

HIGH NUNTON SOLAR FARM

Ref: 21/2490/FUL

APPENDIX G1

DEVELOPMENT PLAN POLICIES

1. Permission to construct a solar farm and battery storage facility on the Borgue Peninsula should be refused on the grounds that
 - 1) the Proposal is significantly contrary to many of the over-arching policies set out in the Development Plan;
 - 2) there is no combination of material considerations of sufficient weight to offset the harmful impact of the Proposal, and
 - 3) there is no policy support for the construction of a large-scale solar farm in this designated scenic area in any adopted national or local plans or relevant guidance.
2. These policy matters are relevant in this context, as section 37A of the Town and Country Planning (Scotland) Act 1997 requires the Planning Authority to “have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.”
3. This submission considers the over-arching policies in Appendix G1, and addresses a number of specific policies in more detail in the following sequence:
 - natural environment (G2);
 - birds (G3);
 - protected species (G4);
 - renewable energy (G5);
 - community services (G6);
 - economic development (G7), and
 - access and transport (G8).

Policy framework

4. The Development Plan does not have absolute authority for planning purposes,¹ and some of its provisions may become outdated and be superseded by more recent guidance, in which case priority may need to be given to other material planning considerations, such as the draft fourth national planning framework [“Draft NPF4”] that was published in November 2021, and was discussed in Appendix B2 (Solar Farm proposal).
5. There is no evidence that any of the policies contained in the current Development Plan, which was adopted by Dumfries and Galloway Council in October 2019, have become outdated or been superseded. The current Development Plan therefore contains the provisions to which the Planning Authority must have regard for the purpose of the Act, while Draft NPF4 from 2021 may be relevant in showing the extent to which the Proposal does not comply with the next national framework’s strategic objectives on matters such as making a positive contribution to the character and sense of place of the area in which a development is located.

Integrated development

6. In dealing with the application, the Planning Authority’s ability to reach a balanced judgment is prejudiced by the lack of any assessment of the likely significant direct and indirect impacts that may arise because the solar farm is part of the larger single project that is discussed in Appendix H1 (Integrated Development), which is needed to export electricity from High Nunton to Tongland. (This element of the Proposal is referred to in the EIA Report as the Cable Route).²
7. That larger single project contains features that also conflict with many of the Development Plan’s over-arching policies that are relevant to the application, and so most of the comments that follow are likely to apply to the Integrated Development, in respect of which there is no application, or other relevant evidence or factual basis on which the Planning Authority can reasonably proceed to reach a decision.

Evidence

8. The Planning Authority’s assessment of the impact of the Development Plan’s over-arching policies needs to have regard to the comments in Appendix E1 (Evidence: Applicant’s case),

¹ *City of Edinburgh Council v Secretary of State for Scotland*, [1997] UKHL 38

² EIA Report, paragraph 10.2.

which deals with concerns as to the adequacy of the factual basis on which the authority has been asked to carry out the environmental and other assessments that need to be completed to determine the application.

9. In this context, the Planning Authority may have to exercise its powers under
 - 1) regulation 26(2) of the EIA Regulations, to seek supplementary information from the Applicant to ensure the completeness and quality of the EIA Report, and
 - 2) regulation 26(4) to require High Nunton Solar to produce such evidence as they may reasonably call for to verify any information contained in the EIA Report.

Over-arching policies

10. The fact that the Proposal does not comply with several of the over-arching policies [“OP”] is demonstrated by evidence the Applicant has provided, including Maps HNS1, HNS2, HNS4 and HNS5, which either singly or in combination prove that an industrial-scale solar farm:
 - 1) is not compatible with the character and amenity of the Borgue Peninsula (Policy OP 1a);
 - 2) conflicts with nearby land uses (OP 1a);
 - 3) does not respect or protect or enhance
 - a) the region’s rich landscape character;
 - b) the region’s scenic qualities, and
 - c) the scale and local distinctiveness of the landscape (OP 1c);
 - 4) does not respect, protect or enhance the region’s rich and distinct biodiversity, geodiversity and sites that contribute to the natural environment (OP 1d);
 - 5) does not respect the important physical and landscape features of the site, including the open landscape with drumlins and gorse knolls (OP 2);
 - 6) does not relate well to the scale, character and appearance of the Fleet Valley National Scenic Area and Solway Coast Regional Scenic Area (OP 2);

- 7) does not limit, but is instead likely to increase, human activity and the associated negative impacts of the development on climate change (OP 1f);
 - 8) does not minimise the need for travel by car to the proposed new footpath and amenity area at High Nunton (OP 1e);
 - 9) involves motor vehicles as the primary focus for users of the proposed footpath and amenity area, and without increasing connectivity with nearby places, paths and open spaces (OP 2);
 - 10) would have an adverse effect on the transport network and road safety, particularly on stretches of the A755 and B727 (OP 1e);
 - 11) is inconsistent in aspects of its general design, as the Proposal seeks to exclude people through an extensive system of boundary fences and security measures, while at the same time placing an amenity area at the heart of the site (OP 2), and
 - 12) does not make a fair and reasonable contribution to the local community that is proportionate to the nature, location and size of this Major Development (OP 3).
11. The comments that follows as to the relevance of the policies to the Proposal have been grouped under a number of broad headings for ease of reference.

Climate change

12. In considering each policy areas, it may be helpful to recall that the Applicant's principal argument to counter-balance the many harmful impacts of the Proposal no longer has any relevance. This is because, amongst other things, the Scottish Government's target of securing all of the nation's gross electricity consumption from renewable sources will have been achieved long before operations ever began at High Nunton.

The landscape

13. The high quality of the present landscape is shown by the Applicant's photographs, for example those in the EIA Report's Appendix 5.1 (PEA for Site) and Appendix 5.3 (GWDTE Survey).
14. The significant alteration to the use of that landscape is clear from the application, which explains that at completion

- “the visual character of the land would change from farmland to a renewable energy development”, and
 - the Proposal “will usher a new land management regime”.³
15. The more important policies that are relevant to the proposed solar farm, and to which the greatest weight should be given for planning purposes, relate to the landscape, character and amenity as this is “the wrong development, at the wrong location”.
16. Unfortunately, most of the Applicant’s documents give readers no information as to the general context in which the development needs to be considered, such as the relationship between the land at High Nunton and the wider Borgue Peninsula and Solway coastal region, whose close association with Robert Maitland’s land is shown in Map HNS1.
17. Having said that, it is clear that several of the over-arching policies are engaged by the more obvious features of the Proposal, as the construction of a solar farm would
- 1) obliterate the designated drumlin pasture and gorse knoll landscapes, which possessed a value that was acknowledged in the Planning Authority’s Scoping Opinion in 2019, and led to the refusal of the Maitland family’s earlier applications (Appendix C (Planning history)), and
 - 2) destroy the rural and settled character of the Borgue Peninsula, and the amenity that is created by the existing access routes and green networks that pass in and around the Proposal Site.
18. The Proposal would subject the Borgue Peninsula to a fundamental and (for all practical purposes) irreversible change as the surface, including large parts of the drumlin pasture and gorse knoll landscapes, would be submerged under 45,000 solar panels and dozens of shipping-container sized units over an area that is similar in size to 100 football pitches.
19. The Proposal would involve the introduction of security measures around the extensive perimeter of the solar arrays and compound, and the addition of boundary fencing to exclude members of the public from land over which they were previously able to pass without any hindrance.

³ PDA Statement, paragraphs 5.9.10 and 7.1.4.

20. In terms of mitigation, the Proposal relies almost exclusively on screening views of the alien sea of solar panels by planting trees and scrub but, as was noted in Appendix E2 (Evidence: Visual impact), the Applicant has provided not one single close-up image to show the dramatic alteration to the landscape that would be seen from the Core Path, or from the other key viewpoints.

21. The Applicant has clearly disregarded the opinion of the Council's landscape architect, who concluded that

“tree and scrub edge screens would be ineffective where slopes are convex and/or exposed in the wider landscape, and generally inappropriate in these characteristically open areas of landscape.”⁴

22. The mitigation planting, even without the solar arrays it would try to conceal, would result in the complete destruction of the drumlin pasture and gorse knolls, and the loss of the rural character of the open landscape at High Nunton, which has existed in an almost untouched state since the 1850s, as the EIA Report explains that

“the Ordnance Survey map of 1857 confirms that land within the Proposal Site has changed little since the mid C19th. Field patterns broadly match present-day enclosures. Existing dwellings within the Proposal Site are clearly visible on the 1857 map ... Woodland shown on the 1857 map is broadly similar to present levels of vegetation cover.”⁵

23. It is therefore the case that the solar farm and mitigation planting would either singly, or in combination, have a very bad impact on the character and amenity of a rural landscape that has remained largely the same since the Victorian period.

24. If it were acceptable to destroy such a large area of quality landscape, provided any alien features were screened by inappropriate planting, then there may be nothing (in the absence of other limiting factors) to prevent developers from constructing solar farms in other sensitive parts of Dumfries and Galloway, as the only requirement to secure planning permission would be to ensure that the panels could not be seen from local homes and other key receptors.

⁴ Scoping Opinion, paragraph 15.2.

⁵ EIA Report, paragraph 6.6.15.

25. The mitigation planting could do nothing other than adversely alter the whole feel of the landscape, and so would be significantly contrary to Development Plan policy OP 1(a) as the project would not be “compatible with the character and amenity of the area”.
26. Indeed it is difficult to conceive how any other conclusion could be reached if a solar farm, boundary fences and new woodland was introduced to such a settled, open landscape within a regional scenic area.

Nearby land use

27. The Proposal’s harmful relationship with nearby land uses is obvious from the application, as the land around the Proposal Site is farmland, as it has been since at least the 1850s, and it continues to provide an open and attractive environment that is valued by people for health, recreational and other purposes.
28. There are no solar farms in the area, and it is clear that the development could do nothing other than conflict with existing land uses on the Borgue Peninsula and the Solway Coast Regional Scenic Area, and so be completely contrary to Development Plan policy OP 1(a).

Scenery

29. The Development Plan highlights the importance to the area and its communities of what it describes as “the scale and local distinctiveness of the landscape”, and sets three tests that need to be considered to determine the acceptability of a development such as a solar farm.
30. The Plan asks developers to consider whether their proposals respect, protect, and/or enhance the region’s rich landscape character and scenic qualities for the benefit of future generations.
31. By its very nature the erection of 45,000 solar panels over a vast area could never respect or enhance either the landscape character, or the scenic qualities of the Proposal Site, or the surrounding national and regional scenic areas, whose close association with High Nunton are evident from Map HNS1.
32. The Proposal would instead impair the characteristics and qualities of the area, and have a significant adverse effect on the rich landscape character and scenery of the Borgue Peninsula, as well as upsetting the whole scale and local distinctiveness of the open drumlin pasture and gorse knoll landscapes, as can be seen by comparing the “before and after” Maps HNS4 and HNS5.

