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Appeal Decision Notice

Decision by Robert Seaton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-120-2060
- Site address: field 300 metres west of Grange of Berryhill, Invergowrie, DD2 5LN
- Appeal by Berryhill Solar Farm Limited against the decision by Angus Council
- Application for planning permission 21/00535/FULM dated 7 July 2021 refused by notice dated 8 February 2022
- The development proposed: installation of a solar photovoltaic (PV) array with an export capacity of not more than 49.9 MW and associated infrastructure
- Application drawing: figure 3.1 (site location) to the Supporting Environmental Information Report, dated 1 July 2021, version 1.
- Date of site visit by Reporter: 5 July 2022

Date of appeal decision: 21 September 2022

Decision

I allow the appeal and grant planning permission subject to the fifteen conditions listed at the end of this decision notice. Attention is drawn to the three advisory notes attached to this notice.

Preliminary

1. The appellant has submitted a copy of the council's screening opinion indicating that the proposed development is not likely to have significant adverse effects on the environment for the purpose of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 and environmental impact assessment is not required. Having considered the environmental information supplied, I find no reason to disagree with that opinion.

Reasoning

2. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan, the main issues in this appeal are the proposed development's contribution to generation of renewable energy and its socio-economic benefits and its effects:

- on landscape and the visual amenity of the area, including its cumulative effects
- on the residential amenity of nearby houses, including its visual effects and associated glare and noise
- in terms of loss of agricultural land
- on local roads as a result of associated traffic during construction and operation
- on flood risk, and
- on wildlife.

Policy in respect of the proposed development

3. The development plan is comprised of the strategic development plan (TayPlan, adopted 2017) and local development plan (the Angus Local Development Plan – ALDP – adopted 2016).

Development Plan

4. While TayPlan policy 2 deals with delivering better quality places, policy 7 deals with energy, waste and resources, policy 8 deals with (among other things) recreational access on green networks, and policy 9 deals with protections for prime agricultural land and for landscape, these policies impose requirements primarily in respect of local development plans rather than individual proposals. Consequently, it is the policies of the local development plan rather than TayPlan that are key to the determination of the appeal.

5. The key ALDP policy is PV9 (Renewable and Low Carbon Energy Development). This indicates that low-carbon energy development will be supported if it meets a number of criteria. These include that:

- the location, siting and appearance of apparatus and associated works have been designed to minimise impact on amenity, landscape and environment, while respecting operating efficiency,
- access for construction traffic can be achieved without compromising road safety or causing unacceptable change to the environment or landscape,
- the site has been designed to make links to the national grid or other users of renewable energy generated on site, and
- there will be no unacceptable effect on landscape character, setting, sensitive viewpoints or public-access routes, sites designated for natural heritage or populations of protected species, or the amenity of communities or individual dwellings.

6. Other relevant ADLP policies include:

- DS4 - a general policy on amenity. It requires proposed development to have regard to opportunities for maintaining and improving environmental quality. Development is not to be permitted if there is an unacceptable adverse impact on the surrounding area or the environment or amenity of occupiers of nearby properties.
- PV3 (access and informal recreation), which provides that new development is not to compromise the integrity or amenity of existing recreational-access opportunities.
- PV5 (protected species), which relates to statutory protection of certain species.
- PV6 (landscape), which states that development that has an adverse effect on landscape will only be permitted subject to four criteria. These are that:- the site is capable of accommodating the proposed development; the siting and design integrate with the landscape context and minimise adverse impacts on the local landscape; potential cumulative effects are acceptable; and mitigation measures are proposed where appropriate.
- PV7 which applies protection to woodland, trees and hedges.
- PV12, which restricts development that would materially increase the probability of flooding to existing development.
- PV20 (soils and geodiversity), which provides that development proposals on prime agricultural land will only be supported in three cases, one of which is if they “constitute renewable energy development and are supported by a commitment to a bond commensurate with site restoration requirements.” Agricultural land required should be minimised and the proposal “should not render any farm unit unviable”.

7. The Renewable and Low Carbon Energy Development Supplementary Guidance also forms part of the development plan. It is stated to provide advice on the interpretation of ALDP policy PV9, guide new development to appropriate and sustainable locations and provide guidance on considerations for renewable-energy development.

National planning policy

8. Like the development plan, national planning policy provides support in principle for renewable development. Scottish Planning Policy (SPP) paragraph 167 requires that development plans should identify areas capable of accommodating renewable electricity projects, while paragraph 169 sets out considerations to be taken into account in determining whether to grant permission for particular proposals. SPP paragraph 202 requires the siting and design of development to take account of local landscape character and potential effects on the natural and water environment and to minimise adverse effects through careful planning and design. Paragraph 203 indicates permission should be refused if the proposed development would have an unacceptable effect on the natural environment. Paragraph 80 provides that if it is necessary to carry out development on good quality land, the layout and design should minimise the amount of land that is required. Development on prime agricultural land or land of lesser quality is not to be permitted subject to a number of exceptions, one of which is if it is essential for the generation of energy from a renewable source, where this accords with other policy objectives and there is secure provision for restoration. Policy on managing flood risk (paragraphs 254 to 268) takes a precautionary approach.

9. SPP includes a presumption (set out in paragraphs 28 and 29) in favour of development that contributes to sustainable development. This becomes a significant material consideration, according to paragraph 33, if the development plan is more than five years old. The presumption is therefore a significant consideration in this case.

Statutory duties under the Climate Change (Scotland) Act 2009

10. In determining this appeal, I am subject to the requirements placed on Scottish Ministers by the Climate Change (Scotland) Act 2009 section 44 to act in the way that is best calculated to contribute to the delivery of statutory targets for reduction in greenhouse-gas emissions and to act in the way I consider most sustainable. Separately, there are statutory requirements for the Scottish Ministers (in sections A1 and 2 of the Act) to ensure that the statutory targets are met. The statutory targets were updated by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019. The Act requires Scotland's net emissions to be reduced to zero by 2045. It sets interim targets of reduction from a 1990 baseline of 75 percent by 2030 and 90 percent by 2040 and also interim annual targets.

11. I understand the adoption of statutory targets and related duties is intended to impose a formal urgency on government action in respect of greenhouse-gas emissions. They are a factor to take into account in determining a planning application. Evidence as to the degree of need for the type of development proposed in order to achieve the targets, including evidence from national policy on climate change and on energy generation, is consequently relevant to this decision.

12. That said, the existence of the section 44 duties does not mean that any particular renewable-energy proposal is automatically to be consented. I am required to act in the way I consider most sustainable. An assessment of what is most sustainable will take

account of factors including those listed in SPP paragraphs 28 and 29 – in particular the policy aim to achieve the right development in the right place, not development at any cost. As regards my duty to act in the way I consider best calculated to achieve the statutory targets, I do not consider that granting permission for unsustainable development is likely ever to be best calculated to achieve the statutory targets. National planning policy, the ALDP and TayPlan were all made with a statutory purpose of achieving sustainable development. Therefore, although such policy is to be interpreted in the light of the section 44 duties, the duties do not displace it.

National policy on energy and climate change

13. The UK Government has set a statutory target of achieving net zero emissions by 2050, and this is also a material consideration. The current statutory targets for the UK and Scotland were adopted following declarations by both the Scottish Government and UK Government in 2019 of a climate emergency. Since those declarations, the Sixth Assessment Report of the Intergovernmental Panel on Climate Change has indicated that it is more likely than not that global temperature increases will exceed 1.5 degrees Celsius above pre-industrial levels. The report indicated that delay in global action to address climate change will miss a brief and rapidly closing window to secure a liveable future. The UK Energy White Paper, *Powering our Net Zero Future (2020)*, describes the costs of inaction as follows:

“We can expect to see severe impacts under 3°C of warming. Globally, the chances of there being a major heatwave in any given year would increase to about 79 per cent, compared to a five per cent chance now. Many regions of the world would see what is now considered a 1-in-100-year drought happening every two to five years.

At 3°C of global warming, the UK is expected to be significantly affected, seeing sea level rise of up to 0.83 m. River flooding would cause twice as much economic damage and affect twice as many people, compared to today, while by 2050, up to 7,000 people could die every year due to heat, compared to approximately 2,000 today. And, without action now, we cannot rule out 4°C of warming by the end of the century, with real risks of higher warming than that. A warming of 4°C would increase the risk of passing thresholds that would result in large scale and irreversible changes to the global climate, including large-scale methane release from thawing permafrost and the collapse of the Atlantic Meridional Overturning Circulation. The loss of ice sheets could result in multi-metre rises in sea level on time scales of a century to millennia.”

14. The report of the Committee on Climate Change (CCC) on the Sixth Carbon Budget, on which the UK Government’s adoption of its 2050 net-zero target was based, indicated that for the UK to achieve its 2050 target, reliance was placed on Scotland achieving its net-zero target for 2045.

