

**Ward Report to Rockbeare Parish Council
27 September 2023**

Owing to the Summer break, this report covers the period since my last report in mid-July.

District Updates

- EDDC Cabinet have approved a plan to develop proposals for the first new council houses to be built in East Devon for many years, with a series of modular, zero-carbon, 'ZedPod' homes currently planned for a brownfield site in the centre of Honiton
- Cabinet have also recommended adoption of a 'Nature Recovery Declaration', together with a stepped plan to implement new nature restoration duties placed on the District Council by the Environment Act 2021
- Two reviews, one of new car parking charges introduced in the last few years, and another of East Devon's system of public bin provision, are currently underway; the former to understand what impacts, if any, changes to the charges may have had on tourism/businesses as well as residents, and the latter as part of a multi-stage process to review what types of bin are provided, where, and for how much, as well as to improve the financial viability of the discretionary service going forwards
- East Devon are later this year undergoing a 'Corporate Peer Challenge' under the guidance of the Local Government Association, as part of which questions regarding how the District works with Parish Councils on a variety of issues are expected to be asked; while direct consultation with Parish Councils may well be undertaken as part of this, to ensure I can make sure any such feedback is properly heard, it would be helpful if the Parish Council could **advise of any feedback/comments that they would make on the subject**

Ward & Parish Updates

- I continue to pursue reports regarding the poor status of various country lanes, particularly between Rockbeare and Marsh Green, and have sought to raise the issue direct with Devon Highways to little success; and I understand residents have had similar experiences
- The planning appeal by public inquiry regarding Marsh Green Solar Farm, with which I have been involved extensively both in administering participation by residents of Marsh Green in the inquiry and in producing written evidence on the group's behalf, has now concluded; I set out a summary and reflection on this below
- Work on the emerging East Devon Local Plan continues; in late August, I and other members of Strategic Planning participated in a workshop to develop an updated vision for the plan, at which I have pushed heavily for appropriate recognition of the value of rural East Devon and the need to ensure its conservation and protection from large-scale development
- I understand that the question of the Cranbrook Boundary Review has been raised again for consideration following the adoption of the Cranbrook Plan late last year – I have no further detail at this stage save to anticipate an invitation to a stakeholder meeting from EDDC in the near future

- Following discussion at the July Parish Council meeting regarding the Rockbeare Neighbourhood Plan following the approval of the first outline application in the Cranbrook Gribble Lane Expansion Area, I have as promised undertaken enquiries with East Devon's Neighbourhood Planning Officer with the following points coming out of that:
 - There is limited guidance available on reviewing/updating Neighbourhood Plans; East Devon has not produced a bespoke document, and the best-available would appear to be [a toolkit from Locality](#)
 - There is a requirement within the RNP to review the plan after five years regardless, and with the recent adoption of the Cranbrook Plan the latter has more weight; an updated RNP would give the Parish more of a say in guiding development management decisions
 - Under the NPPF, as East Devon cannot currently demonstrate an adequate supply of housing land over the next five years, only neighbourhood plan policies that are **less than two years old** have substantial weight in decision-making processes – again a strong point in favour of updating the plan
 - On the flip side, the policy environment for a review/revision/materially-new Neighbourhood Plan is constantly evolving, which might make this challenging; there still remains substantial work on the emerging East Devon Local Plan, and government changes to the plan-making process are looming that could have substantial implications for both the EDLP development process and any review of the RNP
 - On a related point, should a revised RNP be made prior to the emerging EDLP, then the latter would take precedence for decision-making *where there is a conflict between the two* – though given that the RNP would be intended to focus on specific local issues (and feedback from officers is that the existing plan is a good example of doing this already)
 - On the process itself, on the assumption that any revisions would be material and (in the technical language) 'change the nature of the plan' [see p.32 of the Locality guide above], this would effectively be the same as for the preparation of the original plan (informal consultation, evidence gathering, formal consultation, submission to EDDC for further consultation, then an examination by the Planning Inspectorate and possibly a referendum) with the caveat that earlier stages should focus on evaluating the effectiveness of the existing plan (for which community consultation and engagement with the planning team would both help – some light-touch work on the former in particular would help to scope out whether a review is needed, while the latter might help to identify specific policy areas where the existing RNP could be updated)
 - The key then in light of this complexity is for there to be a clear 'purpose' for preparing a materially new plan in order to justify the amount of work involved
 - In terms of support, there is a £10,000 grant from Locality available, with additional technical support if required, if a new/modified plan is taken up, as well as the live evidence base from the emerging EDLP; advice is obviously also available from EDDC's Neighbourhood Planning Officer, and I am available to support where I can
 - At this stage, then, I would suggest an RPC-level discussion (possibly involving myself + EDDC NPO) reviewing these comments with a view to establishing whether some informal consultation is undertaken to inform a decision on whether or not to formally review the RNP

