



Department for
Communities and
Local Government

Mr James Hadfield
Peel Energy Ltd
Peel Dome
The Trafford Centre
Manchester
M17 8PL

Our Ref: APP/A0665/W/15/3140162
Your Ref:

25 May 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY PEEL ENERGY LTD: LAND AT COMMON LANE, FRODSHAM,
CHESHIRE, WA6 0JS**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David M H Rose BA (Hons) MRTPI, who considered written representations and undertook a site visit on 16 February 2016 in relation to your appeal against the refusal of Cheshire West and Chester Council ("the Council") to grant planning permission for the construction of a solar photovoltaic (PV) farm including the installation of solar panels and associated supporting structures, cabling, inverters, transformer, substations and internal access track and ancillary equipment, landscaping and temporary construction compound in accordance with application ref: 15/01724/FUL, dated 22 April 2015, at Land off Common Lane, Frodsham, Cheshire, WA6 0JS.
2. The appeal was recovered for the Secretary of State's determination on 29 March 2016, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because the proposal is significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation and dismisses the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Policy considerations

4. 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. In this case, the development plan comprises the saved policies of the Chester and District Local Plan (May 2006) and the Chester West and Chester Local Plan (Part One) Strategic Policies (2015). The Secretary of State agrees with the Inspector that the most relevant development plan policies are those set out at IR11.
5. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (the Framework) and the associated Planning Guidance, along with national energy policy and legislation.

Main issues

6. The Secretary of State agrees with the Inspector that the main consideration in this case is that set out in IR65-69.

Green Belt policy

7. The Secretary of State notes that there is no dispute between the parties that the proposal represents inappropriate development in the Green Belt and that this would be, by definition, harmful to the Green Belt (IR65). For the reasons given at IR70-73, he agrees with the Inspector that the proposed development, by reference to loss of openness and visual impact would run counter to the aim of safeguarding the countryside from encroachment (IR73). He agrees with the Inspector at IR87 that the harm to the Green Belt by virtue of inappropriateness; the significant loss of openness having regard to the scale of the proposed development; and the very marked encroachment into the countryside by reason of loss of openness and, to a very limited extent, visual impact carry substantial weight against the proposal. He has gone on to consider whether there are any very special circumstances which would outweigh the conflict he has identified.

Benefits

8. For the reasons set out in IR75 the Secretary of State agrees with the Inspector that the proposal would make a valuable contribution to energy security and national energy targets and this weighs significantly in favour of the application.
9. In terms of the stated social and economic benefits arising from the scheme at IR76, the Secretary of State agrees with the Inspector that these lack quantification and certainty, and very little weight should be attributed to them. The Secretary of State agrees with the Inspector who considers that whilst the proposal has potential to enhance the biodiversity of the site, there is nothing to suggest the measures proposed would materially exceed normal expectations of the development management regime, and limited weight applies (IR77).

Other matters

10. The Secretary of State notes that the agricultural land classification is 3b (which is not the best and most versatile land) and agrees with the Inspector that no compelling evidence has been submitted to undermine the appellant's consideration of potential

alternative sites (IR75). The Secretary of State further agrees that the proposal would not cause any harm to landscape, heritage assets, residential amenity, highways, flooding or biodiversity (IR66).

Conditions

11. The Secretary of State has considered the proposed conditions, as set out in the Annex to the IR, and the Inspector's comments on them at IR79-IR86. He is satisfied that these conditions are reasonable and necessary and would meet the tests in paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing the appeal.

Planning balance and overall conclusion

12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

13. The Secretary of State agrees with the Inspector that for the reasons given at IR87, the harm to the Green Belt carries substantial weight. He has gone on to consider whether there are any very special circumstances sufficient to outweigh that harm. He has taken into account the benefits of the scheme, and for the reasons set out above agrees with the Inspector that the contribution to energy security and national energy targets weighs significantly in favour of the scheme, that the biodiversity benefits carry limited weight in favour of the scheme, but that the alleged economic and social benefits carry very little weight. Overall he agrees with the Inspector at IR89 that the factors advanced do not clearly outweigh the harm identified, and the very special circumstances necessary to justify the development do not exist.

14. The Secretary of State therefore concludes that the proposal would be in conflict with the development plan as a whole (with particular reference to Policies STRAT 1, STRAT 9 and ENV 7) and also at variance with the Framework when read as a whole. He further concludes that there are no material considerations sufficient to overcome the conflict he has identified with the development plan and the Framework.

Formal decision

15. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your appeal and refuses planning permission for the construction of a solar photovoltaic (PV) farm including the installation of solar panels and associated supporting structures, cabling, inverters, transformer, substations and internal access track and ancillary equipment, landscaping and temporary construction compound in accordance with application ref: 15/01724/FUL, dated 22 April 2015, at Land off Common Lane, Frodsham, Cheshire, WA6 0JS.

Right to challenge the decision

16. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. 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.

17. A copy of this letter has been sent to Cheshire West and Chester Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

MARIA STASIAK

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by David M H Rose BA (Hons) MRTPI

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

Date: 29 March 2016

Town and Country Planning Act 1990

Appeal by Peel Energy Limited

Cheshire West and Chester Council

Site visit made on 16 February 2016

Land off Common Lane, Frodsham, Cheshire, WA6 0JS

File Reference: APP/A0665/W/15/3140162

CONTENTS

Preliminary Matters	page 1
The Case for Peel Energy Limited	page 4
The Case for Cheshire West and Chester Council	page 8
Written representations	page 11
Inspector's Conclusions and Recommendation	page 12
Annex A: Schedule of conditions recommended by the Inspector in the event of the Secretary of State deciding to allow the appeal	page 16

File Ref: APP/A0665/W/15/3140162

Land off Common Lane, Frodsham, Cheshire, WA6 0JS

- 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 Peel Energy Limited against the decision of Cheshire West and Chester Council.
- The application Reference 15/01724/FUL, dated 22 April 2015, was refused by notice dated 21 October 2015.
- The development proposed is the construction of solar photovoltaic (PV) farm including the installation of solar panels and associated supporting structures, cabling, inverters, transformer, substations and internal access track and ancillary equipment, landscaping and temporary construction compound.