33. As was noted earlier, the Applicant has relied on mitigation planning to screen views over the solar arrays, but such measures are only necessary because such views are obnoxious or upsetting. Similar upsetting views would inevitably increase in number should a line of pylons later stretch from Borgue to Tongland to complete the Integrated Development (or Cable Route).
34. It is therefore the case that the Proposal does not comply with Development Plan policy OP 1(c), as it does not (indeed it could not) “respect, protect and/or enhance the region’s rich landscape character, and scenic qualities”.

Natural environment

35. Over-arching policy OP 1(d) highlights the need to respect, protect and/or enhance the region’s rich and distinct biodiversity, geodiversity and sites that contribute to the natural environment.
36. The Proposal’s non-compliance with these policies are considered in Appendix G2 (Natural environment), G3 (Birds) and G4 (Protected species) while, as noted earlier, further significant direct and indirect adverse effects are likely to be created by the Integrated Development between High Nunton and Tongland.

Transport

37. Over-arching policy OP 1(e) stresses the need for developments to “minimise the need for travel by car and encourage active and other more sustainable forms of travel”, to help to achieve the nation’s climate change objectives, while policy OP 2 states that proposals should “be designed with people, not vehicle movement, as the primary focus … and where possible increase connectivity to nearby places, paths, streets and open spaces”.
38. The Proposal includes a new footpath and amenity area around the solar farm and battery storage complex “to provide enhanced amenity space to the local community”,⁶ which would inevitably result in increased travel by car, rather than help to minimise the need for such travel.
39. In these circumstances the development would not comply with the Development Plan’s transport policies, which are considered more fully in Appendix G8 (Access & Transport).

⁶ EIA Report, paragraph 2.1.4 and PDA Statement, paragraph 5.12.2.

Developer contributions

40. The information the Applicant provided during the pre-application consultation process made no reference to any developer contribution, which may be a relevant planning matter in accordance with policy OP 3.
41. The publicly available minutes of the meetings of the Borgue Community Council contain no record of any proposals being made by the Applicant to enter into any sort of contribution arrangement, whether financial or in-kind, and whether or not they involved local people.
42. In August 2021 it was disclosed that the Applicant had initiated discussions with the Community Council about local benefits, and suggested solar infrastructure for the public hall or Borgue School, or solar-powered devices, such as traffic speed warnings. No suggestion of any financial contribution was made.
43. Developer contributions may have negative consequences, and may give rise to significant challenges for villages such as Borgue, where there may be location-specific factors that mean that such contributions would be unwelcome as they may place strains on community cohesion in connection with the Proposal, adding to those the Applicant has already created.

Conclusion

44. The evidence shows that the Proposal is contrary, and often significantly contrary, to many of the over-arching policies set out in the Development Plan and that the mitigation measures are either inappropriate (as in the case of planting trees and shrubs), or irrelevant, or carry insufficient weight to counterbalance the hugely adverse impact a solar farm would have on the region's landscape and natural environment.
45. The Applicant's planning, design and access statement contends that "The benefits of the Proposal are numerous and significant"⁷ whereas it is the unwelcome and harmful effects of a solar farm that would be numerous and significant.
46. Permission to proceed with the Proposal should therefore be refused on the grounds that

⁷ PDA Statement, paragraph 7.1.3.

- 1) the solar farm development is significantly contrary to Development Plan policies that are material to the application, and
- 2) there is no combination of material considerations of sufficient weight to offset the significant adverse effects of the Proposal.

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APPENDIX G2

NATURAL ENVIRONMENT

1. Permission to construct a solar farm on the Borgue Peninsula and within the Solway Coast Regional Scenic Area should be refused on the grounds that the High Nunton project does not comply with relevant policies contained in the Development Plan, which explains that it is one of the Scottish Government's national outcomes "to protect and enhance the natural environment and the sustainable use and enjoyment of it."⁸
2. The evidence shows that the Proposal
 - 1) does not respect the special qualities of the regional scenic area (Policy NE2);
 - 2) would adversely affect the factors that were taken into account in designating the Solway Coast Regional Scenic Area (NE2);
 - 3) had demonstrated no specific need for the proposed development at that location within the Regional Scenic Area (NE2);
 - 4) would have a significant adverse effect on the natural environment (IN1);
 - 5) would have an adverse effect on European protected species (NE5);
 - 6) does not address policies relating to forestry and woodland, and trees and development (NE7 & NE8), and
 - 7) would result in the deterioration of one or more waterbodies (NE11).

⁸ Development Plan, paragraph 4.55.

Climate change

3. As was mentioned in Appendix G1 (Over-arching policies), and given the negative impact that climate change can have on nature, it may help to recall that the Applicant’s principal argument to counterbalance the many significant negative impacts of the Proposal on the natural environment are no longer relevant.
4. This is because, amongst other factors, the Scottish Government’s climate change target for gross electricity consumption from renewable sources will have been achieved long before High Nunton ever began to operate.

Planning balance

5. As well as climate change, the Planning Authority needs to attach appropriate weight to the impact of the development on the various policy areas that impact on the natural environment, as some of those policies are likely to carry greater weight in the “planning balance” such as the impact on birds and European protected species, and so these are dealt with more fully in Appendices G3 and G4.
6. Those appendices illustrate the sharp contrast between (a) the evidence presented by the Applicant, and (b) the conclusions on which the EIA Report are based, as in the case of the status of the migratory and wintering birds whose presence led to the Solway Firth being designated as a Special Protection Area in December 2020.⁹
7. The high value of the habitats to nationally and locally important flora and fauna is demonstrated by the Applicant’s own evidence. Bird surveys that were conducted on seven days between September 2020 and March 2021, across an area that was substantially smaller than the whole Proposal Site, revealed that up to 37 species of migratory and wintering birds visited High Nunton each day, with combined counts ranging from 325 to more than 1,400.¹⁰
8. This data confirmed the wealth of wildlife that is on the doorstep near Borgue, but the application also highlighted some material limitations in the surveys, as the figures referred to earlier

⁹ Directive 2009/147/EC of the European Parliament etc. (Citation UK9005012), including the black-headed and herring gulls and the pink-footed goose.

¹⁰ EIA Report, Appendix 5.10, Table 2.

- 1) are not accompanied by a general commentary as to the status of populations and habitats across the wider Borgue Peninsula, or along the Solway Coast, or for Scotland as a whole, and
- 2) exclude any species that visited the Proposal Site outside of the small survey area, and in particular failed to present any data or analysis relating to the Southern Access Route and the habitats lying towards the sea at Brighouse Bay.¹¹

Settled landscape

9. One of the most obvious and compelling objections to the solar farm is the significant adverse effect it would have on the natural landscape of the Borgue Peninsula and the Solway Coast Regional Scenic Area.
10. The special qualities of that regional scenic area include its settled character and the absence of any non-indigenous forms, such as 45,000 solar panels, plus the associated battery storage unit and transmission networks.
11. The Applicant plainly recognises that High Nunton lies within a settled natural landscape, where almost nothing had changed in more than 150 years, as the EIA Report explained that the Ordnance Survey map of 1857 confirmed that land within the Proposal Site has changed little since the mid-19th century; that field patterns broadly matched present-day enclosures, and that woodland was similar to present levels of vegetation cover.¹²
12. The factors that were taken into account in designating the Regional Scenic Area, which are relevant in this context, are set out in the technical paper that accompanied the Development Plan, which explained that:

“The area exhibits a diverse and attractive mixture of coastal landscape types. In the west the Peninsulas and Peninsulas with Gorse Knolls create rocky coastlines of cliffs, raised beaches and isolated coves, backed by smooth undulating open landscapes of improved pastures interspersed with knolly, gorse areas.”

¹¹ The Culraven Access Route is shown in

¹² EIA Report, paragraph 6.6.15.

13. The landscape characteristics on the Proposal Site include the important drumlin pasture and gorse knolls,¹³ which would be altered by the introduction of non-indigenous forms such as solar arrays and boundary fencing, which would therefore have a significant adverse effect on the factors referred to in the technical paper.
14. The extent of the negative impact of the solar farm on the natural environment could be nothing other than dramatic: maps HNS4 and HNS5 show the significant harm at a local level.
15. It is clear that mitigation planting would do nothing to protect or enhance a landscape that has remained virtually untouched since the Victorian period, and in respect of which the open farmland views can now be enjoyed from the Core and Culraven Paths and from the other important routes that pass through the area, as well as from viewpoints such as the high ground at Boreland of Borgue.
16. The impact of mitigation planting has not been adequately examined in the EIA Report, which does not evidence the likely significant impacts of such features on the existing microclimates and hydrology, as well as the consequences of removing and/or altering the existing vegetation and the feeding and resting areas that may be important to insects, birds and mammals.
17. The high quality of the habitats on the Proposal Site, even with an altered baseline scenario (see Appendix E1 (Evidence: Applicant's case)) is indicated by some of the Applicant's evidence, as in the photographs that form part of the EIA Report's review of flora and fauna: see, for example, Appendix 5.1 (PEA for Site) and Appendix 5.3 (GWDTE Survey).
18. The EIA Report confirms that the survey site contains a wide range of high value vegetation, including several small woodland areas beside the Core and Culraven Paths and the Southern Access Route, as well as individual mature trees at High Nunton cottage.
19. The Proposal would have the direct negative effect of disturbing the existing relationship between the woodlands and individual trees and the rest of the open landscape by introducing a new element into the area; as well as the indirect effect of altering the microclimates, habitats and other aspects of the woodland environments on the Proposal Site.
20. The Applicant has relied on balancing the likely significant adverse effects of the Proposal against changes that may be beneficial to biodiversity, but the alterations the Company has identified are

¹³ Local Development Plan 2, Technical Paper (Regional Scenic Areas), January 2018, page 25.

all fleeting and/or limited in scope, and none are directly or functionally linked to the Proposal, or have any certainty of yielding a beneficial outcome.

21. This means that in any reasonable balance of material considerations it is clear that the solar farm would have a significant residual adverse effect on the natural environment, and so be significantly contrary to Policies NE1 and NE2.

