



## **APPENDIX 6**

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Legal Opinion of Meyrick Lewis (Barrister)

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Objection to development at  
Maggotts End, Manuden  
(Pelham Spring Solar Farm)

PINS Reference: S62A/22/0011

## BATTLES SOLAR FARM

LAND NEAR PELHAM SUBSTATION MAGGOTS END ROAD MANUDEN ESSEX

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### ADVICE

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#### **SUMMARY**

1. I am asked to advise concerning an application made to Uttlesford District Council by Low Carbon Solar Park 6 Ltd for planning permission to construct a solar “farm” on land on land adjacent to Battles Hall, Manuden, Essex. The application site, which is in two ownerships, extends to 79 ha (196 acres) of agricultural land. The applicant maintains that the proposed solar farm would have a generation capacity of 49.9MW. To accompany their application, Low Carbon have submitted an Agricultural Land Classification report which concludes that over 81% of the Battles site consists of either Grade 2 or Grade 3a agricultural land (although I understand that there is a discrepancy between the area surveyed for the land classification exercise and the application site).
2. In the Planning Statement submitted in relation to the Battles Site, Low Carbon assert that: *“In identifying the site, the applicant has undertaken a detailed methodical site selection exercise. This exercise has involved the careful consideration of several important design criteria, including technical feasibility, environmental and planning constraints, and land availability”*. Exactly the same text appears in the Planning Statements submitted in connection with the Cutlers Green application (see paras 4.19 to 4.22) and Long Meadow (Cole End) application (see paras 4.28 to 4.31).
3. The results of this detailed site selection test in relation to the Battles Site have not been submitted as part of the planning application.
4. Uttlesford’s Planning Policy ENV5 (Protection of Agricultural Land) stipulates that:

“Development of the best and most versatile agricultural land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites or within existing development limits. Where development of agricultural land is required, developers should seek to use areas of poorer quality

except where other sustainability considerations suggest otherwise” (emphasis supplied).

5. This policy is consistent with the provisions of paragraph 175 of the NPPF which state that “Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework”<sup>58</sup>. Footnote 58 notes that “Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality”.
6. Paragraph 13 of the Planning Practice Guidance (Renewable and low carbon energy) (“PPG”) also notes that “particular factors a local planning authority will need to consider include:
  - encouraging the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value;
  - where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays”.
7. The PPG also makes reference to a written ministerial statement (“WMS”) on solar energy: protecting the local and global environment made by Eric Pickles on 25 March 2015. The WMS includes a statement to the effect that any proposal for a solar farm involving the best and most versatile agricultural land must to be justified by “the most compelling evidence”.
8. The most recent decision by the Secretary of State in relation to a solar farm proposal relates to a site at Cleve Hill in Kent. The development constituted a Nationally Significant Infrastructure Project by virtue of its size (350 MW). Whilst the chosen site was determined to be Grade 3b land (and therefore not BMV), the approach taken to site selection and the sequential test is of interest and relevance. The applicant’s “Sequential Test Analysis” dated November 2018 is set out in Technical Appendix A4.1 to the Environmental Statement which accompanied the DCO application. In this document, the developer comments (at paragraph 25):

“The term “sequential test” has been used as this reflects the terminology used by the Planning Inspector in the appeal decision relating to the application for a 38.43 hectare solar PV array at Valley Farm, Wherstead, Ipswich, Suffolk (appeal reference APP/D3505/A/13/2204826)”.

9. Whilst neither the NPPF nor the NPPG use the term “sequential test” the logic of the WMS and the general law on consideration of alternatives is that a “worst first” approach as reflected in footnote 58 of the NPPF means that alternatives should of necessity be addressed on a sequential basis. This seems to me to be an appropriate reflection of the general principle of planning law that proposals which have the potential to cause environmental damage should be approached on a “worst first” or “sequential” basis, having regard to the availability of alternative sites, see e.g. Trusthouse Forte Hotels Ltd v. Secretary of State (1987) 53 P & CR 293 at 299 per Simon Brown J:

“Where... there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it”.

10. Regardless of whether applicants should be required to undertake a formal “sequential assessment”, the requirements of the NPPF and the NPPG remain. It follows that applicants are still required to demonstrate that:

- the use of agricultural land is necessary; and
- poorer quality land has been used in preference to higher quality land.

11. This conclusion is supported by the comments of the Inspector in the appeal in relation to the site at Bunkers Hill, Fraddam, Cornwall , decision letter dated 6 July 2017 (PINS ref: 3140774).

12. As noted in the Valley Farm decision, the definition of a reasonable search area is a matter of judgement. However, various of the appeal decisions provide guidance as to the

approach that is commonly adopted and the extent to which that approach is considered to be adequate.

13. Past appeal decisions also suggest that the extent to which it is appropriate to limit the search to the area of the relevant local authority may depend on the location of the proposed site. For example, in the successful appeal relating to Land off Cold Harbour Lane, Bobbing, Sittingbourne (PINS ref. 3017938), the assessment areas included both Swale Borough Council's area and the area of Medway Council to the west. In the appeal relating to Land at Park Farm, Claverdon, Warwickshire (PINS ref. 3029788) the applicants undertook a search of sites in both Stratford and Warwick districts seemingly reflecting the fact that the appeal site was close to the border with Warwick.
14. An alternative approach is for applicants to conduct a search within a reasonable radius of the preferred site. For example, in the appeal relating to land at Walnut Cottages, Oil Mill Lane, Clyst St Mary (PINS ref. 3007994) the study area comprised an area of 30 miles from the appeal site (which the Inspector considered to be "a substantial geographical area" and "not an unreasonably constrained starting point").
15. These appeal decisions therefore provide authority for the proposition that potential sites for the solar farm development proposed at the Battles site should not be confined simply to the Uttlesford area, least all given the amount of generating capacity and potential in the area already.
16. The Valley Farm appeal indicates that consideration should be given to siting the solar farm on land in industrial areas including distribution and warehousing buildings and that former airfields should be considered. If the applicant has not in fact conducted such a "worst first" exercise, then they cannot say that that they are justified in developing a site in open countryside on BMV agricultural land and/or that there is the "most compelling evidence" for developing such land in the terms of the Written Ministerial Statement.
17. The second limb of the Cleve Hill "sequential test" requires developers to demonstrate that the site that has been selected is the poorest and/or among the poorest quality land available for the proposed development. In circumstances where the search area comprises Grade 3 land, a number of appeals suggest that the developer may need to discount the possibility of Grade 3b land. For example, in the Green Farm, Folly Road, Iron Acton appeal (PINS ref. 3004513) the Inspector commented that there was "Not sufficient evidence to rule out

the existence of alternative potentially developable greenfield sites of poorer agricultural quality (i.e. Grade 3b)". Also, in the Barn Farm, Stanford on Soar appeal (PINS ref. 3005788) the Inspector observed that "since the appeal site consists of 34% Grade 2 land and 66% Grade 3a land, it must follow that even if each of the alternative sites were 100% Grade 3a land, they would all consist of land of poorer agricultural quality than the current appeal site".