Summary of Recommendation: The appeal be dismissed.

Preliminary Matters

Reason for refusal

1. The Council refused planning permission for the following reason:-

'In the opinion of the Local Planning Authority the proposal is considered inappropriate development in the Green Belt. It is considered that the information submitted with the application does not result in very special circumstances which would outweigh the harm to the Green Belt, including the loss of openness. As a result the development is considered to fail to accord with the provisions of the National Planning Policy Framework and Policy STRAT9 of the Cheshire West and Chester Local Plan (Part 1)'.

Determination of the appeal

2. The Secretary of State has directed that, in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, that he shall determine the appeal as it involves proposals for significant development in the Green Belt.

Environmental Impact Assessment

3. The planning application was accompanied by an Environmental Statement (April 2015). Its contents, and all other material arising from the application and the appeal, have been taken into account in the preparation of this report. It is to be noted that the site layout in the Environmental Statement was superseded by Drawing No NT11681/Fig13 (September 2015) which forms the basis on which the appeal is to be determined.

Site visit

4. On 16 February 2016 I made an unaccompanied visit to the site and the surrounding area, including viewpoints referred to in the Landscape and Visual Impact Assessment.

The Proposal

5. The development would have an installed capacity of 5MW based on the installation of up to 20,000 panels with a maximum height of 2.25 metres above ground level and a footprint of 7.7 hectares. Additional structures

would include 6 inverter stations, a substation, perimeter deer fencing and a number of discreet security cameras.¹ Existing hedgerows would be retained and current farm tracks would be utilised for access. No new gaps in fences or hedgerows would be required. Boundaries between the hedgerows and the panels, as well as the area between panel rows, would be managed as species rich grassland including areas to be sown with wildflower meadow. Continued agricultural use of the land, in the form of sheep grazing, would occur.

6. It is anticipated that the project would generate enough electricity to meet the annual average need of approximately 1,390 homes; and during its lifespan of 30 years it would save some 59,540 tonnes of carbon dioxide emissions. Decommissioning would take no more than 3 – 4 months.
7. An initial study of alternatives was undertaken within a 3 km radius of potential network connections; and a further countywide assessment was subsequently provided.² The appeal site remained the most suitable location for the proposed development.
8. Consultation with the local community was agreed by the local planning authority to be proportionate and appropriate. The planning application received no objections from statutory consultees; and it was recommended for approval by the Planning Officer.

The Site and surroundings

9. The appeal site is situated in the North Cheshire Green Belt. The site consists of 10.6 hectares of agricultural land located to the south-west of junction 14 of the M56 motorway. It is defined by the motorway embankment and related tree planting on its north-western side; the A5117 (towards Helsby) to the north-east; and agricultural land on its remaining boundaries. Most of the site is enclosed by dense hedgerows and there is no public access into or across the site. The north-western quadrant of the motorway junction is also 'undeveloped'. Chester Motorway Services is located to the immediate north-east of the M56 and the continuation of the A5117 towards Thornton-le-Moors; and a well enclosed, 'Council Yard'³ is located to the south-east of the junction.
10. A caravan park and large modern agricultural buildings, served from Common Lane, are located to the south of the site. High voltage power lines and pylons run to the north-west of, and generally parallel with, the motorway. The built-up areas of Stanlow and Ellesmere Port lie a short distance away, generally to the north and north-west, with chemical and oil-related installations. The landscape to the south-east of the motorway is markedly rural in character and appearance.

Planning policy

11. The development plan comprises the saved policies in the Chester and District Local Plan (May 2006) and the Cheshire West and Chester Local Plan (Part One) Strategic Policies (January 2015). The policies referred to include:-⁴

¹ Planning Supporting Statement: paragraph 4.1.2

² Environmental Statement: pages 5.14 – 5.15; Planning Appeal Statement (Peel): Annex 1

³ As delineated on the ordnance survey map (the site appeared to be in use for some form of waste disposal)

⁴ Policy extracts in '*italics*'

- (a) **STRAT 1 Sustainable development:** *'Proposals that are in accordance with relevant policies in the Plan and support the following sustainable development principles will be approved without delay, unless material considerations indicate otherwise:- mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation minimise the loss of Greenfield land and high grade agricultural land proposals that fundamentally conflict with the above principles or policies within the Local Plan will be refused'.*
- (b) **STRAT 9 Green Belt and countryside:** *'The intrinsic character and beauty of the Cheshire countryside will be protected by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements. Within the countryside the following types of development will be permitted:- development that has an operational need for a countryside location such as for agricultural or forestry operations small scale and low impact rural/farm diversification schemes appropriate to the site, location and setting of the area Development must be of an appropriate scale and design to not harm the character of the countryside'.*
- (c) **STRAT 10 Transport and accessibility:** sets out principles of sustainable transport.
- (d) **ENV 1 Flood risk and water management:** requires Flood Risk Assessment and sequential approach.
- (e) **ENV 2 Landscape:** *'The Local Plan will protect and, wherever possible, enhance landscape character and local distinctiveness Development should take full account of the characteristics of the development site, its relationship with its surroundings and where appropriate views into, over and out of the site; and recognise, retain and incorporate features of landscape quality into the design'.*
- (f) **ENV 4 Biodiversity and geodiversity:** *'Development should not result in any net loss of natural assets, and should seek to provide net gains'.*
- (g) **ENV 5 Historic environment:** *'development should safeguard or enhance both designated and non-designated heritage assets and the character and setting of areas of acknowledged significance'.*
- (h) **ENV 7 Alternative energy supplies:** *'the Local Plan will support renewable and low carbon energy proposals where there are no unacceptable impacts on:- landscape, visual and residential amenity; noise, air, water, highways or health; biodiversity, the natural or historic environment; radar, telecommunications or the safety of aircraft operation; proposals should be accompanied by appropriate arrangements for decommissioning and reinstatement of the site when its operational lifespan has ended'.*
- (i) **SOC 5 Health and well-being:** indicates that development which would give rise to significant adverse impacts on residential amenity will not be allowed.
- (j) **(Saved Policy) ENV 27:** is a general nature conservation policy.
- (k) **(Saved Policy) ENV 28:** relates to internationally important sites and Sites of Special Scientific Interest.
- (l) **(Saved Policy) ENV 32:** requires archaeological evaluation.
- (m) **(Saved Policy) ENV 33:** is relevant to effects on archaeological sites of regional or county importance.
- (n) **(Saved Policy) ENV 34:** concerns archaeological sites of district or local importance.