Correspondence shared with the Parish Council

Since my last report, I have passed on correspondence with regards to:

- Devon & Cornwall Police & Crime Commissioner's Office – a new Victims of Crime website has been launched at <https://victimcare-dc.org>, which the PCC's Office have requested support in distributing information regarding
- Devon County Council 'free trees' programme – a programme by the County Council to support decarbonisation and nature recovery efforts by Parish Councils; the deadline for this year's applications is Wednesday 27 September – see <https://devon.gov.uk/environment/trees-and-woodland/emergency-tree-fund> – and the Parish Council may wish to consider applying to support environmental improvements at the Parish Field and elsewhere, perhaps as a collaboration with Whimble Primary School or the Whimble & District Garden Association
- Devon & Cornwall Police & Crime Commissioner's Office – a survey exploring how crime is affecting rural communities, which the Parish Council and residents may wish to complete; find out more at <https://www.surveymonkey.co.uk/r/RuralDC>

Summary & Reflections on Marsh Green Solar Farm Inquiry

As RPC will be aware, I have been working very closely with residents of Marsh Green on the above, who successfully obtained Rule 6 status, enabling formal participation in the inquiry as a 'main party' in addition to EDDC and the Appellant. I offer the below observations having observed the full duration of the inquiry and worked closely with the barrister appointed by Marsh Green Valley Protection Group.

Firstly, to summarise, the Planning Inspector assigned to the case identified three 'main' issues for the inquiry to examine: landscape and visual impacts, impacts on heritage assets, and the so-called issue of 'planning balance'. All of these issues were addressed formally through evidence presented by witnesses called by each party and subsequently cross-examined by the relevant opposing party's/parties' barrister/s.

Three further issues were considered in a 'round-table' session – a less formal procedure controlled directly by the Inspector, rather than by the relevant barrister/s, in which experts discuss with each other, and take questions and points from both the Inspector and, on this occasion, members of the public in attendance. Covered in this session was the validity of the Appellant's evidence on agricultural land, impacts on drainage and flood risk, and impacts from construction traffic.

Below, I summarise each of these topics in turn before providing some final thoughts.

Landscape & Visual Impact

All three parties called a witness on this issue; EDDC & Appellant called an appointed expert witness, while MGVPG called Frances Ratcliffe as a local ('lay') witness, supported by a survey of residents in Marsh Green and Westcott.

Unsurprisingly, the Appellant's evidence was that the landscape is no more than a landscape with local value, and thus not subject to any special protection under the National Planning Policy Framework (NPPF); that the visual impacts would be negligible on account of topology, existing screening, and the proposed maintenance of hedges at 3-4m; and that as such the residual impacts on landscape and visual would be minor adverse. EDDC's expert pointed out that existing landscape character assessments for the site are explicit that *low* hedges are typical of the area, and thus that