Water bodies

22. The Applicant acknowledges the fact that the Proposal Site contains assets of relatively high environmental value, with areas of wet woodland, lowland fen and swamp, and that it contains both permanent and seasonal water bodies, including groundwater dependant terrestrial ecosystems, which the Company recognises as being sensitive to hydrological and ecological changes caused by developments.¹⁴
23. The significance of such water bodies was known to the Maitland family, as evidenced by statements made in 2012 when Pamela Maitland’s agent wrote about moving the earlier renewable energy proposal “away from the vicinity of the seasonal pools which form in the landscape (which may have wildlife concerns, etc),”¹⁵ while the Scoping Report from 2019 noted the presence of small lochans across the whole area.¹⁶
24. Some of those waterbodies, including the Mill Hall Burn that flows east into Dhoon Bay, and the Luskie Burn that runs south towards the Solway Firth at Brighouse Bay, remain in place today, despite steps that were taken on Robert Maitland’s land that resulted in the destruction of several notable water features and related habitats (as reported to the Planning Authority in October 2019).
25. The seasonal nature of the water features, and their changing use by wildlife during the course of the year, does not appear to have been fully addressed by the Applicant, as the only relevant survey was undertaken in June 2020, during an unusually prolonged period of dry and sunny weather that began around the start of the Covid pandemic.
26. One of the important omissions from the EIA Report is the extent to which the Proposal would have a significant adverse impact on the wetlands and waterbodies along the Southern Access

¹⁴ EIA Report, Appendix 5.3 (GWDTE Survey), paragraph 0.1.

¹⁵ 1 Stop Renewables Ltd letter to Planning Authority, 23 January 2012.

¹⁶ Scoping Report, para 5.3.1

Route and towards Brighouse Bay, in respect of which no analytical or survey work was undertaken,¹⁷ and no alternative factual basis exists on which the Planning Authority may proceed to reach a reasoned conclusion.

27. The likely negative impact of this omission is clear from the content of Appendix 5.3 to the EIA Report (GWDTE Survey), and in particular Figure 4.1 which shows some of the high-risk areas at the south of the survey site (which all lie to the north of the Southern Access Route).
28. Other potential impacts have not been addressed beyond the Southern Access Route, as the environmental assessment was structured on the incorrect assumption that there was no hydrological connection between the Proposal Site and the sea at Brighouse Bay. This means that there is no consideration of any impacts or risks that may be associated with the downstream hydrology of the land between the B727 and Brighouse where the Luskie water finally enters the Solway Firth.

Solway Firth Special Protection Area

29. The Solway Firth Special Protection Area was established in December 2020 and is closely related to the Proposal Site.
30. The existence of this special protection area reflects the Scottish Government's commitment to a healthy and biologically diverse marine and coastal environment that meets the long term needs of people and nature.
31. The limited survey data and analysis that accompanies the EIA Report shows that the High Nunton land is regularly visited by species of birds that led to the Solway Firth being designated as a protection area, such as pink-footed goose, black-headed gull and herring gull.¹⁸
32. No research evidence is available to demonstrate the nature of the impacts that may arise from the construction of a solar farm on the special protection area, but it would seem logical that any impact would be adverse, and that it may be significant.

¹⁷ EIA Report, Appendix 5.3 (GWDTE Survey), paragraph 2.6.

¹⁸ EIA Report, Appendix 5.10 (Migratory and Wintering Birds), Table 2.

Conclusion

33. The Applicant has failed to address many of the known risks to the natural environment that are associated with the Proposal Site, not least because no survey work or analysis was carried out along the Southern Access Route, or to the south of the B727, and no general assessment or context has been provided as regards the direct and indirect relationships that exist between the flora and fauna populations on the Proposal Site and the flora and fauna that are found throughout the rest of the Borgue Peninsula and in the wider Solway Coast and Solway Firth regions.
34. Even so, it is clear from the Applicant's surveys of the limited study sites, that the Proposal would adversely affect most aspects of the natural environment on the Borgue Peninsula, including
 - 1) the long-settled farmed landscape;
 - 2) the drumlin pasture and gorse knoll features;
 - 3) the high quality breeding and foraging bird habitats;¹⁹
 - 4) the habitats used by the migratory and wintering birds whose presence led to the Solway Firth being designated as a special protection area, and
 - 5) the plant community types which have a high association with ground water and are classified as high risk by the Scottish Environment Protection Agency.²⁰
35. The Proposal contains no mitigation measures that could effectively reduce the likely adverse effects on the farmland, waterbodies and other biodiversity features, and there are no considerations that would combine to offset the negative outcome that would result from placing almost 45,000 solar panels across the open, unspoilt landscape at High Nunton.
36. In terms of protecting biodiversity assets, the Applicant chose to reject the primary response that was noted by Penn Associates Ecology, the organisation that provided the preliminary ecological appraisal of the land at High Nunton, namely
 - retain all habitats in their current condition and under their current management;
 - retain and protect the existing hedgerow and tree root zones;
 - protect and retain the existing drainage patterns within the site, and
 - protect and retain the existing micro-topography within the site.²¹

¹⁹ EIA Report, Appendix 5.1 (PEA for Site), Table 4.2

²⁰ EIA Report, Appendix 5.3 (GWDTE Survey), paragraph 4.0.

²¹ EIA Report, Appendix 5.1 (PEA for Site), Table 6.1 (Mitigation Options).

37. Rather than opting to “protect and retain” the existing habitats, hedgerows, drainage and micro-topography the Applicant has opted to destroy habitats; change the land use from open farmland to electricity generation, and alter existing hedgerows, drainage patterns and topography, all to the detriment of the natural environment.
38. In these circumstances it is clear that the application should be refused as the Proposal is significantly contrary to policies set out in the Development Plan, as it
- 1) does not respect the special qualities of the Solway Coast and would adversely affect the factors that were taken into account in designating the regional scenic area (NE2);
 - 2) would have a significant adverse effect on the natural environment (IN1), and
 - 3) would result in the deterioration of the local waterbodies (NE11).

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APPENDIX G3

BIRDS

1. Permission to construct a solar farm on the Borgue Peninsula, adjacent to the Solway Firth Special Protection Area, should be refused on the grounds that the proposed development is contrary to the wildlife policies set out in the Development Plan, which stresses the need to support the region's green networks or connections (CF2), and the need to avoid developments that would (in the context of renewable energy projects) have an unacceptable residual impact on the natural environment (IN1).

Evidence

2. Any assessment of the impact of Development Plan policies associated with birds that are relevant to the application needs to have regard to
 - 1) the comments in Appendix E (Evidence), which deals with the adequacy of the factual basis on which the Planning Authority is being asked to carry out that assessment, and
 - 2) the grid connection element of the Integrated Development or Cable Route, in respect of which no assessment has been made by the Applicant, and no alternative factual basis exists on which the Planning Authority may reasonably proceed.

EIA Report

3. The EIA Report deals with the area's wildlife mainly by reference to studies that concentrate on only a small part of the overall Proposal site, and in particular do not contain any analysis or impact assessment for (a) the Southern Access Route, even although that would be the route used during the project's operational life, or (b) the land towards Brighouse Bay on the Solway Firth, or (c) the wider Borgue Peninsula and Solway Coast.

4. The EIA Report deals with ecological factors under the following main subject groups: ground water dependent terrestrial ecosystems; great crested newts; otter; badger; bats; breeding birds, and migratory and wintering birds.

5. This appendix deals with the Applicant's assessment of the effect of the solar farm on breeding, migratory and wintering birds, and illustrates the limited reliance that may be placed on the conclusions as to the residual adverse impact of the Proposal.

PEA Report

6. The fact that the Proposal Site is used by a wealth of bird species and hosts several high value habitats was recognised by Penn Associates Ecology Limited in April 2020 in its preliminary ecological appraisal ["the PEA Report"], which now forms part of the EIA Report.²²

7. The PEA Report identified international, national and local sites that are associated with the development site, including the Galloway and South Ayrshire Biosphere Reserve. The report also noticed the proposal to create the Solway Firth special protection area, which was established in 2020 because of the valuable attributes of the sea and coastal areas around the Borgue Peninsula.

8. For all categories of birds (breeding, wintering, passage, crepuscular and nocturnal) the PEA Report considered that the small High Nunton survey site, within the overall Proposal Site, contained species that were defined as protected or priority, and wrote of the location:

"High quality breeding and foraging bird habitat. Confirmed presence of some SBL [Scottish Biodiversity List] species with potential for additional species."

9. The PEA Report explained that in 2020 there was currently no research data into the biodiversity impacts of solar farms in the United Kingdom, and noted that

"Given the dearth of information on the biodiversity impacts of farms currently then for some receptors species it has not been possible to draw conclusions regarding the impacts of the solar developments proposed in this report and hence reflected in the mitigation proposals."²³

²² EIA Report, Appendix 5.1 (PEA for Site).

²³ PEA Report, paragraph 5.1.5.4

10. There is no evidence in the application documents to show that the “dearth of information” about the impacts on solar farms had altered by the time the site visits were undertaken by SAP Ecology and Environmental Limited in May, June and July 2020 to inform the breeding birds report that was issued on 27 November 2020 (Appendix 5.7 to the EIA Report).
11. This leaves an open question as to the value that may be placed on the assessment that was made by SAP, especially in the absence of research data as to the biodiversity impacts of solar farms.
12. Penn Associates highlighted the quality of several aspects the landscapes on the Borgue Peninsula, and explained:

“The site is an area of mixed lowland pasture with mosaic of semi-improved neutral grassland with scrub, scattered parkland trees, ponds, streams and dry stone walls providing habitat for a range of farmland species and populations of some Scottish Biodiversity List species including ... skylark, spotted flycatcher and starling (confirmed) and the potential for other species to be present.

There are areas of good quality fen and Molinia/rush with carr woodland which are locally significant Scottish Biodiversity List habitats, as are some of the farmland habitats within the site (pond, woodland, scattered parkland trees and stream). ...

As well as direct habitat loss, the proposals will result in a reduction in solar energy inputs into biological systems resulting in changes in above and below ground ecosystems e.g. through lower soil temperatures, increased shading, changes in soil hydrology. There will also be a loss of habitat connectivity both within the site and with habitats on adjacent land; this impact will be exacerbated if security fencing is utilised, with impacts likely to be greatest on mammals and birds. ...

Collision risk for birds ... May be an issue for ground nesting species, nesting under and between the arrays, including disturbance arising from routine maintenance.

The PEA has established that the site is used currently by ground nesting bird species including skylark and snipe, with a high risk of other ground nesting species being available. The suitability of the site for continuing use by ground nesting birds is likely to decrease whilst the solar panels are in place due to habitat loss and changes in site management. ...

Panels may deter birds from using an area surrounding an array, e.g. feeding areas....