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The Case for Peel Energy Limited

National Planning Policy Framework⁵ and Planning Practice Guidance

12. The Framework sets out a presumption in favour of sustainable development which should be seen as a golden thread running through decision taking. One of the core principles of the document is to support the transition to a low carbon future. The proposal would provide a source of renewable energy and decision taking should be approached in a positive way to foster the delivery of sustainable development.⁶
13. The Framework also seeks to protect the Green Belt and elements of many renewable energy projects will comprise inappropriate development and developers will need to demonstrate very special circumstances if projects are to proceed.⁷
14. Planning Practice Guidance acknowledges the importance of increasing the amount of energy from renewable and low carbon technologies and confirms that the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively. It sets out a number of matters for consideration including:- agricultural land quality; visual impacts; effects on heritage assets; mitigation measures; and reversibility.⁸ Although the Council refers to the government's subsidy regime and the availability of higher levels of subsidy for building-mounted solar PV, this is not reflective of the government's solar policy, when read as a whole, in that large-scale ground-mounted deployment is not discounted.

Energy policy

15. The government's commitment to securing the provision of renewable energy generation is set out in a number of documents.⁹ Key messages include:- the government's legally binding targets to cut emissions by at least 80% by 2050; support for the solar PV sector; and the need to radically increase the generation of renewable electricity from 5.5% to more than 30% by 2030.¹⁰ The Promotion and the Use of Energy from Renewable Sources Regulations 2011 places a duty on the Secretary of State to ensure that energy production from renewable sources should be at least 15% in 2020.¹¹

Cheshire West & Chester Low Carbon and Renewable Energy Study (2012)

16. Local renewable energy targets (carried forward into the Local Plan) identify a projected installed capacity from solar PV of 11.1 MW by 2020 and 20.6 MW by 2030 (1.5 MW in 2009). Average energy consumption in the Borough is some 2.7 times greater per person than the energy consumption for the North West and the UK due, in part, to the level of industrial activity locally.¹²

⁵ Hereafter referred to as the Framework

⁶ With particular reference to paragraphs 14, 93, 97 & 98

⁷ With particular reference to paragraphs 79, 87, 88 & 91

⁸ With particular reference to paragraphs 001, 010 & 013 (including the speech by the Rt Hon Gregory Barker MP, to the solar PV industry on 25 April 2013)

⁹ Environmental Statement: paragraphs 4.2.1 – 4.2.25

¹⁰ Planning Supporting Statement: paragraphs 6.5.5 - 6.5.9

¹¹ SI(2011 No 243); Planning Supporting Statement: paragraph 6.6.1

¹² Planning Supporting Statement: paragraphs 6.7.1 – 6.7.4

Planning merits

The Green Belt

17. It is accepted that the proposal would be inappropriate development in the Green Belt which is, by definition, harmful; and the solar farm would result in some loss of openness and an encroachment into the countryside.¹³
18. It is to be noted that the reason for refusal relates specifically to the loss of openness. Although the Council's case raises encroachment into the countryside, the claim is not supported in any meaningful manner and runs contrary to the appellant's evidence flowing from the conclusions of the Landscape and Visual Impact Assessment.
19. However, the site is set against the M56 motorway which, in itself, materially lessens the sense of openness. The site is low lying and the development would be low in height. Existing screening, in combination with the motorway embankment, and surrounding flat topography would mean that views of the proposal from publicly accessible locations would be rare.
20. Openness embraces the concept of open and long distance views as well as the lack of built development. Representative viewpoints, in the Landscape and Visual Impact Assessment, illustrate that the proposal would be unlikely to be visible from most locations within the surrounding lowland plain and would not hide views of the landscape beyond it. From the elevated viewpoint of Helsby Hill, the development would not interrupt views of the landscape around and beyond the site and the ability to perceive the extent and openness of the Green Belt would not be affected.¹⁴ This analysis was accepted by the Council's Planning Officer and the weight ascribed to the loss of openness should be proportional.
21. Another significant factor would be the limited lifespan of the solar farm, up to 30 years, and, with the ability to remove the structures and to restore the land, the permanence of the Green Belt would be safeguarded.
22. Looking at the 5 purposes of Green Belts, the project would not result in urban sprawl, the merging of one town with another, impacts on historic towns or undermine urban regeneration. To the extent that the proposal would encroach into the countryside, the motorway and general absence of public views are relevant considerations resulting in a minor infringement of but one of the identified purposes of Green Belts.

Any other harm

23. Given the inherent characteristics of the site and the proposed development, and the intention to supplement existing hedgerows as necessary, the solar farm would not result in any significant visual impacts beyond the site boundary. This is confirmed in the Officer Committee Report.¹⁵ There would be no conflict with Policy ENV 2.

