



Department for
Communities and
Local Government

Mr James Walker
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Our Ref: APP/P2365/W/15/3002667

18 January 2016

Dear Mr Walker

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY HIVE ENERGY LIMITED
AT LAND OFF BUTCHERS LANE, AUGHTON, LANCASHIRE, LA39 6TA
APPLICATION REFERENCE 2014/0601/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, S R G Baird BA(Hons) MRTPI, who made a site visit on 16 June 2015 into your client's appeal against the decision of West Lancashire Borough Council (the Council) to refuse planning permission for the construction of a solar farm, to include the installation of solar panels to generate electricity with transformer housing, DNO substation, switch room, operation and storage rooms, security fencing and cameras, landscaping and other associated works at land off Butchers Lane, Aughton, Lancashire, LA39 6TA in accordance with application reference 2014/0601/FUL dated 6 June 2014.
2. On 8 June 2015 the appeal was recovered for the Secretary of State's determination in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's analysis. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and the addendum to the ES setting out the route of the cable connection to the National Grid. In agreement with the Inspector (IR3), the Secretary of State is satisfied that the Environmental Statement complies with the Regulations and that sufficient information has been provided for him to assess the environmental impact of the appeal.

Written Representations Not Considered by the Inspector

5. The Secretary of State has received a representation dated 19 March 2015 from Rosie Cooper MP (which enclosed a representation from Jonathan Relton) which was not passed to the Inspector. The Secretary of State has given careful consideration to this correspondence, but he does not consider that it raises new issues that would affect his decision or require him to refer back to parties. Copies are not attached to this letter but will be provided on application to either of the addresses at the bottom of the first page of this letter.

Policy and Statutory Considerations

6. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan consists of the West Lancashire Borough Council Local Plan 2012-2027, adopted in 2013 (LP). The Secretary of State considers that the development plan policies of most relevance to this appeal are those summarised by the Inspector at IR13-16.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (the Framework), the accompanying planning practice guidance (the guidance), and the Community Infrastructure Levy (CIL) Regulations, as well as the Written Ministerial Statement of March 2015 which, amongst other matters, concerns solar energy and the protection of the local and global environment. The Secretary of State has also had regard to the documents and targets set out by the Inspector at IR22-26.
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

Main Issues

10. The Secretary of State considers that the main issues in this case are those considered by the Inspector at IR81–116.

Green Belt

11. The Secretary of State agrees with the Inspector (IR81) that the appeal proposal is inappropriate development in the Green Belt. He has had regard to paragraph 87 of the Framework which states that inappropriate development is, by definition, harmful to the Green Belt and that it should not be approved except in very special circumstances. He has also taken account of paragraph 88 of the Framework which states that substantial

weight should be given to any harm to the Green Belt, and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. He has also had regard to paragraph 91 of the Framework, which states that elements of many renewable energy projects will comprise inappropriate development when located in the Green Belt and that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.

12. For the reasons given by the Inspector, the Secretary of State concurs with his opinion that the scheme before him would have a significant adverse effect on openness (IR82). He also agrees with the Inspector's analysis and with his conclusion that the proposal would conflict with, and result in significant harm to the Green Belt purpose to assist in safeguarding the countryside from encroachment (IR83).

Heritage Assets

13. As indicated at paragraph 10 above, the Secretary of State has had special regard to the desirability of preserving those listed buildings potentially affected by the scheme before him or their settings and any features of special architectural or historic interest which they may possess. He has also taken account of national policy as set out at paragraphs 128-134 of the Framework, LP policy EN4 and the Inspector's remarks at IR9.
14. For the reasons given by the Inspector at IR86-87, the Secretary of State shares his views that the appeal proposal would result in a minor amount of less than substantial harm to the significance of the GII listed Gerard Hall and a negligible amount of less than substantial harm to the significance of the GII listed Church of St Mary. As the harm would be less than substantial for the purpose of paragraph 134 of the Framework, this has been weighed against the public benefits of the proposal in the planning balance below. The Secretary of State gives considerable weight to the harm which he has identified.

Landscape and Visual Impact

15. The Secretary of State agrees with the Inspector's analysis at IR88-92 and for the reasons given in those paragraphs he too concludes that the proposal would result in some harm to the character and appearance of the surrounding landscape and significant harm to the visual amenity of users of the public footpaths through and around the site (IR92). Like the Inspector, he concludes that this harm would conflict with the objectives of LP Policy GN3 (IR92).

Agricultural Land

16. The Secretary of State agrees with the Inspector's analysis at IR93-99. Like the Inspector (IR96), he is satisfied both that the non-agricultural use of part of the agricultural holding would not materially harm the holding's viability. He also concurs with the Inspector that the scheme includes features which would provide new and improved wildlife habitats which would benefit, amongst other things, local populations of birds and bats and that it is likely that many of these features would remain after the solar farm has been decommissioned (IR96). In common with the Inspector, the Secretary of State concludes that the appellant's Sequential Analysis Study has not robustly demonstrated that the use of Best and Most Versatile (BMV) agricultural land is necessary (IR99). In conclusion on this matter, the Secretary of State shares the Inspector's view that the appeal proposal would conflict with the objectives of LP Policy EN2, Framework policy and the guidance in that it has not been shown that the use of BMV agricultural land is necessary (IR100).

Living Conditions

17. For the reasons given by the Inspector (IR101-103), the Secretary of State concludes that the scheme's visual impact would not appear so unpleasant, so overwhelming or oppressive, such that any dwelling would become an unacceptably unattractive place in which to live and that the proposal would not conflict with the objectives of LP Policy GN3.

Biodiversity

18. The Secretary of State agrees with the Inspector that, whilst the site is close to areas used as a feeding ground for pink footed geese, the loss of the open agricultural land as part of the appeal development would not result in population level effects and it is unlikely to have a significant effect on any European designated site (IR105-6). He notes that Natural England has indicated that there would be some loss of wintering habitat and that this loss should be compensated for (IR107). The Secretary of State also takes the view that, for the reasons given by the Inspector at IR105-108, on balance the scheme would result in a net benefit in relation to ecology and biodiversity (IR108). He too attaches moderate weight to this matter and considers that the proposal would not conflict with the objectives of development plan policy regarding biodiversity and ecology (IR108).

Conditions and s106 Agreement

19. The Secretary of State has had regard to the Inspector's remarks on conditions at IR76-79 and IR109, the schedule of conditions at pages 24-26 of the IR, paragraphs 203 and 206 of the Framework and the guidance. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework. However, he does not consider that these conditions overcome his reasons for dismissing the appeal.
20. Having given careful consideration to the Inspector's comments at IR80 and IR109, the submitted unilateral undertaking dated 18 June 2015 and the CIL Regulations, the Secretary of State agrees with the Inspector's reasoning at IR109 and he attaches full weight to the undertaking in reaching his decision on this case.

Planning and Green Belt Balance

21. For the reasons set out in this letter, the Secretary of State concludes that the appeal proposals would not be in accordance with the development plan overall and he has gone on to consider whether there are any material considerations which would overcome this conflict.
22. The Secretary of State has given very careful consideration to the Inspector's comments at IR110-111. He has concluded that the scheme before him amounts to inappropriate development in the Green Belt which is, by definition, harmful (paragraph 11 above). He has also found that the proposal would have a significant adverse effect on Green Belt openness and that it would result in significant harm to the Green Belt purpose to assist in safeguarding the countryside from encroachment (paragraph 12 above). The Secretary of State attaches substantial weight to the harm to the Green Belt which he has identified in this case. Like the Inspector (IR111), he considers that, given its impact on the Green Belt, the scheme would conflict with the objectives of LP Policy GN1. The Secretary of State has concluded (at paragraph 15 above) that the scheme would cause some harm to the character and appearance of the surrounding landscape; significant harm to the visual amenity of users of the public footpaths through and around the site; and conflict with LP Policy GN3. Like the Inspector (IR112), the Secretary of State attaches substantial weight to this matter. He has also concluded that the scheme would be harmful to two heritage assets (at paragraph 14 above) and has therefore had special regard to the desirability of

preserving those buildings or their settings or any features of special architectural or historic interest which they possess. He has given considerable weight to the harm identified in this case. As he considers that this harm would be less than substantial, he has weighed it against the public benefits of the proposal in accordance with paragraph 134 of the Framework. The Secretary of State has found that the appeal proposal would conflict with the objectives of LP Policy EN2, Framework policy and the guidance in that it has not been shown that the use of BMV agricultural land is necessary. In common with the Inspector (IR114), he gives this conflict with policy and guidance substantial weight.