the vast majority of the proposed mitigation is, in fact, a further harm; and, leaning to some extent on the evidence presented by MGVPG, that the area is in fact a *locally valued landscape* (the 'next step up' in landscape value terms than that suggested by the Appellant), and as such benefits from some protections under paragraph 174(a) of the NPPF. EDDC's expert thus concluded that the residual harm would be moderate adverse. MGVPG's evidence focussed on three main points: illustrating the *intangible* contribution of the site area to the fundamentally isolated, agricultural, rural character of Marsh Green and Westcott (a point largely neglected by the other experts); the impacts of the proposed 'mitigation' by way of hedge-raising on the visual character and amenity of the area; and the expected impacts of the proposal on cultural heritage, community identity, and social wellbeing should it go ahead.

Without delving into the specifics of the technical discussion, my general impression here is that the Appellant lost some ground, in spite of EDDC's expert's submissions having some obvious errors that undermined credibility. MGVPG's evidence in particular on intangible character and the harm that the proposed mitigations would cause served as a really important contribution, which would not otherwise have come forward – and in my professional view this may well have a material bearing on the Inspector's findings on this point. I was a little surprised to see EDDC's expert take up the locally valued landscape point, but particularly with MGVPG's evidence again I think there's a real chance that may weigh in the Inspector's decision.

Heritage

Only EDDC and the Appellant called a witness here – MGVPG was unable to appoint an expert at short notice on account of industry conditions.

The Appellant's case was that the setting of the six relevant listed buildings was largely (if not exclusively) defined by 'intervisibility' – the extent to which the relevant asset and the development could be seen at the same time, or from one another. As a result of intervening screening, this intervisibility is relatively limited – and as such, the Appellant's expert concluded that there would be *no* harm to the setting of the listed heritage assets.

EDDC's Conservation Officer found differently – that the setting extended beyond intervisibility, encompassing some of the appeal site, and that as such the proposal would lead to *less than substantial harm* to the setting of all six listed buildings.

There were other technical disputes here, and EDDC's witness did not particularly cover themselves in glory in cross-examination, but that's the crux of it. Crucially, however, the Appellant's witness, in cross-examination by MGVPG's barrister, refused to define where exactly she thought the setting of the relevant heritage assets ended – which makes it very hard to take credibly their argument that there would be no impact on setting.

In my professional opinion and that of MGVPG's barrister, the Appellant set their case too high for themselves here – it's a real stretch to argue that the proposed solar farm would have no impact at all on the six listed buildings at Marsh Green and Westcott, which then leaves the issue in the realm of less than substantial harm. If less than substantial harm is found, the Inspector is required as a matter of law to give this substantial weight when considering the planning balance test discussed below. This point will ultimately be down to the Inspector's view on setting, but I would be surprised if he finds no harm.

Drainage & Flood Risk

Discussion on this topic was limited – the Appellant called a witness, while MGVPG had made written submissions on the subject. Members of the public from Marsh Green and Westcott were invited to ask questions of the Appellant’s witness, but ultimately without objection from Devon County Council and where the proposed development fundamentally does not introduce any additional water onto the site, this is a really difficult argument to make – as essentially the argument is that pre-construction of mitigation measures things will definitely be worse, and then following construction if mitigation measures do not work as designed, fail during operation, or are not properly maintained, things *may* be worse. MGVPG had also put the technical argument, based on the survey commissioned by RPC at planning stage, that the Appellant had not provided any calculations or similar to demonstrate their case.

No doubt there will be mixed views on this, but in my professional opinion MGVPG put the case as effectively as possible given the evidence available.

Highways

Discussion of this topic was again limited as MGVPG made a full written submission on the topic, including a full photographic survey of the main construction traffic route, rather than calling an expert witness. Again, members of the public participated, and again a lack of objection from DCC was a hindrance here – but in contrast to the drainage/flood risk point I think it has been most effectively hammered home the extent to which the relevant roads are fundamentally unsuitable for the volume and size of traffic implied by the project. MGVPG also recommended that the Inspector drive the route for themselves, and while we have no way of knowing whether this has occurred as the site visit was unaccompanied, I think it likely that this has been done.