The site is located within c.4.4km of the Solway Firth pSPA which is designated on account of its overwintering and migratory waterbird assemblage. The extent to which the site is functionally related to the Solway Firth pSPA requires further assessment...”.²⁴

13. The photographs that accompany the PEA Report illustrate the rich diversity of the fauna and flora on the Proposal Site, which has been a settled landscape since at least the 1850s, and the report also explains that “Gorse is relatively extensive across parts of the site which occurs with hawthorn and elder scrub in some areas. The scrub supports a high density of breeding song birds.” and “... with active bird nests also visible in a number of the trees.”²⁵
14. The PEA Report contains a photograph (page 30) which shows one of several modifications of the baseline scenario to Robert Maitland’s land, with the caption: “The SW section of the sites had been ploughed shortly prior to the survey, having previously been under grassland.” This appears to be a further example of works being carried out that have had the effect of altering the baseline, with the consequences referred to in Appendix E1 (Evidence: Applicant’s case).
15. The PEA Report’s assessment of the incidence of priority species within the small survey site identified no fewer than 34 Scottish Biodiversity List species, and said that the site was assessed as “highly suitable for some SBL species, primarily farmland and wetland bird species with the potential for raptors.”
16. During the April 2020 survey Penn Associates found several species on site, including skylark, spotted flycatcher and starling, together with a kestrel in hunting flight above the farmland, a pied wagtail foraging in the stream, whinchat using the gorse scrub, and a mute swan on one of the ponds.²⁶
17. The PEA Report recommended that further surveys be undertaken across the entire site for breeding birds between March and June; wintering, passage, crepuscular and nocturnal birds between October and February, and nesting birds from the start of March to the end of October.
18. PEA also recommended that survey updates should be completed 12 months after the last survey, or if there were other factors that would result in a change of habitat status.²⁷

²⁴ PEA Report, paragraph 0.7 (Development Impacts).

²⁵ PEA Report, pages 22 and 23.

²⁶ PEA Report, Table 4.3 (page 36)

²⁷ PEA Report, Table 5.1 (page 45).

19. The conclusion in the PEA Report stressed the absence of research data into the biodiversity impacts of solar farms, and continued:

“Solar farms have the potential to significantly impact biodiversity both within the site on land within proximity to it at a landscape scale as well as a field scale due to the size and character of solar farms. Impacts are likely to include changes in land use e.g. replacement of arable crops by short-cropped grassland, land management as well as in microclimate in particular soil temperatures which drive biological activity.

There is frequently some loss of greenspace to solar farms through the provision of access roads, erection of control areas including energy storage units, transformer stations etc as well as off-site cabling to connect the solar farm to the National Grid. Furthermore, habitat connectivity can be reduced where security fencing is erected around a solar farm.

Solar farms have the potential to impact directly on species which use the proposed site ... as well as indirectly on species, potentially at a landscape scale. ...

... many bird species rely on invertebrates as a food source so the impact of solar farms on invertebrates (air-borne and soil) is likely to be highly significant, with invertebrates impacted not only by changes in habitat type but also by microclimatic changes including soil temperature etc. Consideration also needs to be given to the effect of solar farms on ... bird and invertebrate navigation and behaviour.”

20. Under “Biodiversity Mitigation Proposals” the PEA Report concluded:

“Residual Impacts.

Development of the site would result in a temporary net loss of habitat during the [35 year] operational life of the proposed development which cannot be fully mitigated for and which could contribute to further declines in biodiversity across the UK in line with current trends in various biological indicators, for example, the status of UK priority species and insects of the wider countryside and farmland, woodland and wetland bird species.”²⁸

²⁸ PEA Report, paragraph 6.3 (page 50).

SAP Report

21. The EIA Report contains a document (Appendix 5.7) that deals with breeding birds and the results of a survey that was conducted by SAP Ecology & Environmental Limited in May, June and July, rather than March to June as recommended by Penn Associates Ecology.
22. SAP found as many as 51 species of bird within habitats on the small survey site at High Nunton, including one schedule 1 species (red kite) and 11 red-listed species, including curlew and lapwing, and black-headed gull and herring gull that form part of the water bird assemblage of qualifying species for the Solway Firth Special Protection Area.
23. SAP's summary states that

“There is potential for the proposed development to impact on breeding birds, particularly ground nesting birds such as skylark and meadow pipit, and scrub nesting birds such as linnet.”²⁹
24. The EIA Report does not fully reflect the extent to which species use the Borgue Peninsula during the winter months, as evidenced by recent counts of curlew, which were noted on fields adjacent to the Proposal Site in January 2022 in numbers of between 70 and 120 – contrast this with the 3 curlew recorded in the SAP survey, and of which the report concludes that curlew (together with lapwing and black-headed and herring gulls) “were recorded in low numbers intermittently throughout the site visits”.³⁰
25. In relation to the red-listed species the SAP Report confirms the fear that valuable habitats were removed from the Proposal Site in advance of the survey and so altered the baseline scenario to a material extent, as the report noted that “Over the course of 2020 gorse clearance has taken place as part of ongoing maintenance in line with standard agricultural practice” (but without evidencing whether such clearances were standard practice on the Proposal Site prior to 2020).
26. The removal of gorse that altered the baseline scenario is a significant factor, given PEA Report’s description of the land, which was that gorse was relatively extensive across the site, and occurred with hawthorn and scrub which supported a high density of breeding song birds.

²⁹ SAP Report, paragraph 1.1.

³⁰ SAP Report, Table 2.

27. There are also questionable elements of the SAP Report, such as the absence of any assessment of the impact on the change of land use from farmland to a renewable energy development on the schedule 1 species (red kite), or on the red-listed species, as they may not be breeding on the Proposal Site, but without any analysis to show whether or not the local habitats are important for feeding, resting, mating and so on.
28. In particular the Proposal Site is known to offer refuge to birds during the periods of high wind that are frequently experienced along the Solway Firth and across the Borgue Peninsula, as local people regularly see fields full of seabirds and waders taking shelter from the bad weather.
29. The SAP Report certainly confirmed that the small survey area presented habitats that were suitable for breeding birds. It recommended construction work to be conducted outside the breeding bird season (defined as March to August inclusive), and for lower stocking density around the solar arrays “to mitigate habitat loss and long-term negative impacts of the solar farm on breeding birds.”
30. The application documents suggest that SAP’s recommendation about suspending construction during the breeding season was not adopted by the Applicant, as the outline programme shows no period without works for as much as the 6 months from March to August.³¹

Analysis

31. It is therefore the case that the PEA Report identified a valuable natural asset and significant resources for birds, and that SAP’s limited survey confirmed the suitability of part of the site for breeding birds.
32. The question is whether the information about, for example, the Southern Access Route and the land towards the sea at Brighouse Bay is relevant, necessary and material to the application, given the nature and scale of the Proposal.
33. The answer is likely to be “yes”, given the high quality of the habitats as assessed by Penn Associates, which demonstrates the absence of an adequate factual basis on which the Planning Authority would be able to proceed to grant permission.

³¹ Interim Construction Traffic Management Plan, Appendix Five (Works programme).

34. It is remarkable, in the circumstances, that Penn Associates' assessment of the known and unknown risks associated with the introduction of a solar farm to such a sensitive landscape should be transformed into the misleading statement that was made by Derek Mitchell in the non-technical summary to the EIA Report that

"Important ecological features are predicted to be maintained or improved as part of the development process as a result of the type of habitat being impacted and the associated planting scheme, meaning that overall, the Proposal offers a net gain in the biodiversity value of the site of approximately 18%".³²

Solway Firth Special Protection Area

35. As was mentioned in Appendix G2 (Natural environment) the Solway Firth Special Protection Area was established in 2020 and is closely related to the Proposal Site, which is hydrologically connected to the Solway coast, for example through the fresh-water streams that run into the sea at Kirkcudbright Bay and at Brighouse Bay.
36. The limited survey data and analyses that accompanied the EIA Report show that the High Nunton landscapes are regularly visited by bird species that led to the designation of the Solway Firth as a special protection area, such as pink-footed goose and black-headed and herring gulls.³³
37. No research evidence is provided by the Applicant to demonstrate the nature of the impacts that may arise from the construction of a solar farm on the special protection area, but it would seem reasonable to predict that any impact was likely to be adverse, and that it may be significant.

Conclusion

38. It is clear that the EIA Report rests on limited survey material relating to a small part of the Proposal Site, and that the analyses may be deficient in important respects, and that birds and their habitats are at risk.
39. The work done by Penn Associates demonstrate the surprising richness of the habitats within the Proposal Site, while the factors that led to the Solway Firth being designated as a special protection area demonstrate the importance of the Borgue Peninsula to several important birds.

³² EIA Report, Schedule 2.1, page 16.

³³ EIA Report, Appendix 5.10 (Migratory and Wintering Birds), Table 2.

40. The Planning Authority should therefore refuse the application on the grounds that the Proposal would be significant contrary to Development Plan policies relating to wildlife.
41. It may then be hoped that visitors to High Nunton would be left to peacefully engage with nature and to appreciate an open landscape that holds more than 50 species of bird, and which Penn Associates has identified as containing high quality breeding and foraging habitats, and one which they assess as highly suitable for Scottish Biodiversity List species.

HIGH NUNTON SOLAR FARM

Ref: 21/2490/FUL

APPENDIX G4

PROTECTED SPECIES

1. Permission to construct a solar farm on the Borgue Peninsula should be refused on the grounds that the development is contrary to the policies for protected species set out in the Development Plan, which acknowledges that the region's biodiversity and geodiversity

“are critical components of ecosystems and represent an economic asset and a community resource, as well as being of intrinsic importance.”

2. The Proposal Site and the broader Solway coast region are known to be used by several European protected species that enjoy statutory protection, and so the proposed solar farm and related infrastructure has the potential to have a significant adverse effect on their habitats and populations, even after taking account of any mitigation measures.
3. The significance of High Nunton as a habitat was revealed by the work done by Penn Associates Ecology, as detailed in the preliminary ecological appraisal from April 2020 [“the PEA Report”], which identified several protected species and their likely use of the Proposal Site:³⁴

Bat	High value potential for foraging and commuting bats. Bat roost risk associated with trees.
Otter	Habitat suitable and moderate risk within site.
Reptiles	Moderate risk within site
Great crested newt	Presence cannot be excluded on the basis of current evidence
Small mammals	High quality habitat with confirmed presence.

Evidence

4. Any assessment of the impact of the Development Plan policies connected with European and other protected species that are relevant to the application needs to have regard to

³⁴ EIA Report, Appendix 5.1 (PEA for Site).

