

My name is Claire Russell and I am speaking on behalf of Berden Parish Council.

I would like address 2 of the issues that have been highlighted by the Planning Inspector - being the proposed use of agricultural land and the assessment of alternatives.

As the Inspector notes, the applicant has determined that 72% of the site comprises BMV land. It has not been possible for the PC to conduct its own assessment of land quality because this would require unrestricted access to the site.

Paragraph 174 b of the NPPF requires that planning decisions should contribute to - and enhance - the natural and local environment recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of BMV agricultural land;

Paragraph 175 continues that Plans should allocate land with the least environmental or amenity value, where consistent with other policies in this Framework. Importantly, footnote 58 which accompanies this paragraph states that where significant development of agricultural land is demonstrated to be **necessary**, areas of poorer quality land should be preferred to those of a higher quality.

The importance of protecting BMV land in the context of solar development is further emphasised in the PPG on Renewables and Low Carbon Energy. Paragraph 13 of the PPG deals specifically with ground-mounted solar farms and sets out factors that a planning authority will need to consider. These include:

- encouraging the effective use of land by focussing large scale solar farms on previously developed and non agricultural land, provided that it is not of high environmental value; and
- where a proposal involves greenfield land considering whether the proposed use of any agricultural land has been shown to be **necessary** and poorer quality land has been used in preference to higher quality land;

There is also explicit reference in the PPG to a written ministerial statement from the Secretary of State for Housing, Communities & Local Government to which I will return later.

Uttlesford's Local Plan Policy ENV5 (which is a saved policy and which has been determined to be consistent with the NPPF¹) also requires that development of BMV land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites. It continues that where development of agricultural land is **required**, developers should seek to use areas of poorer quality.

1 https://www.uttlesford.gov.uk/media/1478/Uttlesford-Local-Plan-2005-National-Planning-Policy-Framework-Compatibility-Assessment/pdf/Local_Plan_NPPF_Review_Sept_2012.pdf?m=635095747640200000

Government policy has consistently aimed to protect agricultural land by “promot[ing] a healthy and efficient agriculture capable of producing that part of the nation's food which is required from home sources...”²,. More recently, Government policy has reiterated this aim, with particular reference to solar developments.

This includes a commitment in the Energy Security Strategy - published in April 2022 - which states that:

“We will continue supporting the effective use of land by encouraging large scale projects to locate on previously developed or lower value land³”.

The Government’s Food Strategy - published in June 2022- also notes that:

“it is possible to target land use change at the least productive land⁴”

The current Secretary of State for the Environment, Food and Rural Affairs has also confirmed the importance of preserving farm land for farming. In response to a question posed to her in the House of Commons on 17 November 2022⁵ Dr Coffey responded as follows:

“It is really important that we make the best use of our land, to have the food security ... It is also important, when considering land use, that we think about the best place to put renewable energy. By and large, I think most people in this country would agree: let us have good agricultural land for farming, and let us use our brownfield sites for other energy projects ...”.

In December 2022, the House of Lords Land Use in England Committee published a report entitled: “Making the most out of England’s land⁶”. One of the conclusions of this report is that:

Although there are provisions within the NPPF to dissuade the development of solar farms on BMV land, from the evidence received we are concerned that too many exceptions are being made. we would like to see stricter regulations put in place to prevent the development of solar farms on BMV land.

Energy and other large-scale infrastructure projects should be incorporated into a land use framework.

2 hansard/commons/1945/nov/15/agriculture-government-policy

3 <https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy>. See: Solar and other technologies

4 <https://www.gov.uk/government/publications/government-food-strategy/government-food-strategy>: See: Driving more sustainable food production

5 <https://hansard.parliament.uk/commons/2022-11-17/debates/2211179000003/OralAnswersToQuestions>

6 <https://publications.parliament.uk/pa/ld5803/ldselect/ldland/105/105.pdf>

In December 2022, the Government also published a paper entitled the “Levelling-up and Regeneration Bill: reforms to national planning policy”⁷. This document explicitly acknowledges the importance of preserving high quality land for farming. Under the heading “Recognising the food production value of farmland” the paper states that:

*“The strategy sets out an aim to broadly maintain domestic production at current levels to **build the UK’s resilience to future crisis and shocks**. To emphasise the important role that our best performing farms have on food security, alongside imperatives such as energy security, we are seeking initial views on increasing the consideration given to the highest value farmland used for food production.*

The paper then references para 174 of the NPPF and continues with a proposal to augment footnote 58.

So, how should a developer demonstrate that it is necessary to use BMV land for a solar farm?

The answer is provided in the statement from the Secretary of State which is referenced in the PPG⁸ and which I mentioned earlier. Speaking on the topic of the unjustified use of high quality agricultural land, the Secretary of State commented that:

In light of these concerns we want it to be clear that any proposal for a solar farm involving [BMV] agricultural land would need to be justified by the most compelling evidence.

What, then constitutes the “most compelling evidence”?

In short, it is incumbent on the developer to demonstrate that it has given genuine consideration to the possibility of alternative sites which comprise either brownfield land or poorer quality agricultural land.