Agricultural Land Classification

Here, MGVPG called an expert witness to participate in the round-table discussion with an expert called by the Appellant – and this took up the majority of the time spent in the round-table session. The Appellant had provided *some* additional information regarding the on-site investigation undertaken, which (superficially) addressed *some* of the concern outlined by MGVPG’s expert, but there remained substantial questions over the validity of the data, not least when taken in the context of other investigations undertaken in the area, and issues with the Appellant’s expert’s misleading portrayal of various points of comparison – all of which were, to my non-expert ear, very effectively communicated by MGVPG’s expert, and to which the Appellant’s expert had no real answer. Indeed, I believe the latter’s conclusion was essentially “there’s definitely something going on, but we found what we found”.

The Inspector actively engaged with this aspect of the round-table in particular, asking directed questions to understand exactly what was in dispute and what relevance this had to the planning arguments. I have no doubt at all that the point was properly made and heard – which will leave it down to the Inspector’s judgement as to its relevance to the overall argument.

Planning Balance

Here, I think it is worth just outlining the key decision process that the Inspector will be concerned with in order to contextualise this application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out two stages to the statutory test to be applied when determining whether a proposal should receive planning permission:

1. Does the proposal comply with the provisions of the local development plan when read as a whole?
2. If not, are there other material considerations that indicate that planning permission should be granted?

In summary, the Appellant’s witness on this matter argued both that the proposal does comply with the development plan, and thus should be granted, but that if the Inspector finds that it does not then material considerations (in this case, the sustainability/public interest test informed by government policy and appeal precedents) indicate that permission should be granted anyway; the position of EDDC and MGVPG was that neither apply.

On the first point, in my view the Appellant set their case out way too high for themselves. If for sake of argument we ignore the secondary points on flood risk, highways, and agricultural land: the Appellant’s arguments that the landscape impacts had been suitably mitigated so as to comply with relevant policy on landscape conservation and visual impacts, *and* that there are no impacts at all on heritage assets or their setting, in my view cannot stand up sufficiently for the development to comply with the development plan on these grounds – meaning the proposal would not get permission on the first ground.

The second ground is where things get interesting. Here, the Inspector is required to first make a determination as to whether they think there is harm in each of the aspects discussed above, and if so what weight should be attributed to each of those harms. These then have to be balanced against the benefits of the development, which the Inspector also has to assess according to policy/evidence/etc – and if the benefits are found to outweigh the harms, then the proposal passes the second ground and is awarded planning permission.

I summarise in the table below the weights that each party has argued should be applied to each issue. For clarity, these are the development’s **harms** only.

Issue	Appellant	EDDC	MGVPG
Landscape & Visual Impact	Limited	Significant	Significant
Heritage	None	Significant	Moderate/significant
Drainage & Flood Risk	None	None	Limited
Highways	None	None	Limited
Loss of BMV ag. land	None	Limited	Moderate
Loss of ag. jobs	None		Moderate
Highways impacts on heritage	None	None	Limited

On the flip side, and perhaps unsurprisingly, the Appellant’s evidence identifies a large number of benefits of the proposal; EDDC and MGVPG argued relatively uniformly against these points. I summarise these, and the weight attributed, using the Appellant’s wordings, in the table below.

	Appellant	EDDC	MGVPG
Environmental benefits from a renewable energy production and support from Strategy 39 of the Local Plan	Significant	Significant	Significant
Powering of 18,500 homes	Significant		
Contributing to energy security	Significant		
Environmental benefits from biodiversity net gain	Significant	Moderate	Moderate
Locational benefit – grid connection	Moderate	Limited	None
Betterment to existing drainage regime	Moderate	None	None
Support EDDC climate change resilience	Moderate	None	None
Protection of veteran trees	Limited	None	None
Enhancement of local landscape features	Limited	Moderate	None
Provision of jobs during the construction and operational phases	Limited	Limited	Moderate

A couple of major clash points were identified here that it will be for the Inspector to resolve. The most important of these concerned whether the benefits of renewable energy should be taken separately and hold individual significant weight in favour of the proposal, as the Appellant argues, or whether – as EDDC argued, as well as myself for MGVPG – the wider benefits should be taken *together*, as they are all derived from the same characteristic/s, and therefore counting separately would be double-counting. This also applied to some extent for separation of biodiversity net gain and landscape enhancement in MGVPG’s argument.