18. I note that alternative sites are frequently rejected by developers on the grounds of insufficient size. However, no consistent view on this point emerges from the appeal decisions and there are clear precedents to support the view that, in the absence of any proper justification or explanation, size is not a critical factor, see the Steyning (PINS ref. 2218035) and Clyst St Mary (PINS ref. 3007994) appeals.
19. As regards the point of connection, it may be that the availability of a connection is (in practical terms) a constraining factor in terms of the location of a solar farm. However, the appeal decisions in relation to Clyst St Mary (PINS ref. 3007994), Upton Warren (PINS ref. 3136031 & 3136033) and Codicote (PINS ref. 3131943) support the contention that a grid connection is not a fundamental factor for site selection.
20. I also note that there are examples of solar farms where the point of connection to a substation is quite some distance from the site. For example, a 38MW solar farm constructed by Low Carbon adjacent to the A11 outside Great Wilbraham, Cambridgeshire is connected to a substation in Cherry Hinton in Cambridge via a 10 km cable in the highway. I also note that in the appeal relating to Land at Rose and Crown Farm, Mill Road, Walpole St Andrew (PINS ref. 3001281), the appellant conducted a search within a 15 km radius of the proposed site, noting (at para 5.50 of its Revised Appeal Statement) that: "The viability of running a connection to a cable with capacity is dependent on the estimated output of the proposal/site size. Grid connections are a significant cost such projects have to finance and the length of the grid connection is determined by the size of the project – the larger the facility in terms of energy production, the longer the grid connection can be".
21. As regards the suggestion made by some developers that sites for consideration should be limited to those where there is a "willing landowner", I would observe that there is a danger that this sort of argument becomes a self-fulfilling prophecy, i.e. no one has come forward

so we cannot say a site is available. The Stanford on Soar (PINS ref. 3005788) and Clyst Mary (PINS ref. 3007994) decisions are relevant here. It is also notable that the developer of the Cleve Hill site comments in its Sequential Test Analysis: “It should be noted that the comparison between PDL areas assumes that a commercially viable arrangement for the use of the land could be secured by negotiation with the landowner(s) at each of them. In practice, this is unlikely to be the case. However, given that it is not reasonable to expect landowner negotiations to be carried out as part of a sequential test, the assumption is that the land is available for solar development at commercially viable rates”.

22. Lastly, I note that there is no consistent approach to “sifting” sites which are determined by developers to be potentially developable. However, as with the Valley Farm appeal, previous appeal decisions are relevant material considerations which a decision maker should have regard to unless there are reasons for distinguishing the previous decision of for not applying it in a given case. I note that in the successful appeal relating to Land west of Romsey Road (PINS ref 3010697) the Inspector accepted that it was legitimate for the appellant to discount sites based on their size, shape, flood risk, vehicular access and orientation, proximity to dwellings, proximity to public footpaths, proximity to sites of natural or heritage interest, and designated landscapes. In the context of having to provide “the most compelling evidence” it not unreasonable to expect Low Carbon to address the site suitability constraints referred to in, say, the Romsey appeal.

## **INTRODUCTION**

23. I am asked to advise “Stop Battles Solar Farm” concerning an application made to Uttlesford District Council by Low Carbon Solar Park 6 Ltd (a company owned by Low Carbon Group Ltd) for planning permission for the “construction and operation of a solar farm comprising ground mounted solar photovoltaic arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping” (ref. UTT/21/3356/FUL) on land near Pelham Substation, Maggots End Road, Manuden, Essex. I shall set out the background to the matter and then turn to the questions on which I am asked to advise.

## **BACKGROUND**

24. The proposed solar farm would have a generation capacity of 49.9MW. The application site, which is in two ownerships, extends to 79 ha (196 acres) of agricultural land.
25. As noted in the Planning Statement submitted by applicant, there are a number of Grade II listed buildings in close proximity to the site boundary (The Crump and former barn, Brick House, Rose Garth, Peyton Hall and barn and Battles Hall, together with further Grade II listed buildings at Battles Hall known as Cart Lodge and Dovecote). There are also two Scheduled Ancient Monuments nearby being a “Moated Site at Battles Manor” to the south of the application site and “The Crump”, a late Anglo Saxon to Norman period ringwork, to the north of the site boundary. The site, which is on a slope and crossed a number of footpaths, is adjacent to Battles Wood, an ancient woodland.
26. To accompany their application, Low Carbon have submitted an Agricultural Land Classification report. This concludes that 81% of the Battles site consists of either Grade 2 or Grade 3a agricultural land (although I understand that there is a discrepancy between the area surveyed for the land classification exercise and the application site).
27. If constructed, the solar farm will be connected via a cable to the National Grid substation at Stocking Pelham, which lies less than half a mile away to the west of the site. The substation straddles the boundary between Essex and Hertfordshire and is understood to be connected ultimately to the Sizewell B nuclear power plant on the Suffolk coast. Given the route of the cable and the location of the point of connection to the grid, the applicant has also submitted their application to East Herts Council (ref. 3/21/2781/FUL).
28. The application site is located near the western boundary of the Uttlesford district and close to the administrative areas of East Herts, North Herts and Epping Forrester District Councils.
29. The Uttlesford district is predominantly rural in nature and much of the land is classified as either Grade 2 or Grade 3 agricultural land. The current Uttlesford Local Plan (adopted 2005) notes that “over 80% of the District is classified Grade 2 by [MAFF]” and also that “there is some Grade 3a land”. There is very little brownfield land in the district, although Stansted Airport is within it. I note that the Local Plan is in the process of being replaced but preparations are at an early stage.



