



Neutral Citation Number: [2026] EWHC 1272 (Admin)

Case No: AC-2025-LON-003160

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/05/2026

Before :

SIR TIM KERR
(sitting as a judge of the High Court)

Between :

THE KING on the application of RICHARD DIXON	<u>Claimant</u>
- and -	
WAKEFIELD METROPOLITAN DISTRICT COUNCIL	<u>Defendant</u>
- and -	
BOOM DEVELOPMENTS LIMITED	<u>Interested Party</u>

Mr Richard Harwood KC (instructed by **Goodenough Ring Solicitors**) for the **Claimant**
Mr Alan Evans (instructed by **Wakefield Council Legal Services**) for the **Defendant**
Mr Mark Westmoreland Smith KC (instructed by **Bevan Brittan LLP**) for the **Interested
Party**

Hearing dates: 22 and 23 April 2026

Approved Judgment

This judgment was handed down remotely at 11:00am on 29 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Tim Kerr :

Introduction

1. This is a challenge, by permission of Lang J, to the decision of the defendant local planning authority (**the LPA**) to grant planning permission on 7 August 2025 to the interested party (**the developer**) for the construction of a renewable led energy generating station comprising “solar arrays” (more prosaically, solar panels, or an array of solar panels) and associated infrastructure.
2. The site is on green belt land east of the M1 motorway and a railway line running approximately parallel to the motorway. To the west of the M1 is the Grade II listed Bretton Hall Registered Park and Garden (**the RPG**). The claimant is a local resident who is opposed to the development. He challenges the legality of the LPA’s decision to grant planning permission on three grounds.
3. The first ground is that the LPA’s planning officer did not have a lawful basis for disagreeing with its Design and Conservation Officer (**the DCO**), who advocated refusal of planning permission on the ground that the view from the RPG across the M1 and the railway line would be spoiled by westward facing solar panels; and that would not be sufficiently mitigated by planting of trees.
4. The second ground is that the LPA failed to consider whether there was a clear and convincing justification for the part of the scheme that causes harm to the RPG; and whether, as the DCO thought, the application should be refused unless some solar panels were removed from the northern part of the “western parcel” of land at the development site, i.e. the part facing the RPG on the western side.
5. The third ground is that the LPA acted in a procedurally unfair manner by failing to reopen consultation with the public at large, the Gardens Trust (a statutory consultee) and a local parish council, after the developer had made certain amendments to the planning application in February 2025; and following changes to the National Planning Policy Framework (**the NPPF**) from December 2024, introducing the “grey belt” concept.
6. The claim is opposed by the LPA and the developer. They say the LPA was entitled to depart from the view of the DCO; that there was no misunderstanding of the issues in the officers’ report to the planning committee; that the decision was in line with both national and local policy; that the planning committee was in no way misled; that the LPA was not obliged to reopen the process of consultation; and that the decision to grant planning permission was lawful.

The Facts

7. The developer made its application for planning permission on 21 December 2023. It was supported by a detailed design and access statement and planning statement from its agent, Aardvark EM Ltd (**Aardvark**). Appended to the latter was, at Appendix 1, an “Assessment of Green Belt Purposes”, commenting on “the proposed development against the first four purposes of Green Belt as defined in paragraph 143 of the NPPF”.

8. Those purposes are, first, to check unrestricted sprawl of large built-up areas; second, to prevent neighbouring towns merging into one another; third, to assist in safeguarding the countryside from encroachment; and fourth, to preserve the setting and special character of historic towns. The fifth purpose, encouraging the recycling of derelict and other urban land, was not thought relevant.
9. Appendix 2 stated the “Very Special Circumstances” required to override the inhibition against development in the green belt. The benefit said to outweigh that inhibition was generation of abundant renewable electricity to the National Grid, contributing to the goal of achieving “Net Zero” by 2050. The heritage statement and graphics relating to the site, its history and archaeology, were provided by another agent, Headland Archaeology (UK) Ltd (**Headland**).
10. The predicted impacts of the proposed development were set out in section 9 of the heritage statement. Among the heritage assets considered was the RPG (paragraph 9.2.18 and following). At 9.2.25, Headland asserted that there would be “no change in the setting of Bretton Hall [RPG] or any impacts are unlikely to be significant and will be reversible”.
11. The overall conclusion (9.2.26) was:

“there is expected to be no significant adverse impact on the cultural significance of any of the designated assets within the 1km Study Area.”