23. Turning to the other considerations which weigh in support of the proposal, the Secretary of State has reached the view that the scheme would result in a net benefit in relation to ecology and biodiversity. Like the Inspector (IR115), he attributes moderate weight to the likely net ecological and landscape enhancement measures.
24. As made clear by paragraph 98 of the Framework, even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. The Secretary of State agrees with the Inspector's remarks at IR115 and he too concludes that the proposed solar farm would generate a credible and significant amount of renewable energy which would make a significant and valuable contribution towards national targets for the production of energy from renewable sources and contributing to meeting the objectives of the Climate Change Act, the Renewable Energy Strategy 2009, National Energy Policy, and the Framework. Like the Inspector, the Secretary of State attributes substantial weight to this matter (IR115).
25. The Secretary of State has taken all the above considerations into account, and he has had regard to the temporary nature of the scheme (IR116). However, balancing these matters together he does not consider that the other considerations in this case clearly outweigh the harm he has identified. He concludes that very special circumstances to justify the development do not exist in this case. He further concludes that there are no material considerations which would overcome the conflict with the development plan.

Formal Decision

26. Accordingly, for the reasons given above the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the construction of a solar farm, to include the installation of solar panels to generate electricity with transformer housing, DNO substation, switch room, operation and storage rooms, security fencing and cameras, landscaping and other associated works at land off Butchers Lane, Aughton, Lancashire, LA39 6TA in accordance with application reference 2014/0601/FUL dated 6 June 2014.

Right to challenge the decision

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. From 26 October 2015, this must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
28. A copy of this letter has been sent to West Lancashire Borough Council. A letter of notification has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Christine Symes

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by S R G Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 8 October 2015

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY

HIVE ENERGY LIMITED

against a decision of

WEST LANCASHIRE BOROUGH COUNCIL

Site visit made on 16 June 2015

Land off Butchers Lane, Aughton, Lancashire L39 6TA

File Ref(s): APP/P2365/W/15/3002667

File Ref: APP/P2365/W/15/3002667

Land off Butchers Lane, Aughton, Lancashire L39 6TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Hive Energy Limited against the decision of West Lancashire Borough Council.
- The application Ref 2014/0601/FUL, dated 6 June 2014, was refused by notice dated 17 October 2014.
- The development proposed is the construction of a solar farm, to include the installation of solar panels to generate electricity with transformer housing, DNO substation, switch room, operation and storage rooms, security fencing and cameras, landscaping and other associated works.

Summary of Recommendation: That the appeal be dismissed.

Procedural Matters

1. This appeal was recovered for a decision by the Secretary of State (SoS) in a direction dated 8 June 2015. The direction was made because the appeal involves a proposal for significant development in the Green Belt.
2. The appellant and the local planning authority (lpa) confirmed that prior to determination of the application the Site Layout and Planting Proposals Plan - Drawing No. H.0374_03-B had been amended. The amendment involves relocating a storage area to the centre of the site and tree planting/hedging in the southern part of the site.
3. Regard has been had to an Environmental Statement (ES) submitted under The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (as amended). The appellant submitted an addendum to the ES setting out the route of the cable connection to the National Grid. The ES complies with the requirement of the Regulations.
4. The appellant has submitted a Unilateral Undertaking (UU) under S106 of the above Act.

The Site and Surroundings

5. The site has an area of some 37ha and comprises Grade 2, 3a and 3b quality agricultural land used for arable crops. The elevation of these fields varies by some 8m (25-33m AOD) with the highest point in the north-east corner. Of the 24.6ha to be used solar panels some 31% is Grade 2, 35% is Grade 3a and 34% is Grade 3b land.
6. The site is some 1.5km from the northern edge of Maghull. The grounds of Ashworth Hospital are to the south, some 170m from the nearest solar panel. Mossock Hall Golf Club is located to the east. The village of Aughton is 1km to the north-west and the Liverpool and Ormskirk railway line is to the west.
7. The southern boundary with Butchers Lane comprises a tall, dense mature hedge and contains 2 points of access into the site. The western boundary is largely devoid of any hedgerow planting. The northern boundary is formed by a hedgerow, with hedgerow trees and a dense plantation at its eastern end.
8. The site is crossed by a Public Right of Way (PROW) Footpath 17 (FP) which runs in an east-west direction. The eastern boundary of the northern field is

formed by FP19 and joins FP17. Running along the northern and western boundaries is a permissive footpath in place as part of an Environmental Stewardship Scheme (ES Appendix 2 - Appendix 3 Landscape Features Plan).

9. Several properties are located in the immediate vicinity of the site. These consist of a row of dwellings on the southern side of Butchers Lane. To the east, surrounded by a dense plantation are Gerard Hall, 2 barn conversions and a group of dwellings fronting Prescott Road. Gerard Hall is a Grade 2 Listed Building (LB). On the opposite of Prescott Road is the Church of St Mary/Presbytery; a Grade 2 LB.
10. The site is located within National Character Area (NCA) 32 – Lancashire and Amounderness Plain. Key characteristics of this NCA include flat and gently rolling plains broken by isolated hills; a large scale agricultural landscape with a patchwork of pasture and arable fields with blocks of mixed woodland with a medium to large scale field pattern. The site is within the southern part of NCA 32, described as highly productive arable land with large fields where many field boundaries are ditches.
11. The Landscape Strategy for Lancashire (2000) locates the site within Landscape Character Area (LCA) 15 – Coastal Plan and more particularly within LCA sub-type 15a Ormskirk-Lathom-Rufford. This area is described as undulating lowland farmland characterised by large fields that reflect the typical arable agriculture of the area.

Planning and other Relevant Policy

Development Plan

12. This includes the West Lancashire Borough Council Local Plan 2012-2027 dated October 2013 (LP). LP Objective 8 seeks amongst other things *“to mitigate and adapt to climate change through a variety of measures including correctly locating and designing new development, reducing energy consumption, having sustainable energy sources....”* This objective is to be achieved by, amongst other things, increasing installed renewable energy capacity.
13. Policy SP1 sets out a sustainable development framework that adopts a positive approach reflecting the presumption in favour of sustainable development set out in the National Planning Policy Framework (Framework). All new built development will take place within settlement boundaries except where there is a specific need is identified for development for a countryside use that retains or enhances the rural character of the area. The supporting text recognises that climate change is a global issue requiring local action (paragraph 4.6). The LP recognises that national and local objectives to address climate change will not be achieved without substantial efforts to increase the amount of energy produced from renewable and low carbon sources. In terms of the use of brownfield, greenfield and Green Belt land, the LP highlights that there is insufficient brownfield land in the Borough to satisfy existing targets for residential and employment development.
14. The site is within the Green Belt where Policy GN1 (b) says that proposals will be assessed against national and relevant LP policies. Policy GN3 seeks to guide development proposals to ensure they are sustainable. Amongst other things, a proposal should have regard to visual amenity and complement or

enhance any attractive attributes and/or local distinctiveness within its surroundings through sensitive design and siting; maintain or enhance the distinctive character and visual quality of the relevant LCA, provide landscaped buffers to limit the impact of the development on sensitive uses or the open countryside and minimise the ecological impact.

15. The overarching objective of Policy EN1 is to ensure that the commitment to mitigating climate change can be achieved. Policy EN1(2) indicates support for renewable energy schemes where, having regard to Policies EN2 and EN4, they would not unacceptably harm the local environment or where the harm is outweighed by the benefits of such proposals. Renewable energy developments in the Green Belt that would constitute inappropriate development will need to demonstrate very special circumstances. The supporting text recognises that whilst the Green Belt designation is a consideration it does not entirely rule out renewable energy projects. Whilst there is no disaggregation by renewable energy type, the LP refers to The Lancashire Sustainable Energy Study - April 2011, which identifies a total capacity for renewable energy within the Borough of some 1,630MW.
16. Policy EN2 provides a framework to balance the need to conserve and protect the Borough's natural assets including biodiversity, land resources and landscape character against the need to meet development requirements. Development should enhance or conserve biodiversity and include adequate mitigation measures. Development on the Best and Most Versatile (B&MV) agricultural land (Grades 1, 2 and 3a) will not be permitted except where absolutely necessary to deliver allocated development, strategic infrastructure or development associated with the agricultural use of land. Development likely to affect landscapes or their key features will only be permitted where it makes a positive contribution. The level of protection afforded will depend on the quality, importance and uniqueness of the landscape in question. Policy EN4 has a presumption in favour of the conservation of designated Heritage Assets (HA) and development that harms a LB will not be permitted

National Policy

The Framework

17. Paragraph 7 sets out that the purpose of the planning system is to contribute to the sustainable development. As part of the environmental element of sustainable development, planning needs to contribute to mitigating and adapting to climate change. One of the Framework's Core Planning Principles is that planning should support the transition to a low carbon future by encouraging the use of renewable resources and the development of renewable energy. Paragraph 97 highlights a responsibility on all communities to contribute to energy generation from renewable sources and local policies should seek to maximise renewable energy development whilst ensuring that any adverse impacts are satisfactorily addressed. Paragraph 98 reminds the decision maker that applicants for renewable energy developments are not required to demonstrate need and that small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.
18. Paragraph 79 identifies that the essential characteristics the Green Belt are openness and permanence. Paragraph 80 identifies the 5 purposes of the Green Belt, one of which is to safeguard the countryside from encroachment.

