



**Extract from written advice of
Meyric Lewis KC
re the approach to site selection
dated 17 December 2021
submitted in response to
the Site Selection Report
prepared by
Berden Solar Limited**

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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

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



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Practice areas:

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Practice Profile

Meyric was described by *The Lawyer* as "standing out" for his expertise in planning and judicial review. He specialises in all aspects of planning (including environmental assessment) and compulsory purchase both at inquiries and in the courts at all appellate levels. Clients range from substantial developers to public authorities and individual developers or objectors.

He is frequently reported in the specialist law reports in notable cases. His court practice ranges from judicial and statutory review in the higher courts to prosecutions and other regulatory proceedings in the Crown Court and Magistrates' Court. He has particular experience in proceedings relating to planning enforcement, statutory nuisance and land contamination.

He has widespread expertise in compulsory purchase and compensation law acting for and advising clients on CPO and major infrastructure proposals and the compensation issues arising from them.

He is Chambers' Pro Bono Champion.

Meyric served as B Panel Treasury Counsel 1995-2001 defending Secretary of State's planning decisions in the High Court

He was the elected Chair of the Compulsory Purchase Association 2014 - 20156.

He is regularly invited to speak at specialist seminars including RTPI Planning Law Updates and at the Planning Inspectorate's Enforcement Conference.

He has published many articles including *Expediency in Enforcement* [2003] JPL 1106, *The New Procedures for Planning Challenges in the High Court* [2008] JPL 1720, *Enforcing Planning Obligations* [2012] *Local Government Lawyer* and *Planning and Proceeds of Crime Act* [2014] JPL 972; *The Sanctity of Contract - Enforcing Section 106 Obligations* [2019] JPL 748.

He is the author with Bob McGeady of Law Brief Publishing's *Certificates of Lawfulness - A Guide* (2018)

and Planning Obligations Demystified (2019).

He is an Editor of the Sweet & Maxwell Compulsory Purchase Encyclopaedia.

Planning

Meyric has in-depth expertise in a wide range of specialist areas in planning. He is equally at home promoting and resisting housing, retail and general commercial developments both in urban and countryside locations. He also frequently appears for plan-making authorities and objectors in development plan examinations.

He has particular experience of development schemes in conservation areas or affecting listed buildings.

He regularly acts for appellants and planning authorities in complex enforcement cases.

Set out below is a list of some of the major inquiries and reported cases which Meyric has been involved in followed by more detailed lists of cases in specialist topic areas.

Highlight Inquiries

- Holocaust Memorial and Learning Centre inquiry for London Parks and Gardens Trust and Save Victoria Tower Gardens
- HS2 - 11 petitions in Parliament (Commons and Lords Select Committees)
- Manor Place Oxford - successfully resisting student accommodation proposals in setting of Grade I listed St Catherine's College and Magdalen College's Grade I registered park and within the Oxford Central (University and City) Conservation Area
- Time Out Restaurant Spitalfields - successfully resisting food market restaurant on grounds of impact on Fournier Street and Brick Lane Conservation Area
- Aldeburgh Brickfields AONB inquiry - market and affordable housing on former brickworks in the Suffolk Coast and Heaths AONB
- Enterprise House - tall building proposal at Aldgate in setting of listed buildings and with complex issues of assessment of adequate sunlight and daylight under BRE Guidelines
- Great Cornard, Sudbury - promoting Persimmon scheme for 170 houses in Gainsborough landscape and setting of Grade I listed building (following successful resistance of EU law Environmental Impact Assessment JR in Court of Appeal)
- Witney - resisting Gladman appeal for 270 houses in HSE hazardous installation notification zone
- Sugar House Land CPO - successful objection to taking of Stratford Sail advertising display on grounds of lack of prejudice to regeneration scheme to create new commercial/residential quarter for East London
- St Katharine Docks, Tower of London Conservation Area
- Snoasis Snowdome and wintersports development
- Kingsway Business Park CPO (for North West Development Agency)
- World Society for the Protection of Animals (first ever mega-dairy inquiry)
- Jersey Marine Swansea (for Welsh Development Agency)
- Greater Manchester retail inquiries