30. I understand that the Low Carbon Group Ltd is currently pursuing two further applications to construct solar farms in Uttlesford district as follows (i.e. in addition to the Battles site):

(1) a site at Cole End Farm Lane, Wimbish Essex (“Long Meadow Solar Farm” – ref. UTT/21/0688/FUL) consisting of 136 acres of agricultural land. The ALC survey concludes that the site is comprised of Grade 3b land. Low Carbon estimates that this site will generate approximately 30MW of renewable energy which will be sufficient to power over 9,090 homes. If approved for construction, the solar farm will connect to the local distribution network via an existing overhead cable route that runs to the south west of the site;

(2) a site at Cutlers Green, near Thaxted (ref. UTT/21/1833/FUL) consisting of approximately 160 acres which Low Carbon has determined to comprise 37% Grade 2 (Very Good), 49% Grade 3a (Good) and 14% Grade 3b (Moderate) agricultural land. It is estimated that the site will generate 40MW of renewable energy, sufficient to power over 13,291 homes. If approved, the solar farm will connect to the local network via underground cables into the grid at a 132/33kV substation to the east of Thaxted which is approximately 4km from the site.

31. I am also told that an application for a screening opinion (ref. UTT/21/2158/SCO) has been submitted to the Council by Statera Energy for another potential solar farm on a 165 acre site to the west of Berden, i.e. just a few miles north of the Battles site, also with a proposed connection point at Stocking Pelham substation.

32. There is another proposal, by Renewable Connections, to construct a solar farm on land outside Stocking Pelham in East Herts district, less than 2km from the Battles site. It is believed that an application for a screening opinion has been made although it is not yet available on the East Herts’ website. The developer’s website indicates that the site will comprise 148 acres of land and would generate 45MW of energy. The developer has apparently confirmed in correspondence that this solar farm would also connect to the Stocking Pelham substation via a combination of private land and the highway network.

33. I also understand that (although these projects did not proceed) applications were made for screening opinions for possible solar farms at two brownfield sites: a 10MW Solar farm at Nuthampstead Aerodrome in North Herts (ref. 13/02114/1SO) and at Elsenham Sand Quarry, Henham Road, Elsenham, Bishops Stortford (ref. UTT/15/1206/SCO).

34. Apparently, Uttlesford already has a significant amount of solar energy generation (either installed or approved) relative to the size of its population. Sufficient energy generation capacity exists to supply around 70% of its 38,700 households, i.e. based on Low Carbon's own figures (which indicate that 1MW of solar generated electricity can supply around 330 households). If the Long Meadow Solar Farm application was approved, over 94% of Uttlesford households would be supplied by solar energy.
35. Uttlesford district generates around 21% of the solar energy in Essex, more than any of the other eleven local authorities in the county. There is currently only one solar farm in East Herts, at Mill Farm, Mentley Lane, Great Munden, Ware which generates 5MW of energy and one in Epping Forrest, on the roof of Waltham Point Distribution Centre generating 1.8MW. Solar generation capacity in North Herts, where there are 58,368 households, stands at 15.3 MWs.
36. As noted above, the Council's current Local Plan dates from 2005. Policy ENV5 (Protection of Agricultural Land) stipulates that:
- “Development of the best and most versatile agricultural land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites or within existing development limits. Where development of agricultural land is required, developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise” (emphasis supplied).
37. The Council is currently consulting on a new Local Plan and has recently issued a call for sites. In response, 299 sites have come forward. The Council's website notes that there is a need for up to 17,000 new homes by 2040 – but that if all 299 sites were developed they would accommodate well over 70,000 new homes, i.e. 57,000 over the requirement.
38. Stop Battles Farm has carried out a review of Secretary of State's and Inspectors' decisions on applications and appeals for solar farm developments and analysed their approach to discharging the requirements of the NPPF and associated guidance.
39. The most recent decision by the Secretary of State concerns a solar farm proposal relating to Cleve Hill in Kent. The development constituted a Nationally Significant Infrastructure Project by virtue of its size (350 MW) with the result that a Development

Consent Order was required. Whilst the chosen site was determined to be Grade 3b land (and therefore not BMV), the approach taken to site selection and the sequential test is of interest and relevance for the purposes of my advice. The applicant's "Sequential Test Analysis" dated November 2018 is set out in Technical Appendix A4.1 to the Environmental Statement which accompanied the DCO application. In this document, the developer comments (at paragraph 25):

"The term "sequential test" has been used as this reflects the terminology used by the Planning Inspector in the appeal decision relating to the application for a 38.43 hectare solar PV array at Valley Farm, Wherstead, Ipswich, Suffolk (appeal reference APP/D3505/A/13/2204826)".

40. The Valley Farm appeal, decided on 2 June 2014, in fact pre-dates the Pickles Ministerial Statement of March 2015. Based on the Inspector's observations in the appeal decision, the key aspects of a "sequential test" applied in that case were as follows:

- The first question to ask is whether the use of agricultural land is necessary. This exercise should demonstrate that no suitable brownfield land or non-agricultural land is available within a reasonable search area;
- Whilst the development/local plan area may in some circumstances be an appropriate search area, there is no policy guidance which advocates restricting searches to within a local authority's administrative area;
- There is no need to site renewable energy development in a particular local authority in order to meet a local green energy quota;
- There is no Government guidance on what is a reasonable search area and each case should be considered on its own facts taking account of planning and operational constraints;
- Industrial areas within the district, including distribution and warehousing buildings and former airfields, should be considered;
- Although the Agricultural Land Classification in that case needed to be treated with some caution, it was a good starting point and a basis from which to carry out further investigation;

- The sequential test must be proportionate. However, simply surveying one site (the appeal site) was wholly inadequate;
- A cursory desktop study of four areas of Grade 3 land in the district within a reasonable distance of 33kV overhead lines was regarded as insufficient;
- Proper investigation (including auger testing) was needed to better understand the quality of the land identified in the desktop study.

41. I note that an article by Tromans QC, Philippa Jackson and Jon Darby dated July 2015 comments that:

“Notwithstanding the “high-water mark” of an appeal decision in Suffolk (APP/D3505/A/13/2204846) in which it was suggested that there was “a clear sequential test in national policy”, a number of subsequent appeal decisions have confirmed that neither the NPPF nor the PPG imposes any requirement to undertake a formal sequential assessment...