Paragraph 87 indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 requires the decision maker to ensure that substantial weight is given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

19. Development in the Green Belt is inappropriate unless it falls within one of the closed lists of exceptions in paragraph 89 (new buildings) or paragraph 90 (certain other forms of development). Paragraph 91 highlights that in determining whether very special circumstances exist account may be had to the wider environmental benefits associated with increased production of energy from renewable sources. The Framework does not prohibit the use of B&MV land for development. Paragraph 112 says that the economic and other benefits of the B&MV land should be taken into account and where significant development of agricultural land is demonstrated to be necessary areas of poorer quality land should be used in preference to that of higher quality.
20. Paragraph 131 says that account is to be had to: the desirability of sustaining and enhancing the significance of Heritage Assets (Has); highlights the positive contribution that the conservation of HAs can make to sustainable communities and the desirability of new development making a positive contribution to local character and distinctiveness. The Framework identifies that when considering the impact of development on the significance of a designated HA, great weight should be given to the asset's conservation. Where a development proposal would lead to less than substantial harm to the significance of a designated HA, this harm should be weighed against the public benefits of the proposal (paragraph 134).

Planning Practice Guidance (PPG)

21. PPG reiterates the importance of: renewable energy to the economy, reducing greenhouse gases and tackling climate change. Whilst PPG makes it clear that need does not automatically override environmental protections, it notes that with effective screening and appropriate land topography the zone of visual influence of ground-mounted solar panels could be zero. Whilst PPG encourages the siting of large-scale solar farms on previously developed land or non-agricultural land it does not prohibit the use of agricultural land. Where a proposal involves greenfield land the factors to be considered are: whether the use of any agricultural land has been shown to be necessary and whether poorer quality land has been used in preference to higher quality land and the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays. A Written Ministerial Statement¹ (WMS) issued on the 25 March 2015 reiterates PPG guidance on making effective use of previously developed land and where a proposal involves agricultural land that poorer quality land is used in preference to land of a higher quality. The WMS goes on to make clear that any proposal for a solar farm involving the B&MV agricultural land would need to be justified by the most compelling evidence.

¹ Planning Update 25 March 2015 by the Secretary of State for Communities and Local Government.

Other Documents

22. The UK Solar PV Strategy Part 1 - October 2013 identifies that solar PV is one of the 8 key renewable technologies contributing to a low carbon balanced energy mix and sets out the Government's commitment to substantially increasing the deployment of renewable energy across the UK. One of the guiding principles of the strategy is that schemes are appropriately sited, with proper weight being given to landscape and visual impact, heritage, local amenity and community involvement. Part 2 of the Solar PV Strategy - April 2014 reiterates the importance of solar PV in the UK's energy mix and the need to ensure that developments are appropriately sited.
23. National Policy Statements (NPS) are a material consideration in decisions on planning applications². NPS EN-1 – Overarching National Policy Statement for Energy - July 2011 highlights that to meet emissions targets, the consumption of electricity will need to be almost exclusively from low carbon sources. To meet binding targets and to decarbonise the power sector by 2030, paragraph 3.4.5 of NPS EN-1 reiterates that it is necessary to bring forward renewable energy electricity generating projects as soon as possible and that the need for these projects is urgent.
24. Paragraph 2 of the Framework notes that planning decisions must reflect and where appropriate promote relevant EU obligations and statutory requirements. EU Directive 2009/28/EC set the UK a target to produce 15% of all energy from renewable sources by 2020. In October 2014, the EU confirmed that the 2030 energy and climate change framework would include a binding EU target of at least 40% less greenhouse gas emissions by 2030 compared to 1990; a binding EU level target of at least 27% of renewable energy used and an energy efficiency increase of at least 27%.
25. The Renewable Energy Strategy July 2009 (RES) seeks to reduce CO₂ emissions by 2030, promote the security of our energy supply and reduce fossil fuel demand against forecast use in 2020. The RES seeks the delivery more than 30% of electricity generated from renewable sources. Statutory Instrument (2011 No. 243) The Promotion of the Use of Energy from Renewable Sources Regulations 2011 places a duty on the SoS to ensure that the renewable share of final energy consumption in 2020 is at least 15%.
26. The UK Renewable Energy Roadmap 2011 sets out the path to achieve the UK's renewable energy target. The July 2012 and November 2013 Updates identify solar PV as one of the key technologies in creating a balanced energy mix.

The Proposal

27. The scheme would consist of rows of solar panels (strings) with an installed capacity of some 17MW located in 2 groups, north and south of FP17 and west of FP19 and Gerard Hall. The appeal site extends some 37ha of which some 24.6ha would be developed with solar panels. The largest array of panels would be south of FP17 (Drawing No. H.0374_03-B). Each string of panels would be mounted on a rack supported by pile driven foundations. Between

² Paragraph 3 – National Planning Policy Framework

each string of panels there would be a gap of some 3.3m to avoid any shadowing effect. The panels would be tilted at 20 degrees from the horizontal and orientated to face south towards the sun. The panels would rise to a maximum of 2.5m at the highest point (Drawing No. H.0374_18-A).

28. Each area would be enclosed with 2.4m high deer fencing (Drawing No. H.0374_24-A). Additional security would be provided by twenty-four, 3m high CCTV posts with 40 cameras (Drawing No. H.0374_17-A). To provide a protection buffer in accordance with BS5837:2012³, the panels would be set back from the edges of existing hedgerows. Along the southern boundary of the site, Butchers Lane, the stand-off would be some 60m and to the west and east the stand-off width would be some 30m. These margins of land retained around the security fenced limits of the development would be developed as areas of wildflower meadows. Between Butchers Lane and the larger group of panels part of the stand-off area would be planted as a community orchard.
29. Construction and maintenance traffic would access the site from existing accesses on Butchers Lane. Internal stoned access tracks capable of being removed at the end of the operational period would be created (Drawing No. H.0374_22-A). Associated infrastructure would include 9 transformer cabinets (3.3m x 2.8m x 2.4m steel containers; Drawing Nos. H.0374_23-A), a primary switchgear compound and a control cabin (Drawing No. H.0374_19-A & 20-A).
30. The existing arable land would be converted to pasture and managed by mowing or grazing. During the operating period approximately 1 visit per month would be expected for routine maintenance. The site would be decommissioned after 25 years, the development would be removed and the site reinstated to full agricultural use.
31. The development would retain the existing landscape elements around the field boundaries of the site with measures implemented to ensure that the mature trees near to site boundaries are protected from construction activities. Existing hedgerows and remnant hedgerows would be re-established/gapped-up where necessary both for screening and conservation purposes. Additional hedge and hedgerow tree planting would be on the site boundaries and both sides of FP 17 (Drawing No. H.0374_03-B).

The Case for Hive Energy Limited

The material points are:-

Principle of Development

32. The Framework provides strong support for renewable energy development which is highlighted as being central to the economic, social and environmental dimensions of sustainable development including the requirement to support the transition to a low carbon future. Framework paragraph 98 directs the decision maker to approve applications for renewable energy projects if its impacts are or can be made acceptable. A key objective of the LP is to mitigate climate change and includes a specific target to increase installed renewable energy capacity. Policy SP1 has a presumption in favour of

³ Trees in relation to design, demolition and construction. Recommendations

sustainable development. Thus, there is clear in-principle support for renewable energy development where impacts are acceptable, or can be made acceptable through mitigation.

Use of Previously Developed land

33. The proposal is supported by a Sequential Analysis Study⁴ (SAS) which considers the availability of previously developed land (PDL) in the Borough and shows that the use of agricultural land is necessary. Confirming the findings of LP, the study concludes that there is a paucity of PDL. Moreover, the LP notes that where significant areas of PDL do become available it is likely to be required for residential or commercial uses.

