

Our ref: NP12716

Your ref: S62A/22/0006

Date: 09 September 2022

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FAO Ms Leanne Palmer
Inquiries and Major Casework
The Planning Inspectorate
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By email: section62a@planninginspectorate.gov.uk

Dear Leanne,

Town and Country Planning Act 1990 (Section 62A Applications) Development of a ground mounted solar farm with a generation capacity of up to 49.99MW, together with associated infrastructure and landscaping
At

Berden Hall Farm, Ginns Road, Berden

RPS Group have been appointed by Statera Energy to undertake an environmental impact assessment and submit an Environmental Statement (ES) in support of Statera Energy's current planning application for the above proposed scheme. We are in receipt of your letter (by email) of 7th September 2022 setting out the findings of the interim review by PINS' appointed person.

I shall respond to each of the comments in the same order as your letter.

1. Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

It is anticipated that the ES undertaken in accordance with the above regulations will be formally submitted in approximately 8 weeks, nominally on Monday 7th November 2022.

2. Ecology

- i. The potential impact on priority species or other species referred to in the consultation responses will be assessed in the ES. No further ecological survey work is anticipated to be undertaken in 2022, however pre-construction ecological verification inspections will be undertaken (should planning consent be granted) to confirm our understanding of ecological assets potential affected by the proposed solar farm.
- ii. Details and efficacy of any related ecological mitigation proposals will be included in the ES. Where deemed necessary they will be secured by a planning condition formulated in liaison with Essex County Council Place Services (Ecology) and/or (as applicable) Natural England.
- iii. No effects are anticipated on European sites, however should the environmental assessment identify any potential effects they will be assessed in accordance with the relevant legislation. The Biodiversity Net Gain (BNG) statement will be included in the ES and will be based on the data set out in the ES.

3. Heritage

- i. The potential impact of the scheme on the historic environment will be addressed in the ES, following liaison with both Historic England and Essex County Council's Built Heritage advisor(s).

- ii. Details and efficacy of any mitigation proposal(s) to deal with effects on heritage assets will be included in the ES. Where deemed necessary they will be secured by one or more planning condition(s) formulated in liaison with Historic England and Essex County Council's Built Heritage advisor(s).
- iii. The balance of public benefit against harm will be considered in the ES.

4. Planning obligation / planning condition matters

The National Planning Practice Guidance (NPPG) states that "Planning obligations... should only be used where it is not possible to address unacceptable impacts through a planning condition". Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) also limits the use of planning obligations to circumstances where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

The securing of a landscape management / maintenance plan and decommissioning of the site are capable of being (and are routinely) dealt with via planning conditions rather than planning obligations.

Taking each in turn:

i) A Landscape Management / Maintenance Plan has been submitted as part of the extant application and will be incorporated as an appendix to the ES. This can be further developed in liaison with Uttlesford Council and compliance with the plan can be secured via an appropriately worded condition to a granted planning permission.

ii) Paragraph 27 of the UK Government's planning practice guidance for renewable and low carbon energy states that "solar farms are normally temporary structures and planning conditions can be used to ensure that installations are removed when no longer in use and the land is restored to its previous use". It is, therefore, accepted practice to secure the decommissioning of solar panels via condition. There is no policy basis to require an applicant to enter into planning obligation and/or decommissioning bond with a local planning authority. This has been acknowledged in the Planning Inspectorate's recent S62A decision to grant consent for another solar scheme in Uttlesford's administrative area¹. Further, such arrangements are not required for either of the much larger nationally significant solar schemes consented via the development consent order regime (Little Crow, 150MW; or Cleve Hill, 350MW). Decommissioning of these sites is secured via requirements (the DCO equivalent of conditions) and there is no obligation within the DCOs to secure a decommissioning bond. It therefore cannot be said that requiring a decommissioning S106/bond for a solar site of fewer than 50MW is necessary or fairly and reasonably related in scale and kind to the development. Such an S106 for this development would not meet the statutory test of CIL regulation 122 and would, therefore, be unlawful.

The applicant would be happy to discuss the detail of condition wording to secure both landscaping and decommissioning with both PINS and the local planning authority.

Yours sincerely,

for RPS Consulting Services Ltd

Peter Ireland
Senior Director

[Redacted signature block]

cc: Kirsty Cassie, Statera Energy
Oliver Troup, Statera Energy

¹ S62A/22/0000004, 24 August 2022 – where at paragraph 73 of the decision letter, the inspector declined to require an S106, noting that "there is no guidance that requires a bond or completion of a legal agreement regarding restoration" and that it is "by no means a typical approach to such installations at this time."