[“Most compelling evidence”] does not have to take the form of a sequential assessment, although in practice it may be difficult for applicants to demonstrate that the use of BMVAL is justified, unless they can also show that they have considered and discounted other sites within a proportionate search area on the grounds of land quality or unsuitability... the starting point is always likely to be the availability of a grid connection, as this is clearly a prerequisite for any PV scheme”.

42. But regardless of whether applicants should be required to undertake a formal “sequential assessment”, the requirements of the NPPF and the NPPG remain. It follows that applicants are still required to demonstrate that:

- the use of agricultural land is necessary; and
- poorer quality land has been used in preference to higher quality land.

43. There is also a highly relevant Written Ministerial Statement made by Eric Pickles MP (now Lord Pickles) who was then the Secretary of State for Communities and Local Government dated 25 March 2015 to the effect that any proposal for a solar farm involving

the best and most versatile agricultural land must to be justified by “the most compelling evidence”.

44. This conclusion is supported by the comments of the Inspector in the appeal in relation to the site at Bunkers Hill, Fraddam, Cornwall , decision letter dated 6 July 2017 (PINS 3140774):

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

45. This seems to me to be no more than an appropriate reflection of the general principle of planning law that proposals which have the potential to cause environmental damage should be approached on a “worst first” or “sequential” basis, having regard to the availability of alternative sites, see eg Trusthouse Forte Hotels Ltd v. Secretary of State (1987) 53 P & CR 293 at 299 per Simon Brown J:

“Where... there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it”.

## **STEP 1: IS THE USE OF AGRICULTURAL LAND IS NECESSARY?**

46. As set out in the Valley Farm appeal, in order to demonstrate that the use of agricultural land is “necessary”, applicants should establish that no “non-agricultural” sites are available. The distinction between availability and viability (in the context of grid connection) may be of importance here and is considered further below.

47. As noted in the Valley Farm decision, the definition of a reasonable search area is a matter of judgement. However, various of the appeal decisions provide guidance as to the approach that is commonly adopted and the extent to which that approach is considered to be adequate. I note the following:

- It can be difficult to determine the extent of an “acceptable” search area given that, in many cases, the Inspector concludes that the evidence is not satisfactory;
- It would appear to be common practice to select a wider search area for the purposes of assessing the availability of brownfield land and then to conduct a secondary search of agricultural land by reference to a narrower search area;
- A common approach to identifying brownfield sites is to undertake a search of land within the boundary of the relevant planning authority;
- However, the extent to which it is appropriate to limit the search to the area of the relevant local authority may depend on the location of the proposed site. For example, in an appeal relating to Land off Cold Harbour Lane, Bobbing, Sittingbourne (PINS ref. 3017938) which was allowed, the assessment areas included both Swale Borough Council’s area and the area of Medway Council to the west; in the appeal relating to Land Off Butchers Lane, Aughton (PINS ref. 3002667) the applicants were criticised for limiting the search to the area of West Lancashire and it was suggested that the search area should include the areas of other planning authorities; in the (unsuccessful) appeal relating to Land at Park Farm, Claverdon, Warwickshire (PINS ref. 3029788) the applicants undertook a search of sites in both Stratford and Warwick districts seemingly reflecting the fact that the appeal site was close to the border with Warwick.

48. An alternative approach is to consider sites with a certain radius of the proposed development (which may also result in considering land in the area of other local authorities).
49. In the appeal relating to Havering Grove Farm, Hutton (PINS ref. 3134301) the study area comprised the district authority boundary of Brentwood Borough Council with a 10km buffer from proposed site and therefore included a western section of Basildon Council (approximately two thirds of the district), a south-western section of Chelmsford District (approximately one fifth of the district), a small northern section of Thurrock Council, a small north-eastern section of Havering London Borough; and a small south-eastern section of Epping Forest District Council.
50. In the appeal relating to and at Walnut Cottages, Oil Mill Lane, Clyst St Mary (PINS ref. 3007994) the study area comprised an area of 30 miles from the appeal site (which the Inspector considered to be “a substantial geographical area” and “not an unreasonably constrained starting point”).
51. However, the appellant in the successful appeal relating to a 160 acre site at Rose and Crown Farm, Mill Road, Walpole St Andrew (PINS ref. 3001281) conducted a search within relatively small a radius of 15 km from the cable. Similarly, the successful appellant promoting a 16MW solar farm on a 94 acre site to the west of Romsey Road, Romsey (PINS ref. 3010697) conducted a search in relation to sites within a 5 km radius from a substation connection stating that it “would not progress a project with a grid connection distance of more than 5 km because of the costs involved would be disproportionate to the size of the project and make a development cable of utilising this important capacity commercially unviable”.
52. Lastly, it is worth highlighting the arguments in support of a more expansive approach to the search area. Commenting on in relation to the shortcomings of the sequential test undertaken in relation to the site off Butchers Lane, Aughton (PINS ref. 3002667) the Inspector noted:
- “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”.

53. The Inspector on the Tawdside Far, Ormskirk, Lancashire appeal (PINS ref. 3011997) in January 2016, in making a recommendation to the Secretary of State who dismissed the appeal, cited the Valley Farm appeal and noted:

“There is no national or local guidance when defining a study area and each case should be considered on its own merits taking into account both planning and operational constraints. The PPG at paragraph ID 5-003 confirms that whilst local authorities should design their policies to maximise renewable and low carbon energy, there is no quota which the Local Plan has to deliver. Therefore, there is no need to site renewable energy development in a particular local authority in order to meet a local green energy quota. Subsequently (sic) there is no reason why a search area cannot extend beyond the borough boundaries”.

#### **The scope of the search for non-agricultural land**

54. It appears from the above that, in the first instance, solar farm developers should attempt to find a location on previously developed/brownfield land as a possible site for a solar farm. However, the Valley Farm appeal indicates that consideration should also be given to siting the solar farm on land in industrial areas including distribution and warehousing buildings and that former airfields should be considered.