Bretton Hall, Headland explained, “is best appreciated internally within its confines” (9.2.23). Outside them, the eastward view already featured the M1 motorway. The eastward views “do not contribute to significance of setting or other sensory aspects” (9.2.24).
12. The LPA consulted the Gardens Trust, as it was obliged to do. The RPG is registered by Historic England as a garden of special historic interest (under section 8C(1) of the Historic Buildings and Ancient Monuments Act 1953). Article 18 of and Schedule 4 paragraph 1 (the table at (s)), to the Town and Country Planning (Development Management Procedure) (England) Order 2015 required the LPA to consult the Gardens Trust if the development was:

“likely to affect any ... garden or park of special historic interest which is registered in accordance with section 8C of the Historic Buildings and Ancient Monuments Act 1953”.
13. The LPA carried out that duty and consulted the Gardens Trust on the proposed development. The Yorkshire Gardens Trust (**the YGT**) responded on behalf of the Gardens Trust, in representations made to the LPA in a letter of 5 February 2024. It referred to the developer’s Landscape and Visual Impact Assessment (**the LVIA**) which included photomontages and photographs taken in the high summer of 2023, with trees in full leaf.
14. The YGT was concerned that only three of the photographs were taken from within the boundaries of the RPG; and that the west facing array of solar panels would be far more visible in winter than in high summer. The YGT referred to the “bucolic and sylvan hillsides bordering or outside the RPG” and asserted:

“It’s this rural character outside the Park that gives the Park much of its visual aesthetic, unusual and precious in this area. We contend that it is important to protect this characteristic as much as possible.

In that spirit, and because there is the potential for less than substantial harm to be caused through the adverse visual impact, we suggest that a more detailed LVIA is made from within the Park, taking into account the varying leaf and no leaf views. This LVIA should investigate whether it is possible to mitigate the array’s impact on views from inside the RPG by, for example, planting specimen evergreens in strategic locations (such as The Weston car park). Similarly, it should investigate whether reducing the number of solar panels at the higher end of the array’s site could remove them from any view from inside the RPG.”

15. The developer’s landscape and visual consultants responded on 16 February 2024 pointing out among other things that “[m]ost of the RPG is only accessible to the public by admission fee”; and that eastward views from the RPG included the (not very bucolic and sylvan) M1 motorway. They submitted that the LVIA’s assessment of the “minor adverse” impact of the development on those views from the RPG was “a balanced assessment of the change which would be brought about by the development”.
16. Within the LPA, the DCO, Ms Emma Sharpe, responded to Mr Neil Bearcroft, the officer responsible for dealing with the planning application, in a memorandum dated 12 March 2024. She raised an objection on the ground of unjustified harm to the setting and significance of the RPG, contrary to a local policy, LP64, and paragraphs 205 and 206 of the NPPF; while accepting that “[m]itigation may be possible” and offering “further advice in that regard”.
17. Ms Sharpe noted that late 18th and early 19th century pleasure gardens such as the RPG benefited from the use of “borrowed landscapes”, i.e. attractive views from within the grounds of land outside them, with less attractive areas screened by planting within the grounds. The concept of “conceal and reveal” underlay this design method, she explained.
18. As for mitigation, the DCO did not think screen planting would be adequate. She recommended reducing the number of solar panels or relocating them further down the slope of the western parcel. She expressed the view that the harm was “minor harm”, i.e. less than substantial harm and capable of mitigation, but she objected to the proposal as then formulated, since there was no mention of mitigation in the developer’s heritage statement.
19. On the developer’s behalf, Headland responded at length and in detail on 15 May 2024. It is sufficient to set out the conclusion at paragraph 42 of the written response:

“It is agreed that the proposed solar farm would have a minor-moderate adverse visual effect on the ‘borrowed landscape’, which would represent the lower end of less than substantial harm and that this harm should be weighed against the public benefit of the proposals in accordance with Local Plan Policy LP64 and paragraph 208 of the NPPF.”
20. The LPA invited the Gardens Trust, as a statutory consultee, to comment further on the developer’s updated position. The YGT did so on behalf of the Gardens Trust, in a letter of 6 July 2024. The YGT reiterated that there was “the potential for less than substantial harm to be caused through the adverse visual impact”. The distinction

between areas accessible on payment of a fee and those accessible free of charge was not relevant, they added.

21. The position taken was set out in the following paragraph:

“... the rural character of the views outward from the RPG make a positive contribution to the significance of Bretton Hall Park. YGT agrees with the applicant that the degree of harm is less than substantial, but points to the possibility of real mitigation of any harm by appropriate planting and the application of tree preservation orders to maintain the effect of such planting. We reiterate our recommendation to investigate whether reducing the number of solar panels at the higher end of the array’s site could remove them from any view from inside the RPG.”