- 1) the comments in Appendix E1 (Evidence: Applicant's case), which deals with alteration to the baseline scenario, and the adequacy of the factual basis on which the Planning Authority is being asked to carry out the environmental impact assessment, and
 - 2) the grid connection part of the Integrated Development, in respect of which no assessment has been made by the Applicant as to its impact on European protected species, and no alternative factual basis exists on which the Planning Authority may reach a reasoned conclusion.
5. The concerns that were highlighted in Appendix G3 (Birds), in connection with assessing the residual harmful effects of a solar farm on birds, apply equally to the bat, otter, badger and great crested newt habitats, as the initial assessment for each species was also carried out by Penn Associates Ecology, and later surveyed by SAP Ecology & Environmental Limited ["SAP"].
6. In this context, it is worth recalling the extent to which the Planning Authority may need to exercise its powers under
- regulation 26(2) of the EIA Regulations, to seek supplementary information from the Applicant to ensure the completeness and quality of the environmental impact assessment report, and/or
 - regulation 26(4) to require High Nunton Solar to produce such evidence in respect of the EIA Report as they may reasonably call for to verify any information contained in the EIA Report.

Background

7. The Applicant recognises that the issue of protecting wild fauna and flora is one of general public interest, while in the case of European protected species such as bats and the common otter, the application describes the statutory offences of deliberately disturbing or damaging or destroying a breeding site or resting place of such animals.³⁵
8. The likely impact of developments on protected species was specifically raised in 2011 in connection with the Maitland family's earlier application for a renewable energy development on the Proposal Site (see Appendix C (Planning history)), when the Planning Authority's officer stated that

³⁵ Regulation 39, the Conservation (Natural Habitats, &c.) Regulations 1994.

“The development site falls … within an area known to hold great crested newts, a European Protected Species which are protected wherever they are found.”³⁶

9. The Planning Authority’s position on this matter was confirmed in December 2012 when the report to the Council’s planning applications committee explained that the site “is within an area designated as important for Great Crested Newts”.³⁷
10. Robert Maitland is associated with land on which habitats that are likely to have been used by protected species were located, and in respect of which steps were taken that had the effect of altering the baseline scenario and disturbing or removing European protected species. This may in turn impact on the completeness and quality of the environmental impact assessment process, and so the reliance that may be placed on the EIA Report.
11. The significant effects of the Proposal on protected species are primarily matters to be determined by the Consultation Bodies, and the Planning Authority is entitled to place appropriate weight on the opinion of those consultees (leaving the question of licencing and other matters of regulatory control to the relevant authorities).
12. Having said that, given the evidence of the link between the alteration of the baseline scenario on the Proposal Site and the content of the PEA and SAP Reports, there is clearly a need to obtain information from specialists, and perhaps also from members of the public, who have a knowledge of the protected species and their habitats, to ensure that the statutory consultees and the Planning Authority are able to proceed on an adequate and correct factual basis.
13. It is notable that the reports compiled by Penn Associates and SAP provide no general context about the use of the Borgue Peninsula or the wider Solway coastal area by European protected species, or examine the impact of external factors on the adequacy of the survey data on which the EIA Report is based, for example
 - 1) by comparing the average climatic and ecological conditions across the survey location, with conditions at the data-gathering dates between April and August 2020, including the influence (if any) of the unusually long spell of dry and sunny weather than was experienced in the area just after the start of the Covid pandemic, and

³⁶ Planning Authority Screening Report by Steve Rogers, 15 February 2011.

³⁷ Planning Applications Committee Report, 3 December 2012, paragraph 1.2.

- 2) by considering the impact on wildlife behaviours caused by the increased use of the location by people and their dogs during the Covid pandemic, and the good weather that was associated with the survey period.
14. The SAP Report certainly acknowledges the limits in the scope of the protected species survey and the problems encountered in gathering data for this important purpose, such as the fact that

- 1) the majority of the ponds and water features “were either too dry at the time of sampling or too shallow to allow for the collection of a viable sample”³⁸ to determine the impact of the Proposal on great crested newts, and
- 2) the weather limited the deployment of the static monitoring device that was used for the bat survey (but, even so, identified suitable habitats for seven bat species).³⁹

Survey area

15. It is also the case that
 - 1) no survey or analytical work is reported to have been carried out since 2020, and so the Consultation Bodies and the Planning Authority are being invited to assess the adverse impact the development is likely to have on European protected species despite the passage of almost two years since SAP last examined the site, and
 - 2) no survey work or analysis of any kind was carried out for European protected species over large parts of the Proposal Site, and in areas that are ecologically linked to High Nunton, including the high-quality wetland habitats that exist along the Southern Access Route and towards point where the Luskie Burn’s water reaches the Solway Firth at Brighouse Bay.
16. The risks associated with the absence of information about Dumfries and Galloway’s biodiversity was referred to in the Development Plan which, in the context of considering the protection of sites, habitats or species and the designation of local sites, explained that

³⁸ EIA Report, Appendix 5.4, paragraph 4.2.

³⁹ EIA Report, Appendix 5.6, paragraphs 4.4 and 7.

“other features of local importance for biodiversity can be found outside of these sites, but their importance may never have been surveyed or assessed.”⁴⁰

17. As was noted in Appendix D (Pre-application consultation) the issue of public engagement was considered in *Milne*, when attention was drawn to the fact that:

“Members of the public with local knowledge may well be able to add significantly to the information about the site, thus supplementing the “description of the development” provided by the developer in the environmental statement.”⁴¹

18. This issue is relevant to the Proposal Site, as my experience has shown that otters have used habitats within less than one kilometre of the High Nunton site, and I have seen an otter using the Corraford Burn, as well as the remains of an otter beside the road to the north of Boreland of Borgue, near the point where that burn intersects with the A755.

Planning Guidance

19. The Planning Authority’s approach in relation to European protected species was the subject of a Scottish Executive note from 2006,⁴² after it was revealed that some authorities were attaching suspensive conditions to planning permissions, instead of fully ascertaining, prior to the determination of the planning application, whether such a species was present on a site, and what the effect might be of such a species being present.
20. The Scottish Executive drew attention to the interim guidance for local authorities:

“it is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either will not impact adversely on any European protected species on the site or that, in its opinion, all three tests necessary for the eventual grant of a Regulation 44⁴³ licence are likely to be satisfied.

To do otherwise would be to risk breaching the requirements of the Directive and Regulation 3(4). It would also present the very real danger that the developer of the site would be unable

⁴⁰ Development Plan, paragraph 4.66.

⁴¹ *Milne v Rochdale Metropolitan Borough Council* [2000] EWHC 650.

⁴² Scottish Executive letter to Heads of Planning, Planning Authorities, 16 May 2006.

⁴³ The Conservation (Natural Habitats, &c.) Regulations 1994.

to make practical use of the planning permission which had been granted, because no Regulation 44 licence would be forthcoming. Such a situation is in the interest of no-one.”

21. The Scottish Executive stated that “to ensure that all decisions are compliant with the Habitats Directive and the Regulations and the above mentioned Guidance, planning authorities should fully ascertain whether protected species are on site and what the implications of this might be before considering whether to approve an application or not.”
22. Such an assessment of the implications of the presence of protected species on the Borgue Peninsula cannot be undertaken until
 - 1) the impact of the alteration to the baseline scenario has been determined;
 - 2) the assessment of the presence of protected species is brought up to date from 2020, and
 - 3) the presence of protected species is assessed across the whole of the Proposal Site and the habitats that are ecologically linked to the site, including the land along the Southern Access Route and towards the sea at Brighouse Bay.

Mitigation

23. The Proposal contains measures that seek to mitigate the significant adverse effects of the development on European and other protected species, but it is not clear if any of the measures are proportionate to the actual risk that would emerge from an assessment of an unaltered baseline scenario, and a complete habitats analysis across the whole of the Proposal Site.

Conclusion

24. While the situation on the Proposal Site is complicated because of the alteration of the baseline scenario, and the absence of survey data for large parts of the wider landscape, the Applicant has shown that the Proposal would be likely to have adverse effects on protected species, such as the badger that SAP found to have active setts, and bat species that SAP reported to be foraging within or commuting through the land at High Nunton.⁴⁴

⁴⁴ EIA Report, Appendix 5.6, paragraph 6.3.

25. The significance of the adverse effect of solar farms on such European protected species is more difficult to assess, given the absence of an adequate factual basis on which to proceed, and also because, as SAP wrote in connection with the bat survey:

“Long-term impacts are difficult to predict as studies on the impacts of photovoltaic panels and solar farms on bats are limited.”

26. The Development Plan states that proposals will not be permitted for any adverse effect on a European Protected Species (Policy NE5), and so the effect does not need to be major or significant to prohibit development.

27. The policy envisages that proposals would be permitted only if the following three conditions were fulfilled:

- there is no satisfactory alternative;
- the development is required for preserving public health or public safety or for other imperative reasons of overriding public interest, and
- the development would not be detrimental to the maintenance of the population of the species at a favourable conservation status in its natural range.

28. It is clear that the Proposal does not satisfy the first two conditions, while there is no evidence in the application on which to reach a reasoned conclusion as to the relevance of the third.

29. Leaving aside the fact that there may be statutory provisions that would limit or prohibit development because of the known presence of badgers and European protected species of bats, it is clear that the Applicant has not demonstrated that the conditions set out in the Development Plan have been satisfied.

30. In these circumstances the application should be refused as the Proposal is contrary to policy NE5 (Species of international importance).

HIGH NUNTON SOLAR FARM

Ref: 21/2490/FUL

APPENDIX G5

RENEWABLE ENERGY

1. Permission to construct a solar farm on the Borgue Peninsula should be refused on the grounds that the development, after taking account of the mitigation planting, would be significantly contrary to the infrastructure policies set out in the Development Plan because
 - 1) the Proposal does not result in a renewable energy development that is located, sited and designed appropriately (Policy IN1);
 - 2) the Proposal would have
 - a) a significant adverse landscape and visual impact on the Borgue Peninsula and this part of the Solway Coast Regional Scenic Area;
 - b) an adverse effect on people of the Borgue Peninsula;
 - c) a significant adverse effect on individual dwellings that are located close to the solar arrays;
 - d) a significant adverse effect on the natural environment, and
 - e) an adverse effect on public access through, and the recreational use of, the site (IN1).
2. As has been noted previously, the Proposal is not supported by any current policy that deals with the construction of large-scale solar photovoltaic power systems and battery storage facilities, in contrast to the adoption of policies that regulate wind energy developments (IN2).
3. The Proposal is also no longer justified on the grounds that it is needed to help to secure the only public benefit the Applicant has identified as being capable of counter-balancing the adverse impacts of the solar farm on the Borgue Peninsula.

4. This is because, among other factors, the Scottish Government's target of achieving 100% of gross electricity consumption from renewable energy sources has already been met, while the agreements that were concluded by Crown Estate Scotland on 17 January 2022 will generate around 25,000 MW, or more than 800 times the projected output for High Nunton.
5. It is also the case that the Proposal may adversely impact on other matters that the Planning Authority and Scottish Ministers consider relevant in connection with securing the nation's future energy supply and climate change objectives, including (a) the use of the gas pipeline that runs through the Proposal Site, and (b) the nature of the retail energy market.