15. The CCC report also indicated that achieving the 2030 interim target set in Scotland would be very challenging – the target was higher than the CCC had recommended. The CCC’s report to the Scottish Parliament in December 2021 on progress in reducing emissions in Scotland confirmed this. It acknowledges that Scotland has halved its emissions in thirty years, but indicates Scotland must do so again in the next decade.

16. The most recent data indicates that, in 2019, Scotland had not fully met its statutory targets for emissions reduction. Following 2019, on account of the more stringent targets adopted that year, the pace at which emissions are to be reduced has nearly doubled. Given that data for 2019 has only recently been published (and no data is available for

subsequent years), it is not clear how Scotland is performing at the moment in respect of the targets. However, taking into account the position in 2019 and the challenging nature of the annual reductions required since and given that achieving the targets is a legal requirement on Ministers, I consider any assumption I make about the current position should be cautious, made with a view to Scotland achieving the statutory targets. I assume, therefore, that Scotland is still behindhand on meeting the interim annual targets, as it was in 2019.

17. The UK Energy White Paper indicated that there is a need both to decarbonise the generation of electricity and to generate more electricity to allow the decarbonisation of other sectors of the economy. The British Energy Security Strategy, published in 2022, confirms this approach. It also notes that increasing the proportion of electricity from domestic renewables reduces dependence on volatile fossil-fuel markets and so increases energy security. While it envisages future development of nuclear power, the strategy does not suggest any new nuclear development is in prospect before 2030. It envisages a five-fold increase in deployment of solar power to 2035 from the current 14 GW of UK solar capacity. It is not clear how much of that increase would be in Scotland. Given that Scotland forms about a third of the UK's landmass, notwithstanding the lower solar yields here, it is cautious to assume that a significant proportion of the required increase in solar capacity will have to be in Scotland.

18. The Scottish Energy Strategy (2017) set a target that Scotland should meet half of all energy demand (for electricity, heat and transport) from renewable generation by 2030. There is no specific target for increasing the capacity for solar generation in Scotland. The strategy indicates that "a diverse, well-balanced energy supply portfolio is essential" for decarbonisation of electricity and other sectors, and that "solar will play an important role". The update to the Scottish Government's Climate Change Plan (2020) indicates that solar and wind power are now the lowest-cost forms of new generation. The role of solar power in the energy transition is confirmed in the Scottish Government and Scottish Green Party shared policy programme. The 2021 Programme for Government does not expressly refer to solar power. It does, though, affirm the Government's position both that increased renewable development is required to achieve the targets and that the transition to renewables represents an economic opportunity for Scotland, including an opportunity to export power.

19. The appellant has supplied a document from a campaign group called Solar Energy Scotland. This suggests that Scotland should adopt a target of having 4GW of installed solar generating capacity by 2030 and should have an ambition of 6 GW of capacity. Such a target and ambition may or may not be achievable. It is clear though that existing policy requires a rapid transition to renewable power in Scotland, that an increase in electricity generating capacity is required, that there is urgency in achieving the transition, that solar power is to play a significant role in this transition, and significant additional solar capacity will be required.

The balance to be struck

20. The council has referred to the report on the Strathy Wood windfarm, in which the reporters stated (in summary) that the benefits of renewable energy are not an over-riding consideration and that there is nothing in policy or Ministerial decisions that indicate an intention to reduce the importance given to adverse environmental effects. I agree with this citation, so far as it is apt. But I have found above that there is an increased and urgent need for renewable-energy development generally and for solar development in particular to achieve the statutory targets. While there is no reduction in the importance to be given to

adverse environmental effects in absolute terms, a balance must always be struck between policy aims in making a planning determination. The increased need for renewable development shifts the balance of considerations in favour of such development. This said, I agree that it is not a consideration that necessarily over-rides all others in making a planning determination in respect of any particular development.

Landscape and visual amenity

21. The appellants have provided an assessment of landscape and visual effects of the proposed development. This includes plans showing the proposed development's theoretical visibility (its predicted visibility taking account only of landform and modelled effects of existing land cover) and a number of views from viewpoints at which it was predicted the proposed development could be seen, showing the proposed development's extent as seen from the viewpoint. There were also photomontages from two viewpoints, including one on the minor road south of the site. I carried out an accompanied inspection of the application site and locations around it, including the track from the Check Bar Road to Binn Farm then from Binn Farm to North Binn and back to the Check Bar Road. Unaccompanied I also visited viewpoints around the site including viewpoints identified in the appellant's study and also other viewpoints on the circular walk by the Check Bar Road and minor roads past Berryhill, Fowlis and Muirloch to Piperdam, as well as the road to Balruddery Farm, including the view from the entrance to Balruddery Cottages. I also visited Dundee Law.

22. The appellants' assessment makes a distinction (as is common practice) between impact on landscape (treated as a resource) and impact on visual amenity (the effect on people observing the development in places where they are likely to be, such as on roads or in settlements).

Landscape effects

23. No part of the application site is designated for its landscape value. There is no suggestion in the evidence of adverse landscape effects on such a site.

24. The council has carried out a strategic landscape capacity assessment for solar energy in Angus. This was intended to be a consideration in determination of planning applications. The proposed development is almost entirely in the igneous hills landscape-character area (TAY 8) it identifies. The assessment refers to this area as having variable capacity for development of solar power, though its overall capacity is low. The description recommends that development is avoided in non-arable areas where slopes are steeper, on hill crests and on areas overlooked from higher ground. The description refers to the TAY 8 landscape character area in its eastern part merging into the dipslope farming landscape-character area (TAY13(i)). In this latter area, capacity for development is medium. The description refers to the latter area's land use pattern of large or medium rectilinear arable fields and woodland blocks as providing capacity for development.

25. Though the capacity study gives general guidance for each landscape-character area it identifies, these areas can merge into one another (rather than there being a hard boundary). This is how the capacity assessment describes the transition between the igneous hills and dipslope farming. It appears to me that the appeal site is in the transitional area and has some of the characteristics of TAY13(i). The character areas are not policy designations and no policy consequence follows directly from the assessment's finding on capacity in each area. The guidance provided by the capacity study assists in identifying the constraints to development in such areas. Whether a particular proposal is

acceptable at a particular site is a matter better dealt with in a specific study for the proposal, such as that provided by the appellant for the present proposal.

26. To the site's immediate north, the visibility of the proposed development would be very limited given the landform. Though some infrastructure could be seen from some locations in the Piperdam estate, the visibility would be restricted to only a small part of the development. Land cover would further reduce the available views. The theoretical visibility to the east would be more extensive. However, the photomontage for the viewpoint at Fowlis and also the evidence available for the viewpoint at the junction of the Berryhill Road shows that the angle at which the proposed development would be viewed together with existing land cover would limit the impact. The landscape immediately to the east and south east is characterised by large fields with small blocks of woodland. The proposed landscaping would provide additional screening, reducing views from these directions. It would also involve the re-introduction of field divisions similar to those seen in the landscape to the east and south east, which would allow the proposed development to settle into the landscape as the landscaping matured. It would therefore reduce the landscape impact to the south and south east as it matured.

27. The appellants' study acknowledges a large-medium scale effect on landscape character extending about 400 metres to the site's south and a small-scale effect on the elevated landscape of Blacklaw Hill to the site's west. This is accounted for by the western array's location on elevated, sloping ground, which makes it prominent in views from land immediately to the south. In my view, this scale of effect would extend south of Berryhill Road as far as Balruddery Farm. Beyond the farm, the land begins to drop away to the south east. This factor, together with the increased distance, would cause the proposed development to become less prominent in the landscape, and so the degree of impact would quickly lessen.

28. Visibility to the west would be limited by Blacklaw Hill and the plantation to its south. I agree with the appellant's assessment that, other than from the eastern slopes and summit of Blacklaw Hill and the landscape immediately south of the site, the proposed development would be perceived mainly as a change in land use affecting a relatively small part of a wider landscape that is already heavily influenced by commercial-scale farming, including polytunnels, and other human activity.

Visual effects

29. As regards the effect on visual amenity at the selected viewpoints in the appellants' assessment, I agree that there would be limited visual effects at viewpoints 4 (Piperdam), 6 (Liff), 7 (Mains of Fowlis), and 8 (A90 at Star Inn).

30. At viewpoint 1 (on Berryhill Road just beyond the south-east corner of the appeal site by the access to the settlement of Berryhill), I agree with the assessment that the initial scale of the adverse effect would be medium, given the degree of screening and the angle at which it would be viewed. The effect would reduce to small over time as the proposed landscape planting became established and screening increased.