22. The DCO added some further comments four days later, in a further memorandum to Mr Bearcroft dated 10 July 2024. She referred to a further local policy, LP35 dealing with proposals for renewable energy generation developments. She maintained that:

“Although additional analysis has been provided, there is no consideration of mitigation or justification for this harm. It does not seem feasible that screen planting would mitigate the harm given the topography of the application site. Consideration should therefore be given to reducing the number of solar panels or relocating them within the site, lower down the slope. At present we consider the proposals are contrary to Local Plan Policies LP35 and LP64 as they would cause harm to a designated heritage asset and this harm is not justified because it could be possible to deliver the benefits of the proposal in a less harmful manner.”

23. The DCO’s conclusion was that, as matters stood, her department objected to the development as it was contrary to local policies LP35 and LP64 and to paragraphs 205 and 206 of the NPPF. She added that the department for conservation within the LPA would be “happy to provide further advice on mitigation measures that could address these issues”.

24. The YGT provided further comments at the invitation of the LPA on 10 November 2024, in the light of further photographic images, provided by Mr Nick Leaney of Aadvark on behalf of the developer. Certain comments were made on these images and a site visit by the LPA to the RPG was recommended to get a more complete picture. In the last two paragraphs, the YGT stated:

“9. YGT agrees with the applicant that the degree of harm is less than substantial, and we note that much of the successful screening of the array from the RPG comes from the presence of mature trees.

10. YGT recommends that the LPA investigates whether additional planting would add further screening from points where there is intervisibility. YGT further recommends that the LPA imposes a planning condition to retain and replace trees during the life of the array if and when trees fall or die.”

25. Such was the state of play when in December 2024 changes to the NPPF were introduced, in a major policy shift which included introduction of the new “grey belt” concept. These changes were well known to those working in the field of planning and infrastructure development as planning officers, LPAs, developers and consultants. I will need to return to the changes shortly.

26. Mr Leaney of Aadvark emailed Mr Bearcroft of the LPA, raising several points arising from the publication of the new version of the NPPF. I do not appear to have a copy of that email but Mr Bearcroft's response to it was in an email of 14 January 2025, which I do have. He provided some updated comments from the DCO and from the LPA's recently appointed Urban Designer, focussing "more on landscape impact". Mr Bearcroft's conclusion was:
- "Overall, my final recommendation will be to refuse the application on heritage grounds, based on the harm caused to the setting of Bretton Park as out in the comments by the Conservation Officer and given this harm, when considered against all other factors, very special circumstances will not have been demonstrated to outweigh the harm to the Green Belt."
27. However, he also proposed an alternative:
- "Alternatively, I can set up a meeting with myself and the Conservation Officer to discuss their comments further / discuss potential mitigation measures, though I believe this would likely require to a reduction in the number of panels proposed on the western parcel."
28. The developer's agents updated the plans. Discussions were held with the LPA. On 14 February 2025, Mr Leaney emailed Mr Bearcroft amended plans showing "additional planting" to achieve better screening of solar panels as viewed from the RPG in its borrowed landscape. Further photographic images and montages – projecting expected tree growth into the future over a 15 year period – were provided in April 2025. These were intended to satisfy the requirement for better mitigation of the adverse impact on the views from the RPG.
29. Then on 17 April 2025, Mr Leaney of Aardvark sent to Mr Bearcroft of the LPA "correspondence relating to Grey Belt policy" in relation to the developer's planning application. Mr Leaney emphasised that significant weight should be given to "the benefits associated with renewable and low carbon energy generation"; and referred to the new notion of grey belt land within the green belt, as defined in the glossary of the new version of the NPPF.
30. Mr Leaney referred to recent decisions of planning inspectors on appeal, in which the new grey belt policies had begun to be taken into account. He then referred to the green belt assessment done back in late 2023 and revisited that assessment by reference to the first four of the five green belt purposes, adding that the proposed development should now be considered by the LPA to be grey belt and "not inappropriate" because it met the requirements of the new paragraph 155 of the NPPF.
31. Mr Leaney went on to explain in detail why the development would, in the developer's view, meet those requirements, which are, in the words of paragraph 155:
- "a) The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
- b) There is a demonstrable unmet need for the type of development proposed;
- c) The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework; and

d) Where applicable the development proposed meets the ‘Golden Rules’ requirements set out in paragraphs 156-157 below.”