Evidence

6. The Planning Authority's assessment of the impact of the Development Plan's infrastructure policies that are relevant to the application needs to have regard to
 - 1) the comments in Appendix E1 (Evidence: Applicant's case), which deals with deficiencies in the adequacy of the factual basis on which the authority is being asked to carry out that assessment and to determine the application, and
 - 2) the absence of any factual basis on which to assess the impact of the Integrated Development, or Cable Route that is needed to connect High Nunton to the electricity substation at Tongland (currently operated by Scottish Power, part of the Spanish group Iberdrola).

Location

7. Any assessment of the Proposal Site's suitability as the place to erect 45,000 solar panels needs to have regard to local, regional and national factors.

Local

8. The effect of the proposed development was described in Appendix G2 (Natural environment) and demonstrated that, even after any mitigation measures were implemented, a solar farm that was spread over an area that was bigger than 100 football pitches in such a sensitive and settled rural landscape would have a significant adverse effect on the Borgue Peninsula, and so be entirely contrary to policy IN1.

Regional

9. At a regional level, the significant negative impact of the Proposal is also clear, as can be seen from the Applicant's own illustrations, as Map HNS1 shows the close association and dominant relationship that exists between the land at High Nunton and

- the district towns of Kirkcudbright and Gatehouse of Fleet;
- the Fleet Valley National Scenic Area;
- the Solway Coast Regional Scenic Areas, and
- the regional scenic route that passes round the Proposal Site,

while Map HNS2 conveys the strong visual effect that is likely to be felt over a wide area of the Borgue Peninsula and from land close to Kirkcudbright.

10. The significant negative impact these maps reveal is consistent with the comments that were expressed by Scottish Natural Heritage to Robert Maitland at the preliminary consultation stage in 2018, when it was noted that:

“we [Scottish Natural Heritage] consider it will be challenging to accommodate a proposal of this type and size without significant and adverse landscape and visual effects occurring. . . .”

The proposal is at the upper end of the scale in terms of size . . . and is located within a landscape likely to be sensitive to a development of this type due to its medium to small scale, the intricate pattern of knolls and drumlins present on site and the strongly rural character that is exhibited. . . .

We consider the landscape to be sensitive as it [is] located to the east of the Fleet Valley NSA and largely within the Solway Coast Regional Scenic Area. . . . When a development is spread over two or more character types it tends to be more challenging to achieve a coherent relationship between the proposal and key landscape characteristics.

We consider both of these [Drumlin and Peninsula with Gorse knolls] landscapes exhibit a high degree of integrity and pattern, which is essential to the quality of these landscapes.”⁴⁵

⁴⁵ Pre-application Enquiry Report, Reference 18/0854/MCE, paragraph 7.1.

11. A similar risk profile was identified by the Council's landscape architect, who concluded that:

"The proposed site would pose a number of challenges in terms of development due to sensitivities with respect to landscape character, the landscape value of the site and wider area, and views and visual amenity for a high number of sensitive visual receptors (people). Of particular concerns with regard to successfully siting a large footprint solar photovoltaic installation and associated security/boundary fencing in this landscape: ...

The rural and relatively unspoilt character of the Borgue Peninsula, of which this 6-7km sq site makes a positive contribution to a large proportion of it, and to one of the popular areas.

...
The scenic and designated quality of the landscape, its value in terms of visual amenity and recreation; the numerous publicly accessible and good viewpoints along quiet roads and core paths and around the coast; opportunities for visitors to stay in and enjoy the landscape.

The special qualities of the Solway Cast Regional Scenic Area. ...

The setting of Borgue Church in the wider landscape...

The generally open and visually exposed nature of the coastal peninsula landscapes (LCT 1a) to the south, and some areas of the northern drumlin landscape (LCT 13). ...

... there may be few effective and appropriate options to mitigate the adverse and potentially significant effects of the solar farm."⁴⁶

National

12. At a national level, the unsuitability of the location is likely to engage a different set of issues, as is clear from one of the Applicant's information sheets,⁴⁷ which shows that the historic distribution of the highest levels of solar irradiance is strongly biased towards the southern half of England, and that – in the absence of other material considerations – the south of England would be a far more suitable location.

⁴⁶ Dumfries & Galloway Council, Pre-application Enquiry Report (2018), paragraph 7.2.

⁴⁷ High Nunton Solar website, headed "Solar irradiance in the local area".

13. The Applicant has, however, made no case to show why a more suitable location for the development was not chosen elsewhere in the United Kingdom based on a study of the national distribution of solar irradiance, a factor that was already known to High Nunton Solar.

Borgue Peninsula

14. The Proposal would have a very direct and negative effect on people who travel through the Borgue Peninsula, as they would have no practical option but to go to work, or to the shops in Gatehouse or Kirkcudbright, or to take their children to Borgue School, without being exposed to the visual impacts of the solar farm as they went about their normal daily business, even if the views were only of the fleeting kind the Applicant has predicted.
15. The adverse effects of the Proposal on local people also includes the prolonged exposure to the disruption that would occur during the 9 months construction phase, while the development would blight several homes and so have a negative effect on the wellbeing of some members of the community on a much longer-term basis.
16. The extent of the challenges that would be faced by many local people is evidenced by the EIA Report, which shows that the strong visual impact of the solar farm would be most keenly felt in dwellings that are in close proximity to the Proposal Site, including Blackcraig, East Cottage, Pringleton House, Cooper Croft and Lower Nunton.
17. An adverse impact would also be felt by people who visited important local tourism attractions, and who stayed at places such as the caravan parks at Brighouse Bay and Seaward, and the Holiday Property Bond's Coo Palace.
18. In each case, the impact of the Proposal would, as predicted by Scottish Natural Heritage and the Council's landscape architect in 2018, have an adverse impact on many of the issues that are relevant for the purpose of policy IN1 – including the whole character of the Borgue Peninsula, and the effect of a solar farm on local people and their homes, as well as tourism and public access – and so would justify the refusal of permission.

Electricity goals

19. As was noted earlier, High Nunton's case for altering the Borgue Peninsula rested solely on the balance to be struck between (a) achieving the nation's renewable energy goals and (b) the harm that would be caused to local people and places, but those goals have now been achieved, and so

the Applicant's argument no longer carries any weight, just as happened in 2013 when the Maitland family's earlier renewable energy applications were rejected by Scottish Ministers (see Appendix C (Planning history)).

20. Scotland's plan of obtaining all of its gross electricity consumption from renewables will have been realised long before the first solar panel operated at High Nunton, as 99% of the electricity consumption already comes from renewables, as shown by the energy statistics the Scottish Government published in December 2021.⁴⁸
21. Any demand for additional electricity – for example to power future generations of electric car, or to provide a surplus to sell outside of Scotland – would be met by the energy projects that are now in place or in progress, including the very large renewable energy proposals that were announced by Crown Estate Scotland on 17 January 2022, with wind-related agreements relating to a capacity of almost 25,000 MW, or more than 800 times that of High Nunton.

Electricity use

22. There are obvious tensions between the renewable energy policies in the Development Plan, including IN1, as the implementation of some of those policies would be likely to increase human activity and greenhouse gas emissions, while others would do the opposite.
23. In balancing the “climate change” policies, High Nunton may even indirectly weaken Scotland's ability to secure its zero carbon goals, as the solar farm would either allow the nation to maintain its current emission levels, or it could stimulate demand for goods that are powered by electricity and so play a direct role in increasing emissions.
24. The Applicant referred to the consumption of electricity by the end-user as a factor that was introduced to support the Proposal, by claiming that the High Nunton electricity would power 8,000 homes.⁴⁹
25. The Applicant has therefore relied on that “end-user” effect as being a relevant issue for planning purposes, presumably on the grounds that energy from High Nunton would result in less greenhouse gas emissions than energy from sources such as oil or gas.

⁴⁸ Scottish Government, Energy Statistic for Scotland Q3 2021 Figures, published 23 December 2021.

⁴⁹ EIA Report, Appendix 2.1 (Non-Technical Summary), page 2.

26. Such a reference to the end-user effect has not always been approved by the courts,⁵⁰ but if the Planning Authority decided to accept that the ultimate use of High Nunton's electricity was a material consideration, then it is important to note that in balancing the "emissions account" the Applicant has failed to recognise the amounts attributable to a wide range of end-users and other issues, such as the emissions associated with

- 1) the production of the solar panels, mounting frames, inverters, transformers, buildings, cabling, fencing, cameras, road material and all of the other plant and equipment that is required to construct the solar farm;
- 2) the production of the materials that would be used in connection with the Applicant's landscape proposals, mitigation planting and so on;
- 3) the transportation of the solar panels and the rest of the plant and equipment from its point of production to the Borgue Peninsula;
- 4) the preparation of the roads and access arrangements that need to be in place before the solar panels and mitigation measures are installed;
- 5) the erection of the 45,000 solar panels, and completion of the solar farm battery storage facilities, amenity area and related works;
- 6) the completion of the grid-connection infrastructure linking High Nunton with Tongland, and
- 7) the High Nunton electricity that was bought by end-users to power (using the Applicant's own figure) say 8,000 new heating and ventilation systems, or new washing machines or fridge freezers.

27. The Proposal is founded in the development's ability to generate income from the sale of electricity, and so it is only viable if demand for that electricity is maintained and/or promoted.

28. It is therefore the case that a material (but perhaps less obvious and indirect) risk is that High Nunton would exacerbate emissions by maintaining or even stimulating demand for electricity, and so frustrate Scotland's climate change objectives.

⁵⁰ See, for example, *Greenpeace Limited v. The Advocate General and others* [2021] CSIH 53.

29. The risk that the solar farm may lead to increased consumption has been entirely “greenwashed” out of the Applicant’s energy and emissions account, and so excluded from the EIA Report’s assessment of the net impact of High Nunton on climate change.
30. The factors that influence the global energy balance are complicated, and the data that is needed to calculate the impact of a development on climate change is unlikely to be available at anything like a project level. But that does not mean that any negative aspects of the High Nunton scheme can be ignored or discounted for the purpose of determining the relevance of emissions for planning purposes.