31. Viewpoint 2 (on Berryhill Road, due south of the site) is about 500 metres from the nearest proposed panels. It provides a wide view of the development's western and eastern arrays, of striking extent, with the panels rising up the hill. I agree with the assessment that the scale of visual change would be large and adverse, though I also agree that the creation of field boundaries would (as they matured) somewhat mitigate the impact of the development's scale on the viewer by breaking up the proposed

development's visual extent. On the July day on which I visited, the vegetation by the wall was more extensive than is shown in the photomontage and – for an observer on foot or in a car – would partly have screened the development. Although there was an event on at Balruddery Farm, there was very little traffic on the road as it passed the viewpoint.

32. Viewpoint 5 is located just within a field to the north of Berryhill Road at its entrance to Fowlis. There would be little theoretical visibility within Fowlis although the viewpoint represents views from the settlement's edge, which may include the views from some houses. The angle at which the proposed development is viewed within the landform combined with intervening woodland and field boundaries would mean that there would be some limited visibility of the proposed development at the viewpoint, mainly of the south-eastern part of the development. From the road itself, rather than the field, visibility would be even more limited. I agree with the assessment that the scale of effect would be medium-small and adverse, and that the effect would reduce as the proposed landscaping matured.

33. I was also asked to visit other points on Berryhill Road, including the bend near Balruddery Cottages. The bend is at a relatively prominent point above the Balruddery Burn and the road runs due north with direct views towards the proposed development, only partially filtered by trees. The degree of effect would be similar to that at viewpoint 2. The section of road that runs due north, where the highest degree of effect would be, is relatively short. Although the Balruddery Cottages are near the bend, the view from them to the north is largely screened by a wall.

34. There would be an extensive view from viewpoint 3 (Blacklaw Hill) of the northern and eastern part of the development, though views of the nearer part would be filtered through a stand of trees below the hill's summit. I disagree with the assessment that the relatively intimate nearby landscape of the valley in which North Binn is set can be simply dismissed as "unremarkable lower-lying farmland". There are, however, wide views available from the viewpoint, including across the Sidlaws, to Dundee, and out over the Firth of Tay. The proposed development, well below the viewpoint in the middleground of the view, would not affect the parts of the view with the greatest interest. I acknowledge that the area of the proposed development is included in one of the views in the publicity for the walk to Blacklaw Hill, but I consider the main interest in the photograph is the wider and more distant views of the firth, Dundee and Fife. I agree that the visual effect would be medium and adverse. The hill is evidently a reasonably popular viewpoint locally, but it is unlikely to represent an attraction to a wider area. Given the nature of the views in which the solar farm would be seen, I doubt that the presence of the solar farm would cause any substantially adverse effect on the enjoyment of the walk to the hill summit or put off visitors.

35. Viewpoint 9 (Dron Hill) provides similarly wide views to Blacklaw Hill. There would be an extensive view of the proposed development's southern part. Although it is likely to be striking feature, it would be at some distance. I agree that the adverse visual effect would be medium in scale.

36. I was asked to consider the proposed development's effect at viewpoints further afield, including in Dundee. I consider the view from Dundee Law is likely to be representative of other views from Dundee. While the proposed development would theoretically be visible from the Law, I found it was unlikely it would be easily picked out at such a distance. Since the proposed development is reflective, it is possible that its glint might be visible at longer distances. It seems to me likely any such effect would only occur in the early morning or evening. I doubt at a viewpoint at the distance of Dundee, the effect would be intense. I do

not consider that the proposed development would have a substantive adverse visual effect either in Dundee or further afield.

37. There would not be a substantial adverse visual effect on residents in the settlements of Fowlis or Piperdam or any other more distant settlement. While the proposed development would be visible from the housing group at Berryhill, the visual impact would be limited by the angle at which the development was viewed within the landform and by intervening vegetation. I consider the impact on the community around Binn Farm in the section on residential amenity below.

38. The only public road whose views would be affected more than negligibly would be Berryhill Road. I consider the three viewpoints on the road to be representative of the effects upon it. At the time of my site inspection, the level of traffic on Berryhill Road was low enough for it to be comfortable to walk along, even though there was an event on at Balruddery Farm that day. West of Balruddery Farm, it is likely that the ordinary level of traffic on the road would be even lower. There would be a considerable impact on the road's amenity due south of the development, though this would be partially mitigated as the landscaping matured. The adverse effect would be much less from the Berryhill access track eastwards.

39. There would be an adverse visual effect on the Check Bar Road, a core path that runs through the site from Piperdam to Berryhill Road. The path is promoted in a council leaflet, which connects it to a circular on-road walk along Berryhill Road to Fowlis and then through Muirloch back to Piperdam. I have no doubt that the path is locally valued and is used by some visitors to the Piperdam estate.

40. The council characterises the experience of walking the path if the proposed development goes ahead as being one of passing through a large-scale solar development, lined on both sides by high fencing and under the observation of CCTV cameras.

41. The fencing, which is proposed to be up to 2.5 metres, does in some places appear on the indicative layout plan to be relatively close to the path. I understand the fencing to be proposed within the field, though, not running immediately along the edge of the path. The appellant has indicated it proposes to offset the fences from the path by about 20 metres. In the northern part of the path, the fence would be set back beyond the existing woodland. On the southern part of the path, where there are fewer trees beside the track and the fence to the west runs relatively close, the appellant proposes to plant a hedge between it and the footpath. The layout shows the arrays are generally proposed not to be immediately beside the path on both sides – though they may be relatively close on one or other side. There would not generally be the sense of enclosure of the path that the council suggests. The plan does show the fences of the eastern and western arrays quite close together at one point at the top of the rise from Berryhill Road. Even there, the offset of 20 metres and the briefness of the narrow section shown on the plan would mean, in my opinion, that there would not be a strong sense of enclosure of the path. It may be that, at this same location, the south-eastern view of the Firth of Tay at that point would be lost as a result of the construction just to the east of a substation compound and the provision of a screening hedge to its east. That would be regrettable since the view from this point is one of the attractions of the path. The layout plan is indicative, though, and the details of the buildings are still to be finalised. In my view, it would be possible, when the detailed layout is finalised, for the position or design of the proposed substation compound to be adjusted so that the impact on the view was minimised.

42. As regards the CCTV cameras, the proposal is to install these within the fences and aligned along the gap between the fence and the panels. I doubt that in such a position the cameras would be particularly noticeable from the path, let alone impinge substantively on the experience of walking the path.

43. There would be adverse visual effects on other undesignated paths locally, in particular the paths up Blacklaw Hill from Binn Farm, from North Binn and from Piperdam. The route from Piperdam would only be affected near the summit, and I have considered the effect on the view. Though I have no doubt the other routes are used recreationally, the evidence I have been given suggests they are not promoted as recreational routes. Consequently I consider their value and so their sensitivity to the adverse effects of the proposed development is somewhat less than that of the promoted routes.

Cumulative landscape and visual effects

44. Several objectors suggested that the proposed development would have unacceptable cumulative effects with the polytunnels in the area. There are some locations, such as at viewpoint 8 (Star Inn) where the proposed development could be seen in the background with existing polytunnels in the foreground. The effect of development in foreground and background would be somewhat adverse, though the main impact would arise from the polytunnels. Given the relatively limited extent of the adverse landscape and visual effects of the proposed development, I do not consider such cumulative effects would be extensive either.

45. One objector referred to the constraint the proposed development might place on the development of polytunnels as a consequent of cumulative landscape and visual effects. Whether there was such an effect could only be determined in respect of a particular proposal, which has not been made. There is no priority or preference in planning policy for the development of polytunnels over solar power.

Effects upon residential amenity

46. The appellant provided assessments of the proposed development's effect on nearby houses. These included an assessment of visual impact (appendix 5 of the landscape and visual appraisal), an assessment of glint and glare, and a noise assessment. It is clear from these assessments that the houses whose environment would primarily be affected by the proposed development would be the houses at Binn Farm, the houses on the Binn Farm track, and the isolated house at North Binn.

47. The question to determine here is whether the policy restrictions in ALDP policies PV9 and DS4 are engaged in respect of development that has unacceptable adverse effects on the amenity of occupiers of nearby or adjoining properties. Notwithstanding these policy restrictions, some adverse impact on private amenity from development can be inevitable. Generally speaking, the view from an existing private house is not treated a material consideration in planning. This is subject to two qualifications: first, an impact on the amenity of a community can be a material consideration; second, an impact on a house that is of a degree that would make it an undesirable or unsatisfactory place to live would also be an adverse consideration.

North Binn

48. The council argues that the effect on North Binn would cause it to become an undesirable and unsatisfactory place to live. The council refers to the prospect of the house being set in the midst of an industrial-scale solar development, which would be an unavoidable presence for the occupants of the dwelling.

49. The northern array would be located on either side of North Binn. The vehicle access to the house is from Berryhill Road along the Check Bar Road. The immediate access to the house would pass from the Check Bar Road through the northern array.