32. It is unnecessary to repeat all the detailed points made by Mr Leaney in his written submission in support of those requirements being met. It followed that, the developer contended, very special circumstances were not required to outweigh the inhibition against development in the green belt; though, he added, the developer considered there were such very special circumstances, as had been asserted in the original green belt assessment in late 2023.
33. The claimant was also well aware of the changes to the NPPF and the new concept of grey belt land. He submitted written comments to add to his earlier ones, in a post on the LPA’s portal on 4 May 2025 covering two pages. He had clearly seen Mr Leaney’s updated “Green Belt Assessment”, to which he referred, noting the contention that the site should be reclassified as grey belt.
34. The claimant regarded the updated assessment as a device to avoid the “very special circumstances” test. He criticised the grey belt policy and the lack of an “alternative site analysis”, among other things. His other comments were broad and included criticism of the net zero policy itself.
35. The DCO also provided further detailed comments, on 12 May 2025. She noted that mitigation measures had now been proposed, but did not include any reduction in the number of solar panels facing westward towards the RPG. The DCO’s assessment was that the proposed mitigation would not reduce the level of harm to the setting and significance of the RPG.
36. She referred to the “clear and convincing justification” test in paragraph 213 of the NPPF and, locally, in Local Plan Policy LP64. Later in her memorandum, she noted that the proposed mitigation was “a 10m wide belt of native trees and shrubs running through the site, parallel with the existing overhead line exclusion zone. Some additional planting is also proposed in the northern part of field 1”. She depicted this in map illustrations.
37. However, the DCO observed, due to the topography of the site, the additional planting did not provide much screening of the development in views from viewpoint 11, a viewing point within the RPG. There were now “winter/spring” photomontages as well as summer ones. But there was no willingness to reduce the number of panels in the northernmost part of field 1, which is the highest part of the site.
38. The level of harm was considered to be unchanged. It was, the DCO considered, “just below the midpoint of the less than substantial harm bracket”. It was “above minor, so perhaps best described as ‘moderate’”. This weighed considerably against the proposed development.
39. The claimant added a further single page of comment on the LPA’s portal on 10 July 2025. He anticipated that the development would be allowed, but wanted to “add some final points”. He denied the existence of any “local or national emergency that justifies the industrialisation of productive or rural land.” He referred again to the grey belt, describing it as “a political sleight of hand” which “seeks to bypass long-standing protections for our countryside”. He said the rush to green energy would “end in tears”.

40. The planning committee met to consider the application on 17 July 2025. There was a long and detailed officers' report. It is agreed that the reasoning in it was adopted by the LPA, as the latter did not give any separate reasons for its decision. I will need to return to the content of the officers' report shortly, when considering the parties' submissions.
41. I note here that the officers' report included mention of a decision by officers not to readvertise formally "the amended plans and further information submitted through the course of the application". The reason given was that:
- "it has not led to an increase in the scale of the proposed development, and has solely provided more supporting text and assessments to the application and some additional on-site planting".
42. The report recommended granting permission. The conclusion in it was that the site was grey belt land within the green belt. The requirements for development on the land were met. The development was not "inappropriate development". The proposal accorded with paragraph 155 of the NPPF, the report stated (at the end of the third section, headed "Green Belt").
43. The fourth section of the report was headed "Landscape and Visual Impact". It included an account of the impact and a table (numbered 7.2) summarising the "Main Operational Phase Visual Effects". The impact on the RPG was "set out in the heritage section of this report". The Urban Design Officer had requested that the number of panels in the western field be reduced, the authors noted.
44. That was rejected, but, the report indicated, "specific planting information will be secured by condition". The report recorded:
- "Given the mitigation measures set out, it is considered that they would help to reduce the impact of the western parcel both in terms of direct views but also more longer distance views from key receptors such as the Historic Bretton Park and Gardens, as set out in more detail within the heritage section of this report, and it is considered that this has been sufficiently demonstrated in the submitted additional photomontages.
- The direct visual impact of the development is therefore considered to be localised which when combined with the additional planting proposed by the development would help to reduce the impact. Direct views of the structures at the site would be mostly masked by the panels themselves, however, to ensure that these are of an appropriate colour, final details will be secured by condition. ...
- ...
- In terms of the potential for reducing the number of panels on the western parcel, the applicant has advised that primarily they do not consider that it would significantly alter the landscape impact of the development, and a certain level of panels are required to make the development economically viable and also represent an efficient use of the site in terms of renewable energy generation. These points are accepted by Planning Officers, and it is considered that the photomontages demonstrate how the development would be seen in the landscape and read along with other features. The proposed additional landscaping buffer, once mature is considered to represent a strong mitigation measure which would help screen the most eastern panels, on the western parcel, when viewed from the west, and would also assist in joining up sections of woodland within the local area.