¹³ Planning Appeal Statement: section 6.3

¹⁴ Environmental Statement: paragraph 6.12.10 & Figures 6.5 – 6.16

¹⁵ Environmental Statement: Chapter 6; Committee Report: paragraph 6.51

24. The site, grade 3b, is not best and most versatile agricultural land; it would continue to be used for grazing with the development in place; and it would represent a form of farm diversification.¹⁶
25. The proposal would retain existing hedgerows and trees across the site; and, following construction, the land would be managed as permanent grassland, including areas sown with wildflowers (as ecological enhancement). No significant impacts on ecological receptors are predicted; in some instances there would be positive benefits; and the scheme has not been subject to objection by Natural England or the authority's Biodiversity Officer. The proposal would accord with Policies ENV 4, ENV 27 and ENV 28.¹⁷
26. The panels would face away from the motorway and would be unlikely to cause driver distraction. The development would accord with Policy STRAT 10.¹⁸
27. In terms of heritage assets, a slight adverse impact would occur on the setting of Hapsford Hall (Grade II Listed Building); but this has been agreed to be insufficient to be classed as even less than substantial harm. Historic England has raised no objections in relation to the Elton Scheduled Monument or on the Promontory Fort Scheduled Monument. There would be no conflict with Policies ENV 31, ENV 33 and ENV 34.¹⁹
28. The site is in Flood Zone 1 with no obstacle to development; no objections were raised by the Environment Agency; and Policy ENV 1 would be met.²⁰
29. The nearest dwellings are approximately 350 metres from the proposed development; potential noise impacts during the construction phase could be mitigated by planning conditions; visual effects are not anticipated; the Council's Environmental Protection Officer has raised no objections; and the proposal would accord with Policy SOC 5.²¹
30. The overall conclusion is that there would be no other harm. This is supported by the absence of any objections from statutory consultees.
31. In response to the representations made by Dunham on the Hill and Hapsford Parish Council, the land is not best and most versatile; agricultural activity can continue; financial matters are not a material planning consideration; the current tenant farmer has not objected; energy predictions are specific to the appeal site; subsidy has to be considered in addressing climate change; it cannot be assumed that all roofs are capable of hosting solar panels (e.g. structural, orientation, service infrastructure, ventilation, lighting, ownership, tenure and grid constraints); and the letter from Rt Hon Gregory Barker MP clearly states that there is still a place for larger scale field based solar in the UK's energy mix.²²

¹⁶ Environmental Statement: Chapter 7

¹⁷ Environmental Statement: Chapter 8; Committee Report: paragraphs 6.54 – 6.69

¹⁸ Environmental Statement: Chapter 10; Committee Report: paragraphs 6.40 – 6.46

¹⁹ Environmental Statement: Chapter 11; Committee Report: paragraphs 6.95 – 6.99

²⁰ Flood Risk Assessment: Annex 2; Committee Report: paragraphs 6.84 – 6.87

²¹ Committee Report: paragraphs 6.88 – 6.94

²² Letter from Wardell Armstrong dated 22 September 2015

Appeal decisions

32. A number of solar farms have been approved on appeal in Green Belt locations. Very special circumstances have included:- the wider environmental benefits associated with increased production of energy from renewable sources; well-contained and well-screened sites; temporary nature of the development; continuing agricultural use and sustainability; farm diversification and viability and stability of rural businesses; biodiversity enhancements; and proximity to grid connection.²³

Benefits and balance

33. The Officer Report came to the conclusion that very special circumstances had been demonstrated and that the proposal was in accordance with Policy STRAT 9 and also with the Framework. In this regard, significant weight was given to the harm to the Green Belt; significant weight was also granted to the benefits of renewable energy; and, in the absence of any other harm, the balance tipped in favour of the proposal.²⁴
34. The very special circumstances include the sizeable renewable energy generation (it is wrong for the local planning authority to assert that the proposal would represent a small contribution) which would add to the security of energy supply against the background of the UK's statutory obligations, Energy Policy, the Framework and related guidance, the Development Plan and also in local targets.²⁵
35. The social and economic benefits of addressing climate change would include:- support for farm diversification and extra revenue for the farm whilst permitting continued agricultural activity; the supply of jobs through the construction process and the procurement of local goods and services. The appellant has been successful in securing local labour for other projects such as Frodsham Wind Farm and Scout Moor Wind Farm.²⁶
36. In terms of biodiversity improvements, an ecological management regime would be implemented with regard to hedgerows and species rich and wild flower grasslands to support local habitats and species. The net biodiversity benefit should be given positive weight.
37. It is relevant to note that an alternative site assessment did not identify a better site. Again, this merits positive weight. Although the local planning authority has subsequently questioned aspects of the alternative site assessment, this runs counter to its original position. Moreover, the introduction of potential new alternatives late in the process has not been considered; other than to say that the use of land at Ince Power Station would remove an employment opportunity when job creation is a fundamental objective.
38. The development would be temporary and fully restored to crop land after decommissioning. Although the Council, by reference to extracts from appeal decisions, argues that a lifespan of 25 or 30 years is not temporary, there are numerous examples which accept the temporary nature of solar farms.