55. The appeal decisions indicate that it is common for developers to consider options for solar panels on the roofs of industrial buildings. However, where considered, analysis of the decisions suggests that developers are quick to dismiss this option, chiefly because of the difficulty of finding a large enough area of roof space. For example:

- The Romsey appeal (PINS ref. 3010697) records that the largest potential viable commercial rooftop within the Romsey/Southampton area was at the Nursling Industrial Estate where a 5 acre flat roof exists; and
- The appellant in relation to Rectory Farm, Upton Warren (PINS refs. 3136031 and 3136033) recorded that “There is approximately 1.2ha of potentially available roof space which could be suitable for commercial scale rooftop solar PV in the



District”. However the appellant questions (i) whether an installation is technically or commercially feasible (ii) the structural capability of the roof space, (iii) the willingness of the building owner and (iv) the feasibility of a grid connection or on site consumption. The appellant also notes that rooftops analysed would offer in the region of 0.5-1MW of installed capacity which is less than 15% of the capacity offered by the 8MW+ Rectory Farm project”.

56. A number of the appeal decisions show that the use of airfields for solar development have been considered but, again, dismissed. For example, the appellant in relation to Barn Farm, Stanford on Soar (PINS ref. 3005788) discounted an airfield because it had been identified for housing and lay more than 3 km from network. The successful appellant in relation to the site at Land off Cold Harbour Lane, Bobbing, Sittingbourne (PINS ref. 3017938) considered an airfield as one of 40 possible alternative sites. The Sequential Analysis Study noted that “the site is smaller than application site and, due to lack of screening in the local area, a development would be visible. Greater understanding of the local requirements of the microlight training facilities would be needed. Although solar panels are next to runways for some of the largest airports in the world so glint and glare should not be an issue”. The appellant in the Green Farm, Folly Road, Iron Acton (PINS 3004513) noted that it had conducted a search of former RAF stations and airfields in Gloucestershire which revealed that there are up to 19 former airfields. However, these were dismissed on the basis that they have been returned to agricultural use “so it would be incorrect to suggest that such sites are more acceptable”.

### **Site size**

57. As noted above, alternative sites are frequently rejected on the grounds of insufficient size. However, no consistent view emerges from the decisions as to whether a search for alternative sites must be limited to sites of an equivalent size. For example, in the successful appeal relating to Land west of Romsey Road (PINS 3010697) the Inspector accepted that it was legitimate for the appellant to discount sites based on their size (as well as their shape, flood risk, vehicular access and orientation or for their proximity to dwellings, public footpaths, sites of natural or heritage interest, and designated landscapes). The “sequential test” undertaken in relation to the Cleve Hill DCO site also notes that potential sites were examined sequentially in order of: (i) previously developed land; (ii) non-agricultural land (of low ecological value); (iii) decreasing ALC grade (i.e. the worst

agricultural land was considered first); and (iv) within each ALC grade, decreasing order of size.

58. Conversely, in the appeal in relation to Huddleston Farm, Steyning (PINS ref. 2218035) the Inspector commented that: “Given the overall extent of the 33kV lines (over 60 kilometres), the appellant’s claim that suitable sites are ‘massively constrained’ is not clear. Similarly, there is nothing to suggest that a smaller scheme would not be viable”. Equally, in the Walnut Cottages, Clyst St Mary appeal (PINS ref. 3007994) the Inspector noted that: “a number of people talk about the difficulties of implementing solar on brownfield sites, including the practical difficulties in rooftop schemes, the difficulty in competing with hope values, and problems in achieving security of tenure with multiple land owners. I accept that these constraints would be likely to be prohibitive for a speculative scheme of this size, which by its nature would be most easily accommodated on a greenfield site. Although the Council accepts that limited brownfield land is available I nonetheless have no convincing evidence before me to indicate why the proposal needs to be the size proposed, and this reduces my confidence in excluding the potential of all brownfield land in the area.”

### **The approach to search**

59. The appeal decisions suggest that a common approach to the identification of brownfield sites is to undertake a desktop search which may include consideration of:

- The National Land Use Database of previously developed land;
- extant and emerging Local Plan(s);
- 5-year housing land supply assessment to ascertain surplus or deficit of previously developed land within the study area; and
- OS mapping and aerial photography to identify sites of a suitable size within a grid connection corridor.

60. It is noted that The Town and Country Planning (Brownfield Land Register) Regulations 2017 now require local planning authorities to maintain an online register of brownfield sites that are suitable for housing.

## **STEP 2: CONSIDERATION OF THE POOREST QUALITY LAND**

61. The second limb of the Cleve Hill “sequential test” requires developers to demonstrate that the site that has been selected is the poorest and/or among the poorest quality land available for the proposed development. Compare footnote 58 to the NPPF: “Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality”.

### **ALC maps and desktop analysis vs site surveys**

62. In the Valley Farm appeal, the Inspector commented that “although the Agricultural Land Classification may need to be treated with some caution, it is a good starting point and a basis from which to carry out further investigation into land quality”. However, analysis of the appeal decisions suggests that developers are reluctant to undertake anything other than a desktop analysis.

63. Notwithstanding the comments made by the Valley Farm Inspector that “simply surveying the appeal site is wholly inadequate” and that “a cursory desk top study of [four] areas of Grade 3 land in the district within a reasonable distance of 33kV overhead lines is insufficient”, the appeal decisions suggest that developers do not routinely conduct physical surveys of alternative agricultural sites. Nevertheless, in circumstances where the search area comprises Grade 3 land, it is suggested that the developer may need to discount the possibility of Grade 3b land.

64. I note, for example, that in the Green Farm, Folly Road, Iron Acton appeal (PINS ref. 3004513) the Inspector commented that there was “Not sufficient evidence to rule out the existence of alternative potentially developable greenfield sites of poorer agricultural quality (i.e. Grade 3b)”. In the appeal in relation to land at Walnut Cottages, Clyst St Mary, (PINS ref. 3007994), the Inspector commented that “According to the Agricultural Land Classification maps, and the assessment carried out by the appellant's agricultural consultant, the remaining land within the unconstrained area is made up of predominantly Grade 3 land, with areas of Grade 2 land associated with sandstone outcrops. This land has not been subject to individual testing in the way the appeal site has. Nevertheless, based on the information that is available, although some land would be of equivalent quality, some would also be likely to be of lower quality than the predominantly Grade 2 land which makes up the appeal site”. In the Barn Farm, Stanford on Soar appeal (PINS ref. 3005788)

the Inspector noted that “The appellant's evidence, then, indicates that there are six (and would possibly be more, if sites in more than one ownership were not ruled out) alternative sites potentially as suitable for the development of a large-scale ground-mounted solar farm as the appeal site, each of which consists of Grade 3 agricultural land. I accept the appellant's point that there is no reasonable or practical way of assessing whether that land is Grade 3a (and thus BMV...), or Grade 3b (and thus not...). But since the appeal site consists of 34% Grade 2 land and 66% Grade 3a land, it must follow that even if each of the alternative sites were 100% Grade 3a land, they would all consist of land of poorer agricultural quality than the current appeal site”.