Agricultural Land

34. The SAS identifies 13 potential alternative sites of similar or lower grade land. However, given constraints applying to these sites, including environmental designations and considerations, the study concludes that there are no alternative sites on poorer land that would be likely to receive permission. Agricultural use of the land would be retained throughout the operational period of the scheme and this scheme includes biodiversity enhancements some of which would remain after decommissioning.
35. On the use of agricultural land, interested persons refer to an Inspector's decision⁵ issued in June 2014. This decision predated changes to PPG in March 2015 and WMSs, which refined and clarified the policy requirements for considering the use of agricultural land and as such the weight to be attached to that decision is limited. The most recent interpretation of policy is contained in 2 appeal decisions⁶ issued by the SoS in March 2015. In 2216381, the site comprised entirely Grade 3a land, permission was sought for a period of 40 years and no comparison with lower grade agricultural alternatives was undertaken. There the SoS concluded that irreversible loss of agricultural land would not occur and the loss of the opportunity for intensive cropping for a considerable period of time must be balanced against the public gain through the generation of renewable energy and a reduction in carbon emissions. In the current case although the appeal site is higher grade land overall, the period that it would be lost from cropping would be materially less i.e. 15 years and the SAS demonstrates the need for using the appeal site. In 2193543 where most of the site was Grade 3b land, the SoS concluded there was no evidence to show that the proposal would result in a significant or permanent loss of the B&MV agricultural land or that there would be harm to the agricultural industry.

Landscape and Visual Impact

36. The ES Landscape and Visual Impact Assessment (LVIA) shows that this development could be successfully accommodated within the existing landscape without causing unacceptable harm to visual amenity or to landscape character. Paragraph 6.38 of the Planning Officer's report concurs with this conclusion highlighting the professional agreement and consensus

⁴ Agricultural Spatial Report June 2014

⁵ APP/D3505/A/13/2204846

⁶ APP/D0840/A/14/2216381 & APP/T3535/A/13/2193543

that the proposal is acceptable in terms of its landscape and visual impact and compliant with LP Policies GN3 and EN2.

Ecology

37. The ES notes that the site is not subject to any designation relating to its biodiversity value or that the scheme would adversely affect any such site. No material impacts on protected species are anticipated, with a net gain resulting following the introduction of biodiversity management and enhancement measures. Secured by a UU, the scheme includes some 13ha of land to compensate for the loss of wintering bird habitat. Lancashire County Council (LCC) does not object to the proposal subject to conditions relating to landscaping, habitat creation and an ecological management plan. Therefore, subject to appropriate conditions and the UU, the proposal would be acceptable and comply with LP Policy EN2.

Heritage Assets

38. There are no HAs within the site and the ES shows that there would be no substantial harm to or total loss of significance to any HA. There would be no more than a negligible impact to the significance of any HAs, with the exception of Gerard Hall Farmhouse, where a minor adverse effect to its setting would occur. The proposal is consistent with LP Policy EN4.

Living Conditions

39. The operational period of the development is benign, with minimal movement, noise or reflection from the panels. No properties are close enough that the development would result in an overbearing impact on occupiers to the extent that the dwelling would become an undesirable place to live. The proposal is compliant with LP Policy EN3.
40. A Noise Survey and BS 4141 Assessment Report was submitted with the application. The proposal includes a range of potential noise sources comprising the 603 inverters set out in 4 strings and 9 transformers located throughout the site. The 2 substations, whilst containing switchgear would not include transformers, would be located towards the southern edge of the site and would not produce significant levels of noise.
41. Noise levels from the inverters and transformers has been predicted in accordance with ISO 9613-2 and the predicted source noise level at the nearest noise sensitive receptor is 25 dB(A). The maximum rated noise level allowing for potential features in the noise would be 30 dB(A) which is very low according to the BS 4142 standard. Noise from the development is unlikely to represent a source of disturbance to neighbouring residents and would comply with the requirements of the Ipa. Interested persons have misunderstood the contents of the SoS's decision on a solar farm in Suffolk⁷. There the Inspector concluded and the SoS agreed, that the imposition of a condition would satisfactorily address the requirement to limit noise. The appellant is willing to accept a condition limiting noise levels to a more stringent criteria of 30 dB(A), which is consistent with the submitted noise assessment.

⁷ APP/J3530/A/13/2193911

Flood Risk

42. The site is in Flood Zone 1, which has the lowest probability of flooding. Swales would be located throughout the site to improve drainage. LCC has no objection subject to the imposition of a condition requiring a surface water drainage scheme. The proposal would comply with LP Policy GN3.

Highways and Access

43. During construction there would be some 309 vehicle loads over a 3-month period. The 2 existing field accesses off Butchers Lane would be used during the construction and operational phases. These accesses would be widened and resurfaced to accommodate HGVs. LCC, as Highway Authority, has no objection subject to conditions relating to control of the construction phase. The proposal is compliant with LP Policy GN3.

Community Consultation

44. Whilst public views can be a material consideration this does not override the requirement of S38 (6) of the Act to determine applications in accordance with the development plan. PPG confirms that there is no further weight to be given to public views for large scale ground-mounted solar farms. Demonstrating significant public support for the scheme, some 46% of the representations made to the lpa were in support of the application.

Green Belt

45. Taken as a whole, the proposal could be seen as inappropriate development in the Green Belt. Substantial weight must be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of its inappropriateness, and any other harm, is clearly outweighed by other considerations.
46. With regard to "any other harm", harm arising from impacts on relevant matters, including landscape and visual impact, ecology, HAs, amenity, flood risk and highway safety are particularly benign and compliant with the LP, with only a minor impact on the setting of Gerard Hall. These matters are not part of the RfR and should not weigh against the proposal when considering whether very special circumstances exist.
47. The proposal would not prejudice the Green Belt purpose of keeping land permanently open. The solar farm would be in an area which is currently open, and as such an impact on openness is inevitable. However, the field boundary hedgerows, the woodland blocks around Gerard Hall and elsewhere, and the railway embankment would limit intervisibility and the length of the majority of views in the local area. Where field boundary hedgerows are low or gappy, views are marginally longer. Even here, views are limited by boundary vegetation, small woodlands, or the railway embankment, to only one or 2 fields. Therefore, the low lying and ground-hugging nature of the development and the hedgerow planting would not significantly affect the openness of these views, or local intervisibility. Permission is sought for a temporary operational period of 25 years and following decommissioning the site would be returned to open agricultural land. Accordingly there would be no permanent effect on openness. Taken together, these matters reduce the weight to be given to the impact on openness.

48. The proposal would not prejudice the Green Belt purpose of safeguarding the countryside from encroachment. Whilst the proposal would result in a development that is not usually or traditionally expected in the countryside, once operational the development would be benign and not result in a material increase in associated activity which would, be harmful to the countryside or increase encroachment of urbanising development. The visual screening of the site and the low nature of the development would further reduce any perception of encroachment into the countryside. Whilst the proposal would not directly assist in urban regeneration, given that there are no sites of this scale available which would be suitable or deliverable for this development it would not prejudice urban regeneration either in the local or wider area.
49. The proposal is temporary and at the end of the operational period would be removed and the site restored as agricultural land. As such the proposal would not prejudice the purposes of the Green Belt to: check the unrestricted sprawl of large built up areas; to prevent the merging of towns; to preserve the setting and special character of historic towns or assist in urban regeneration.

Summary of Green Belt Harm

50. In this case "any other harm" to the Green Belt would amount to a temporary loss of openness and encroachment, both of which would not be readily perceptible when the development was in place. Moreover, due to the low level nature of the development and its time limited nature, these adverse impacts would attract only moderate weight in the balance when establishing very special circumstances and must be weighed against the positive considerations of the scheme.

Benefits

51. The Framework says that very special circumstances may include the wider environmental benefits associated with the increased production of renewable energy. This proposal has an installed electricity generating capacity of 17MW, and it is estimated that this scheme would produce electricity sufficient to power 4,960 average homes and save approximately 7,050 tonnes of CO₂ emissions per annum, totalling 176,219 tonnes over the 25 year operational period. Therefore, this proposal would make a significant and valuable contribution to the national policy objectives regarding: reductions in CO₂ emissions; increasing electricity generated from renewable sources and assisting in meeting the UK's binding renewable energy obligations; mitigating climate change and contribute to the security of the UK energy supply.
52. The significance of these benefits is enhanced when considered against recent under-performance against national targets. SI 2011 No.243 places a duty on the SoS to ensure that the renewables share of the final energy consumption in 2020 is at least 15% and to introduce measures to ensure the indicative targets for the share of energy from renewable sources are met. The UK Energy Roadmap - November 2013 Update confirmed that the SI target was not met with only 3.94% of electricity used being generated from renewable

sources compared to the first interim target of 4.04%. EU Research⁸ shows that the UK is not expected to meet the 2020 RES under baseline conditions. Moreover, to meet EU 2030 targets the UK's requires a significant increase in the use of renewable energy. The November 2014 electricity generation figures show that renewables energy generation had fallen to 13.2TWh in the second quarter of 2014. This was a fall of 1% on the same quarter in 2013 and 27% less than the peak generation of 18.2TWh in the first quarter of 2014. Indeed, energy generation in the second quarter of 2014 was at its lowest level in the last 16 years.