²³ Planning Supporting Statement: paragraphs 7.3.1 – 7.3.20

²⁴ Committee Report: paragraphs 7.1 – 7.11

²⁵ Planning Appeal Statement: section 6.7

²⁶ Planning Appeal Statement: section 6.7 & Annex 3

39. With regard to the Council's case, there is a clear misunderstanding on the application of Green Belt policy in that it is incorrect to judge the merits of each benefit, one by one, as a very special circumstance. The correct test is whether all of the potential benefits, in combination, outweigh the potential harm. If they do, compelling special circumstances exist.
40. In addition, the Council has relied on selective extracts from a number of appeal decisions where the case was dismissed. These attract limited weight because each case must be taken on its own merits.
41. However, once the full reasons for dismissal are considered alongside proposals which were allowed in the Green Belt, a clear pattern emerges:- inappropriate development within the Green Belt is not reason enough to refuse a solar farm. This is because the benefits of these schemes counter the harm caused via their inappropriate presence. A robust case for refusal is formed when there will be other significant harm (such as impacts on heritage or best and most versatile agricultural land) as well as the inappropriate development within the Green Belt.²⁷
42. In the absence of other harm, the weight ascribed to the benefits of renewable energy combined with other site specific benefits (such as ecology or employment), result in the planning balance being tipped towards the appeal being allowed.

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The Case for Cheshire West and Chester Council

Planning policy and guidance

43. The site lies in the North Cheshire Green Belt to which Policy STRAT 9 applies. Its explanatory text confirms that the construction of new buildings within the Green Belt is considered inappropriate with exceptions identified in the Framework.
44. The Framework itself confirms that the government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open with the essential characteristics of Green Belts being their openness and their permanence. One of the purposes of Green Belts is to assist in safeguarding the countryside from encroachment.²⁸
45. Although Planning Practice Guidance confirms that the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively, the government's solar PV strategy underlines the importance of focusing growth on domestic and commercial roof space and previously developed land. The speech by the Rt Hon Gregory Barker MP and the later Written Ministerial Statement, outlining the importance of focusing the growth of solar PV in such locations, reinforced this stance.²⁹

²⁷ Response to the case made by Cheshire West and Chester Council: pages 8 - 12

²⁸ With particular reference to paragraphs 79, 87, 88 & 91

²⁹ With particular reference to paragraph 013; Planning Update: Written Statement – HCWS488 Solar energy: Protecting the local and global environment

46. In terms of local guidance, there is nothing specific on ground-mounted solar arrays. However, the Cheshire West & Chester Low Carbon and Renewable Energy Study (2012) indicates the deployable potential of 11.1MW (installed capacity) for solar PV in the Borough, by 2020, which would amount to 0.038% of the Borough's energy consumption at that date. The proposed development would make a proportionally small contribution towards overall energy requirements.

Planning merits

The Green Belt

47. There is no dispute that the proposal would be inappropriate development in the Green Belt. The Officer Report confirms that the proposal would impact on the openness of the site and would be encroachment into the countryside.³⁰
48. Support is to be found in an appeal decision (Eashing Farm, Godalming) which, whilst accepting the limited height of solar panels and the well screened nature of the site, stated:- *'The concept of openness does not relate directly to visibility or visual harm but to lack of development. The solar park and associated works would therefore significantly reduce the openness of the Green Belt'*³¹
49. Similarly, at Butchers Lane, Aughton, the Inspector expressed the view:- *'Openness is an essential characteristic of the Green Belt openness is, in my view, about the absence of buildings or built form'*³²
50. Overall, the proposal would cause significant harm to the openness of the Green Belt.
51. The solar farm would also conflict with one of the 5 purposes of Green Belts in that it would not assist in safeguarding the countryside from encroachment. The scheme would have a footprint of some 7.7 hectares, up to 20,000 panels, and related infrastructure (inverters, substation, fencing and security cameras) which would represent a significant encroachment into the countryside.
52. Again, support is drawn from an appeal decision, at Tithe Barn Lane, Chorley:- *'..... solar panels are engineered products that have an industrial appearance. They are not, inherently, products that fit into a countryside environment. On the scale proposed the solar panel, if installed on the site and together with the industrial type fences that would surround them, would result in significant encroachment into the countryside'*³³ Similar views were expressed by the Inspector in the Butchers Lane report.³⁴ Moreover, the appellant, in its statement, acknowledges that some encroachment would occur.³⁵

Any other harm

53. The local planning authority accepts that the proposal would not result in significant other harm.³⁶

³⁰ Report to Strategic Planning Committee: paragraph 6.12

³¹ Appeal Statement: Appendix 1 (APP/Y3615/A/14/2212923 – paragraph 5)

³² Appeal Statement: Appendix 4 (APP/P2365/W/15/3002667 – IR82)

³³ Appeal Statement: Appendix 2 (APP/D2320/A/14/2222025 – paragraph 6)

³⁴ Appeal Statement: Appendix 4 (APP/P2365/W/15/3002667 – IR83)

³⁵ Appellant's Planning Appeal Statement: section 6.5 point 3

³⁶ Report to Strategic Planning Committee: paragraphs 6.40 – 6.99

Benefits and balance

54. The prime benefit would be renewable energy generation. However, whilst 5MW installed capacity would be a substantial benefit, the contribution to the Borough's energy requirements would be but a small fraction. Reference to the Eashing Farm decision indicates the government's position that the need for renewable energy does not automatically override environmental protection.³⁷
55. Some weight should be given to farm diversification and the employment benefits. However, these should not be regarded to be very special circumstances.³⁸
56. The biodiversity improvements merit some weight but do not represent very special circumstances.³⁹ In this regard, the Framework indicates that the planning system should contribute to and enhance the natural and environment, including net gains in biodiversity where possible; and Inspectors have not found such factors to amount to significant benefits.⁴⁰
57. With regard to the alternative site assessment, it is considered that further work is required to demonstrate that the sites are not suitable. For 2 of the sites, the potential for unacceptable impacts is not certain; Ince Power Station could be suitable for a solar array, albeit smaller than the appeal proposal; and members were not convinced that other more appropriate schemes, including roof mounted installations on large employment premises, could not deliver similar benefits without detriment to the Green Belt.⁴¹
58. Although potential constraints on the delivery of large scale solar PV is capable of adding weight to the consideration of a site within the Green Belt, the matter has not been fully explored and the lack of an alternative has not been established as a very special circumstance.
59. Further, the temporary nature of the development is not a very special circumstance as is evident from a number of appeal decisions.⁴² The loss of openness, and encroachment into the countryside, would be for a substantial period of 30 years.
60. Overall, very special circumstances have not been demonstrated and the proposal would conflict with Policy STRAT 9 and also with the Framework.
61. If the Secretary of State decides to allow the appeal, the Council invites consideration to be given to the imposition of conditions.⁴³

