

# BONDSTONES®



## SUPPORTING STATEMENT CERTIFICATE OF LAWFULNESS – EXISTING USE BROADHAYES FARM

CLIENT:  
ROBIN BRIGHT  
BROADHAYES FARM  
BROADHAYES  
EX14 9EL

PROJECT REF: CH311111 - BRIGHT

Prepared by:

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## CONTENTS

STATEMENT OVERVIEW ..... 3

SITE ACCESS & CONTACT INFORMATION ..... 3

SITE LOCATION: ..... 3

1. INTRODUCTION ..... 4

2. SITE ASSESSMENT & HISTORY ..... 5

3. EXISTING USE ..... 6

4. TCPA 1990 REQUIREMENTS ..... 7

5. CONCLUSION ..... 9

6. APPENDIX ..... 10

### DOCUMENT HISTORY

REV	PURPOSE	MODIFIED BY	CHECKED BY	DATE
-	FIRST EDITION	AP/LR	LR	26/01/24

## STATEMENT OVERVIEW

This statement has been produced to satisfy the requirements of current Planning Legislation and is intended to summarise the details of the proposal and the findings / recommendations of any third parties that have contributed to the project to date.

The application to which this document is appended has been prepared with National and Local Planning Policy and associated guidance in mind from the outset. In addition, the Local Planning Authority's 'Validation Checklist' has been consulted to ensure that necessary information has been collated and provided to enable swift validation and efficient determination by the planning authority.

The report is designed to assist the case officer and stakeholders by providing an analysis of the site and its context, a description of the proposal and the needs of the applicant together with an assessment of the application against planning policy. The report is intended to be considered in association with plans and supplementary documents - submitted in parallel - and which are referenced accordingly.

## SITE ACCESS & CONTACT INFORMATION

For the purposes of this application Bondstones' project lead (the Applicant's Agent) and primary point of contact to arrange access is:

**Lisa Rasch**

*Senior Planning Consultant*

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## SITE LOCATION:

Address: EX14 9EL

W3W: [what3words.com/driven.finishers.likes](https://www.what3words.com/driven.finishers.likes)

Site OS Grid reference: ST233024

**NB: For health and safety purposes the site is closed and must not be accessed without prior agreement (allowing at least two working days' notice). Please contact the above if access into the site is required.**

## 1. INTRODUCTION

### 1.1. PROJECT SUMMARY

- 1.1.1. This statement has been prepared in support of a Certificate of Lawfulness application to East Devon District Council to provide sufficient evidence to support the application.
- 1.1.2. Broadhayes Farm is an active high intensity pig unit with 3,500 pigs at the farm.
- 1.1.3. The applicant has chosen to install solar panels in one of the agricultural fields to provide renewable energy to be used by the farm. The installation is future proofing the farm to allow for the solar panels to become weathered and degrade over time so that during their lifetime (around 25 years) they will always provide enough energy for the farm to function. Any energy that is not used by the farm during daylight hours will be stored on a battery for use after dark / at a later date.
- 1.1.4. The solar panel and the framework are not permanent structures, they are moveable – they can be taken apart easily and quickly and are anchored to the ground using long metal pegs. The panels, once erected upon the framework, will be able to be orientated towards the sun and will be ‘rocked’ around 6 times per year to gain the best position to take energy from the sun. The specialist framework is known as ‘Cornish Rockers’.
- 1.1.5. The solar panels and their framework are considered to be permitted development in accordance with Schedule 2 Part 6 Class A of the General Permitted Development (England) Order 2015 (as amended) as they are plant and machinery arising from engineering operations reasonably necessary for the purposes of agriculture.
- 1.1.6. The site is therefore considered immune from enforcement, however in the interest of crystallising the existing use, and for security / peace of mind for the next generation, a Certificate of Lawfulness is sought for the existing use of the solar panels.