50. The house is oriented primarily to the south. The land rises to the north and the house's outlook in that direction is limited. Since the panels are proposed to be offset from the garden of North Binn and since there are no panels proposed due south of the house, there would be limited views of built elements of the proposed development from within the house itself. The main outlook from inside the house would be on the proposed area of ecological improvement, a meadow with scattered trees (instead of a field with crops, which is the present land use).

51. The proposed development would be visible from the garden at the front of the house, which is the main garden space. It would be visible particularly from the south-eastern part of the garden, where the trees near the garden boundary are not yet mature. There are trees on the garden boundary presently that filter views in directions from south west through north to north east. Trees within the garden also provide some filter to views to the east from the curtilage just in front of the house. The owner told me that trees in the garden's south west were diseased and had to be removed. This would considerably reduce the immediate screening of views in that direction. Still, the set-back of infrastructure from the house both to the south west and south east and the oblique nature of the views to the development from the house would mitigate the impact on the house's outlook. The impact is likely to be reduced when the proposed hedges around the infrastructure are established. There are still likely, though, to be clear views from the garden particularly to the panels on the higher slopes to the west.

52. There was a partially built outhouse or cabin to the north east of the house, apparently designed to be used as additional accommodation, which had with a window facing east. Given the somewhat elevated position of the cabin, the proposed development would have a considerable impact upon views from its east-facing window, which the proposed screening hedge would only somewhat mitigate. There was also a partially completed two-storey extension at the house's east, which was apparently intended to have an eastern outlook. The proposed development would adversely affect an extension with such an outlook, particularly from the upper storey. The effects on these works, although unfinished, are an element of the adverse effect on the house. I note, though, that there is some scope for changing design or intended use before they are completed.

53. While there would be a marked adverse effect on the visual amenity of the house, given the set-back of the development, the oblique nature of most views, the degree of existing screening (even though some is to be lost), and the proposals for further mitigation, I do not find the visual effect by itself such as to cause the house to become an unsatisfactory or undesirable place to live.

54. The noise assessment predicts that noise from the development's construction would have a minimal effect. It predicts that there would be noise during the operation of the development from inverters and from the substation. The external noise level at North Binn

is predicted to be 30.1 dB(A). This is well below the limit of 50 dB_{L(Aeq)} the council's environmental health team (who have statutory responsibility for the prevention of noise nuisance) required to be met. Conditions have been proposed to limit noise externally and internally. Though the council does not consider noise immissions at the predicted level to be a nuisance, it is likely noise from the development would be audible in the garden, and I take that into account.

55. The assessment of glint and glare predicted that the proposed development would reflect the sun towards the property for about 20 minutes between 5.40 and 6.30 am and half an hour between 6.00 and 7.00 pm between April and September. The assessment was based on a model that included panels within 25 metres of the dwelling, though the proposed set-back has since been increased (which may decrease the effect somewhat). The assessment identified panels between the west and north west and east and north east that caused the effect at the property. The proposal to plant screening hedges was predicted to obstruct about half of the reflecting panels to the west and obstruct the panels entirely to the east, with the exception of the view from one upper-floor window. The hedges would take a number of years to be established. Nonetheless, it appears to me that the existing vegetation around the property is likely to filter glare, particularly from the east. I do not find that the effect of glare would, by itself, be oppressive.

56. The house's access from the Check Bar Road is currently through open fields which were under crops at the time of my site inspection. The proposed development would result in this access being enclosed on either side. The proposed fences, 2.5 metres in height, would be just over three metres from the road's edge on either side, while the panels would be just over eight metres from the road. To mitigate the visual effect on the access, the appellant proposes to plant hedges on either side of the road to screen the fences and panels. Clearly, until the hedges became established, the arrangement would be unusual. It does not seem to me it would, by itself, be oppressive. The fences would be set back from the track. The three-metre-high panels, a further five metres beyond the fences, would not dominate the track. The CCTV cameras, on the inside of the fences, would not be directed to the track. Given their distance from the track and their orientation, I do not agree with the council that they would give the impression of surveillance of users of the track. Once the proposed hedges were established, there would be little or no immediate view of the fields. While this would represent a change, any effect on amenity would, in my view, be neutral as compared with the current baseline. I do not consider it is unusual in the countryside or as causing any substantive adverse effect on amenity to have a house access with hedges on either side, with little view for users of the track of the immediately surrounding fields.

57. Although I do not consider any one of the various effects on the property to be oppressive by itself, the occupants would experience all these effects cumulatively. The proposed development would undoubtedly be a presence as a result, particularly for anyone sitting or working in the front garden of the house. It would detract from the house's present high amenity. Even so, I consider that the proposed set-back between the proposed development and the house (which would reduce the impact of noise and glare as well as visual impact), the designing-out of panels from the immediate southern prospect of the house, and the proposals for screening the infrastructure (taken together with the existing screening provided by vegetation within the property boundary) are sufficient that the house would not become an unsatisfactory or undesirable place to live.

Houses on the track to Binn Farm

58. There are five houses on the access track to Binn Farm. The council has also made the argument that the proposed development would cause these houses to become an unsatisfactory or undesirable place to live. The houses are all situated on the south side of the track with fronts facing north. They have small gardens or parking areas to the north and (in some cases) sides, with larger and more private gardens to the south, on the opposite aspect of the house to the proposed development. The south-facing gardens of several of the houses descend to the Balruddery Burn.

59. The western array would be located on land to the north of the access track, where the ground rises fairly steeply from the road. The panels are proposed to be offset from the houses by 50 metres. The security fencing is proposed about 30 metres from the houses. The landscaping proposals involve the creation of a strip to the north of the track with trees and wildflower seeding and a hedge that would be grown to about three metres in height, set back about 20 metres from the houses.

60. The diagram provided by the appellant in appendix 5 of the landscape and visual assessment suggests that the hedge and landscaped strip, once mature, would obscure views of the proposed development. The assessment finds that, until the hedge was established, there would be open views from the north-facing windows and the parking areas and gardens in front of the house. There would also be open views from the access along the Binn Farm track. The appraisal finds a visual effect of substantial magnitude. I do not disagree with that.

61. I was able to visit one of the houses on my site inspection. I found that views of the infrastructure of the development were unlikely to be obtained through the northern window of the living room by someone standing in the middle of the room or sitting on the seats in their arrangement at the time of my visit. It would, though, have been possible to see it when standing closer to the north-facing window. The view from the window was of a sloped field, fairly close at hand, with standing crops. The furniture in the room was not arranged in a way that suggested this view was key to enjoyment of the house. Views from inside other houses are likely to be similar given the similarities of their design and of their relationship with the land to the north and with the proposed development. As the appellant's appraisal identified, a number of the houses have blinds or net curtains in the north-facing windows. At the time of my site inspection, two houses had closed curtains in the north-facing windows, presumably for privacy. Another house had a hedge that largely obscured the view north. Although there would be a substantial impact in the front and side curtilage of the properties, there would be limited impact on the south-facing gardens. It appears to me that these are more important as a living space for the households than the spaces to the north in the sense that they are likely to spend more leisure time in the back gardens than at the front. These factors would limit the degree of sensitivity of the houses to the impact of views of the proposed development to the north. The visual impact would be greatly reduced once the landscaping was established.

62. The council has suggested that the proposed landscaping would reduce light to the houses through the northern windows. Given the distance of the hedge from the houses and the north-facing aspect of the windows affected, an adverse effect on light to the houses or their front gardens seems most unlikely, and any effect that did occur would be minimal.

63. Until the landscaping became established, the proposed development would be a substantial presence on the approach to the houses along the Binn Farm track. The set-

back of the infrastructure from the track would mean the effect was not oppressive or unacceptable. This visual effect would be largely removed as the trees and hedges grew beside the track. I accept that residents in the houses would use Berryhill Road, which would itself be adversely impacted by the proposed development. I have considered the effect on that road above. I do not consider that the adverse effect on its amenity would be unacceptable by itself, though I acknowledge it is a factor in assessing the overall adverse effect on the houses.

64. The noise assessment indicates that an external noise level from the development of 33 dB(A) is predicted. This is well below the limit set by the council's environmental health team, though as I have noted, it is likely that noise from the development would be audible. However, noise is likely to be less of an issue in the houses and in the gardens immediately to the south (given that the houses would present a barrier to noise).

65. The assessment of glint and glare predicted that the houses would be affected by reflected light between 5.40 and 6.30 am for about 30 minutes from March to September and between 6.15 and 7 pm for about 20 minutes from April to August. The proposed landscaping, once established, would largely mitigate such effects. It is likely that there would be an effect until the landscaping is established. The relatively short duration of the impact in the evening, the occurrence of the morning impact before most residents are likely to be active, and the orientation of the houses which I have described indicate to me that such an effect would not by itself be unacceptable.