In conclusion whilst there would be some residual landscape and visual effects brought about by the development, these would be on the lower end of effect and impact, with the greatest impact only occurring for a short period of time when close or adjacent to the application site. It is therefore concluded that whilst there would be a change to the character of the field from agricultural to developed as a solar farm, the impact would be localised and the negative impact on the landscape is considered to be limited.”

45. The committee agreed with the recommendation in the officers’ report and decided at the meeting to grant planning permission. The written grant of permission was dated 7 August 2025. It is the decision challenged in this case. To allow time for a connection with the National Grid to be established, condition 1 required that development must begin within eight years of the permission. Condition 6 required a tree planting programme approved by the LPA, in accordance with the plans and discussions that had taken place.

Issues, Reasoning and Conclusions

46. The first ground of challenge is that the LPA’s planning officer did not have a lawful basis for disagreeing with the DCO, who advocated refusal of planning permission on the ground that the view from the RPG across the M1 and the railway line would be adversely affected by westward facing solar panels; and that this would not be sufficiently mitigated by planting of trees.
47. For the claimant, Mr Harwood KC began by referring me to the text of relevant parts of the NPPF, in both the pre- and post-2024 versions; and to relevant parts of the Planning Practice Guidance (**PPG**) dating from July 2019. He focussed on the degree of harm to the setting of a heritage asset, the need to identify it precisely and quantify it in more detail than the binary distinction between “substantial” and “less than substantial” harm.
48. Mr Harwood submitted that the assessment in the officers’ report merely expressed disagreement with the views of the DCO and the YGT on the level of impact the development would have on the RPG. He contended that the planning officer’s assessment failed to give adequate and intelligible reasons why the “technical advice” (in Mr Harwood’s phrase) from within the LPA and of the statutory consultee was rejected.
49. Mr Harwood also submitted that officers failed to identify “the level of less than substantial harm” found at the report stage; referred to a statutory duty – section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 – that does not apply to registered parks and gardens; asserted that the impact on the historic environment was “neutral”; and left very serious doubt whether the planning officers understood the heritage issues sufficiently to justify contradicting the view of the DCO.
50. The claimant says it is impossible to understand from the report whether officers considered that the harm to significance was reduced and, if so, why. The judgment of the DCO was on an issue of heritage, not landscape and visual impact, Mr Harwood argued. The planning officers in the report did not say at what level the harm stood, within the category of “less than substantial harm”.
51. They relied on the proposals for landscaping to reduce the level of harm, but did not explain by how much; they cannot be said to have properly found that the harm was

“less than moderate but not fully mitigated”. The reasoning was further flawed by reliance on section 66 of the aforementioned 1990 Act, which applied to listed buildings, not registered gardens.

52. The relevant part of the report, after referring to Local Policy LP35, indicated acceptance that the planting maintained for at least 30 years, would “not fully mitigate the harm caused”; the “remaining harm” to the RPG should therefore be:

“weighed against the public benefits of the scheme as per paragraph 215 of the NPPF. This weighing exercise is not an even balance, as significant weight is to be given to the conservation of the listed building as per section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.”

53. After some further discussion, the report stated the authors’ conclusion on heritage thus:

“In conclusion, the proposal is considered to cause less than substantial harm to the Grade II Registered Park and Garden at Bretton Park, due to the change to the landscape which can be seen from the Historic Park and which currently makes a positive contribution to the of the historic parkland. The harm is considered to be partly mitigated by the proposed planting, which would be maintained for a minimum of 30 years for the purposes of BNG, and which is to be secured by condition, and the wider public benefits of providing low carbon energy to the national grid is considered to outweigh this harm. The proposal would therefore accord with Policies LP63 and LP64 of the Local Plan and Chapter 15 of the NPPF. It is therefore considered that the proposal would have a neutral impact on heritage.”

54. Mr Harwood made the obvious point that to describe the level of harm as less than substantial and not fully mitigated, is inconsistent with the proposition that “the proposal would have a neutral impact on heritage”. He submitted that, overall, the report was “riddled with errors” and was not rationally based. The disagreement with the DCO’s view was not grounded in sound reasoning. Any professional person with knowledge of heritage planning would not have made those errors. The planning committee must have adopted those errors and its decision could not stand.

55. The second ground of challenge is closely related to the first. It is convenient to take the claimant’s contentions on both grounds together. The second ground is that the LPA failed to consider whether there was a clear and convincing justification for the part of the scheme that causes harm to the RPG; and whether, as the DCO thought, the application should be refused unless some solar panels were removed from the northern part of the “western parcel” of land at the development site, i.e. the part facing the RPG on the western side.