### 1.2. PROJECT PARTICIPANTS

- Client: Robin Bright
- Planning Consultant: Bondstones
- Planning Authority: East Devon District Council

### 1.3. DATA SOURCES

- 1.3.1. This statement and accompanying documents have been compiled by members of the Bondstones professional services team and, where required, have drawn upon technical input from specialist suppliers (noted above). Where precis extracts are incorporated within this document, original participants’ reports are available on request and / or appended with the application for reference where appropriate.
- 1.3.2. Site analysis and related data collection / analysis is sourced from various public and private suppliers including (but not limited to):
- HM Government
  - DEFRA / Natural England
  - The Environment Agency
  - Historic England
  - HM Land Registry
  - Ordnance Survey (under MasterMap licence)
  - Local Authority Websites

### 1.4. ERRORS OR OMISSIONS

- 1.4.1. Where possible, all information included with this application has been verified during the project delivery process and as such, all information provided for the purposes of seeking planning consent is offered in good faith. However, Bondstones cannot be held responsible for inaccurate or potentially misleading information that may have been provided.
- 1.4.2. Any errors or omissions (no matter how minor) MUST be reported to the author at the earliest possible opportunity so that corrections and / or revisions may be made in good time.

### 1.5. CDM REGULATIONS 2015

- 1.5.1. In respect of the Construction Design Management Regulations 2015 Bondstones is appointed as Principal Designer in this project. However, note that this document is not intended nor provided as a CDM statement - and no part should be relied upon for CDM purposes unless expressly stated.

### 1.6. COPYRIGHT, CAVEATS & LIMITATIONS

- 1.6.1. This application and documentation provided herewith is prepared for the sole use of the above-named client and is accordingly bound by the company’s terms and conditions (T&Cs).
- 1.6.2. The information provided within this application *may*, while in the custody of external authorities, be published in the public domain, however the reader will TAKE NOTICE that Bondstones asserts copyright over all original work and, without the express written permission of Bondstones, no part or parts of this document or supporting documents may be reproduced, used or relied upon by any 3<sup>rd</sup> party for purposes other than for which it is provided.
- 1.6.3. Any liability arising out of use of this document or parts thereof by a third party, for any unauthorised purpose, shall indemnify Bondstones against all claims, costs, damages, and losses arising out of such use.

## 2. SITE ASSESSMENT & HISTORY

- 2.1.1. The site is an agricultural field of improved grassland, that slopes gently to the south, bordered by devon hedgerow and hedgebank and some mature trees.
- 2.1.2. The site currently has an application under consideration by EDDC for an agricultural building for the storage of straw. The building is to be located in the south west corner of the site.
- 2.1.3. The farming enterprise is for the intensive rearing of 3,500 pigs. The enterprise currently relies on a diesel generator to power the site which is noisy, produces emissions and is expensive to run. The Environment Agency has been adding pressure to the client to stop using the generator.
- 2.1.4. The solar panels are proposed to provide renewable and sustainable energy to the farming enterprise.