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³⁷ Appeal Statement: Appendix 1 (APP/Y3615/A/14/2212923 – paragraphs 15 - 17)

³⁸ Report to Strategic Planning Committee: paragraphs 6.76 & 6.101; Appeal Statement: Appendix 1 (APP/Y3615/A/14/2212923 – paragraph 12)

³⁹ Report to Strategic Planning Committee: paragraph 6.33

⁴⁰ Appeal Statement: Appendix 1 (APP/Y3615/A/14/2212923 – paragraph 12) & Appendix 2 (APP/D2320/A/14/2222025 – paragraph 24)

⁴¹ Appeal Statement paragraph 4.28

⁴² Report to Strategic Planning Committee: paragraph 6.34; Appeal Statement: Appendix 2 (APP/D2320/A/14/2222025 – paragraph 25) & Appendix 3 (APP/J3530/A/13/2193911 paragraphs 11 & 17)

⁴³ Appeal Statement: Suggested Conditions

Written Representations at application stage

Elton Parish Council

62. The majority of the scheme would be in Elton parish, not Hapsford. Whilst acknowledging the benefits of renewable energy production, the proposal would result in a substantial visual impact on good quality farmland within the Green Belt. Roof locations are available nearby. If the scheme is approved, a Community Benefit Fund should be secured by planning obligation.

Dunham on the Hill and Hapsford Parish Council

63. Objections include:-
- (a) such proposals are driven by financial considerations rather than green credentials and rely on subsidy which drives up the cost of electricity;
 - (b) farmland should be kept for growing food; the appeal site is highly fertile; and tenant farmers who have worked the land are being given notice to leave;
 - (c) rooftops should be favoured; use should be made of large industrial or retail premises; and Peel should use its extensive portfolio of buildings;
 - (d) Cheshire, due to its latitude, is not well-placed for solar radiation; performance is poor in winter months; and solar panels are of no use at night;
 - (e) the site is within the Green Belt; and it provides wildlife and flora habitat; and
 - (f) the proposal would provide little if any economic benefit to the community, no social benefit as it is opposed by the community; and it would fail to meet broader environmental tests as defined by the Rt Hon Gregory Barker MP.

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Inspector's Conclusions and Recommendation

64. The references in brackets [x'] are to the principal paragraphs in my report of the cases from where my conclusions are drawn.

The main consideration

65. The main parties have agreed that the proposal would represent inappropriate development in the Green Belt by reference to paragraph 91 of the Framework. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. However, such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. [13, 17, 43, 47]
66. It is also common ground that the proposal would not give rise to any material adverse impacts in relation to landscape; heritage assets; residential amenity; loss of best and most versatile agricultural land; highways; flooding; or biodiversity. I concur with that position having had particular regard to section 66(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 and the parallel guidance on the protection of heritage assets afforded by the Framework. [23 – 30, 53]
67. On a further point, although the Council's reason for refusal cites 'loss of openness' and remains silent on 'encroachment', the Officer Report refers to 'encroachment' on more than one occasion; and the appellant's Planning Appeal Statement, in any event, admits that the project would represent an encroachment into the countryside. [18, 22, 47]
68. Given that the Framework confirms that 'the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open' and, as the Framework is to be read as a whole, the 5 purposes of Green Belt (with particular reference in this case to 'safeguarding the countryside from encroachment') cannot be ignored. [22, 44, 51, 52]
69. Against this background, the main consideration is the effect of the proposal on the openness and purposes of the Green Belt and whether the harm by reason of inappropriateness would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development. [13]

The Green Belt

70. The Green Belt within the vicinity of the appeal site already contains built development with the motorway corridor having a particularly significant effect on openness. However, there is nothing to suggest that the Green Belt is less sensitive in such locations or has greater scope to accommodate inappropriate development which could itself add to loss of openness. [9, 10, 19]
71. It is true that the site is particularly well-screened by established topography and hedgerows and that the proposed development need not be visible from nearby surrounding land. However, the analysis undertaken by the appellant, and endorsed by the local planning authority, conflates the concept of openness (i.e. whether the land is open or whether it is developed) with that of visual impact (i.e. the ability, or otherwise, to see the development in question). In this regard, loss of openness, with related encroachment into the countryside arising from loss of openness, would occur over an extensive area of some 7.7 hectares. [20, 48 - 52]

72. It is also claimed that openness embraces the notion of open and long distance views as well as the lack of built development, with particular reference to views from Helsby Hill (Viewpoint 8 Photomontage). This approach, again, ignores the conceptual distinction between openness and visual impact. For my part, from this vantage, I was able to readily identify the appeal site in the wider landscape (with greater clarity than that conveyed by the photomontage). *[20]*
73. There is no doubt that the proposed solar farm would be visible as a 'man-made' installation with a block of countryside undergoing a consequential loss of openness. That loss of openness would not be made any less by the ability to see around and beyond the development. Moreover, from this location, the proposed solar farm would have a perceivable visual impact on the appearance of the countryside; and the proposed development, by reference to loss of openness and visual impact would run counter to the aim of safeguarding the countryside from encroachment.