66. As with North Binn, all these effects taken together would have a cumulative impact on the houses. Even so, particularly given the orientation of the houses and the proposals for landscaping to mitigate the effect, I do not consider that the adverse impact on their amenity would cause them to become unsatisfactory or unacceptable places to live.

Other properties

67. I agree with the appellant's assessment that there would be a moderate visual effect at Binn Farm Cottage, which I understand is a holiday cottage. The noise level would likely be similar to that at the other cottages on the track to Binn Farm. Though the glint and glare assessment predicted a similar degree of effect on the cottage to that on the cottages on the Binn Farm track, there are trees in the large garden that are likely to screen the cottage from reflected light. Both the visual effect and any glare are likely to be mitigated as the proposed landscaping becomes established.

68. The farmhouse at Binn Farm is located to the south of Binn Farm Cottage, and set among trees. While the proposed development would be a feature of the approach to the farmhouse along the track until the landscaping became established, the visual effect and effect of glare on it would likely be limited, while the effect of noise would be less than at the cottage to the north.

Assessment of effects

69. One objector pointed out that the final location of noise-generating infrastructure was still to be determined and therefore the level of noise immissions at any particular property cannot be known for certain. While this is true, I have found that the noise immissions at sensitive properties would be well below the limits set. The setting of the limits is not dependent on the exact location of the infrastructure. Nonetheless, since the predicted effect of noise emissions is a factor in my overall assessment of effects on residential amenity, I have added an express condition providing that the final location of the nearest

noise-generating infrastructure should be no closer to receptors than shown on the indicative plan.

Conclusion on residential amenity

70. Overall, I do not find the proposed development's effect on the residential amenity of any house is of a degree that is unacceptable or contrary to policies DS4 or PV9.

Loss of agricultural land

71. Much of the site of the proposed development is presently agricultural land. There are some areas with steep slopes to the west of Binn Farm that were not under crops at the time of my site inspection, but for the most part, the site was being used for growing food. The appellants' planning statement refers to the possibility of using land with panels on it for grazing, but this more productive use for growing food would be lost.

72. There is policy both in the development plan and in SPP protecting prime agricultural land. There is dispute (which I consider below) over whether the site is prime agricultural land or not. This dispute is largely beside the point, though, since policy in both the development plan (ALDP policy PV20) and SPP (paragraph 80) provides an exception to the restriction on development of prime agricultural land for renewable energy development. It is confirmed in the supplementary guidance that this exception is intended to apply to solar power. Nonetheless, I acknowledge objectors' argument that, in view of recent political developments, growing food in the UK is becoming more important. Although SPP is the adopted policy, I note that the report of the Scottish Government's Short Life Food Security and Supply Taskforce having considered responses to Brexit and the Ukraine war notes that "food security work in Scotland [will] become a key mechanism to inform future policy-making decisions on agriculture, including land use". Consequently I consider further the questions of whether the site is prime agricultural land and whether the exception allowing its development should be set aside.

73. The appeal site is shown on the Land Capability Classification for Agriculture maps produced by the Macaulay Institute as being class 3.1. Such land falls within the definition of prime agricultural land in SPP. The appellant has provided a study by Soil Environment Services Ltd. (SESL) which indicates the land falls into categories 3.2, 4.1, 4.2 and 5.3, which categories are not prime agricultural land.

74. Several objectors cast doubt on this re-classification of the land. I have been provided with copies of email correspondence with staff at the Hutton Institute. It appears that the staff were asked to comment in general terms on the possibility of a change in land classification such that the classification was of a higher number than that shown on the Macaulay Institute maps. It does not appear from the correspondence, however, that their comments were made on the basis of having seen a copy of the SESL report. The emails do not directly address the reasoning given in the report for the finding that the land was not prime agricultural land.

75. It appears to me that the SESL report did exactly what the Hutton Institute staff advised should be done where there was a question about the classification of agricultural land. The report bears to have been carried out by a specialist and to have been based on a survey involving analysis of samples from a grid of 159 bore holes as well as consideration of climate and topography. The findings in the report appear to me broadly credible, subject to one comment below. The bulk of the land at the site (82.1 hectares) was found to be class 3.2, one division down from class 3.1 shown on the Macaulay map. The reasoning

indicates that the soil types (sandy clay loam and sandy silt loam) are respectively limited by droughtiness and wetness or by droughtiness. This placed them in class 3.2. Some areas by the burn that drains the northern part of the site (which I will refer to as “the Binn Burn”, though it is not named on the map) are placed in classes 4.1 and 4.2. Though it is not express in the study, it appears that this classification arises from the wetness of soils and flood risk in those areas. Lastly, some areas in the south of the site are allocated to classes 4.2 and 5.3. I understand that this is on account of the gradient of the land. The one sceptical comment I have is about this last classification, since land placed in class 5.3 lying east of Binn Farm apparently because of gradient had standing crops on it on the day of my site inspection. Still, it was clear to me that there was a steep gradient on the land. It seems likely that this would present some impediment to farming. While perhaps this latter land ought to have been allocated to a lower number in the classification scale, it does not necessarily follow that it should have been treated as prime agricultural land.

76. A number of objectors referred to the location of the Balruddery Research Farm belonging to the James Hutton Institute not far south of the appeal site as evidence that the soil at the appeal site must be of good quality. I have not been provided with evidence of the classification of Balruddery Farm nor does it follow that land of a different farm with different topography and apparently different underlying geology would necessarily have the same agricultural classification, simply because it is nearby.

77. Finally, the argument that the Macaulay Map is correct and the SESL report wrong, if taken its height, would result in the land at the site being treated as the lowest class of prime agricultural land. Given the need for renewable development that I have discussed above, such evidence would not persuade me that the policy exemption for such development on prime agricultural land should be set aside for protection of the land’s agricultural use.

78. The council did not find that the viability of the agricultural unit would be affected. The unit would benefit from rental income from the solar farm and it is proposed it would continue to be used for agriculture, albeit for grazing. Consequently I agree that this element of policy PV20 is also met.

Effect of traffic generated by the proposed development

79. A number of objectors referred to the effects of construction traffic on the roads by which it would access the appeal site. The appellant’s design and access statement describes an expected route for construction traffic from the A90 at Longforgan by minor public roads past Millhill and Dron, accessing the site by the track to the south of Binn Farm. The statement estimates that construction would take six months and that there would be four deliveries by heavy-goods vehicles and 15 other vehicle arrivals a day associated with it. There is unlikely to be substantial additional traffic associated with the proposed development once it is operational. The appellant proposes that a construction-traffic-management plan (CTMP) should be prepared subject to consent by the council before commencement of construction.

80. Transport Scotland had no objection to the proposed development, subject to a condition requiring approval of the CTMP. The access route north of the A90 would run mainly through Perth and Kinross Council’s area. That council’s transport planning team also did not object to the proposed development subject to such a condition. The council did request that the condition that should require approval of the CTMP by Perth and Kinross Council. I do not consider the imposition of a condition that required the approval of a body other than Angus Council as planning authority would be appropriate, even in

respect of roads outside the Angus area. It would be possible though for Angus Council to consult Perth and Kinross Council in respect of the proposed CTMP.

81. There is no indication in the evidence that there is any existing restriction on large vehicles, even articulated lorries, passing along the existing public roads on the proposed access route as matters stand. Existing farm traffic is likely sometimes to include large vehicles and agricultural machinery. Construction traffic would be considerably more intense, but only for a limited period. Some disruption associated with a construction project is inevitable. I do not consider that disruption associated with the predicted amount of traffic on public roads for the limited period of construction represents a substantial consideration weighing against the proposed development. This is so even if the construction traffic is not distributed evenly across the construction period – if there was a period of more intense traffic, then although the disruption might be somewhat greater, the period of it would be shorter. I consider that, subject to management of traffic through the CTMP, the greatest of the inconvenience that might be caused can be avoided.

82. Perth and Kinross Council suggested that the establishment of additional passing places may be required on the U331 minor public road, where it forms part of the route for construction traffic. This would be identified in the CTMP. If such additional passing places are required, they would be the subject of a separate consenting process. The environmental impact of such works is likely to be minimal, though it may provide a minor benefit to road users. Any alteration to the road would require separate consent from Perth and Kinross Council as roads authority.

83. The Check Bar Road would be affected during construction by traffic crossing the path. The southern part of the track is presently used by farm traffic and traffic to North Binn. It is not proposed that construction traffic should pass along the Check Bar Road. Again, although there would inevitably be a degree of disruption to public use of the route for the period of construction, the impact would not be such as to weigh substantially against the proposed development.