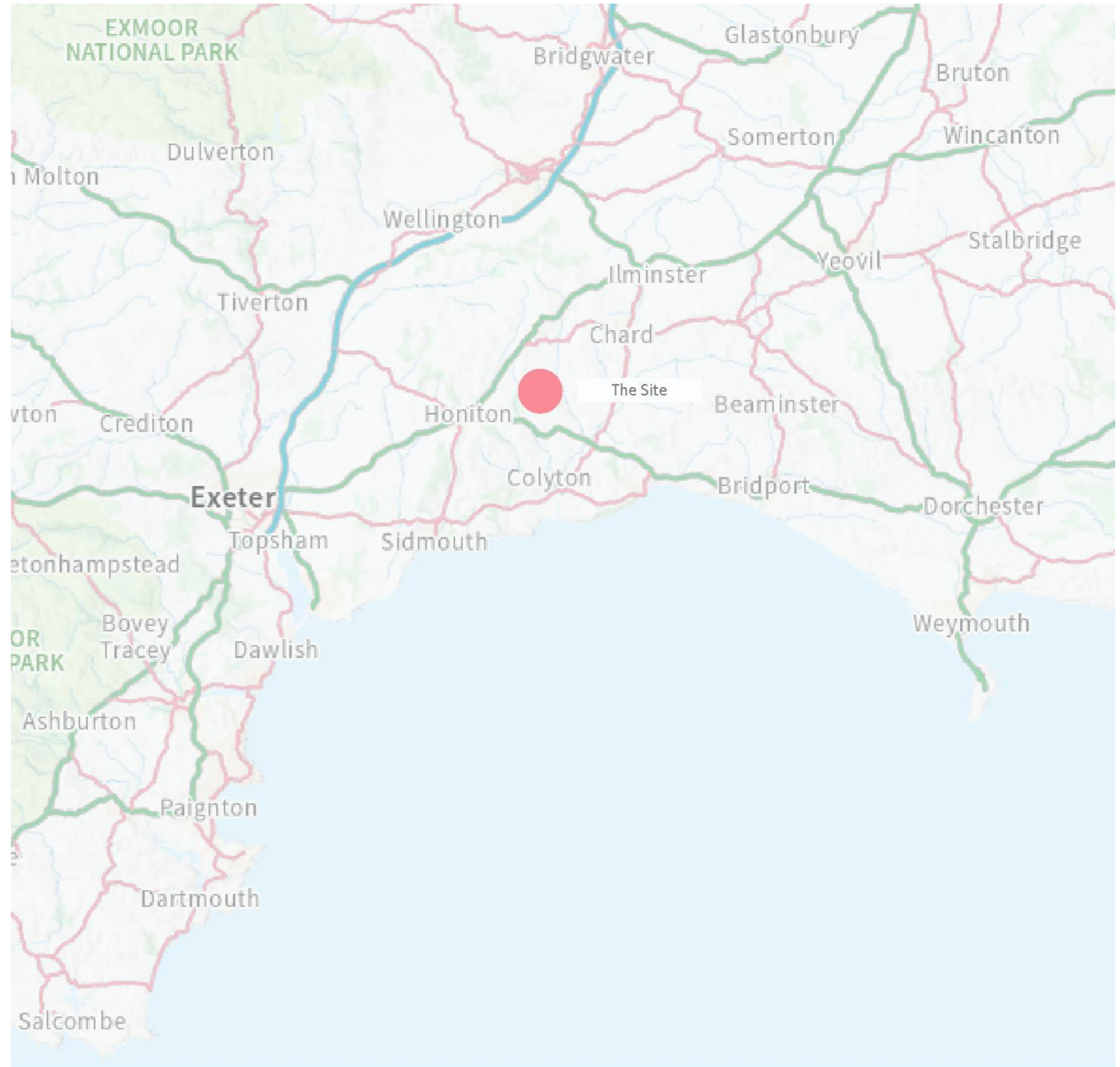


FIG: 1 - SITE LOCATION

UPDATED: JANUARY 22, 2024



### 3. EXISTING USE

- 3.1.1. This image opposite outlines the extent of the metal framework already installed on site, the panels are yet to be fitted to the framework.
- 3.1.2. The applicant has had communication with the enforcement team at East Devon District Council, who are of the opinion that the installation of solar panels requires planning permission. The Enforcement team at EDDC have allowed the client time to instruct Bondstones to put together a submission to provide evidence that the installation is permitted development or submit a full planning application.
- 3.1.3. The area of land covered by the solar panels is less than 1000 sqm and is considered plant arising from engineering operations in accordance with Schedule 2, Part 6, Class A (b) of the GPDO.
- 3.1.4. The integration of these solar panels marks the replacement of the previously employed diesel generator, signifying a transition to a notably more efficient and environmentally friendly energy solution. This shift not only enhances operational efficiency but also aligns with a commitment to ecological well-being within the site and the local and global environment.





## 4. TCPA 1990 REQUIREMENTS

4.1.1. Section 191 from the Town and Country Planning Act 1990 specifies that if a certificate of lawfulness of existing use or development should be issued:

1. If any person wishes to ascertain whether -

- a. Any existing use of buildings or other land is lawful;
- b. Any operations which have been carried out in, on, over or under land are lawful; or
- c. Any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

2. For the purposes of this Act uses and operations are lawful at any time if-

- No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

## 5. GENERAL PERMITTED DEVELOPMENT ORDER

5.1.1. The GPDO has a specific section for the installation of ground mounted solar panels under Schedule 2, Part 14, which now includes the installation of ground mounted panels on article 2.(3) land (as of 21<sup>st</sup> December 2023 update). However, as this installation is for the purposes of agriculture, to remove the requirement to use a Deisel generator on site for the pig farm, we have considered the installation under Schedule 2, Part 6, Class A (b) "any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that

unit." Therefore the installation is not considered the erection of a building requiring prior approval or planning permission.