- M40 MSAs inquiry/M42 MSAs inquiry

Highlight Court Cases

- *London Historic Parks and Gardens Trust v Secretary of State for Housing, Communities and Local Government and London Historic Parks and Gardens Trust v Minister of State for Housing* – challenges respectively to decision making arrangements for and then decision on Holocaust **Memorial and Learning Centre inquiry**
- *R (Thurston Parish Council) v Mid Suffolk DC*, Court of Appeal – challenge for Thurston Parish Council to planning permission granted in conflict with Neighbourhood Plan
- **Warners Retail** – success in Court of Appeal in important decision on interpretation of national policy on retail development
- *R (Khodari) v RBKC*, Court of Appeal – confirming planning agreements cannot prohibit holding of residents' parking permits
- *R (Anglian Water) v EA* – success in first ever JR under Bathing Water Regulations 2013
- *R (Maynard) v Chiltern DC* – JR of Neighbourhood Plan ruling on statutory "basic conditions" for validity of plans
- *R (Kohle) v Westminster City Council* – successfully resisting high-profile JR challenge on Equality Act grounds to change of use of historic Africa Centre in Covent Garden
- *R (Stefanou) v Westminster City Council* – complex JR on whether repointing of listed building facade sufficient "building" works to begin development and keep consent alive
- *R (Eatherley) v LB Camden* – first JR on need for express consent for new basement (or whether permitted "enlargement/improvement")
- *Bolton MDC v Secretary of State*, House of Lords – duty to give reasons in planning appeal decisions
- *R (Smith) v Cotswold DC*, Court of Appeal – adequacy of reasons for granting planning permission (successfully resisting appeal against Richard Buxton and Co)
- *Bateman v South Cambs DC*, Court of Appeal – adequacy of reasons in European/domestic context for not requiring environmental impact assessment
- *R (Goodman) v LB Lewisham and Big Yellow Ltd*, Court of Appeal – environmental assessment (for Big Yellow)
- *Fairstate v Secretary of State*, Court of Appeal – ten year rule in enforcement
- *R (Trillium) v LB Tower Hamlets* – alleged "improper" designation of conservation area

Residential

- Persimmon Homes, Great Cornard – 166 homes in setting of Grade I listed Abbas Hall
- Brickfields, Aldeburgh – 40 homes in Suffolk Coast and Heaths AONB
- Laing Homes development of 180 units at the Triangle Site, Cambridge – also successfully defended their development at Chertsey Bridge, Surrey
- Advised Barratt Homes on substantial development in Gravesham
- Crossways Estate CPO inquiries – compulsory purchase of former Council flats to create nearly 700 units
- Appeal on behalf of Grosvenor Estate – Aldford House, Park Lane (conservation implications of views from Royal Parks and Mayfair conservation areas)

Commercial

- Welsh Development Agency – substantial commercial/retail development at Jersey Marine

site on M4 near Swansea

- Kingsway Business Park - 170 hectare regeneration development of regional and national significance in Rochdale, Greater Manchester - instructed by Eversheds for North West Development Agency
- Argent Estates plc footpath orders to facilitate implementation of regeneration development at Piccadilly Place accessed via the Manchester Curve Bridge, Piccadilly Station - instructed by Lovells
- Colchester United FC training ground

Listed Buildings and Conservation Areas

- Holocaust Memorial and Learning Centre
- Manor Place Oxford - successfully resisting student accommodation proposals in setting of Grade I listed St
- Catherine's College and Magdalen College's Grade I registered park and within the Oxford Central (University and City) Conservation Area
- Time Out Restaurant Spitalfields
- Persimmon Homes, Sudbury - 166 homes in setting of Grade I listed Abbas Hall
- Aldford House, Park Lane (Mayfair and Royal Parks conservation areas)
- St Katharine Docks - successfully resisting unsympathetic redevelopment of historic docks affecting listed buildings in the Tower of London conservation area, "an area of exceptional architectural and historic interest"
- Daresbury Hall inquiry (enabling development - for English Heritage)
- *R v. Secretary of State ex parte Bath and NE Somerset Council*, Court of Appeal - requirements for validity of planning/listed building consent applications (for Bath and NE Somerset Council)
- Advice to London Borough of Tower Hamlets on designation of Redchurch Street and Hackney Road conservation areas
- 5 day Crown Court trial for Warwick DC - unauthorised alterations to listed building

Major Transport Infrastructure

- HS2 - numerous petitions on behalf of objectors
- Manchester Metrolink - Airport Extension; Salford-Eccles Extension
- Crossrail
- Merseytravel
- Highways
- Argent Estates plc footpath orders to facilitate implementation of regeneration development at Piccadilly Place, Manchester - accessed via the Manchester Curve Bridge
- *R v. Secretary of State ex parte Slot*, Court of Appeal - natural justice in highway order proceedings

Enforcement Notices and Injunctions

- *Fairstate Ltd v. Secretary of State* - ten year rule arguments through inquiry High Court and Court of Appeal
- Kemble Airfield, Glos - enforcement action on behalf of Cotswold DC
- Ashford Borough Council - long running enforcement action against illegal development transferred into ownership of off-shore company involving numerous appearances in court, an inquiry and two High Court challenges

- Nottinghamshire County Council – advising on enforcement to secure restoration of Bentinck Void and Tip site
- Cotswold Water Park – enforcement of "holiday use only" restrictions
- Surrey Heath – equestrian uses in Green Belt
- Numerous injunction cases – including Human Rights of Travellers
- Committal proceedings for local authorities eg *East Herts DC v. Doherty and others*, and for LB Newham, Ashford BC, Kent County Council and Basildon DC where injunctions disobeyed by Defendants

Compulsory Purchase and Compensation

Meyric has practised in compulsory purchase and compensation law all his working life. He has widespread expertise, acting for and advising clients on CPO and major infrastructure proposals and the compensation issues arising from them. Chambers and Partners describe him as "a recognised authority on compulsory purchase". He was elected Chairman of the Compulsory Purchase Association 2014 – 2015.