84. I do not understand there to be a proposal to route construction traffic through Fowlis.

Flood risk

Flood risk to the development

85. The appellant submitted a flood-risk and drainage assessment in support of the application. Flood risk to the appeal site from the Binn Burn is assessed as medium (between a 0.1 percent and 0.5 percent annual risk of flooding). I agree with the assessment that the proposed development would be essential infrastructure and can be established in an area at medium risk of flooding. The assessment found that, if the culvert upstream of the Check Bar Road should be entirely blocked, the floodwaters would flow overland and re-join the burn, even when the modelled flood was augmented by 35 percent to make allowance for climate change, and that flood-sensitive infrastructure would not be affected.

86. There is a possible discrepancy between this assessment of flood risk and the SESL study, which indicates that two small areas of the appeal site near the Binn Burn, on which panels are proposed, are to be categorised in agricultural class 4.2, apparently partly because of wetness and flood risk. Several objectors mentioned flooding on lower-lying areas of the appeal site. It may be that such flood risk arises from rainwater run-off from the fields pooling in those areas rather than from flooding on the burn. Nonetheless,

assuming those small areas are at greater risk of flooding than is identified in the flood-risk and drainage assessment, I do not consider that the proposed use of those areas for solar panels placed on stands is a use that has significant vulnerability to flooding. In view of this, and in the absence of any objection from the Scottish Environment Protection Agency (SEPA) or the council's own flood-risk management team, I do not consider the degree of flood risk to the proposed development is contrary to policy.

Flood risk arising from the development

87. A number of representations alleged that there is an existing flooding problem at Fowlis associated with the Binn Burn and also an existing flooding problem on Berryhill Road and on the Binn Farm track (the latter being in the catchment of the Balruddery Burn, rather than the Binn Burn). A number of representations also suggested that the proposed development could make the current flooding situation worse by increasing the impermeable area in the two catchments as a consequence of the panels and hardstanding on the slopes above these two locations.

88. A drainage strategy is proposed with measures that include gravel ditches at the downslope face of areas of hardstanding to attenuate runoff, access tracks built from permeable material, measures to prevent erosion at the drip line of the photovoltaic panels and vegetated swales at the foot of the slopes. The strategy states that the change in the use of the appeal site from use for growing of crops to grazing land would reduce surface-water runoff and soil erosion. This would reduce the surface-water runoff rate into the Balruddery Burn and the Binn Burn as compared with the existing use. I agree that these measures would mitigate flood risk associated with the development and that the change of land use would be more likely than not to reduce existing flood risk. In view of this, I find the effect of the proposed development on downstream flooding would be acceptable in terms of policy.

Protected species and other wildlife

89. The appellant provided an ecological desk study and an outline biodiversity management plan with its supporting environmental information report.

90. The outline biodiversity management plan identified potential impacts on badger. Badgers were identified near part of the proposed infrastructure. Fences would be installed to prevent their access to the panel arrays to prevent cable damage from their foraging. The outline plan reports that badger commuting routes would not be greatly affected. A pre-construction survey is proposed to check that the location of badger setts has not changed before construction. A disturbance licence would be sought if construction work was to be done close to a sett.

91. The infrastructure is proposed to be set back by twenty metres from tree lines and substantial tree-felling is not proposed. I accept, as the plan states, that this would avoid impact on bats. Himalayan balsam, an invasive species, has been found on the site. A survey would be required before construction to check the location of the species and biosecurity measures are proposed to prevent its spread. Construction work is proposed to be commenced before the bird-breeding season (March to August) to reduce the potential for impact on breeding birds. While some other larger mammals, such as fox or deer, might be excluded from part of their range by the proposed fenced areas around the panels, these species are not endangered and the impact on their ranges would be negligible.

92. The appellant proposes to create and manage within the development site a new woodland, a wildflower meadow, and hedgerows, sets out in the plan proposals to ensure suitable biodiversity of such planting, and proposes to safeguard connectivity of badger habitat outside the panel areas. All of these measures can be secured by condition.

93. Neither NatureScot nor the council's ecological advisors have objected to the proposed development or raised a concern about the effect on any protected species. There has been no adverse comment from any organisation with a role in wildlife protection. I do not consider the evidence to support a finding that there would be an adverse environmental effect on any wildlife species. Overall, I consider that with the implementation of measures along the lines in the outline biodiversity management plan, biodiversity at the site is likely to be improved.

Socio-economics

94. The appellant has provided an assessment of the socio-economic effects of the proposed development. This estimates capital investment of £21.5 million in the proposed development, including groundwork, civil engineering, construction and landscaping. The appellants propose to place a requirement for local procurement on the contractor. Maintenance costs are estimated to be about a million pounds a year. The appellant estimates that about 45 percent of the operational expenditure would be with Angus businesses. It predicts expenditure in Scotland of just under £15 million over the project's 40 year life, which it predicts with multiplier effects would have a total economic impact of just over £30 million on the Scottish economy over that period.

95. In its submission, the council refers to the popularity of Piperdam for tourism and recreation and its contribution to the economy of the area. There is an implication that the proposed development might affect this. I have acknowledged that some visitors to the Piperdam estate may use the Check Bar Road. It is likely that some such visitors also sometimes take paths to Blacklaw Hill and walk in the wider area. I do not consider there is any evidence to suggest that the attraction of Piperdam to visitors would be reduced in any non-negligible way. There are many facilities at Piperdam such as a golf course, swimming pool and restaurant which would attract visitors and would be entirely or substantially unaffected by the proposed development. The condition of the Check Bar Road at the Piperdam end does not suggest that a high proportion of visitors walk that way to Binn Farm or Berryhill. I do not consider there is evidence of any non-negligible adverse effect on Piperdam or the contribution it makes to the local economy.

96. The figures in the appellant's report can only be broad estimates based on current economic models. There would also be some loss of economic activity in agriculture at Binn Farm as a result of the change in land use, and it is not clear to me that account has been taken of that in the assessment's figures. Nonetheless, I accept that the proposed development would be likely to have a net positive economic effect.

The scale of the contribution to renewable-energy-generation targets

97. A number of objections referred to the efficiency of solar power, to the proposed development's predicted load factor of 10.3 percent, and to the possibility of using other forms of renewable energy, such as offshore windfarms.

98. I have found that both Scottish and UK policy favours an increase in capacity for solar generation, as part of an energy mix. The proposed development would have installed capacity of 49.9 MW. The appellant predicts it would generate about 45 GWh annually (a

figure that takes account of the predicted load factor), which it states is sufficient to supply 12,500 homes. This would be a substantive contribution to meeting the need for renewable-energy generation and the aim of the UK Government's British Energy Security Strategy to increase solar capacity in particular. Objectors have made an adverse comparison between the output of the proposed development and that of offshore wind turbines – but since a mix of sources of generation is required, solar generation cannot simply be replaced with more offshore turbines. While photovoltaic panels inevitably do not have as high a load factor as other forms of generation, this was a known factor when the UK and Scottish governments made their policy favouring development of such capacity. No factor has been drawn to my attention relating to the proposed development specifically that would suggest there might be a limitation in generating potential relating to its site in particular.

Other matters

99. A number of objectors raised tree-felling as an impact of the development. I do not understand any substantial tree-felling to be proposed, since the infrastructure is to be set back from tree lines. There is a suggestion from some objectors that trees would require to be removed on the Binn Farm track to allow construction traffic to pass. Construction traffic is not proposed to use that route, though, but rather the southern farm access. There is a reference to protection of trees by a deed of conditions on that route. A grant of planning permission does not lift existing protection for trees in private law (such as from a deed of conditions).

100. A number of objectors alleged that there was a fire risk associated with the proposed development. Generally speaking requirements for the safe operation of infrastructure are dealt with under health and safety legislation. No substantive evidence was advanced that there is a special or particular risk associated with the development proposed (such as that fires were a known and frequent risk associated with such development) that would make such a risk a planning issue.

101. Several objectors referred to the possibility of pollution caused by materials from the photovoltaic panels. The same comment I have made in respect of fire safety as regards responsibility for safe operation of infrastructure would apply to release of poisonous substances. No substantive evidence has been submitted that would indicate any such problem has been associated with photovoltaic panels. Neither the council's environmental-health team, which has responsibility for addressing statutory nuisances, nor SEPA, which has responsibility for dealing with environmental pollution, has suggested there would be any such issue and have not objected. There are already measures in law to require remediation of contamination of land and water should it arise.

102. Aviation safety was raised by several objectors. In the absence of any objection from Dundee Airport or any other body with relevant responsibility, I do not find this to be an adverse consideration.

103. No proposal is made for the grid connection for the proposed development in the application that is the subject of this appeal. Consideration of the connection is for a separate future procedure.

104. The proposed design incorporates wayleaves for the overhead line and gas pipeline that cross the site.

105. Several objectors referred to the inadequacy of proposed financial payments for community benefit. Such payments are a matter between the developer and the community. They are not a material planning consideration.