5.1.2. EDDC were notified that the installation was going to take place in July 2023 was considered by the applicant to be permitted development. In that email the council were asked to respond within 14 days if any further information was required, and no response was received asking for an application or stating that the installation was not considered permitted development by the LPA. (Email submitted as evidence with the application).

5.1.3. The proposal is compliant with Schedule 2, Part 6, Class A of the GPDO regarding the following criteria:

5.1.4. The installation is on a unit of more than 1 hectare.

5.1.5. The installation will cover less than 1000sqm of the parcel of land.

5.1.6. The installation is for agricultural purposes and not to send electricity to the grid for profit.

5.1.7. No part of the development is within 25m of the metalled part of a trunk or classified road.

5.1.8. The installation is not considered the erection of a building, due to the nature of the footings of the framework for the solar panels to be mounted upon. A photo of the anchors has been submitted as evidence with the application. The anchors are movable and temporary and do not have any concrete foundations. They are essentially long "pegs" that hold the small metal plates to the ground to stop the panels blowing away.

## 6. APPEALS

6.1.1. The framework and installation of solar panels is required to be pre-planned and erected by engineers rather than builders. This is due to the requirement to be oriented and mounted in a specific orientation to gain the most solar energy and the careful electrical installation required to connect the solar panels. This process requires an experienced Solar Installer to draw up plans before being installed by an experienced and suitably qualified solar panel installation company. A solar installation

company needs to be MCS qualified. The installers also need to be qualified electricians.

6.1.2. The installation process in question is quite unique in that it requires steel pegs to be driven into the ground to support the framework rather than being mounted on foundations of any sort. The framework and panels need to be orientated at the correct angle and are to be tilted up to 6 times per year to gain the best energy from the sun as it changes position throughout the year.

6.1.3. Therefore, a person or persons (depending on the scale and size of the panels) with engineering knowledge, in this case specific solar engineering knowledge, was required to plan the installation prior to going on site and supervise / carry out the installation.

6.1.4. The definitions of "engineering operations" in the case law attached and referred to below, support the above view:

6.1.5. APP/Q3115/C/18/3201871 and APP/Q3115/C/18/3201874 – In these appeals' para 12, the inspector states "The Courts have determined that engineering operations involve works with some element of pre-planning, which would normally, but not necessarily, be supervised by a person with engineering knowledge." Then concludes in para 15, "The evidence presented strongly suggests that **an element of pre-planning was involved, and a degree of skill was necessary to carry out the works.** Therefore, I take the view that the works alleged in notice A amounted to an engineering operation within the meaning of development in s55(1)". This description of "engineering works" does not state that the description is only applicable to earth works and no other types of engineering operations. This is further supported in the appeal's quoted below.

6.1.6. APP/N1215/X/12/2185102 - The inspector states at para 9, "The meaning of development for the purposes of the Act is set out in s55 of it. Included within this meaning is 'engineering operations. The term is not defined in the statute but the judgement of the court which established that it **could be an operation which would generally be supervised by an engineer** but that it was unnecessary that it should actually have been so supervised" he concludes, "Some form of lining (an artificial membrane or natural material such as suitably impervious clay) would be required. **In my view, either would need to be laid to drawings prepared in advance**

by someone with the necessary expertise, typically an engineer. As a fact and degree judgement therefore I consider the proposal amounts to an engineering operation.”

- 6.1.7. In correspondence with the agent, the Enforcement Officer stated that this appeal related to earth works and it does. However the most relevant part of the inspectors decision is that an artificial membrane or lining may be required which would require the proposal “being laid to drawings in advance by someone with the necessary expertise, typically an engineer.” The laying of the lining is the engineering operation referred to in this appeal, not the moving of earth. As such this appeal is relevant to the solar installation as the proposal was laid to plans by a solar engineer before installation by a solar engineer.