53. The Council's Annual Monitoring Report - June 2014 highlights local performance against the LP targets. With regard to the target to increase renewable energy generation, the report confirms⁹ in that in 2013/14 the Council was below target. In 2013/14 only one application for a renewable energy development, a biomass plant, was granted planning permission and there were no renewable energy developments of a sufficient size to register at County or Regional level. This scheme would provide a substantial additional level of local renewable energy generation where there is an identified under-performance against LP targets. The Borough is almost entirely covered by Green Belt designation and as such, for a development to provide such significant local benefit and support LP objectives, it must be located within the Green Belt. The SAS shows there are no preferable sites where renewable energy can suitably be deployed. In this context, the national and local environmental benefits of the development attract very substantial weight when assessing very special circumstances. The lpa's attribution of moderate weight is understated.
54. This scheme has other site specific benefits which show the necessity for Green Belt location. The Framework confirms that lpas should plan positively to enhance the Green Belt, including retaining and enhancing biodiversity. The scheme includes measures that would result in a net gain to biodiversity. The planting of significant lengths of new native hedgerows and trees, the infilling of remnant hedgerows and planting of meadow grassland would provide additional foraging, shelter and habitats for a variety of species. These biodiversity enhancements would continue beyond the lifetime of the development, providing a long-term and continuing ecological benefit. Together, these measures amount to a significant ecological benefit, which would enhance the Green Belt and should be accorded moderate weight in the consideration of very special circumstances.
55. The strengthening of existing hedgerows and additional planting would result in local landscape enhancements through: the provision of greater physical continuity, the strengthening of local landscape character and strengthen the field pattern of the site. Again, these benefits would remain in the long term beyond the lifetime of the planning permission and would enhance the Green Belt. The proposal includes the strengthening of FPs17 and 19, which would enhance the local footpath network thereby improving access to the countryside. These benefits can be given limited weight in the consideration of very special circumstances.

⁸ 2020 RES Scenarios for Europe – Are Member States well on track for Achieving 2020 RES Targets - Vienna University of Technology and Energy Economics Group September 2014.

⁹ Section 5.9 on pages 52 and 53

Conclusions on Very Special Circumstances

56. Judging whether very special circumstances exist involves attributing: moderate weight to the harm arising from the impact on the openness of the Green Belt and encroachment; very substantial weight to the environmental benefits associated with renewable energy generation; moderate weight attached to the biodiversity enhancements and limited weight to landscape enhancements and improved public access.
57. The Framework confirms that the benefits of renewable energy alone can constitute very special circumstances. This together with the additional site specific benefits when weighed against the harm to the Green Belt, i.e. inappropriateness and the limited and time-limited impact on openness and encroachment, clearly outweigh that harm and in this case very special circumstances have been demonstrated.

Planning Balance and Conclusion

58. The proposal complies with Development Plan policies, the Framework, and also the criteria for large scale solar PV developments in PPG. The impacts of the proposal are acceptable and, where there is harm it is limited and falls some way below a threshold which would warrant dismissing of the appeal.
59. The significant benefits of this proposal, primarily the generation of renewable energy would provide a significant and valuable contribution towards meeting the challenging obligations of the Government regarding renewable energy generation, and also in the form of ecological and landscape enhancements and access to the countryside, weigh heavily in favour of this development. The weight to be given to the local need for renewable energy schemes is supported by the lpa's admission that it is below its own targets. Thus, upon considering compliance with the Development Plan and national planning policy/guidance, the significant benefits and the relatively benign impacts this proposal, on balance, falls well within the scope of acceptability.
60. The consideration of these factors, together with the limited harm to the purposes of the Green Belt, demonstrates that very special circumstances exist and an approval is justified. The professional opinion of the lpa officers as given to the Planning Committee concurs with this conclusion.

The Case for West Lancashire Borough Council

The material points are:-

61. This development would be inappropriate development in the Green Belt, it would cause harm through loss of openness and encroachment into the countryside with insufficient very special circumstances to outweigh the harm. Matters relating to the impact of the development on ecology, landscape, visual amenity and HAs form no part of the lpa's reason for refusal and it remains satisfied that the proposed development results in no additional harm over and above that set out in the reason for refusal.
62. The lpa accepts that this scheme would contribute to national targets for the generation of electricity from renewable sources. However, the site is in the Green Belt and the scheme must be considered in the context of Framework

policy, PPG and LP Policy GN1. The appellant accepts that the scheme would be inappropriate development in the Green Belt, which by definition is harmful to the Green Belt and contrary to the Framework. Therefore, it falls to be considered whether there are any very special circumstances which outweigh the presumption against inappropriate development.

63. Openness is an essential characteristic of the Green Belt and this concept has been clarified in appeal decisions¹⁰. Openness is freedom from development and is an absolute test i.e. the development is there or it is not. This scheme would introduce an expansive array of structures across land that is currently open and free from development and would have a negative effect on openness. This adverse impact on openness would be increased by the cumulative elements of the scheme, i.e. the number of buildings, the access tracks and the fencing. Thus, the proposal would have a significant impact on openness. Moreover, this scheme would conflict one of the purposes of the Green Belt, i.e. safeguarding the countryside from encroachment.
64. The low lying nature of the development, surrounding boundary treatments and other landscape features would not limit the visibility of the development and openness would be significantly affected. Openness is not a visual matter and the presence of buffers to limit visibility should not be construed as being a limiting factor in terms of openness. Similarly, encroachment into the countryside would not be negated once the scheme becomes operational as the encroachment would remain. Moreover, any physical buffers surrounding the site cannot negate encroachment, which would happen by virtue of the physical and continued presence of the development.

Very Special Circumstances

65. There is no accepted definition of very special circumstances and whether they exist is a matter of planning judgement. The appellant's case centres on 4 points: the provision of renewable energy; biodiversity enhancements; landscape and visual enhancements and improved public access.
66. The lpa recognises that the need to increase renewable energy sources within the district and nationally is paramount and is the key to a low carbon future. It is acknowledged that this district has a role to play in meeting national targets for the generation of energy from renewables, as set out in the EU Renewable Energy Directive. It is acknowledged that the development would make a measurable contribution to the region's renewable energy targets. The Framework makes it clear that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.
67. National policy/guidance advises that solar development needs to be appropriately sited and applications should only be approved if material considerations do not dictate otherwise and if impacts are, or could be made acceptable. Whilst the Framework indicates that renewable energy projects are not prohibited in the Green Belt it is a matter of balancing the benefits they bring against any harm they could cause. It is accepted that the development has the potential to make a material contribution towards securing the wider

¹⁰ APP/P2365/A/99/1026818; APP/P2365/A/03/1052263; APP/P2365/A/01/1069351; APP/P2365/A/03/1132895; APP/P2365/A/05/1184634; APP/P2365/A/04/1161391; APP/P2365/A/06/2027967; APP/P2365/A/10/2120291 & APP/P2365/A/13/2204379

environmental, social and economic benefits advocated by the Government's sustainable development strategy and this benefit should be attributed significant weight. However, this contribution must be set against the harm by reason of inappropriateness, loss of openness and conflict with one of the Green Belt purposes. These harms are significant and weigh substantially against the grant of planning permission.

68. As to biodiversity enhancements, it is recognised that the appellant has strived to include habitat improving features through additional planting. However, the loss of the open fields could result in some loss of existing habitat opportunities and as such the scale of net improvements are difficult to quantify. In any event, whilst the development would result in some biodiversity improvements, these would be achievable with or without the proposed scheme if the land owner so wished and the therefore these improvements only attract limited weight.
69. The landscape and visual enhancements attract only limited weight. The enhancements are only required by virtue of the development. Currently the site is typical of its rural setting and if left undeveloped would require no further enhancements to provide the greater physical continuity, strengthening of the local landscape character or strengthening of the field pattern of the site suggested by the appellant. The limited improvements to the public footpaths would be a minor benefit attracting only limited weight. The existing footpaths are useable and accessible and in the absence of any development require no immediate attention to provide greater access to the countryside.

Planning Balance and Overall Conclusions

70. The development represents inappropriate development in the Green Belt, which should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Whilst the Framework advocates support for renewable energy schemes, it does not expressly state that such schemes automatically override all other considerations. The lpa acknowledges that the scheme includes a number of benefits, in particular the generation of renewable energy. However, on balance, the harm to the Green Belt by reason of inappropriateness, loss of openness and the conflict with the purpose of safeguarding the countryside from encroachment is significant and such that the harm cannot be outweighed by the considerations put forward by the appellant. Accordingly, very special circumstances are not found to outweigh the totality of the harm to the Green Belt.

Written Representations

71. The proposal would be inappropriate development in the Green Belt; it would have an adverse impact on openness and encroach into the countryside. There are no considerations that clearly outweigh the harm to the Green Belt.
72. Hedgerows around the site are deciduous and for a substantial part of the year this industrial development would be visible resulting in unacceptable harm to the landscape character of the Green Belt and the visual amenity of residents.