This requirement reflects the general principle of planning law that proposals which have the potential to cause environmental damage should be approached on a “worst first” or “sequential” basis, having regard to the availability of alternative sites. This principle is explained in the Court of Appeal decision in Trusthouse Forte Hotels Ltd v. Secretary of State⁹

7 <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy>

8 <https://questions-statements.parliament.uk/written-statements/detail/2015-03-25/HCWS488>

9 (1986) 53 P & CR 293 at 299 per Simon Brown J: “Where... there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it”.

It is generally accepted that the appeal in relation to Valley Farm, Wherstead¹⁰ provides the most comprehensive guidance on an appropriate approach to site selection. This appeal sets out the key aspects of a Sequential test in the context of solar developments and highlights -among other points - that:

- There is no policy guidance which advocates restricting searches to within a local authority's administrative area.
- Industrial areas including distribution and warehousing buildings, and former airfields should be considered.
- Simply surveying the appeal site is wholly inadequate.
- Proper investigation (including auger testing) is needed to better understand the quality of the land identified in a desktop study.

There is therefore a very high bar for using BMV land. This conclusion is supported in a number of later appeal decisions, most recently in the 2022 appeal relating to land at Cawston¹¹ in Norfolk. Note, for example, the following comments in the appeal to the Secretary of State in relation to a site at Bunkers Hill, Fraddam, Cornwall¹² in which the Inspector states:

*“It seems to me that if any proposal for a solar farm involving [BMV] agricultural land needs to be justified by the most compelling evidence, then there is an onus on the developer to show that alternative options, on previously-developed land, or land of lesser quality, for example, are **not available**”.*

In fact, we know that the Applicant has given **no proper consideration** to the possibility of an alternative site. Notwithstanding the requirements of EIA Regulations¹³ the Applicant simply explains that:

“The main driver for the location of the solar farm at this location is its proximity to the existing Pelham Substation and the high solar irradiance associated with the area.”.

This comes as no surprise given that the Applicant had previously provided the following information in an FAQ document published on its project website in 2022:

Question: “What other locations did you consider?”

Answer: None. Statera Energy has selected this site on its merits alone and believes it is a good site to promote.”

¹⁰ PINS ref: 2204846 dated 2 June 2014

¹¹ PINS ref 3278065 dated 7 June 2022

¹² PINS ref: 3140774 dated 6 July 2017

¹³ Schedule 4(2) of the EIA Regulations also sets out the need for “a description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects”.

In response to challenge from the Planning Inspectorate the Applicant has, belatedly, stated that it did consider whether there were other areas of land within the vicinity of the substation on which a solar scheme of the size proposed could be sited but they were considered too small capacity or were under consideration by other developers. However, no details of those alternative sites have been forthcoming. It is worth noting that the applicant applied for the grid connection for "Berden Hall Solar Farm" over 4 years ago¹⁴ and has had plenty of time to consider other sites.

It remains common practice for developers to conduct a sequential test in order to provide the most compelling evidence to justify the use of BMV land. See for example, the document produced in connection with Birch Solar Farm which is currently with Colchester District Council for consideration¹⁵. In this case the developer has identified a long list of over 100 sites leading to a short list of 33 sites which were assessed against 9 criteria.

It seems unlikely that a sequential test would have identified Berden Hall Farm as a preferred site for a solar farm. The site slopes from North to South and is highly visible to a number of receptors. The site is crossed by a number of footpaths and is in close proximity to several important heritage assets. Lastly, access to the site is likely to be highly problematic given the restricted width of the roads which pass through Manuden and Berden.

The Applicant has provided no evidence that the chosen site was the only land available. As the Inspector noted in the appeal relating to and at Walnut Cottages, Clyst St Mary¹⁶:

"I note the appellant's view that there are no other available sites within the remaining area which could practically be implemented due to both a lack of willing land owners and available grid connections. However, I have been provided with no substantive evidence which enables me to discount all other potential sites on this basis.

Lastly, I would like to highlight that the availability of a grid connection is not a matter which carries weight from a planning perspective. This is clear from the decision relating to two appeals regarding a proposed solar "farm" on Land North of Dales Manor Business Park in Sawston¹⁷ where the Secretary of State agreed with following comments made by the Planning Inspector :

"A connection to the national grid is an essential site requirement and the availability of a connection in a part of the network with capacity to accept the output is of assistance to the appellant- but it does not bring a public benefit and adds no weight to the planning case for the proposals".

In conclusion, Berden Parish Council invites the Inspector to refuse permission for the construction of this solar development on 177 acres of high quality farm on the grounds that the applicant has failed to demonstrate that the use of BMV land is necessary. Accordingly, the application fails to comply with both local plan policy ENV5 and with paragraphs 174 and 175 of the NPPF.

14 <https://www.ukpowernetworks.co.uk/electricity/distribution-energy-resources/the-embedded-capacity-register>

15 <https://d0cs.colchester.gov.uk/publisher/docs/457851A7F2D68EDD35C0F10C95F33BA1/Document-457851A7F2D68EDD35C0F10C95F33BA1.pdf>

16 PINS Ref: 3007994 dated 25 July 2015

17 PINS Ref 3012014 & 3013863 dated 15 June 2016