Benefits

74. The parties have referred to a number of appeal decisions (or extracts). However, each of these is case specific in terms of site location; the size of the development; the physical characteristics of the site; and the benefits likely to arise. Given that the exercise is one of planning judgement, related to the case under consideration, there is nothing to suggest that any of the submitted examples are capable of direct comparison. *[32, 40, 41, 48, 49, 52]*
75. The primary benefit of the proposed development would be its valuable contribution in generating renewable energy and reducing greenhouse gas emissions. Whilst much is made of the encouragement given to rooftop installations, government policy does not seek to preclude greenfield locations (where the impacts are or can be made acceptable); and no compelling evidence has been submitted to undermine the veracity of the appellant's identification and consideration of potential alternative sites. Whilst the Council has sought to belittle the generation potential, in light of the Borough's overall energy needs, the proposal finds clear support by reference to paragraph 98 of the Framework. Significant weight attaches. *[6, 7, 12, 14 – 16, 34, 37, 45, 46, 54, 57, 58]*
76. In terms of the claimed social and economic benefits, there is no indication of how the regular revenue stream arising from the proposal would play in farm diversification and how it might benefit a particular agricultural enterprise or the rural economy more generally. The employment provided during construction would be transient in duration; ongoing employment in the maintenance and upkeep of solar farms is generally limited; and there is no indication of the likelihood, or otherwise, of the extent to which local goods and services might be procured. Moreover, despite the appellant's use of local labour in other construction projects, there is no certainty that this would be the outcome here. Overall, the benefits prayed in aid lack quantification and certainty. Very little weight is to be attributed. *[35, 55]*
77. The proposed ecological management regime, and the continued use of the land for grazing, reflects common practice in the development of solar farms. There is nothing to suggest that the measures proposed would materially exceed the normal expectations of the development management regime, through Policy ENV 4, and the Framework's call for the planning system to

contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible. Limited weight applies. [11(f), 36, 56]

78. The proposed installation, described by the appellant as 'temporary', is intended to have a lifespan of up to 30 years. Although the proposal would be fully reversible at the end of that period, the development would, nonetheless, have a material impact on the openness of the Green Belt over a considerable period of years and the harm to the Green Belt would still be substantial. This would be in direct conflict with the aim of Green Belt policy to keep land permanently open. As such no weight is merited. [21, 38, 59]

Conditions

79. None of the conditions sought by the Council, in the event of the appeal being allowed, have been opposed by the appellant. [61] The conditions are considered in the order set out in the Council's schedule with any necessary revisions set out in full in Annex A to this report.
80. Condition 1 specifies the period within which the development is to be commenced. The listing of approved plans, in condition 2, is required to provide certainty; but some of the drawings and particulars (e.g. Energy opportunity map for Cheshire West and Chester) do not fall into this category and should be omitted.
81. Condition 3 defines the lifetime of the permission, with provision for earlier removal in the event of the cessation of electricity generation for a specified period, for certainty. However, greater precision would be achieved by imposing separate conditions covering the two distinct elements. Condition 4 would secure the removal of the development at the end of the specified period in accordance with Policy ENV 7.
82. The solar panels should be restricted to the height for which permission was sought, on visual grounds, through condition 5; and the fixing of the supportive frameworks should be specified in condition 6 to ensure ease of reversibility. Final details of the other elements of the installation should be agreed for completeness, visual amenity and highway safety as set out in conditions 7 and 8.
83. Preclusion of any form of access, either permanent or temporary, to the motorway, condition 9, is unnecessary as such works would require planning permission. Condition 10, relating to protecting motorway drainage systems, is superfluous in light of the drainage proposals set out in the Flood Risk Assessment.
84. The maintenance of existing boundaries and supplementary planting, conditions 11 – 13 and 16, is important so as to minimise the physical impact of the proposed development; and it is important, with reversibility in mind, to ensure that the land is managed appropriately as required by condition 14.
85. The construction period is likely to generate significant traffic movements which should be managed by means of a Construction Traffic and Management Plan as set out in condition 15. Safeguarding measures, with particular reference to badgers, amphibians, bats and breeding birds, and habitat creation and management, conditions 17 -21, would minimise any potential adverse impacts.

86. For ease of reference, following the rewording of condition 2; the omission of conditions 9 and 10; the redrafting of conditions 3 and 17 into 2 distinct conditions; and the amendment of other conditions for clarity and precision (e.g. omission of the phrase '*to the satisfaction of the local planning authority*') a revised schedule of conditions is set out in Appendix A for consideration should the Secretary of State decide to allow the appeal.

The planning balance

87. The final balance consists of applying substantial weight to the harm to the Green Belt by virtue of inappropriateness; the significant loss of openness having regard to the scale of the proposed development; and the very marked encroachment into the countryside by reason of loss of openness and, to a very limited extent, visual impact. The principle of renewable energy generation attracts significant weight; but the alleged social, economic and biodiversity benefits carry very little weight.
88. Although it is suggested that other significant harm must be added to Green Belt harm in order to outweigh the benefits of the proposal, the matter is one of planning judgement, and it is to be noted that I have not endorsed the level of benefits claimed by the appellant. Moreover, having established harm to the Green Belt, the material test is whether there are 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. [42]
89. Whilst the harm in this case would be Green Belt specific, such harm merits substantial weight. The totality of the benefits, with particular reference to renewable energy generation, attracts significant weight. Nonetheless, the factors advanced do not clearly outweigh the harm identified and the very special circumstances necessary to justify the development do not exist. The proposal would be in conflict with the development plan (with particular reference to Policies STRAT 1, STRAT 9 and ENV 7) and also at variance with the Framework when read as a whole. [11, 39, 60]

Recommendation

90. I recommend that the appeal be dismissed. However, in the event that the Secretary of State disagrees and allows the appeal, I recommend that the conditions at Annex A be applied.