### **The role of the point of connection in defining the search area**

65. In a further Tromans and Jackson article of September 2015, the authors observe that “the availability of a grid connection (or lack thereof) will be fundamental to showing that the use of BMVAL is justified, since without a grid connection the PV proposal cannot go ahead... [However] there appears to be a lack of consistency in the approach being adopted by different Inspectors in relation to this issue. We note, for example, the decision of an Inspector, Anne Jordan BA (Hons) MRTPI, dated 24 July 2015 [ie the Clyst St Mary appeal PINS ref. 3007994], concerning a 16ha site in Devon, where the Inspector accepted that it was reasonable of the appellant to exclude land where no suitable grid connection was available but went on to reject the site analysis, in part on the basis that there was no “convincing evidence... to indicate why the proposal needs to be the size proposed. By contrast, in dismissing an appeal on 6 July 2015 (determined by written representations) concerning a PV proposal on 15ha of Grade 3a land in Leicestershire, Inspector David Rose held that the applicant’s sequential test was flawed, by searching only for sites with an adequate grid connection”.
66. As noted above in relation to the Cole End and Cutlers Green sites, there appear to be two possible approaches to connecting a solar farm to the electricity network, i.e. some solar farms (such as Long Meadow) are connected to the network via a high voltage overhead cable in the vicinity of the site or, alternatively, a connection can be made directly to a substation.

67. It may be that the availability of a connection is (in practical terms) a constraining factor in terms of the location of a solar farm. However, there are a number of examples of solar farms where the point of connection to a substation is quite some distance from the site. For example, a 38MW solar farm constructed by Low Carbon adjacent to the A11 outside Great Wilbraham, Cambridgeshire is connected to a substation in Cherry Hinton in Cambridge via a 10 km cable in the highway; and another development currently proposed by Low Carbon, at Fern Brook Solar Farm Land to the east of Gillingham, is connected to Shaftesbury substation about 4.5 km away from the site.
68. The successful appeals suggest that an approach to searching for agricultural sites of poorer quality within a reasonable distance of the point of connection has found favour with Inspectors. In the Romsey Road appeal (PINS ref. 3010697) the study area was defined to include a 5 km radius from the substation on the basis that a cable run of up to 5 km would be commercially viable (although noting the proposed generation capacity of 16MW).
69. In the appeal relating to Land at Rose and Crown Farm, Mill Road, Walpole St Andrew (PINS ref. 3001281), the appellant conducted a search within a 15 km radius of the proposed site, noting (at para 5.50 of its Revised Appeal Statement) that: “The viability of running a connection to a cable with capacity is dependent on the estimated output of the proposal/site size. Grid connections are a significant cost such projects have to finance and the length of the grid connection is determined by the size of the project – the larger the facility in terms of energy production, the longer the grid connection can be”.
70. Similarly, in the Cleve Hill DCO decision, the Secretary of State accepted that a study area within a 5 km radius from the National Grid substation at Cleve Hill was sufficient. The applicant observed in para. 21 of the sequential assessment that “the grid connection distance could be substantially more than 5 km, e.g. 6 to 8 km. To assess viability, therefore, it has been assumed that the grid connection route would be along public highways which is representative of the potential constraints which could be encountered, and would need to be avoided along a route. This represents a potential increase in connection distance of 20 to 60% from the ‘as the crow flies’ route.”
71. Conversely, the following approaches to identifying alternative sites were not considered to be adequate by the Inspectors in the Clyst St Mary appeal (PINS ref. 3007994) in which the appellant focused on sites within 3 km of power lines with capacity within the wider 30

mile search area and in the Havering Grove Farm, Hutton appeal (PINS ref. 3134301) where the unsuccessful appellant contended that there was very limited grid capacity within the 10 km area. Sites beyond the 2 km grid corridor were discounted on the basis that the cost of connecting to the grid beyond this distance would be unviable.

72. Likewise, in the Rectory Farm, Upton Warren appeal (PINS refs. 3136031 and 3136033) the search was again limited to sites within an area of 2 km from the existing point of connection to the network. The Inspector commented that the search area for the alternative site assessment was a “very restricted search area” and said “I acknowledge the constraints that distance from the substation places on the financial viability of the proposal and the difficulties of finding suitable grid connection capacity. However, I have little substantive evidence before me that there are no other substations within a reasonable distance of the Wychavon area with connection capacity”.
73. See also the Three Houses Lane, Codicote appeal (PINS ref. 3131943) in which the Inspector said “The Applicant’s sequential analysis study concludes that there are no deliverable sites on poorer quality land. However, the study area used comprises a 10 km radius from the centre of the site, along with assumptions about grid connection, resulting in a 2 km wide corridor centred on the limited existing 33kv/66kv distribution network. Given that targets for renewable energy are national, there does not appear to be any basis for selecting such a limited study area”.
74. Lastly, the relevance of a connection in terms of the weight that it gives to the suitability of the chosen site in planning terms is not determinative. For example, in the Clay Tye Farm, Upminster appeal (PINS ref. 3007618) the Inspector commented that: “Whilst appeal site is technically suitable, little weight should be given to this argument”; and, in the case of the appeals at Dales Manor Business Park, Sawston (PINS refs. 3012014 and 3013863) the Secretary of State agreed with the comments of the Inspector to the effect that “A connection to the national grid is an essential site requirement and the availability of a connection in a part of the network with capacity to accept the output is of assistance to the appellant but it does not bring a public benefit and adds no weight to the planning case for the proposals”.