73. The 2 substations would be located close to houses on Butchers Lane and residents would be unacceptably affected by noise. Sub-stations associated with solar farms are known sources of damaging and hard to mitigate low-frequency noise. The characteristic hum from a substation typically generates noise levels ranging from 60 to 80 dBa. The adverse noise impacts would be exacerbated by the potential introduction of cooling fans. During the summer when there are long hours of daylight/sunlight the solar farm would be operating at its peak and noise would be at its highest. However, Butchers Lane is a tranquil area and summer is the time when residents would seek to make the most of their dwellings and gardens. The noise impact report does not contain a background noise level survey and is inadequate; its assumptions and conclusions are flawed. A previous appeal decision¹¹ was particularly critical of the appellant's approach to noise and local concerns.
74. The emphasis of Government policy/guidance is to avoid using B&MV agricultural land for large scale solar arrays wherever reasonably possible¹². Where B&MV land is used it should be the last resort and it must be robustly justified. The appellant's SAS report lacks robustness, is flawed and fails to demonstrate that the use of B&MV agricultural land is necessary.
75. There is no local support for this proposal.

Conditions and Obligations

76. The Ipa's Statement of Case includes a list of 18 suggested conditions (SCs). The appellant takes no issues with these conditions and has suggested a further condition to limit noise.
77. SC 1 is the standard 3-year time limit for the implementation of a full planning permission. SC 2 provides that the development would have a lifespan of 25 years from the date of the first export of electricity to the grid. SCs 3 and 4 provide for removal of the panels and restoration of the site after the 25 years or if any panel fails to generate electricity for a continuous period of 6 months. SC 5 specifies the approved plans. In the interests of highway safety SCs 7, 8 and 9 provide for the submission and approval prior to commencement of: a Construction Traffic Management Plan; construction traffic routing, timing and control; details of the site access points and passing places on Butchers Lane.
78. In the interests of environmental protection, protecting neighbours' living conditions and the character and appearance of the area, SCs 6, 10, 11 12, 13, 14, 15, 16 and 18 provide for the approval of: (a) security lighting, (b) ecological mitigation and enhancement, (c) the provision of amphibian fencing (d) a landscaping scheme, (e) a management plan for the community orchard, (f) surface water drainage details and implementation in accordance with the Flood Risk Assessment, (g) the removal of permitted development rights, (h) a Construction Environment Management Plan Method Statement, and (e) the control of the timing of construction works.
79. In the interests of protecting neighbours' living conditions, the appellant's suggested condition would limit noise generated by the plan to 30 dB(A) at any dwelling façade containing a habitable room window.

¹¹ APP/J3530/A/13/2193911

¹² APP/D3505/A/13/2204846

80. The appellant's signed S106 UU provides for a land management scheme for an area of adjoining land. Shooting within the habitat area would not take place between 1 October and 30 April; bird scaring tactics would be removed and the activity ceased and no new field boundaries would be created. Notwithstanding his willingness to provide and manage the Habitat Area as habitat enhancement to support PFG he considers the covenants are not necessary to mitigate any adverse effect of the development. Whilst the lpa has indicated some rewording of the UU, which it requires to make it acceptable, no justification has been submitted to support the proposed changes.

Inspector's Conclusions

The numbers in [] brackets refer to earlier paragraphs in this report.

Green Belt

Inappropriate Development

81. The site is in the Green Belt and LP Policy GN1 says that here development will be assessed against national policy in the Framework [14]. Taken in the round, this development does not fall within the lists of exceptions identified in Framework and is inappropriate development [45 & 61]. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework says that substantial weight attaches to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Openness

82. Openness is an essential characteristic of the Green Belt. Whilst there is no definition of openness in either the development plan or the Framework, in the context of applying Green Belt policy, openness is, in my view, about the absence of buildings or built form [63]. The site comprises agricultural fields extending to some 37ha and the area covered by built-form would be some 24.6ha and given the number of panels proposed along with the ancillary plant and buildings, this scheme would have significant adverse effect on openness.

Encroachment

83. One purpose of the Green Belt is to assist in safeguarding the countryside from encroachment. I agree with the appellant that this proposal is a form of development that is not usually or traditionally expected in the countryside [48]. Given its spatial extent and the industrial appearance of the arrays this development would be significant encroachment into the countryside. Given that the proposal would be seen for all of its operational life from a number of public vantage points particularly FPS17 and 19 and the railway line, the degree of encroachment would be neither benign nor mitigated. As such the proposal would conflict with and result in significant harm to the purpose of including land in the Green Belt.

Heritage Assets

84. The policy context is LP Policy EN4 provides for the protection and enhancement of HAs. This policy has a presumption in favour of the conservation of HAs and development that would adversely affect the setting of a LB will not be permitted [16]. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to have special regard to the desirability of preserving a LB or its setting or any features of special architectural or historic interest which it possesses.
85. The Framework indicates that when considering the impact on the significance of a HA great weight should be given to its conservation. The significance of a HA can be harmed through alteration or destruction of the asset (physical harm) or development within its setting (non-physical or indirect harm). Substantial harm to a Grade 2 LB should be exceptional and should be refused unless that harm is necessary to achieve substantial public benefits that outweigh the harm. Where a development would lead to less than substantial harm to significance, the harm should be weighed against the public benefits of the proposal (Framework Paragraph 134).
86. Here, those HAs with the most potential to be affected are Gerard Hall and the Church of St Mary. Both are Grade 2 LBs and given both are outside the site the potential for harm arises from the location of the proposal within the setting of these buildings. Part of the significance of Gerard Hall is derived from its wider agricultural setting and the introduction of a solar farm over an extensive area adjoining this building would result in an alteration to that setting. However, where views of the Hall can be obtained the agricultural foreground would be retained and the relationship between the Hall and the surrounding agricultural land would largely be preserved. In this context, the magnitude of change would be low and the significance of effect would be minor adverse. In Framework terms, the proposal would result in a minor amount of less than substantial harm to the significance of Gerard Hall [38].
87. The agricultural/rural setting does not materially contribute to the principal significance of Church of St Mary because it is largely screened and isolated from views. Thus, whilst there would be some loss of its agricultural setting, the magnitude of change and the significance of effect would be negligible. In Framework terms, the proposal would result in a negligible amount of less than substantial harm to the significance of the Church of St Mary.

Landscape and Visual Impact

88. The policy context is LP Policy GN3, which provides for the protection and enhancement of the landscape. This policy is supported by the approach in the Framework which seeks to protect and enhance the natural environment and recognises the intrinsic character and beauty of the countryside.
89. Dealing first with the impact on landscape character, the appeal site is not located within a designated landscape. As a low, gently undulating, arable agricultural landscape of medium to large fields generally devoid of hedgerows with isolated woodland blocks this is a moderate to large landscape of moderate complexity. The high railway embankment to the west and the woodland to the north and east limit the availability of open views across the plain to near distance views from Butchers Lane to the south and parts of

Mickering Lane to the north and north-west. In this context this is a landscape that has a medium sensitivity to change.

90. The solar farm would not generally protrude above existing/proposed hedgerows and would not affect the topography of the area or the existing sense of enclosure and would not form a feature on the skyline. Local intervisibility would remain unaffected and, in terms of the wider LCA, the open character and the gently undulating agricultural landscape, the field pattern and trees/hedgerows would remain physically unaffected. That said, on the site and within the immediate vicinity the agricultural landscape would be replaced by serried rows of solar arrays with transformer cabinets and numerous 3m high CCTV posts enclosed by 2.4m high fencing that would cover an extensive area [27 & 28]. This would introduce into the immediate landscape a new and incongruous feature that would create a strong new pattern and add a different texture and colour to the existing landscape. Thus within and immediately adjoining the site itself there would be a high magnitude of landscape change and a major adverse impact. However, given the limited availability of open views across the plain, I consider that major impact would be largely confined to the area bounded by the railway line to the west, Butchers Lane to the south and the woodland to the east and north. In this context, the effect on the wider landscape of the NCA and particularly the LCA sub-type (Ormskirk-Lathom-Rufford) would be minor adverse.
91. Turning to visual impact, most public views would be obtained from the elevated railway line to the west, from Butchers Lane to the south, from the FPs17 and 19 that run east to west through the site and along the eastern boundary of the northern sector and the permissive path that runs along the western and northern boundary of the site. From Butchers Lane, views of the development would be partly screened by existing hedgerows and, in time, the new hedgerows and trees. The main impact on public visual amenity would be on views from the public footpaths and railway line. Whilst the views obtained by rail passengers would be fleeting, walkers, particularly those using FP17, where it approaches and runs between the two sectors, would be subject to a high magnitude of change resulting in a substantial adverse effect. Given the limited availability of open views across the plain from beyond the railway line and woodland, the visual impact in the wider area would be minor adverse.
92. Drawing the above together, this proposal would result in some harm to the character and appearance of the surrounding landscape and significant harm to the visual amenity of users of the public footpaths through and around the site. This harm would conflict with the objectives of LP Policy GN3.