56. The essence of this ground is the contention that the officers’ report and the committee failed to engage with the assertion of the DCO and (on the scheme as originally submitted) the YGT that some solar panels should be removed from the western parcel. In short it is said in the claimant’s skeleton argument that “[t]he planning officers failed to consider whether the harm could be reduced by removing panels from the scheme”; or moving them lower down.

57. Mr Harwood noted that the committee had accepted that some harm (at an unspecified level, as argued under the first ground) would result from the development. He criticised the committee’s adoption of the officers’ view that reducing the number of

panels would not make much difference to landscape impacts. That consideration related to effect on the landscape character of the area, a different matter from consideration of the effects on the significance of the RPG or other heritage assets.

58. In addressing the issue of removing solar panels, the officers' report had merely referred to the developer's assertion that it would not be economically viable to reduce the number of solar panels on the site. That was not adequate, Mr Harwood contended. The possibility of reducing the number of panels was a compulsory consideration, made so by local policy LP35 which required that mitigation measures must be considered when assessing the level of harm.
59. The LPA and the developer, through the submissions of, respectively, Mr Evans and Mr Westmoreland Smith KC, opposed those arguments in sustained and detailed submissions. I can summarise them more briefly here in just a few paragraphs.
60. They submit that the disagreement with the DCO's judgment was one of planning judgment and disclosed no error of law or approach; that it was adequately reasoned; that the distinction between heritage issues (properly so called) and visual or landscaping issues, was not significant in the present context because the harmful impact on the setting of the RPG was visual in nature, impacting adversely as it did on views from within the RPG.
61. They further contended that the two errors relied on by the claimant were not material or consequential and represented the over-legalistic approach to interpreting officers' reports, deprecated on high authority. The reference to section 66 of the Act of 1990 was in error but the error was not significant. The reference to the balance to be struck being a weighted balance, did not prejudice opposition to the development; properly stated it, rather than understated, the hurdle the developer had to surmount.
62. The reference to a "neutral impact on heritage" was clumsy language but must be taken to refer to an impact that was not so great as to mean planning permission should be refused. They pointed out that the authors of the report had used the phrase "neutral impact" in other parts of the report in an equally inappropriate manner; but the phrase was nothing worse than a linguistic infelicity and did not infect the report and resulting decision with illegality.
63. As for the officers' treatment in the report of the issue of removing solar panels from the development, they submitted that the authors had adequately explained their position: the DCO had thought that without any removal of panels planning permission should be refused; while the YGT had reached the position that the developer's proposals for concealment of panels by planting over 30 years, to be secured by condition, sufficiently mitigated the harm; and officers were entitled to adopt the latter view, which became embodied in condition 6.
64. Further, they submitted, the DCO was not (unlike the Gardens Trust) a statutory consultee and, in any case, her views had been fairly stated in the report. There was no misleading of the committee about what her views were. The report had done them justice and officers were not bound in law to agree with them as a matter of planning judgment.

65. The degree of harm perceived by officers within the “less than substantial” category was expressed adequately in the report. Officers took no issue with the DCO’s view that, without the additional landscaping that subsequently became condition 6, the degree of harm could be characterised as “moderate”. No more precision than that was required under the relevant planning guidance.
66. On the second ground of challenge, the court should reject the claimant’s argument that the LPA did not apply the “clear and convincing justification” test. Both Local Policy LP64 and paragraph 213 of the NPPF stated that test. The relevant provisions were referred to and worked through and it cannot be said that they were overlooked.
67. The submission that officers overlooked the need to consider the proposal being subjected to an enforced reduction in the number of solar panels should equally be rejected, they submitted. The developer was unwilling to reduce the number of panels in its planning application and there was no obligation on the LPA to consider a diluted version of the proposal, rather than the proposal as it stood.
68. Taking the first and second grounds of challenge together, I come to my reasoning and conclusions. In my judgment, on close scrutiny, these grounds lack merit. As the application and the process of examining it evolved, different judgments and opinions were formed and held by different parties at various times. That is both normal and lawful; indeed, it is a mark of a healthy consultation process and consideration by the LPA of its fruits.
69. Before the advent of the grey belt, the application was ambitious: on the one hand, it had the advantage of offering a contribution to low carbon power generation; but on the other, it had to overcome the “very special circumstances” test because the land was in the green belt and no one seriously disputed that it would cause harm, albeit less than substantial harm, to the setting of the RPG.
70. Despite that, the DCO was not dogmatic in her opposition to the application. She was prepared to discuss and advise on the mitigation measure of reducing the number of, or moving to a less conspicuous location, the solar panels. The YGT supported that and also proposed additional planting. The responsible planning officer, Mr Bearcroft, was however not persuaded at that stage: in January 2025 he would have recommended refusal.
71. But as the change of policy took hold, introducing the concept of grey belt land within the green belt, the developer’s prospects were altered in a manner favourable to it. The changes to the NPPF and the revised green belt assessment in April 2025 aimed at a lower threshold for grant of permission; the “very special circumstances” test need no longer be met, for the development to be appropriate. Measures to mitigate harm remained to be addressed, however.
72. In addressing that issue in the officers’ report, the authors were not obliged either to agree or disagree with any particular view on the issue as to whether additional planting was sufficient (as the YGT appears to have latterly accepted), or whether the developer must go further and reduce the number of solar panels or move some lower down the western parcel slope. It was a matter of planning judgment for officers and the committee considering their report.