106. Several objectors raised issues about the manufacture of solar panels. Although it is not expressly covered in evidence, I am aware that the carbon emissions involved in the manufacture of solar panels are only a relatively small proportion of the emissions saved over their lifetime on the current grid mix of generation (though different types of panels have different levels of embodied carbon). There is an international market in solar panels. While some might be made in countries with poor labour practices and environmental regulation, that will not be the case for all. In any case, questions of regulation of the market for appliances such as solar panels fall outside the scope of the planning system.

Policy conclusions

107. I have found that ALDP policy PV9 is the key policy in the development plan on renewable-energy development. Although I have recognised that there would be adverse effects on residential amenity of North Binn and the houses on the Binn Farm track, I have found that those effects would not be such as to make any house an undesirable or unsatisfactory place to live. I recognise that there would be adverse effects on visual amenity and landscape and the concerns expressed by objectors in respect of such effects. I do not consider, though, that they would be extensive for a development of the proposed scale. Taking account of the proposed landscaping, I find that the location, siting and appearance of the proposed development is such as to minimise impacts on amenity, landscape and the environment while respecting operational efficiency. I have not found any substantial evidence that construction traffic would compromise road safety or cause unacceptable change to the environment or landscape. While the grid connection would be the subject of a separate planning process, the applicant reports that it has had discussions with the distribution-network operator which indicated that a grid connection would be viable. Taking into account the need for additional renewable-energy generation which I have discussed above, I do not find the proposed development would have any unacceptable effect on landscape character, setting, sensitive viewpoints or public-access routes, designated natural-heritage sites or the amenity of any community or any individual dwelling. Consequently, I find that the proposed development accords with ALDP policy PV9.

108. These findings in respect of the specific renewable-energy policy PV9 largely address policy DS4, the general policy on amenity, and PV6, the general policy on landscape. The proposed development would not have an unacceptable adverse effect on the surrounding area, the environment or occupiers of nearby property. While there would be some adverse effect on the immediate landscape setting, the limited extent of such an effect and the proposed mitigation show that the site is capable of accommodating the proposed development, that it would integrate with its landscape context, and that impacts would be minimised. The limited cumulative effects are acceptable. The proposed development would accord with policies DS4 and PV6.

109. I do not consider that proposed development would compromise the integrity of existing recreational-access opportunities. While it would have adverse effects on their amenity, I have not found these to be unacceptable. The proposed development accords with policy PV3.

110. The proposed development accords with policies PV12 (flooding) and PV20 (soils and geodiversity). There is no substantial relevant impact that would cause policy PV7 (woodland, trees and hedges) to come into consideration.

111. As regards the factors listed in SPP paragraph 169, although I have identified adverse effects particularly on the amenity of a number of dwellings, on the immediate landscape and on other visual receptors locally, including particularly the Check Bar Road, Berryhill Road, Blacklaw Hill and paths leading to it, I do not consider that any of these impacts outweighs the renewable-energy benefits of the proposed development. In respect of SPP paragraph 202, I consider that the siting and design of the proposed development does take account of local landscape character and – taking account of the landscaping proposed – minimises adverse effects of the proposed development. I do not find the proposed development to be contrary to relevant national policy on protection of agricultural land, flood risk, woodland or other matters raised by the council or objectors. Taking into account the need for new renewable development, I find that the proposed development's effect on the natural environment would be acceptable in terms of SPP paragraph 203. The proposed development would not be contrary to national policy on protection of agricultural land or on flood risk.

112. As regards the factors referred to in SPP paragraph 29 in respect of the sustainability presumption, I find that the proposed development would support the delivery of energy infrastructure and mitigation of climate change. The proposed development would have a net economic benefit. Although it would have some adverse effects on visual amenity locally, its siting and the proposed design of its landscaping would address those impacts such that they would be reduced or eliminated as the landscaping matured. In this respect, the proposed development does support good design. Although the application site is agricultural land, the evidence shows it is not of the highest quality, and the change of land use does not exclude some continued agricultural use. Consequently I consider the change of land use does represent an efficient use of the capacity of the land. While it has some adverse effect on the amenity of some recreational paths, it would not be substantially detrimental to public access. In some respects, it would enhance access to natural heritage with the associated sowing of a wildflower meadow and planting of hedges and woodland. Although the proposed development is large in its scale, I consider the proposal for its design, with hedges on the line of field boundaries breaking up the overall array, would avoid overdevelopment. I do not find any adverse implications for water, air or soil quality. Even though the proposed development would have some adverse effects, they are not such as would significantly and demonstrably outweigh its benefits. I find that the proposed development would be sustainable overall.

113. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations that would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none that would lead me to alter my conclusions.

Conditions

114. The council recommended changes to the conditions it had proposed to remove panels west of North Binn from the design and to increase off-set distances between infrastructure and the North Binn track and also between infrastructure and the houses on the Binn Farm track. It follows from my reasoning that I do not consider such changes necessary. I do agree that the infrastructure of the proposed development should be no closer to those houses than shown on the indicative plan, though, and so I have added that

provision to the condition for approval of the final layout. I have made a number of other changes from the conditions proposed by the council. My purpose was not to change the broad purpose of any condition, but simply to ensure that they clearly captured the council's intentions.

Robert Seaton

Reporter

Conditions

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of its grant.

Reason: This condition is for the purpose of the good planning of the area, to ensure that the permission will lapse if it is not implemented within three years. Permission granted for a development for a limited period is excepted from the operation of section 58(1) of the Town and Country Planning (Scotland) Act 1997, and without a condition to control when it would lapse, would have no restriction on the time within which it could be implemented.

2. The solar array and associated infrastructure hereby approved shall be removed from the site no later than 40 years after the date when electricity is first generated from any photovoltaic panel at the site. Written confirmation of the commencement date of electricity generation shall be provided to the planning authority within one month of that date. In the absence of such written confirmation, the commencement date shall be taken to be nine months after commencement of development.

Reason: In order to ensuring infrastructure is removed from the site at the end of the development's expected operational lifetime.

3. No development shall commence until details of the proposed development's final layout and the location and final designs for the external appearance of all buildings, structures, and fencing and of the location of all CCTV cameras have been submitted to and approved in writing by the planning authority. Thereafter the buildings, structures, and fencing shall be constructed and the CCTV cameras located in accordance with the approved details. In the final approved layout, neither the proposed panels nor the proposed fencing shall be closer to the houses at North Binn or the houses on the track between Berryhill Road and Binn Farm than is depicted on the indicative layout plan version 3 dated 23 November 2021 (labelled APP 3.59). Furthermore, no noise-generating infrastructure shall be closer to any of those houses than the nearest noise-generating infrastructure depicted on that plan.

Reason: In order that the planning authority may verify the acceptability of the final layout and details of buildings and structures in the interests of amenity, restoration of the site, road safety, and environmental protection.

4. No development shall commence until the following details or evidence has been submitted to and approved in writing by planning authority:

- (a) Details of a bond or other financial provision to be put in place to cover all decommissioning and site-restoration costs. The bond or financial provision shall be provided under terms that will allow the planning authority to call upon it if the scheme of decommissioning and restoration of the development's site referred to in condition 4 is not carried out or completed as approved under condition 5.

- (b) Provision for the regular review of the bond value to ensure it will cover the final site-restoration costs.
- (c) Documentary evidence that the bond or other financial provision in the approved terms has been put in place.

The developer shall ensure that the bond or other financial provision approved is in place throughout the life of the development until the completion of its decommissioning and restoration.

Reason: to ensure that funds are available to carry out the necessary work properly to decommission the development and restore the site to its previous use even in the event of failure on the part of the developer or landowner.

5. No development shall commence until a scheme of decommissioning and restoration of the application site has been submitted to and approved in writing by the planning authority. The scheme shall include provision:

- (i) setting out the means of reinstating the solar farm site to agricultural use following the removal of the components of the development,
- (ii) requiring its completion within 18 months after the final date electricity is generated at the site, being at the latest a date 18 months after the date for removal of the development infrastructure set by condition 2 of this permission, and
- (iii) for aftercare after restoration is complete.

The scheme shall be implemented as approved.

Reason: To ensure that the site is properly decommissioned at the end of its life and the land is restored to its former use.