Agricultural Land

93. The policy context with regard to the use of B&MV agricultural land (Grades 1, 2 and 3a) is LP Policy EN2 which seeks to provide a framework to balance the need to conserve and protect the Borough's land resources against the need to meet development requirements [16]. Development on B&MV agricultural land will not be permitted except where absolutely necessary to deliver allocated development, strategic infrastructure or development associated with the agricultural use of land. Similarly, the Framework and PPG do not place an absolute bar on the use of B&MV agricultural land for development. Paragraph 112 says that the economic and other benefits of the B&MV agricultural land

should be taken into account and where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be used in preference to that of higher quality. PPG seek to encourage 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. Whilst the March 2015 WMS does not place a bar on the use of B&MV agricultural land it indicates that the use of such land needs to be justified by the most compelling evidence.

94. The Framework and PPG do not specifically refer to the carrying out of a sequential appraisal. However, to show whether the use of any agricultural land is necessary and whether poorer quality land has been used in preference to higher quality land can only be done through a sequential assessment. In addition to a sequential assessment, PPG also requires the decision maker to consider whether a proposal allows for continued agricultural use and/or encourages biodiversity improvements around the arrays.
95. Here, the agricultural holding extends to some 78ha of which 71ha is agricultural land. The area to be set aside for the solar farm is 37ha, some 52%, of the agricultural land. Of this 37ha, some 24.6ha would be developed with solar panels equating to some 35% of the total agricultural land on the holding. The remaining 12.4ha would be planted with meadow wildflower species and land north of Butchers Lane would be planted as a community orchard. Of the 24.6ha of land to be directly developed, some 66% is B&MV agricultural land i.e. Grades 2 and 3a [5]. The detailed soil classification report shows that the majority of the northern sector is Grade 3b land (not B&MV land) and that the majority of the southern sector is B&MV land.
96. Here, the 37ha of land to be set aside for the solar farm is primarily used for winter wheat and barley. Whilst arable use would cease during the lifetime of the development (25 years), the solar farm would have no material impact on agricultural land quality in that the development is temporary and reversible. The farm currently has a small herd of rare breed sheep, which would be expanded to graze the area around and below the solar panels. There is nothing to suggest that the proposed use of some 35% of the holding for a non-agricultural use would materially harm the viability of this agricultural holding. Rather the regular and predictable income received from renting the land to a solar operator would enhance and maintain viability of the remainder of the holding. The scheme includes new hedgerow planting, including filling gaps in existing hedges and a mix of wildflower grass seed would be used in parts of some of the fields. These features would provide new and improved wildlife habitats which would benefit, amongst other things, local populations of birds and bats. It is likely that many of these features would remain after the solar farm has been decommissioned [34].
97. Turning to the sequential appraisal, given that the majority of the northern sector of the scheme is Grade 3b land, the use of this area would not conflict with the objectives of the Framework or PPG. In terms of undertaking a sequential assessment, neither local policy nor national guidance indicates how or over what area such a study should be carried out. However, whilst climate change is a global issue the response requires local action. Thus, the benefits of any scheme are largely national/international whilst impacts are purely

local. In this context, the identification of a study area for undertaking the sequential assessment is critical to the robustness of the assessment.

98. In coming to a conclusion on the necessity of using agricultural land any assessment must include the identification and assessment of the availability of previously developed land and the potential for using commercial roof-space. This is particularly so given the thrust of the March 2015 WMS. At this point, I note that both the WMS and the update to PPG on solar farms postdate the 2 appeal decisions highlighted by the appellant as providing the most recent interpretation of policy by the SoS [35]. Accordingly, I have relied on the more recent WMS and PPG in coming to my conclusions. A WMS is capable of being a material consideration and the weight to be attached to a material consideration is a matter of judgement for the decision maker¹³.
99. Whilst the appellant has attempted to undertake a proportionate assessment using the best published information available, I consider a fundamental weakness in the SAS is the choice of study area. The assessment is restricted solely to the administrative area of West Lancashire. However, the appeal site is located close to the adjoining administrative areas of Sefton and St. Helens and the eastern and northern boundaries of West Lancashire, where the appellant has undertaken specific assessments relating to land quality, adjoin the administrative areas of Wigan, Chorley, South Ribble and Fylde. Thus, given that a sequential assessment must include the identification and assessment of the availability of previously developed land and the potential for using commercial roof-space and given that climate change is not purely a local issue, I consider that a proportionate assessment of these factors should, at a minimum, include the adjoining administrative areas. In this context, I consider that the SAS has not robustly demonstrated that the use of B&MV agricultural land is necessary.
100. Notwithstanding my favourable conclusions regarding continued agricultural use and biodiversity improvements, this proposal would conflict with the objectives of LP Policy EN2 and Framework policy and PPG guidance in that it has not been shown that the use of B&MV agricultural land is necessary.

Living Conditions

101. I have no reason to disagree with the conclusions of the appellant's noise assessment or the lpa's conclusion that operational noise would be unlikely to result in a material adverse effect on neighbours' living conditions [40]. In this case, subject to the imposition of appropriate conditions relating to control of the construction phase and subsequent operation of the solar farm, I conclude that there would be no material effect on living conditions from noise.
102. Renewable energy developments can result in significant visual effects that would change the outlook of dwellings. Thus, the identification of a significant change is not, on its own, necessarily harmful. In deciding whether, in the public interest, there is a case to resist a scheme, the assessment of the impact on residential visual amenity has to go beyond that of identifying significant visual impact. The approach I have adopted is to determine

¹³ Oxford Diocesan Board of Finance and 910 Secretary of State for Communities and Local Government and (2) Wokingham Borough Council [2013] EWHC 802 (Admin).

whether the presence of the solar arrays would be so unpleasant, overwhelming and oppressive, that a dwelling would become an unacceptably unattractive place in which to live. This approach strikes the right balance between the objective of ensuring adequate protection for residents and the deployment of renewable energy developments.

103. Here, the main group of dwellings affected would be those along Butchers Lane. The majority of dwellings would, in the early stages of the development, have largely uninterrupted views, mainly from the first-floor habitable rooms, of the solar arrays and their associated infrastructure. However, given the degree of separation and the proposal to provide additional hedgerow and tree planting, I consider that its visual impact would be mitigated and would not appear so unpleasant, so overwhelming or oppressive, such that any dwelling would become an unacceptably unattractive place in which to live.
104. Drawing these matters together, I conclude that the proposal would not conflict with the objectives of LP Policy GN3 [14].

Biodiversity

105. LP Policy EN2 seeks to protect biodiversity by resisting development that would destroy or adversely affect important wildlife habitats [15 & 16]. Whilst the site is not located within an area designated for nature conservation, it is close to areas used as a feeding ground for pink footed geese (PFG).
106. The ES undertook what I consider to be a proportionate assessment of the potential impact of the scheme on local ecology. The ES concludes that there would be no adverse effects and that, subject to mitigation and enhancement, the scheme would be acceptable. Whilst the general area is in use as a feeding ground for PFG, the appeal site is not identified as a regular foraging site due to the general absence of preferred foraging crops. The nearest area recorded as regularly being regularly used is some 500m to the north-east. In this context, the loss of the open agricultural land as part of this development would not result in population level effects and it is unlikely to have a significant effect on any European designated site.
107. Notwithstanding, the above conclusion, during the life of the development both Natural England and LCC indicate that there would be some loss of wintering habitat and that this loss should be compensated for. The appellant has submitted a signed S106 UU to provide for and manage an area of land as a habitat enhancement to support PFG [37]. Subject to the imposition of an appropriate condition requiring the implementation of the mitigation and enhancement measures contained in the ES and measures to mitigate the impact on amphibians there is no objection to this proposal on ecological grounds. I have no reason to disagree with those conclusions.
108. The planting of additional hedgerows, the strengthening of existing hedgerows, the tree planting as part of the community orchard and the planting of meadow grassland, most of which would be retained after the development had been decommissioned, are a biodiversity benefit. Whilst during the life of the scheme there would be some loss of habitat, on balance I conclude that the scheme would result in a nett benefit in relation to ecology and biodiversity, to which I attach moderate weight. Drawing these matters

together, the proposal would not conflict with the objectives of development plan policy regarding biodiversity and ecology.