73. I do not find force in the criticisms of the officers' report: that an inapplicable statutory provision was cited, that the phrase "neutral impact on heritage" was wrong; and that the degree of less than substantial harm was insufficiently calibrated along a scale. These criticisms are technical and over-legalistic. The first is a minor error without consequence. The second is a wrong use of language that misled no one. The third is of no consequence because everyone agreed that the harm could be called moderate or some similar word.
74. Nor there is any substance in the submission that officers did not understand the law and policies on heritage assets and confused them with landscape and visual issues. In the present context, the two distinct disciplines occupied the same factual territory and, as Mr Westmoreland Smith put it, they should not be considered "in silos". There was no heritage issue in play here other than that of impact on the view from the RPG.
75. The second ground of challenge does not fare any better than the first. The focus on the "clear and convincing justification" test does not disclose any error of approach in the report or the committee's decision based on it. It is obvious from a fair reading of the report as a whole that officers had that test in mind. The DCO had used the actual words in one of her written commentaries. The report made reference to the relevant policies, local and national, containing the phrase. Those policies were worked through in the report.
76. Nor do I accept that officers failed to consider whether the level of harm could be reduced by moving or reducing the number of solar panels. That issue was discussed in the report. It was recorded therein that the developer was unwilling to take that step for economic reasons. The question was then whether *without* that step the mitigation of additional planting was, or was not, sufficient to reduce the harm to an acceptable level which was outweighed by the benefits of the proposal. The LPA lawfully decided that it was sufficient. For those reasons, which closely reflect the submissions of the LPA and the developer, I reject the first and second grounds of challenge and I come to the third ground.
77. The third ground is, I remind myself, that the LPA acted in a procedurally unfair manner by failing to reopen consultation with the public at large, the Gardens Trust and a local parish council, after the developer made amendments to the application in February 2025; and following changes to the NPPF from December 2024, introducing the concept of the grey belt.
78. As to the law, all parties referred me to the decision of Mr John Howell QC, sitting as a deputy judge of this court, in *R. (Holborn Studios Ltd) v. London Borough of Hackney* [2017] EWHC 2823 (Admin), [2018] PTSR 997. At its simplest, the claimant relied on that case as authority that (as it was put in Mr Harwood's skeleton argument), the LPA:
- "was required to deal with amendments to a planning application fairly (*Holborn Studios*) as part of the fair handling of the planning application as a whole. Fairness can also require consultation on important new supporting material".
79. For the developer, Mr Westmoreland Smith reminded me that the common law imposes duties of consultation as part of the general law, not confined to the planning sphere, in limited circumstances delineated in well known authorities such as *R. (Plantagenet*

Alliance Limited) v. Secretary of State for Justice [2014] EWHC 1662 (Admin), [2015] 3 All ER 261. The duty, where it arises, is founded on broad principles of fairness.