### STEP 3: OTHER FACTORS RELEVANT TO SITE SELECTION

75. Where candidate sites are determined by the applicant to be of equivalent suitability in terms of agricultural land quality, it appears to be common practice to apply a range of additional criteria in order to reach a conclusion as to the preferred site. However, neither the NPPF nor the associated guidance dictate consideration of specific factors for the purposes of establishing the suitability of a particular site. There is therefore little observable consistency in the application of these further constraints.
76. The trade association for the solar development industry, Solar Energy UK, has published ten commitments in relation to solar farms on its website. However, this document is of limited assistance given that the only relevant recommendation is that “Land selected should aim to avoid affecting the visual amenity of landscapes, maintaining their natural beauty, and should be predominantly flat, well screened by hedges, tree lines, etc., and not unduly impact upon nearby domestic properties or roads”.
77. As emerges from the appeal decisions, there are a variety of factors chosen by developers to aid with the identification of the most suitable site including:
- (in the Romsey appeal PINS ref. 3010697) (i) size, (ii) shape, (iii) flood risk, (iv) vehicular access (v) orientation (vi) proximity to dwellings, (vi) proximity to public footpaths, (vii) proximity to sites of natural or heritage interest, and (viii) designated landscapes;
  - (Iron Acton appeal PINS ref. 3004513) (i) orientation i.e. north facing excluded (ii) not in an area of flooding (iii) not identified as strategic housing land for the future expansion (iv) not within flood zone (v) not over historic mine workings;
  - (Aughton -appeal PINS ref. 3002667) (i) not within Flood Zone 1 (ii) not close to a SSSI (iii) not close to a Special Protection Area (iv) not close to a Special Area of Conservation (v) not close to National Nature Reserve (vi) over 2km from the nearest Registered Park and Garden (vii) not close to the nearest Ancient Woodland and (viii) not close to a Local Nature Reserve; and
  - The Alternative Site Assessment undertaken in the Upton Warren appeal (PINS refs. 3136031 & 3136033) includes an even greater number of criteria: (A)

General: • Site Size • Site Characteristics • Site Allocations • Site Uses • Physical Development Constraints • Proximity to Sensitive Users / Landscape and Visual Impact • Access / Proximity to Local transport Networks • Land availability and ownership • Previously developed land and (B) Environmental: • PRow • Heritage • Flood • Ecology • Agricultural Land Classification and • Previously Developed Land.

78. In one case, the appellant also attempted, unsuccessfully, to limit their search by reference to sites in single ownership, see Barn Farm Stanford on Soar (PINS ref. 3005788): “I have serious reservations about the appellant’s decision, when assessing alternative sites of lower grade agricultural land, to limit consideration to sites within single ownership. I appreciate that doing so would “minimise project complexity” but I see no valid reason why a potentially suitable alternative site should be ruled out, simply on the basis that negotiations with two or more landowners may prove complicated”.
79. Some appellants have also contended (again unsuccessfully) that it is legitimate to exclude sites on the basis that no willing land owner has been identified, see again Stanford on Soar (PINS ref. 3005788): “The outcome of the appellant's Agricultural Sequential Test was the identification of nine alternative sites, six of which were - like the ... appeal site – rated “amber”... The appellant explained that it has made contact with the landowners of these areas, but that for “commercial reasons, on the part of the landowner”, further discussions have not progressed and so it must be concluded that none of the alternative sites are available. That is not, to my mind, a safe conclusion to draw. There may be any number of reasons why a landowner might be unwilling to progress discussions with a potential developer, from lack of agreement as to a fair price for the land, to prior commitments with an alternative developer”
80. See also in the Clyst St Mary appeal (PINS ref. 3007994): “I note the appellant’s view that there are no other available sites within the remaining area which could practically be implemented due to both a lack of willing land owners and available grid connections. However, I have been provided with no substantive evidence which enables me to discount all other potential sites on this basis.
81. Lastly, the developer of the Cleve Hill site comments in its Sequential Test Analysis: “It should be noted that the comparison between PDL areas assumes that a commercially



viable arrangement for the use of the land could be secured by negotiation with the landowner(s) at each of them. In practice, this is unlikely to be the case. However, given that it is not reasonable to expect landowner negotiations to be carried out as part of a sequential test, the assumption is that the land is available for solar development at commercially viable rates”.

82. Finally, I note that the Overarching National Policy Statement for Energy (EN-1) applying to NSIPs contains some somewhat restrictive guidance on the consideration of alternatives in DCO examinations, see para. 4.4.3 (and para. 4.2.13 of the draft replacement NPS). In particular I note the guidance to the effect that “alternative proposals [which are] are not commercially viable or alternative proposals for sites [that] would not be physically suitable, can be excluded on the grounds that they are not important and relevant to the IPC’s decision”. However, I do not interpret this statement to mean that it is legitimate for applicants (such as Low Carbon) to consider only sites which are “on the market and available”.

#### **THE APPLICATION BY LOW CARBON IN RELATION TO BATTLES SITE**

83. The relevant extract from the Planning Statement submitted in relation to the Battles Site. Notwithstanding Low Carbon’s assertion in its Planning Statement submitted in relation to the Battles site that: “In identifying the site, the applicant has undertaken a detailed methodical site selection exercise. This exercise has involved the careful consideration of several important design criteria, including technical feasibility, environmental and planning constraints, and land availability”, the results of this detailed site selection test have not been submitted as part of the planning application.
84. Indeed, it is striking that exactly the same text appears in the Planning Statements submitted in connection with the Cutlers Green application (see paras 4.19 to 4.22) and Long Meadow (Cole End) application (see paras 4.28 to 4.31). No additional documentation has been submitted to support this analysis in either case. It seems likely therefore that the selection of each of these sites has been driven principally by (i) proximity to a point of connection – particularly relevant in the case of the Battles Site and (ii) a willing land owner (or owners).

85. Lastly, I understand that the three Low Carbon applications referred to above follow in the wake of successful application made to the Council by Low Carbon in 2020 in relation to Terriers' Farm (UTT/19/1864/FUL). In that case, the Design and Access Statement was prepared by Flexygen (rather than Pegasus as for the Battles site) and focussed (in Section 4) on (i) the high proportion of Grade 2 Farmland in the Uttlesford District and (ii) the proximity and availability a grid connection. Flexygen concluded that there were no alternative site locations within 2 km of the point of connection on lower graded agricultural land, commenting that "finding an alternative connection point for the Development would be very difficult, even without considering the suitability of alternative sites on planning grounds as UKPN generation availability for solar is highly constrained". Flexygen also cited two appeals a precedents for allowing solar farms on BMV, ie the Walpole St Andrew appeal (PINS ref. 3001281) and the successful Romsey appeal (PINS ref. 3010697).
86. It seems evident from the Planning Officer's report (recommending approval of the Terriers Farm development) that Low Carbon's assessment was taken at face value:

"There are no alternative site locations within 2km of the point of connection on lower graded agricultural land. The vast majority of land in Uttlesford is grade 2 meaning options for renewable energy schemes of this nature on lower grade land are extremely limited. With the process of site selection being led by the ability to connect to a substation with available capacity, suitable locations for such a project are limited. The location of solar farms is heavily dictated by their proximity to a viable connection point".