6. No development shall commence until the following plans for the period of construction have been submitted to and approved in writing by the planning authority:

(a) a Construction Traffic Management Plan (CTMP) including (but not limited to) the following provisions:

- (i) the routing for any abnormal loads;
- (ii) the type and volume of vehicles to be used in the delivery to the site of construction materials associated with the construction of the solar array;
- (iii) details of heavy-goods-vehicle (HGV) movements to and from the site;
- (iv) details of any proposed accommodation works or mitigation measures affecting public roads in order to allow for delivery loads (including, without restriction, carriageway widening, junction alterations, associated drainage works, protection to public utilities, temporary or permanent traffic management signing, and temporary relocation or removal of other items of street furniture);
- (v) restrictions to be placed on delivery traffic to specified routes and measures to be put in place to ensure other routes are not used;
- (vi) the timing of construction traffic to minimise impacts on local communities, particularly at school start and finish times, during refuse collection, at weekends and during community events;
- (vii) a code of conduct for HGV drivers to allow for queuing traffic to pass;
- (viii) contingency procedures (including names and telephone numbers of persons responsible) for dealing with vehicle breakdowns;
- (ix) a dust- and dirt-management strategy, including requirements for sheeting of loads and wheel cleaning prior to departure from the site and arrangements for cleaning of roads affected by material deposited from construction sites associated with the development;

- (x) the location, design, erection and maintenance of warning and information signs for the duration of the works at site accesses and crossovers on private haul roads or tracks used by construction traffic and pedestrians, cyclists or equestrians;
- (xi) contingencies for unobstructed access for emergency services;
- (xii) co-ordination with other major commercial users of the public roads on the agreed routes in the vicinity of the site;
- (xiii) the provision and installation of traffic counters at locations to be agreed prior to the commencement of construction;
- (xiv) traffic management, in the vicinity of temporary construction compounds including details of information signs to inform other road users of construction traffic;
- (xv) arrangements for liaison with the relevant roads authority regarding winter maintenance;
- (xvi) arrangements for the monitoring and review of the approved plan and for reporting on its implementation; and
- (xvii) procedures for monitoring compliance with the approved plan and for addressing any breach of it.

(b) a Construction Environmental Management Plan (CEMP). The CEMP shall include (but not be limited to) provisions in respect of: -

- (i) site working hours;
- (ii) mitigation measures for dust and machinery emissions arising from the construction phase and dust-complaint investigation procedure;
- (iii) mitigation measures for noise and vibration impacts and an investigation procedure for noise and vibration complaints;
- (iv) waste management;
- (v) pollution monitoring and mitigation;
- (vi) tree-protection measures both for trees to be retained within the site and for trees outwith the site;
- (vii) ensuring good practice in environmental and ecological protection is adhered to;
- (viii) the appointment of a suitably qualified ecological clerk of works (ECOW), their remit (to include monitoring of adherence to environmental requirements of these conditions), and contact details for the ECOW appointed;
- (ix) invasive-species risk assessment and management plan; and
- (x) procedures for monitoring compliance and dealing with any breach of the approved plan.

(c) An Access Management Plan (AMP). The AMP shall include (but is not limited to): -

- (i) arrangements for management of public access on core path 215 (the Check Bar Road) and other public access routes within the application site during construction works;
- (ii) details of the extent and timing of any closures and proposed diversions of such public access routes;
- (iii) details of the proposed path diversion including:- its construction specification; enclosures to be incorporated adjacent to the path; a timescale for the provision of the path and details of any proposed maintenance (including cutting of surface vegetation or adjacent trees or hedges);
- (iv) arrangements for reinstatement of any core paths or other public access route(s), the surface of which may be disturbed during construction, and the schedule for the completion of any works; and
- (v) procedures for monitoring compliance and dealing with any breach of the approved plan.

The CTMP, CEMP and AMP shall be implemented as approved during the construction of the development.

Reason: to ensure that the impacts of construction and construction traffic on the environment, on the amenity of nearby residents, on road safety and convenience of road users, and on access of the public to the countryside are controlled.

7. No development shall commence until a Biodiversity Mitigation and Enhancement Plan (BMEP) has been submitted to and approved in writing by the planning authority. This shall

- include proposals for mitigation and enhancement works, being as a minimum those described in section 5 of appendix F4 to the Supporting Environmental Information Report for the Berryhill Solar Farm (the Outline Biodiversity Management Plan) dated 30 June 2021,
- provide a schedule for completion of such works, and
- identify any ongoing activity required for the duration of the development's operation.

The BMEP shall be implemented as approved.

Reason: to ensure adverse effects on biodiversity as a consequence of the proposed development are mitigated and that the proposed development is carried out in a way that best secures and enhances biodiversity of the site during and following the development's construction.

8. No development shall commence until a scheme for localised road widening and provision of passing places on the U144 and U331 public roads, supported by evidence of consultation with Perth and Kinross Council as roads authority, has been submitted to and approved in writing by the planning authority. No deliveries of construction materials shall be made to the site until any approved road improvements have been carried out. The improvements shall remain in place and shall be fully maintained throughout the operational life of the development hereby approved.

Reason: to ensure broad arrangements for road improvements for access to the proposed development and any details of their impacts are considered and to ensure improvements are retained for the duration of the development.

9. No development shall commence until a survey of the application site to identify any existing private water supplies has been submitted to and approved in writing by the planning authority. If the survey identifies any private water supply, no development shall commence until details of mitigation measures designed to protect the integrity and wholesomeness of such a supply during both the construction and operational phases of the development has been submitted to and approved in writing by the planning authority. Development shall be carried out in accordance with the approved mitigation measures.

Reason: to ensure that any impact on private water supplies during construction are identified and mitigated.

10. No development shall commence until a scheme of landscaping works to be undertaken on the site has been submitted to and approved in writing by the planning authority. The submitted scheme shall include details of: -

- (i) existing landscaping features and vegetation to be retained;
- (ii) the location of new trees, shrubs, and hedges, and details of the width of standoff areas to solar panels;
- (iii) a schedule of plants to comprise species, planting stock size, numbers and density;
- (iv) measures to protect planting from grazing animals; and

(v) A landscape management and maintenance plan.

The approved planting shall be completed within the first planting season following the initiation of development. The landscaping shall be managed and maintained in accordance with the approved details for the duration of the development's operation. Any plants or trees that within a period of 5 years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size or species.

Reason: To ensure details of landscaping are considered such that it best contributes to mitigating the adverse landscape and visual effects of the development and that it contributes to biodiversity and to ensure that the approved landscaping becomes established so that it meets those purposes.

11. Noise associated with the construction of the development including the movement of materials, plant and equipment shall not exceed the noise-immission limits at sensitive receptors shown in table A below for the times shown. At all other times noise associated with construction operations shall be inaudible at any sensitive receptor. For the avoidance of doubt, sensitive receptors includes all residential properties, hospitals, schools and office buildings.

Table A: Construction Noise Limits

Day	Time	Noise limit
Monday – Friday	07:00 – 08:00	60 dBA Leq (1hr)
Monday – Friday	08:00 – 18:00	08:00 – 18:00 70 dBA Leq (10 hrs)
Monday – Friday	18:00 – 19:00	60 dBA Leq (1hr)
Saturday	07:00 – 08:00	60 dBA Leq (1hr)
Saturday	08:00 – 13:00	70 dBA Leq (5 hrs)

Reason: To safeguard the amenity of local residents and other occupants of noise-sensitive locations during the construction of the development.

12. Vibration levels associated with construction activities shall not exceed the following limits, unless agreed in writing with the Planning Authority: -

- (a) At any residential or educational properties 1 mms-1 PPV; and
- (b) At any commercial or industrial properties 3 mms-1 PPV.

The above vibration limits relate to maximum PPV ground-borne vibration occurring in any one of three mutually perpendicular axes. Vibration is to be measured on the foundation or on an external façade no more than 1m above ground level or on solid ground as near the façade as possible.

Reason: To safeguard the amenity of occupants of nearby properties that may be affected by vibration.

13. Noise from any activity associated with the operation of the development hereby approved shall not exceed 50 dBLAeq (1hour) as measured and assessed within the external amenity area of any noise sensitive property and in accordance with BS 4142:2014 methods for rating and assessing industrial and commercial sound.

Reason: To protect the amenity of residents and other occupants of noise-sensitive properties.

14. Noise from any fixed plant associated with this development shall not give rise to a noise level assessed within any dwelling or noise sensitive building with windows partially open for ventilation, in excess of that equivalent to Noise Rating Curve 30 between 0700 and 2200 and Noise Rating Curve 20 at all other times.

Reason: To protect the amenity of residents and other occupants of noise-sensitive properties.

15. Within two months from receipt of a written request from the planning authority (which may be made following a complaint to it of nuisance from reflected light from the development from an occupant of any sensitive property), the solar farm operator shall, at its expense, undertake and submit for the written approval of the planning authority, a glint and glare assessment. The assessment shall be carried out by a suitably qualified person. It shall include an assessment of the degree of any effect, identification of any mitigation measures required to address such an effect, and a scheme (including timescales) for the implementation of such measures. The development shall be adapted or operated in accordance with the approved scheme. A sensitive property includes a residential property, a hospital, a school, an office building and any similarly sensitive receptor.

Reason: To protect the amenity of residents and other occupants of properties sensitive to nuisance from glare.

Advisory notes

- 1. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 3. Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).