchy has not been appropriately implemented. Under the clear direction of NPS EN-1 paragraphs 4.2.15 to 4.2.17, these residual effects do not constitute the 'the most exceptional circumstances' under which CNP infrastructure should be refused development consent.

5.3.4. The Applicant therefore reiterates the conclusion of the Planning Statement [APP-163], that the Proposed Development benefits from a strong presumption of consent, in which the urgent need for this infrastructure greatly outweighs any harm, and in which its **limited residual effects do not constitute the most exceptional circumstances in which development consent should be refused.**