

My name is Rosie Somers and I am speaking on behalf of Stocking Pelham Parish Council.

The applicant has determined that 72% of the site comprises BMV land. Uttlesford Policy ENV5 states that the development of BMV land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites. It adds that where development of agricultural land is required, developers should seek to use areas of poorer quality. This text is consistent with the NPPF.

An updated version of the NPPF was published in 2023. As previously, the NPPF recognises the economic and other benefits of BMV. However, footnote 62 now places increased emphasis on the use of agricultural land for food production.

The importance of protecting BMV land in the context of solar development is also emphasised in the PPG on Renewables and Low Carbon Energy. Paragraph 13 of the PPG highlights the need to focus large scale solar farms on non agricultural land and the requires consideration of whether the use of any agricultural land has been shown to be necessary - if so, poorer quality land must be used in preference to higher quality land.

The PPG also refers to a written ministerial statement made Eric Pickles in 2015¹ in which the minister states that:

“Meeting our energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high quality agricultural land”.

And also that

“any proposal for a solar farm involving [BMV] agricultural land would need to be justified by the most compelling evidence.”

Written Ministerial Statements are statements of government policy. The law is clear that they remain in force unless and until expressly withdrawn or modified².

Policy ENV5, the NPPF, the PPG, and WMS are all material considerations for the purposes section 70 of the 1990 Act and all use words which place an evidential burden on the applicant to demonstrate that there are no alternative sites³.

Previous decisions by the Secretary of State are also material considerations to which regard must be had. Protect the Pelhams has highlighted a number of decisions which reference the need for the most compelling evidence to justify development on BMV agricultural land and conclude that the absence of such evidence weighs heavily against the proposal. The recent Lullington Appeal confirms that the Written Ministerial Statement remains extant. Last month the High Court⁴ confirmed that the inspectors decision in relation to Lullington was robust. The Inspector who determined the Pelham Spring Solar Farm also agreed that the necessity of significant development of BMV agricultural land had not been demonstrated.

There is therefore a very high bar for using BMV land. However, the Applicant has failed to undertaken any assessment of alternative sites. Following the community consultation in

Berden Village Hall in March 2022, Statera published an FAQ document and one of these questions was: “What other locations did you consider?” to which Statera clearly answered “None. Statera Energy has selected this site on its merits alone and believes it is a good site to promote..” None..so I was quite surprised to see an undated retrospective 32 page site selection report on the PINS portal last night.

The owner of the Site owns at least 710 acres of land in Berden but the Applicant does not explain why it failed to consider whether this agricultural land might be of lower quality. From the recently posted site selection report, it is clear from the Executive Summary section 2.1 that proximity to the substation is a key driver. Solar farms do not need to be connected directly to a substation and the proximity of the site to national grid is NOT a material consideration.

Natural England’s ALC map shows significant areas of Grade 3 land to the West of the Site in which is close to the distribution network. The land to near Puckeridge (along the A10) should also be considered. Recently approved solar farms at Wimbish⁵ and Felsted⁶ also show that suitable Grade 3b land is available in Uttlesford.

The Parish Council therefore invites the Inspector to refuse permission on the grounds that the applicant has failed to demonstrate that the use of BMV land is necessary contrary to both National and local planning policy.

Thank you

References

¹ [REDACTED]

² see *Save Britain’s Heritage v Secretary of State* [2018] EWCA Civ 2137 at para. 51

³ see by analogy *Parkhurst Road Ltd v Secretary of State for Communities And Local Government. & Anor* [2018] EWHC 991 (Admin) (27 April 2018) at para. 48: “The relevant policy framework here is not materially distinguishable from that considered by HHJ Gilbart QC (as he then was) in *Vicarage Gate Limited v First Secretary of State* [2007] EWHC 768 (Admin) at paragraphs 44 to 54. He held that where, in the context of determining a planning application, a policy requires a party (eg. an applicant) to demonstrate a state of affairs, then although it is correct to say that he is not under a legal burden of proof, the effect in forensic terms is nevertheless similar. “The decision-maker will still be looking for the party identified by the policy to adduce evidence of the kind prescribed by the policy to the standard set by the policy” (paragraph 48). In such a case, it is permissible for an Inspector to reject that party's case as lacking sufficient cogency to satisfy the policy (paragraph 54). Thus, a policy requirement can give rise to an evidential burden. In *Harris v First Secretary of State* [2007] EWHC 1847 (Admin), Lloyd-Jones J (as he then was) took the same approach (paragraphs 43 to 44).”

⁴ [2024] EWHC 295 (Admin) Case No: AC-2023-LON-002550

⁵ (UTT/21/0688/FUL 6 UTT/22/0007/FUL