## 7. OTHER EVIDENCE

- 7.1.1. A legal opinion has been sought from Clarke Wilmott on this case. However at the time of submission, no response had yet been given from their legal team due to their heavy workloads. Given that the Enforcement Team were awaiting submission of an application, the application is to be submitted and the legal opinion will be sent into the allocated case officer as soon as it is received.
- 7.1.2. The following link states that solar panels are categorised as plant and machinery for capital allowances as per the HMRC Capital Allowances Manual: <https://www.gov.uk/hmrc-internal-manuals/capital-allowances-manual/ca22335>



## 8. CONCLUSION

- 8.1.1. It is considered that the existing use is lawful in every respect as the legality of the solar panel installation is substantiated by a series of considerations:
- 8.1.2. The solar panels are plant and machinery, reasonably necessary for agriculture, and therefore do not require planning permission or prior approval.
- 8.1.3. Schedule 2, Part 6, Class A (b) of the General Permitted Development (England) Order 2015 (as amended) states that engineering operations such as plant and machinery which are reasonably necessary for the purposes of agriculture are permitted development, which this installation complies with.
- 8.1.4. The exploration of solar panels as engineering operations delves into the specialised knowledge, pre-planning and skills required for their installation. The necessity for an experienced Solar Installer, adherence to specific angles, and the qualification requirements for a solar installation company, highlight the intricate planning and execution involved. The case law appended emphasises that engineering operations entail pre-planning and supervision by individuals with engineering knowledge. This aligns with the intricate planning and execution necessitated by solar panel installations.
- 8.1.5. HMRC categorise solar panels as “plant and machinery” and offer capital allowances for business for the installation of solar panels. This supports our view that Solar Panels are Plant and machinery.
- 8.1.6. East Devon District Council were notified by Bondstones in July 2023 (email submitted with the application as evidence) that the installation was going to be taking place and considered permitted development, and no response was received from the council requesting / advising that a planning application should be submitted. When the agent raised this with the LPA, the council’s response, was that no question was asked of the council in the email and therefore the email was merely noted, and no action taken. It is our opinion that if the council had thought that the installation required permission, whether the agent directly asked a question or not, they would have responded with a request for the submission of an application back in July 2023. Therefore, at that stage

the applicant could have submitted an application for prior approval and avoided being contacted by the Enforcement Team once the installation was underway.

- 8.1.7. In summary, the comprehensive analysis of legal provisions and case law supports our contention that the solar panel installation in question does not require planning permission as it is the installation of plant and machinery reasonably necessary for agriculture in accordance with Schedule 2, Part 6, Class A (b) of the General Permitted Development (England) Order 2015 (as amended).



### 3. APPENDIX

#### THE TOWN AND COUNTRY PLANNING ACT 1990

The following from the TCPA 1990 outlines the requirements for a Certificate of Lawfulness of Existing Use:

#### Section 191 - Certificate of Lawfulness of Existing Use or Development

**(1)** If any person wishes to ascertain whether –

- (a) any existing use of buildings or other land is lawful;
- (b) any operations proposed to be carried out in, on, over or under land are lawful or,
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

**(2)** For the purposes of this Act uses and operations are lawful at any time if –

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason);
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

**(3)** For the purposes of this Act uses and operations are lawful at any time if –

- (a) the time for taking enforcement action in respect of the failure that has expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

**(3A)** In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time be taken not to have expired if –

- (a) the time for applying for an order under Section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

**(4)** If, on application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

**(5)** A certificate under this section shall –

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in the order under section 55(2)(f) identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matter to be lawful; and
- (d) specify the date of the application for the certificate.

**(6)** The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

**(7)** A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission –

- (a) section 3(3) of the Caravan Sites and Control of Development Act 1960
- (b) section 5(2) of the Control of Pollution Act 1974; and
- (c) section 36(2)(a) of the Environment Protection Act 1990.



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