Other questions concerned whether various elements comprised a bona fide benefit or simply a policy requirement – as in the latter case these would not constitute benefits. This was an issue for the arboriculture and landscape points in particular.

I can elaborate on the specific arguments put on each potential benefit in discussion at a later date if that would be helpful, but for now I would simply conclude by saying that the weight attributed to each of these points is ultimately for the Inspector to determine for themselves – and while each of the three experts has made their points, convincingly or otherwise, in many of these instances it will be a judgement call. On the major point regarding whether the benefits of renewables are taken together or separately, there is no extant case law that addresses this point, nor any material guide in policy – I come back to this point in my reflections below.

Conclusion & Reflections

It's hopefully apparent from the above where the major turning points of the Inspector's decision in this case will be, but to summarise:

- Whether the proposal represents significant harm to landscape,
- Whether the proposal results in less than substantial harm to the setting of heritage assets, and
- Whether the benefits of renewable energy should be taken together or separately.

The former two are the mainstays of the harm; if the Inspector finds that either is not valid/has no weight, or that both have weight but less than significant, then in any scenario I cannot see the appeal being dismissed. On similar lines, if the Inspector finds with the Appellant on the benefits and comes up with a long list of items which are attributed significant weight, then again, I would expect the appeal to be upheld and permission granted.

I don't think either of those scenarios are particularly likely. On the first two, on the balance of probabilities – substantially so in the case of heritage – I cannot see how the Inspector can find other than that there will be material harm to the visual and intangible character of the landscape, particularly in light of the evidence of MGVPG's landscape witness, or how the Inspector could not find less than substantial harm to the setting of the six listed buildings on account of their clear connection to the appeal site by virtue of their historical agricultural ties. It is of course possible that the Inspector will do either or both of these things – there are not many decisions in the public domain from this Inspector, so it is difficult to predict or anticipate – but in my professional opinion it is much more likely that the Inspector will confirm that he agrees with the assessment of harm in both cases but find that the benefits of the scheme outweigh those harms.

That view goes to the latter point. The fact that there is no established precedent on whether the benefits of renewable energy should be taken individually or separately is because, to my knowledge, no Inspector has found it necessary to address in order to rule on a planning appeal against the refusal of permission for a solar farm: in every case that I have read, the harms are either sufficiently clear such that the assessment of benefits is not so much an issue, or it has been found that the benefits from the generation of renewable energy – described just as that – have such weight that they materially outweigh any drawbacks of the scheme. That is, simply, the nature of the planning policy environment as it stands: if the proposal were for any other form of development other than renewable energy, I would say the chances of it being dismissed at appeal were better than even; as it is for renewable energy, I have been clear in my advice to residents from the start that this is an uphill battle. Despite EDDC's landscape and heritage witnesses both making some errors in their submitted documents that unfortunately undermined credibility, and some important points being landed against the Appellant's landscape and heritage witnesses by both EDDC and MGVPG in evidence and argument, my expectation and assessment in that regard has not materially changed: it is by no means impossible or inconceivable that the appeal will be dismissed, but I think it remains more likely than not that it will be allowed and permission granted.

To be clear, this is not my own view on the merits of the scheme – that is set out in my proof of evidence as a planning expert witness acting on MGVPG's behalf – but rather what I hope seems a realistic and objective appraisal. I am happy to discuss this in more detail as required.