David MH Rose

Inspector

Annex A: Schedule of conditions recommended by the Inspector in the event of the Secretary of State deciding to allow the appeal

Schedule of Planning Conditions (1 – 21)

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing Number: NT11681/Fig13, September 2015: Figure 13 Site Layout;
 - Drawing Number: NT11681/Fig1.1, April 2015: Figure 1.1 Site Location;
 - Drawing Number: NT11681/ Fig.1.2, April 2015: Figure 1.2 Planning Application Boundary;
 - Drawing Number: Figure 3.2, 17/04/2015, Typical Solar Array Detail, Hapsford Solar Farm;
 - Drawing Number: Figure 3.3, 01/04/2015, Transformer/Inverter Station Hapsford Solar Farm;
 - Drawing Number: Figure 3.4, 01/04/2015, Typical Cable Trenching Hapsford Solar Farm;
 - Drawing Number: Figure 3.5, 01/04/2015, Typical Security Camera, Hapsford Solar Farm;
 - Drawing Number: Figure 3.6, 01/04/2015, On-site Track Design, Hapsford Solar Farm;
 - Drawing Number: NT11681/Fig 12.1, April 2015, Figure 12.1 Mitigation Measures; and
 - Flood Risk Assessment, by Wardell Armstrong, April 2015.
3. No generation of electricity hereby permitted shall take place after 30 years from the date on which electricity is first transmitted from the site. Notification of first transmission shall be given (in writing to the local planning authority) within a period of 7 days following the date on which electricity is first transmitted from the site.
4. If, before the end of the 30 years period referred to in condition 3 above, electricity generation ceases for a continuous period of 6 months, notification of cessation shall be given (in writing to the local planning authority) within a period of 7 days following the 6 month period.
5. Within a period of 12 months, following the cessation of electricity generation as defined by either condition 3 or condition 4 above, 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, cabling, 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 and restored in accordance with the approved DMS.
6. No part of any solar panel or associated framing structure shall be higher than 2.25 metres above existing ground levels.

7. The supportive framework for the solar arrays shall be fixed in place using either a 'ground screw' or pile method.
8. Prior to the commencement of development, full details, including the design, materials and colour of the inverter/ transformer buildings, substation, fencing, security cameras and lighting shall be submitted to the local planning authority for approval and thereafter, following written approval, shall be implemented and retained in accordance with the approved details.
9. Prior to the commencement of development, details of the works within the highway, to provide for a suitable vehicle access from the A5117, shall be submitted to, and approved in writing by, the local planning authority and the approved works shall be completed and available for use prior to work commencing on site.
10. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme. If within a period of 5 years from the date of initial planting, any trees or shrubs planted in accordance with the approved landscaping works are removed, die, become diseased or seriously damaged then replacement trees or shrubs shall be planted in the next planting season with others of similar size and species, unless the local planning authority gives its written approval to any variation. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be included. The landscape management plan shall be carried out as approved.
11. The perimeter hedge of the site along the M56 and A5117 shall be maintained at a height of no less than 3 metres.
12. All existing trees and hedgerows, as shown on Figure 12.1 Mitigation Measures, shall be protected in accordance with the approved plans. The erection of fencing for the protection of retained trees and hedgerows shall be undertaken in accordance with the approved plans before any equipment, plant, machinery or materials are brought onto the application site for the purposes of implementing the development hereby approved. Such fencing shall be maintained in situ for the duration of the construction works. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within the areas protected by the fencing shall not be altered in any way without the prior written agreement of the local planning authority.
13. Prior to the commencement of development full details of an Agricultural Land Management Plan, for the duration of the development, shall be submitted to the local planning authority for approval and thereafter, following approval, it shall be implemented and maintained in accordance with the approved details.
14. Prior to the commencement of development a Construction Traffic and Management Plan shall be submitted to and approved in writing by the local planning authority. The approved Plan shall be adhered to throughout the

construction period unless otherwise agreed in writing by the local planning authority. The Plan shall provide for:

- (i) the parking of vehicles of site operatives and visitors;
 - (ii) storage of plant and materials used in constructing the development;
 - (iii) the erection and maintenance of security hoarding where appropriate;
 - (iv) wheel wash facilities where appropriate;
 - (v) measures to control the emission of dust, dirt, noise, vibration and light during construction; and
 - (vi) a scheme for recycling / disposing of waste resulting from construction works.
15. No retained tree / hedgerow, as shown on Figure 12.1 Mitigation Measures, shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner unless otherwise agreed in writing by the local planning authority. Any lopping or topping shall be carried out in accordance with British Standard BS3998 Tree work.
 16. Prior to the commencement of development, an updated Badger Survey shall be undertaken in accordance with a scheme previously submitted to and approved in writing by the local planning authority.
 17. Prior to the commencement of development, and following the survey works referred to in condition 16 above, where badgers/badger setts have been identified, a mitigation strategy shall be submitted to and approved in writing by the local planning authority and thereafter implemented in accordance with the agreed scheme.
 18. Prior to the commencement of development a detailed statement of Reasonable Avoidance Measures for amphibians during the construction of the development shall be submitted to and approved in writing by the local planning authority and implemented in accordance with the approved details.
 19. Prior to the commencement of development a lighting plan to avoid bat foraging/commuting lines shall be submitted to and approved in writing by the local planning authority and shall, thereafter, be implemented in accordance with the approved details.
 20. No vegetation removal shall be undertaken during the bird breeding season (1st March to 31st August inclusive) unless otherwise approved in writing by the local planning authority following a detailed inspection of the site by an appropriately experienced ecologist.
 21. Prior to the commencement of development, a 30 year Habitat Creation and Management Plan based on the ecology and landscape features in the Environmental Statement shall be submitted to and approved in writing by the local planning authority. The Plan shall in particular refer to a planting plan, barn owl box locations, areas of enhanced hedgerow and species mixes along with a timescale for implementation. The approved Plan shall be reviewed every 3 years through written agreement with the local planning authority, and continue for the lifetime of the development.

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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).

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.