Policy support

31. As was noted earlier, the Applicant has referred to the draft fourth national planning framework [“Draft NPF4”] which the Scottish Government published in November 2021.
32. The current Development Plan does not contain any policy statement about solar farms, and no public consultation has been completed that has altered the policy with respect to the construction of solar farms in Dumfries and Galloway, or in any national or regional scenic areas, and so there is currently no explicit support for such developments.
33. Draft NPF4 has to be read in conjunction with other draft policies, which have the effect of maintaining the *status quo*, and so solar farm developments will not be supported where (as here) they would be contrary to other policy objectives, such as landscape and visual amenity, the natural environment and tourism.
34. Any presumption in favour of a solar farm development, whether or not of this scale and complexity, based on a narrow interpretation of Draft NPF4, may therefore constitute an alteration to the Development Plan that was of such a significant nature, and involved such a material departure from the statutory planning process, that it could never be used to support the Proposal and would instead be reduced by the courts as being *ultra vires*.

Greenwashing

35. In striking the difficult “energy v. environment” balance (in the context of applying Policy IN1), the Planning Authority needs to have regard to the matters referred to in Appendix E (Evidence), as well as the reliability of the information that is publicly available in connection with the status of the renewable energy market.

36. The need for caution is demonstrated by concerns Scottish Power raised in April 2021 in a report entitled *Come Clean on Green: Greenwashing of electricity tariffs in the UK market*, in which the company highlighted the “widespread mis-selling” of green electricity tariffs that were backed by no more than guarantees of origin, that is certificates which are a tracking instrument for electricity generated by renewable sources.
37. Scottish Power explained that tariffs based merely in traded United Kingdom renewables certificates, with no direct link to the source of the energy, provided minimal benefit to renewables generators, while tariffs based on certificates purchased from outside the United Kingdom provided no benefit, and instead exempted the supplier from contributing to the government support schemes for renewables.
38. The use of certificates was termed greenwashing, and Scottish Power found that around one third of the electricity supplied through tariffs marketed as green or renewable had been “greenwashed”. They identified the most culpable suppliers as Bulb Energy and Shell Energy, and one they believed to be Octopus Energy.
39. Scottish Power called on the government to take urgent action to “call time on greenwashing”, including requiring higher standards of transparency and disclosure in green marketing; tightening the rules around what was termed “additionality”⁵¹ in supplier marketing claims, and closing the loophole which allows suppliers to escape their environmental levy obligations by purchasing foreign certificates.
40. In the context of the Proposal, an important message to be taken from the Scottish Power document is the extent to which parties in the renewable energy sector make claims, backed by no more than images of birds and bees, to mislead customers into thinking that their energy activity is helping to achieve climate change targets.
41. The reality may be that High Nunton’s electricity is exported to England by “greenwash” suppliers to consumers who have little interest in preserving Scotland’s flora and fauna to satisfy their energy needs, rather than the Applicant engaging in measures of a more local and beneficial nature, such as promoting the reduction of travel by car, the enhancement of public transport, and the installation of domestic solar systems.

⁵¹ Additionality was defined by Scottish Power as “the additional benefits delivered when a consumer is supplied energy through a green tariff”.

Gas pipeline

42. On a separate matter, but one that links the energy market and the Borgue Peninsula, the Planning Authority should have regard to the fact that Proposal does not provide any evidential basis to determine the extent of any strategic risks that may be associated with the close proximity of the solar farm, battery storage facilities and grid-connection infrastructure to the natural gas pipeline that runs between Brighouse Bay and Ireland.
43. The Planning Authority may therefore have grounds for requiring further particulars to be provided to assess the level of the risks associated with the direct and indirect impact of the Integrated Development on the trans-national pipeline infrastructure, and *vice versa*.

Conclusion

44. The Applicant has provided no evidence of any mitigation measures that adequately address the significant adverse effects of the Integrated Development on the Borgue Peninsula, including the cumulative impacts of a solar farm on the landscape, the cultural and natural heritage, the areas and routes that are important to tourism and to the recreational use of the countryside, and the amenity of much of the surrounding area.
45. The Proposal would cause significant harm to some local people and their homes and, in combination with the other material considerations that have been mentioned, the Planning Authority would be right to conclude that the Proposal is significantly contrary to the Development Plan policy IN1 and so justify the refusal of planning permission.
46. That outcome is consistent with (a) the decision Scottish Ministers reached in 2013 in connection with the Maitland family's earlier renewable energy proposal, and (b) the preliminary conclusions that were reached by the Council's landscape architect in 2018, who thought that "there may be few effective and appropriate options to mitigate the adverse and potentially significant effects of the solar farm", and who recognised "the highly sensitive landscape of the site and its wider surroundings, the large scale of these proposals, and the industrial nature of the development."⁵²
47. In determining the "energy v. environment" balance, it is also clear – not least from the most recent government statistics – that the refusal of planning permission to construct a solar farm at

⁵² Pre-application Enquiry Report, paragraph 7.2.

High Nunton would not undermine the Scottish Government's objective of securing gross electricity consumption from renewables.

48. There would also be no loss of the “biodiversity gain” on which the Applicant relied so heavily to make its case, as the Maitland family would continue to be able to introduce the beetle-banks and beehives that featured so prominently in their promotional material.

HIGH NUNTON SOLAR FARM

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APPENDIX G6

COMMUNITY SERVICES

1. Permission to construct a solar farm on the Borgue Peninsula should be refused on the grounds that the Proposal is contrary to policies set out in the Development Plan, as
 - a) it would neither add to, nor enhance, green networks or connections to them (Policy CF2), and
 - b) it would adversely impact on access routes and paths in the area (CF4).
2. The Proposal may also adversely affect the rights of access that currently exist with respect to some or all of the land that comprises the Proposal Site, especially in those areas where the boundary fencing and other security measures were constructed to deny entry to the public.

Evidence

3. In considering this aspect of the application it is important to remember that the Planning Authority has no factual basis on which to assess the environmental and other impacts of the Integrated Development, which consists of the solar farm and the pylons and infrastructure linking High Nunton with the electricity substation at Tongland.

Green networks

4. The Proposal Site is located within walking distance of the villages of Borgue and Twynholm and is only 2 miles from the Royal Burgh of Kirkcudbright. It is also within easy cycling distance of towns such as Castle Douglas and Gatehouse of Fleet.
5. One of the most scenic routes within the whole of the Solway Coast Regional Scenic Area runs parallel to the Proposal Site, and follows the B727 from the centre of Kirkcudbright south, via

Dhoon Bay to Borgue, and then on into the Fleet Valley National Scenic Area. The course of this scenic route is highlighted in Map HNS1.

6. The green networks that are used by locals and valued by visitors include the B727 and C32s, with the related tracks and paths that give access to the open farmland and other landscapes that surround those roads, including drumlin pasture and gorsey knolls.
7. The Development Plan explains that well planned and designed green networks have social and health benefits through encouraging physical activity and time spent outdoors, as well as having important economic benefits:

“Green networks can greatly increase the perceived value of areas, making them more attractive to businesses and homebuyers who appreciate the benefit of easy access to parks, playgrounds and natural open space. Other benefits include enhancing biodiversity, providing educational resource, climate change mitigation and encouraging tourism.”

8. The Development Plan policy (CF2) would indicate that the Planning Authority should not support the Proposal as it does not “add to and/or enhance green networks or connections to them,” while it is obvious that a solar farm would make the area much less attractive to homebuyers, as well as disappointing tourists, and perhaps also discouraging inward investment by certain types of wildlife and environment-related businesses that might otherwise have chosen to locate in this part of Dumfries and Galloway.

Access routes

9. As regards access to the Proposal Site, this can now be done in a number of ways, including the use of routes that allow for the recreational use of the woodland to the north of the Proposal Site, and through the Core and Culraven Paths that begin at Dhoon Bay, which is a popular destination with toilets and other recreational facilities.
10. The construction of a solar farm would clearly harm all of the existing access routes, not least by introducing solar panels over an area the size of 100 football pitches, and with boundary fencing that is designed to impede public movement through the landscape, which would be contrary to the Development Plan policy CF4 under which the Council, as access authority:

“will assert, protect and keep open and free from obstruction any route, waterway or other means by which access rights may reasonably be exercised.”

11. The Proposal would also be contrary to Policy CF4 to the extent that “Development proposals should not impact adversely on any of the aforementioned access routes and Core Paths”, as the introduction of the solar farm would blight the existing use of the Core and Culraven Paths.
12. The application contains proposals to create an alternative route to the Core Path, but the Applicant has failed to realise that the major benefit of the existing path would be lost, as it would no longer lead walkers from the lower roads through to a “reveal” over an open, settled drumlin pasture and gorse knoll landscape that has remained largely untouched since the 1850s.
13. Under the Proposal, walkers would instead be confronted with an alien sea of 45,000 solar panels, and mitigation planting that has no place in this part of the Borgue Peninsula.
14. It may be worth contrasting the Proposal with what the Council’s landscape architect wrote in 2018 about
 - the scenic and designated quality of the landscape of the Borgue Peninsula;
 - the numerous publicly accessible and good viewpoints along core paths;
 - the opportunities for visitors to stay in and enjoy the landscape, and
 - the scenic quality and unfolding views from the network of tracks and footpaths that are enjoyed by cyclists and walkers.
15. All of this would disappear if permission were granted to construct a solar farm at High Nunton.

Conclusion

16. The evidence shows that the Proposal, and the much larger Integrated Development of which it is part, would be bad for green networks, and bad for access routes, and so be contrary to Development Policies CF2 and CF4 and so justify a refusal to grant planning permission for this type of development on the Borgue Peninsula.

HIGH NUNTON SOLAR FARM

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APPENDIX G7

ECONOMIC DEVELOPMENT

1. Permission to construct a solar farm within the Borgue Peninsula and the Solway Coast Regional Scenic Area should be refused on the grounds that the Proposal does not comply with the economic policies as set out in the Development Plan, as it
 - 1) would jeopardise a scenic landscape which tourists appreciate (ED9), and
 - 2) would not enhance the enjoyment of an area that has been described as a “world class environment” (ED10).

Integrated Development

2. As with all of the other Development Plan policies, it is important to remember that the Planning Authority has no factual basis on which to assess the environmental and other impacts of the Integrated Development, including the infrastructure that is needed to export the electricity to Tongland, which is likely to have an impact on the economic development policies.

Tourism

3. The Development Plan identifies tourism as a key sector within the local economy, and refers to the important role planning has in supporting the sector throughout Dumfries and Galloway “whilst safeguarding the tourism assets of the region”.
4. The Proposal Site is located less than 2 miles from the Royal Burgh of Kirkcudbright, and within line-of-sight of the village of Borgue. It lies within the Solway Coast Regional Scenic Area, and can be seen from the Fleet Valley National Scenic Area, as well as being closely associated with the Solway Firth Special Protection Area.