80. Mr Harwood submitted that the February 2025 amendments to the planning application were important and that fairness required consultation on them. The amendments were intended to avoid likely refusal of permission for lack of very special circumstances outweighing the harm to the green belt, about which Mr Bearcroft warned in his email of 14 January 2025.
81. The resulting proposal for additional planting to address the requirement for better mitigation of the adverse impact on the views from the RPG were, Mr Harwood submitted, “contentious and debatable”. They did not persuade the DCO to alter her view. The Gardens Trust, a statutory consultee, was not consulted about the changed proposals. The public at large, including the claimant and the nearby Yorkshire Sculpture Park (located within the RPG) also had a legitimate interest in being able to comment on the changes.
82. Mr Harwood further submitted that the developer’s revised green belt assessment in April 2025, characterising the site as grey belt land, was an attempt to change completely the basis of the planning application from one that was (absent very special circumstances) inappropriate development, to one that was not inappropriate development even without very special circumstances.
83. Thus, Mr Harwood argued, the developer sought to lower the bar, thereby correspondingly raising it for objectors. In those circumstances the claimant argued that fairness required a fresh consultation process about the April 2025 revised green belt assessment and the proposition that the site land was grey belt land. The concept of the grey belt was itself new and had supervened in December 2024, since the application was initially made.
84. Mr Harwood contended that the claimant had suffered prejudice from the failure to reopen the consultation exercise because, although he had been aware of the developer’s April 2025 revised green belt assessment, he had lacked the expertise, in preparing his response to it in May 2025, which the YGT and others would have had, if they had been alerted to the developer’s representations in April 2025 and had been consulted afresh upon them.
85. For the LPA, Mr Evans submitted that its decision not to reopen consultation was taken (in the words of the officers’ report) on the basis that “the application ... has not led to an increase in the scale of the proposed development, and has solely provided more supporting text and assessments to the application and some additional on-site planting”.
86. While it is for the court to decide whether that was a fair decision to reach, as Mr Evans accepted, he said there is no reason for the court to reach a different conclusion from that of the LPA. The changes were of a much lesser order than those that had weighed with Mr Howell QC in *Holborn Studios*. There, the objector was a leaseholder of much of the application site and the changes directly affected its ability to make commercial use of its leasehold land.

87. Furthermore, the claimant was not materially prejudiced by the decision not to reopen consultation, Mr Evans submitted. No prejudice is asserted in his witness statement. He was aware of the representations made by the developer in April 2025. He knew about the policy change leading to the introduction of the grey belt concept. He was able to make, and did make, representations in May and July 2025 with full and up to date knowledge of the proposals.
88. As for the position of the YGT, Mr Evans pointed out that it had not objected to the proposal outright in its latest written representations made in November 2024. It had, rather, suggested additional planting and screening which is what the developer then proposed in February 2025 and illustrated by further photomontages in April 2025, which were all published on the LPA's website and available for anyone interested to comment on.
89. For the developer, Mr Westmoreland Smith echoed Mr Evans' submissions on the facts and added copious citations of well known authorities on the content of procedural fairness, emphasising that there is no such thing as a technical breach of natural justice; that the complainant must have suffered material prejudice, i.e. lost something of substance; and that whether fairness requires consultation to be reopened is a fact sensitive issue.
90. Mr Westmoreland Smith emphasised that the advent of the grey belt did not itself alter the scope of the application. It heralded a change in government policy and the LPA had to apply that changed policy and apply its planning judgment to the application in the light of it. The change of policy was not in itself close to triggering a common law duty to consult.
91. I can deal with this ground briefly. First, I do not accept that the advent of the proposal for additional planting – in response to the warning in January 2025 that permission was, as things stood, not likely to be granted – came close to generating a requirement, as a matter of fairness, to reopen the consultation process. It is commonplace for developers to react to objections by proposing measures they hope will be sufficient to overcome them.
92. The suggestion of additional planting had been put forward by the YGT in 2024. The suggestion was not new in 2025. It did not impact directly, personally or commercially, on the claimant, unlike the proposed alterations in the *Holborn Studios* case. He did not suffer material prejudice because he was well aware of the state of the proposals throughout. They were published and he was able to respond to them.
93. The same conclusion applies to the policy change introducing the grey belt. While it lowered the bar for the developer and therefore raised it for objectors, it did not change the nature or scope of the planning application. That remained the same and, again, the claimant was able to respond to the representations in April 2025 and to do so with knowledge of the changed policy. I find no substance in the argument that fairness required the consultation process to be reopened and rerun after April 2025.
94. The outcome is the same whether the issue is viewed, as per the submissions of the LPA, as a question of fact and degree applying the impact-related tests in *Holborn Studios*; or whether, as the developer submitted, it should also be considered more

broadly as a question of common law, requiring the threshold of conspicuous unfairness to be reached. The third ground of challenge fails.

Disposal

95. It follows that the claim must fail and it will be dismissed. Subject to hearing the parties if that is necessary, I propose to make an order dismissing the claim for judicial review and requiring the claimant to pay the LPA's costs, limited to £5,000 including any VAT. The parties are asked to agree the terms of a draft order and submit it to me for approval in the usual way. I am very grateful to counsel for their helpful submissions.