Conditions and S106 Agreement

109. I have assessed the suggested conditions in accordance with the advice contained in PPG and for the reasons set out in paragraphs 77 to 79 of this report I consider the conditions suggested by the lpa and the appellant are reasonable and necessary. With regard to the provisions of the UU [80], given the comments of LCC and Natural England regarding the loss of potential wintering habitat, I consider the management of land outside the site to provide compensation is necessary. I have had regard to the lpa's proposed amendments. However, in the absence of any supporting justification for the suggested changes I have no reason to conclude that the UU or the land management scheme it contains are deficient. I have had regard to the requirements of Framework paragraph 204 and CIL R122 and consider the UU does not conflict with these requirements and as such I have attached weight to it in coming to my conclusion.

Planning and Green Belt Balance

110. This scheme would be inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight attaches to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
111. Given the size of the site and the scale and nature of the development, this scheme would have a significant adverse effect through a loss of openness and in terms of encroachment and as such would conflict with the objectives of LP Policy GN1. In terms of the degree of weight to be attached to this harm, the appellant's attribution of moderate weight is, in my view, understated [56]. The Framework is specific and cautions that that substantial weight attaches to any harm to the Green Belt. Whilst it is a matter of planning judgement for the decision maker as to the degree of weight that attaches to the other considerations in this balance, there is, in my view, no discretion as to the level of weight that attaches to what is referred to in the Framework as "*...any other harm to the Green Belt...*"; it cannot, as a matter of fact and degree, be anything less than substantial. Accordingly, the harm/conflict I have identified is a matter to which I attach substantial weight.
112. There would be some significant and localised harm to local landscape character the magnitude of which would quickly decrease with distance. Overall the harm to the landscape character of the wider LCA 15 – Coastal Plan would be minor and reversible. Similarly, there would major and localised adverse visual impacts, which would decrease with distance. Overall, I consider there would be minor/moderate adverse landscape and visual effects and as such, the proposal would conflict with LP Policy GN3. This harm/conflict is a matter to which I attach substantial weight.
113. The proposal would result in some harm to HAs and, whilst the degree of harm ranges from negligible to minor, in Framework terms this would amount to less

than substantial harm. Notwithstanding this conclusion, S66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving a LB or its setting. Therefore, although the likely harm to HAs would be less than substantial this is a matter that I attach substantial weight to.

114. Notwithstanding my favourable conclusions on the continued agricultural use of the land and net biodiversity improvements that would flow from the scheme, I consider the fundamental weakness in the appellant's sequential assessment with particular regard to the extent of a study area, having regard to the objectives of the development plan, the Framework and PPG, means that the appellant has failed to show that the use of B&MV agricultural land is necessary and whether poorer land has been used in preference to higher quality land. This conflict with policy/guidance is a matter that I attach substantial weight to.
115. This solar farm would generate a credible and significant amount of renewable energy. As such, this scheme would make a significant and valuable, contribution towards national targets for the production of energy from renewable sources and contributing to meeting the objectives of the Climate Change Act, the RES and National Energy Policy [13]. Thus, having regard to the Core Principles of the Framework and the specific guidance relating to climate change and the thrust of national energy policy, this is a matter that I attach substantial weight to. Similarly, I attach moderate weight to the likely net ecological and landscape enhancement measures much of which would remain after the development was decommissioned. The absence of harm to neighbours' living conditions would be a neutral matter that does not weigh for or against the proposal.

Conclusion on the Planning and Green Belt Balance

116. Taking all the above consideration into account and having regard to the temporary nature of the scheme, I find that in this case the other considerations do not clearly outweigh the totality of the harm identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Recommendation

117. For the above reasons, I conclude that the appeal should be dismissed. However, should the Secretary of State disagree with my recommendation and allow the appeal, the planning conditions set out in the attached Schedule of Conditions should be imposed for the reasons set out in paragraphs 76 to 79 and 114 of this report.

George Baird

SCHEDULE OF CONDITIONS

1. The development must be begun not later than the expiration of 3 years beginning with the date of this permission.
2. The planning permission hereby granted is for the development to be retained for a period not more than 25 years from the date when electricity is first exported to the electricity grid (First Export Date). Written confirmation of the First Export Date shall be submitted in writing to the local planning authority within one month of the First Export Date.
3. Not less than 12 months before the expiry of this permission, a Decommissioning Method Statement (DMS) shall be submitted to and approved in writing by the local planning authority. The DMS shall include details of and a timetable for the removal of the panels, supports, inverters, cables, buildings and all associated structures and fencing from the site. The DMS shall also include details of the proposed site restoration. The site shall be decommissioned in accordance with the approved DMS within 6 months of the expiry of the 25 year period of planning permission.
4. If any of the solar panels hereby permitted ceases to export electricity to the grid for a continuous period of 6 months then, unless otherwise agreed in writing by the local planning authority, a scheme of restoration shall be submitted to the local planning authority for its written approval for the removal of the solar panel(s) and associated equipment and the restoration of (that part of) the site to agricultural use. The approved scheme of restoration shall be fully implemented within 6 months of the date of its written approval by the local planning authority.
5. The development hereby permitted shall be carried in accordance with the following drawings: Site Layout and Planting Proposals - H.0374_03-B; Solar Panel Details - H.0374_18-A; Security Fence Details - H.0374_24-A; Transformer Detail - H.0374_23-A; DNO Substation Detail - H.0374_20-A; Customer Substation Detail - I-1.037419-A; Operation and Storage Room Detail - H.0374_21-A; Access Track Detail - H.0374_22-A and CCTV Detail - H.0374_17-A.
6. No construction work shall take place until a scheme showing details of any security lighting has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. No construction work shall take place until a scheme for the construction of the site accesses has been submitted to and approved by the local planning authority. Development shall be carried out in accordance with the approved details.
8. No construction work shall take place until details of the passing places on Butchers Lane have been submitted to and approved in writing by the local planning authority. No part of the development shall commence until the passing places have been provided in accordance with the approved details and are available for use.
9. No construction work shall take place until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning

- authority. The plan shall include methods and details of: construction including vehicle routing to the site, construction traffic parking, deliveries and the proposed traffic management measures. Development shall be carried out in accordance with the approved details of the CMP.
10. The proposed Mitigation and Enhancement as referred to in paragraph 4.10.10 of the Ecology chapter contained within the Environmental Statement shall be implemented in full throughout the duration of development.
 11. No construction works shall take place until details of an amphibian exclusion fence around the pond have been submitted to and approved in writing by the local planning authority. The exclusion fence shall be provided in accordance with the approved details prior to the installation of the solar panels.
 12. No construction works shall take place until a landscaping scheme, including details of the hedgerow planting, wildflower grassland and community orchard and a timetable for their implementation has been submitted to and approved in writing by the local planning authority. The scheme shall include locally appropriate native species. The landscaping scheme shall show the location, branch spread, and species of all existing trees and hedges; the location, species and number of all proposed trees, shrubs and hedges; and the location of all existing and proposed grassed and hard surfaced areas. Trees and shrubs planted shall comply with BS. 3936 (Specification of Nursery Stock) and shall be planted in accordance with BS. 4428 (General Landscape Operations). All planting shall be maintained and dead or dying material shall be replaced for a period of 7 years from the agreed date of planting.
 13. No construction works shall take place until a management plan for the Community Orchard has been submitted to and approved in writing by the local planning authority. The management plan shall include details of (but not limited to) maintenance responsibilities and access rights. The plan shall be implemented in full and shall operate for the lifetime of the development.
 14. No construction works shall take place until details of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. This shall be based on sustainable drainage principles and an assessment of the hydrological context of the development. The drainage strategy should demonstrate the surface water run-off generated up to and including the 1 in 100 year plus climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. Development shall be carried out in accordance with the approved details.
 15. The development shall be carried out in accordance with the Flood Risk Assessment (FRA) H463-D0002 FRA dated June 2014.
 16. No construction works shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details of ground anchoring, ground re-profiling works, temporary storage/construction compound areas and construction hours. Development shall be carried out in accordance with the approved details.
 17. Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 1995 (or any Order amending, replacing or re-enacting

that Order) no fixed plant or machinery, buildings, structures and erections or private ways shall be erected, extended, installed, rearranged, replaced, repaired or altered at the site without prior planning permission from the local planning authority except for those works permitted by this permission.

18. Construction work, which is audible from the boundary of any noise sensitive receptor, shall only take place between the hours of 08:00 and 18:00 on Monday to Friday inclusive, 08:00 and 13:00 hours on Saturdays with no such working on a Sunday or local or national public holiday. The receipt of any materials or equipment for the construction of the site is not allowed outside the said hours, unless otherwise approved in writing by the local planning authority having been given a minimum of 2 working days' notice of the occurrence of the proposed event.
19. The rating level of the noise emitted from the development from fixed plant and equipment shall not exceed a level of 30 dB(A) outside any dwelling at a distance of not less than 3.5m from any façade of that dwelling containing a window to a habitable room. The measurements and assessment shall be made in accordance with BS 4142:1997.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.