5. High Nunton presents views that are strongly rural in character and have been settled since the 1850s. It is also the home of badgers, European protected species and a wide range of important flora and fauna, including more than 50 species of bird.
6. These are all important attributes of the land that are likely to appeal to wildlife and other visitors, in an area that is already well known to tourists.
7. Within a 10 kilometre radius of the Proposal Site visitors have access to harbours and other tourist facilities at places such as the Seaward and Brighouse holiday parks to the east and south of the Proposal Site, and at Carrick and Sandgreen within the National Scenic Area.
8. Visitors also have access to the Borgue Hotel, and to other bed and breakfast and self-catered accommodation in and around the Borgue Peninsula, and in the neighbouring towns of Kirkcudbright, Castle Douglas and Gatehouse of Fleet.
9. The regional scenic area provides opportunities for visitors to engage in activities such as arts and crafts, fishing, painting, photography, sailing and more. They also have easy access to sites of geological importance, the Brighouse Bay site of special scientific interest, and features of historic value, such as the listed Borgue Old House, and scheduled monuments such as the Dhoon Wood Fort and the Boreland Motte.
10. The high value of the historic environment along the Solway Coast was recently highlighted by an exhibition that opened at the Kirkcudbright Gallery and Museum in October 2021, which displayed artefacts from the internationally important Galloway Hoard (which was found less than 15 kilometres from the Proposal Site).
11. The Proposal is therefore likely to impair the visitor experience on the Borgue Peninsula and surrounding area, particularly from the start of construction work in say 2027, through the whole of the 35 or so year operational phase, and so it would have a permanent adverse effect.
12. The extent of the visual change that would confront tourists can be seen from the Applicant's illustrations, and in particular
 - Map HNS1 which shows the close connection between High Nunton and the national and regional scenic areas;

- Map HNS2 which shows the visual impact of the solar farm on the Borgue Peninsula and the land in and around Kirkcudbright, and
- Maps HNS4 and HNS5 which show “before and after” images of what would confront users of Core Path 195.

Coo Palace

13. The exceptional quality of the area’s scenery was recognised in 2020 when a well-known tourist business, the Holiday Property Bond, opened Corseyard Farm, a Category A listed farm building near Borgue, known locally as the Coo Palace, as a high quality tourist destination.
14. The developer described this part of the Solway Coast in glowing terms:

“This beautiful part of lowland Scotland is perfect for adventurers, with an undulating coastline of rocky shoreline and sandy beaches, acres of inland forest and plenty of green spaces. The nearby towns and villages are full of culture and history, as well as dozens of other attractions to entertain all kinds of holidaymakers.”
15. The importance of the Borgue countryside was demonstrated by the Holiday Property Bond’s documents, which include guides for walkers that cover locations around the Proposal Site, including the Senwick Wood core path that begins at Dhoon Bay, beside the entrance point to the Core and Culraven Paths.
16. The harm that would be caused by a solar farm would be obvious to any visitor from the Coo Palace who walked to the north of High Nunton, where (on a clear day) they now have a panoramic view over the settled open landscape down towards the Solway Firth, and then across to the Isle of Man and the mountains of Cumbria, a view that would be obliterated by a sea of 45,000 solar panels, mitigation planting and boundary fences.
17. Those same Coo Palace guests can now appreciate the wildlife features and the many bird species that use the habitats on the Proposal Site, but would no longer be able to do so after the solar farm was constructed.

Economic development

18. The Proposal demonstrates the tension that exists between economic development and climate change objectives, as the construction of a large solar farm at such a sensitive location may deter inward investment, and so reduce the potential for creating future revenue streams and employment opportunities.
19. Those potential inward investors include homebuyers who may have thought about re-locating to Dumfries and Galloway, but would be reluctant to do so now because of the threatened presence of a large solar farm near their property, or for fear that High Nunton would set a precedent that may lead to further unwelcome development in the region, which would have an even more negative impact on their investment.
20. It is also the case that potential investors whose businesses depend on attracting visitors who value the landscape, wildlife and other natural assets the area has to offer, may also be lost to Dumfries and Galloway because of the direct and indirect effects of the proposed development.
21. Indeed, it is difficult to think of a business that operates in the tourism, heritage or wildlife sectors that would not suffer from having an industrial scale solar farm at this location.
22. The likely deterrent effect of the Proposal on investors can be illustrated by considering developers such as Holiday Property Bond, as any future funding decisions to improve tourist facilities in Dumfries and Galloway may be postponed or abandoned for fear that the alien landscape at High Nunton would detract from the appeal of the area to visitors, and create an unwelcome precedent in terms of further blight within the Regional Scenic Area.

Conclusion

23. The Proposal would also be likely to sustain, or even to increase, current levels of greenhouse gas emissions, and so be contrary to the Development Plan's policy ED10 of supporting the aims of the Galloway and Southern Ayrshire Biosphere, as well as doing nothing to support "the enhancement, understanding and enjoyment of the area as a world class environment."
24. The Proposal contains no mitigation measures that could address the likely direct and indirect adverse effects of High Nunton on economic development, which are mainly connected with (a) the impact the solar farm would have on the scenic, heritage and wildlife assets that draw visitors

to Dumfries and Galloway, and (b) the creation of a precedent that would deter future inward investment.

25. The Proposal contains “tourist attractions and recreational facilities”, but this is no more than an amenity area located beside the battery storage units at High Nunton, and so it carries no weight for the purpose of determining the merits of the application, as the Proposal could do nothing other than jeopardise the local assets which tourists appreciate, and so permission should be refused as it is contrary to policy ED9.

HIGH NUNTON SOLAR FARM

Ref: 21/2490/FUL

APPENDIX G8

ACCESS & TRANSPORT

1. Permission to construct a solar farm on the Borgue Peninsula and within the Solway Coast Regional Scenic Area should be refused on the grounds that access matters that are relevant to the proposal are not supported by a complete or adequate design and access statement.

Disabled access

2. The Applicant's approach in connection with access is contrary to the requirements of regulation 13(5) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 [“the DMP Regulations”], which explain that because the application is for a Major Developments it must be accompanied by “a design statement and written statement about how issues relating to access to the development for disabled people have been dealt with”.
3. The regulations require the Applicant to do various things in connection with this aspect of access to the Proposal Site, including
 - 1) to explain the policy or approach that the developer has adopted as to access for disabled people to the existing land;
 - 2) to describe how any specific issues which might affect access have been addressed, and
 - 3) to explain whether any consultation was undertaken on issues relating to access for disabled people.⁵³
4. There was no mention of access for disabled people in the pre-application consultation process or in the final application, whether in the section that deals with the proposed new amenity area or with the re-routing of Core Path 195, or the creation of the “new footpath loop” of around 2.7

⁵³ Regulation 13(5), DMP Regulations.

kilometres which was designed to “offer the local community a walk across land that is currently not widely accessible as it forms part of a working farm.”⁵⁴

5. In the section of the application headed “Access” there is no more than the incorrect and misleading statement that

“There is no public access within the Proposal boundary and no specific arrangements for impaired access are considered necessary”.⁵⁵

Transport

6. As with the Development Plan policies relating to certain aspects of the natural environment that were mentioned earlier, the significant direct and indirect impacts on transport that relate to the Integrated Development raise matters of policy, regulation and enforcement that are primarily within the remit of parties other than the planning department, in this instance the Council’s transport department.
7. Having said that, and as with matters relating to European protected species, there is value in obtaining information from people who know about the local transport networks, and so may be able to help the authorities to proceed on an adequate and correct factual basis, for example in ensuring that the Planning Authority is aware that the entry to the Northern Access Route is located on a stretch of the A755 that is renowned for having poor visibility, and for being dangerous for walkers and cyclists.
8. It may therefore be appropriate, for both transport management and for public safety reasons, to refuse permission for the construction of the solar farm at the Proposal Site because of the lack of adequate access arrangements for the whole of the Integrated Development, both at the entry to the Northern Access Route off the A755, and also at the start of the Southern Access Route that is located on the B727 at the entrance to Culraven Farm, which would be the normal entry point for the solar farm during its 35 or so year operational phase.

⁵⁴ PDA Statement, Appendix 2 (Improved local facilities).

⁵⁵ PDA Statement, paragraph 6.7.1.

Amenity Area

9. The land at High Nunton is mainly accessed by those living on the Borgue Peninsula by foot or cycle or car, while the majority of visitors from outside the Solway Coast area would have to travel to the new footpath and amenity area by car, and would probably use the well-established Dhoon Bay car park, or alternatively try to park in the village of Borgue, where there are no designated parking bays at any point along the B727.
10. The proposed footpath is described as a “local facility” and was developed by the Applicant in conjunction with the amenity area to attract visitors to High Nunton.
11. The amenity area featured in the project description in the EIA Report,⁵⁶ but not in the detailed plans or analysis that accompanied the application. It was also referred to in the pre-application consultation material, including the Leaflet in which High Nunton Solar advised the public that the project would include a new “woodland picnic area for the enjoyment of the local community.”⁵⁷
12. The amenity area was mentioned in the “Frequently Asked Questions” document,⁵⁸ where the question asked was “How will the picnic area [be] kept clean of waste and free from fly tipping?” to which the Applicant responded:

“The picnic area will be some distance from the nearest public road and so it is unlikely to be at risk of fly tipping. We would hope that people using the footpath and the picnic area will respect the countryside and take their litter away with them, however, in the event rubbish is left on site then Robert Maitland shall arrange for it to be collected and removed.”

Conclusion

13. The evidence indicates that the Proposal should be refused on the grounds that it is contrary to the transport policies set out in the Development Plan, because the footpath and the amenity area the Applicant intends to create for visitors:
 - 1) do not take account of statutory equal opportunities obligations relating to accessibility;
 - 2) have not been designed for the safety and convenience of all potential users;

⁵⁶ EIA Report, paragraph 2.1.4.

⁵⁷ PAC Report, page 23.

⁵⁸ PAC Report, page 21.

- 3) are not well served by the most sustainable modes of travel;
 - 4) provide no opportunities for a modal shift from private car use;
 - 5) do not include adequate parking;
 - 6) do not have any level of electric vehicle charging points for visitors, and
 - 7) do not incorporate any parking facilities for cycles (Policy T2).
14. In the absence of suitable alternatives, travel to the amenity area would be by the least sustainable modes of travel (car), while the “visitor” aspects of the Proposal would stimulate human activity and so increase the related greenhouse gas emissions associated with private car use.
15. The Proposal contains no disabled access statement of the kind that is required by regulation 13(5) because the solar farm is a Major Development, while the entry points on the A755 (Northern Access Route) and B727 (Southern Access Route) may be contrary to traffic management and health and safety policies for which the Council is responsible.
16. The evidence shows that no adequate measures have been put in place to mitigate the likely residual adverse effects of the solar farm on the Development Plan’s transport policies, as the new footpath and amenity area are contrary to the provisions of policy T2, and so this would be one of the many factors that combine to justify the refusal of the application.