## QUESTIONS FOR ADVICE

87. I am asked to advise on the extent to which the applicant has satisfied the requirements of the relevant planning tests and guidance in relation to the use of BMV land in its application to build a solar farm at the Battles Site. In particular, I am asked to consider the documents submitted by Low Carbon to accompany their planning application and to comment on:

- (1) The extent to which the sequential test set out in the Valley Farm appeal remains relevant for the purposes of satisfying the requirements of the relevant planning rules and guidance;
- (2) A reasonable approach to determining a search area (both for potential “non-agricultural” sites and, if different, for poorer quality agricultural land) in the context of the Battles site;
- (3) The impact of the proposed generation capacity (if any) on the size of the search area;
- (4) Whether it is reasonable to expect any search of non-agricultural land to include roof tops and former airfields or private airfields which are currently in use or formerly in use;
- (5) The extent to which potentially suitable sites may be “discounted” by reason of their limited size and/or in the absence of evidence that there is a “willing landowner”;
- (6) The significance of the available capacity in the local network (noting that the cables running east to west are shown in teal on the capacity map at Annex 3 and marked as “Active Network Management – Flexible distributed generation zone”). I note that, until around October 2021, this part of the network was shown in red on the capacity map and marked as being “highly utilised and/or reinforcement required”;
- (7) The extent to which it is reasonable to expect Low Carbon to consider additional constraints regarding site suitability such as those listed in the successful Romsey appeal;

(8) The extent to which existing or approved generation capacity in Uttlesford is relevant for the purposes of determining whether the use additional agricultural land for solar schemes is necessary; and

(9) Generally, whether Low Carbon’s submission amounts to “the most compelling evidence” of the need to use BMV land.

88. I shall address each matter in turn and comment on certain additional matters raised in my instructions.

(1) “Sequential test”?

89. I acknowledge that neither the NPPF nor the NPPG use the term “sequential test” but the logic of the Pickles Ministerial Statement and the general law on consideration of alternatives is that a “worst first” approach as reflected in footnote 58 of the NPPF means that alternatives should of necessity be addressed on a sequential basis. Compare Trusthouse Forte Hotels Ltd v. Secretary of State (1987) 53 P & CR 293 at 299 per Simon Brown J:

“Where... there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it”.

(2) Reasonableness of search area in the context of the Battles site

90. It is difficult to be prescriptive about the reasonableness or appropriateness in a given case because of the inherent need to make a series of judgements according to the factual circumstances arising. But Stop Battles Solar Farm can certainly query the adequacy of the very limited and generalised reference in the applicant’s Planning Statement that “the applicant has undertaken a detailed methodical site selection exercise. This exercise has involved the careful consideration of several important design criteria, including technical feasibility, environmental and planning constraints, and land availability”.

91. There is nothing in that (apparently generic) statement which reveals what search area was looked at or, indeed, what the criteria were which were applied in the exercise.

92. The point should be made that, on the evidence of Cutlers Green and Long Meadow applications that the statement seems to be a “one size fits all” one, without any supporting evidence. On the basis of the Valley Farm appeal decision (and others) the point can be made that the search for sites should not be confined simply to the Uttlesford area, least all given the amount of generating capacity and potential in the area already. Also, the Clyst St Mary, Upton Warren and Codicote appeal decisions should be deployed as necessary to counter any assertion as to a grid connection being a fundamental factor for site selection.

(3) Impact of proposed generation capacity on size of search area

93. This might be said not to be relevant in the context of the general benefit of generating renewable energy but, that said, it can of course be used a contention as to overriding need (particularly if that need can be satisfied by developing a site elsewhere which would have less harmful environmental effects).

(4) Reasonableness of expecting search to include roof tops, former airfields etc

94. This is plainly a relevant matter on the basis of the precedent of the Valley Farm decision. If the applicant has not in fact conducted such a “worst first” exercise, then they cannot very well say that that they are justified in developing a site in open countryside on BMV agricultural land and/or that there is the “most compelling evidence” for developing such land in the terms of the Written Ministerial Statement.

(5) Discounting sites on grounds of size and/or absence of “willing landowner”

95. There are again clear precedents in the appeal decision for size not to be a critical factor, in the absence of any proper justification or explanation, see the Steyning and Clyst St Mary appeals.

96. On the “willing landowner” question there is of course a danger that this sort of argument becomes a self-fulfilling prophecy, i.e. no one has come forward so we cannot say a site is available. The Stanford on Soar and Clyst Mary decisions are also relevant here. The question is a matter for evidence.

(6) Significance of the available capacity in the local network

97. I can see that this would be a relevant factor if it could be shown that there was limited capacity elsewhere and needs could only be satisfied where there was available capacity. But there does not at present seem to be any constraint of this sort operating in the area.

(7) Reasonableness of expecting Low Carbon to address constraints in Romsey appeal

98. As with the Valley Farm appeal, previous appeal decisions are relevant material considerations which a decision maker should have regard to unless there are reasons for distinguishing the previous decision of for not applying it in a given case. But there is nothing unreasonable, again in the context of having to provide “the most compelling evidence”, for expecting or challenging Low Carbon to address the site suitability constraints referred to in, say, the Romsey appeal.

(8) Relevance of existing or approved generation capacity in Uttlesford

99. See my comments in para. 93 above.

(9) Whether Low Carbon has “most compelling evidence” of need to use BMVAL

100. Given that Low Carbon has seemingly produced only a generic statement as to site search and selection, it can strongly be contended that they have not produced the required “most compelling evidence” of the need to use BMV land for the location of the proposed development.

Other matters

101. I hope that the above is reasonably clear and covers all of the matters on which I have been asked to advise. Instructing Solicitor should not hesitate to be in contact if there is any aspect of the case on which my further views may be of assistance.

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17 December 2021