Highlight cases include:

Compulsory Purchase

- HS2 – numerous petitions on behalf of objectors including Sir Cameron Mackintosh, British Car Auctions, Gallagher Holdings/Charles Wilson Engineers, LTDA, Park Village East Limited and residents and International Automotive Components Ltd
- Thames Tideway Tunnel – objections on behalf Surrey Quays Shopping Centre
- Kingsway Business Park CPO – promoted CPO for 170 hectare site in Rochdale, Manchester
- Manchester Metrolink – promoted Salford-Eccles and Airport Extensions
- Crossrail – petition for Agrexco/Carmel
- London Borough of Tower Hamlets Crossways Estate CPOs and numerous other CPOs (housing, empty properties)
- Brick Lane CPO inquiry
- *Collis v Secretary of State* – successfully defending CPO in High Court
- *Lockwood v Highways England Co Ltd* – success in CAAD appeal against Highways England
- Carpenters Road, Stratford – Olympics CPO Land Compensation Act appeal and four other appeals concerning certificates of appropriate alternative development
- Revocation and discontinuance orders – eg Ashford Council, Hertfordshire County Council, South Oxfordshire District Council
- Purchase notices

Compensation

- *Smoke Club v Network Rail* – successful resolution of multi-million pound claim for closure by Thameslink of Cable nightclub London Bridge
- *Batchelor v. Kent CC* – successful ransom value claim of £2.15 million for less than an acre of land, Lands Tribunal then Court of Appeal twice

- *Whitby v Cheshire East Council* – successful resistance of £10 million “ranson” claim
 - *Stayley Developments v. Secretary of State*, LT – claim for £13 million in respect of the M66 motorway resulted in payment of only £1 million
 - *JZT Limited v. Newcastle City Council* – £3 million Lands Tribunal claim (ultimately settled) for profits lost on extinguishment of business
 - *RWE Npower plc v. Kent CC* – successfully resisting claim for £600,000 on basis of time bar under Limitation Act
 - Advising on Crossrail compensation claims
 - Advising Greenwich RLBC on Kidbrooke Estate CPO compensation claims
 - Advice to British Waterways Board on compensation payable by electricity companies for crossings over canals and waterways
 - Lands Tribunal claim against Anglian Water plc for losses
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Major Infrastructure Projects

DCOs/TWAOs

- Thames Tideway Tunnel – for British Land
- Manchester Metrolink – promoting Manchester Airport Extension; Salford – Eccles Extension
- Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order – for Canal and Rivers Trust
- East Northants Resource Management Facility Western Extension – for Anglian Water
- Crossrail (Plumstead Sidings) Order
- Highways Agency (Knutsford to Bowden) DCO – for National Grid
- Advising on compensation provisions in Hinkley Point C Connection and East Anglia ONE North and East Anglia TWO DCO

Gas/Electricity

- Electricity Act overhead line proceedings: London Docklands; Barking Reach; Nidd Valley, North Yorkshire (all for National Grid)
 - Advised TRANSCO on compulsory purchase compensation implications of acquisition of Kings Cross gas holders as a result of construction on Channel Tunnel Rail Link
 - *Whelan v British Gas* – Claim for pipeline laid under intended landfill site.
 - Airfields
 - RAF Kemble, Gloucestershire
 - RAF Llanbedr, Snowdonia
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Public Law

Meyric has a thorough-going knowledge of administrative law principles and procedures. He is frequently reported in the specialist law reports in notable cases. His court practice covers judicial and statutory review in the higher courts at all appellate levels. He is a Member of Administrative Law Bar Association and served as B Panel Treasury Counsel for the Secretary of State from 1995–2001 defending planning decisions in the High Court and Court of Appeal.

Statutory Review and Judicial Review

Notable cases include:

- *Bolton MDC v. Secretary of State*, House of Lords – duty to give reasons for administrative decisions
 - *R v. Secretary of State ex parte Slot*, Court of Appeal – natural justice in administrative decision-making
 - *R (Goodman) v. LB Lewisham and Big Yellow Ltd*, Court of Appeal – environmental assessment
 - *Fairstate Ltd v. Secretary of State*, Court of Appeal – lawful use rights and the ten year rule
 - *R v. Secretary of State ex parte Bath and NE Somerset Council*, Court of Appeal – validity of planning and listed building consent applications
 - *R (Springhall) v. RLB Richmond*, Court of Appeal – extent of delegated authority of planning officers
 - *R (Smith) v. Cotswold DC*, Court of Appeal – reasons for and reasonableness of granting planning permission
 - *Collis v. Secretary of State* – validity of CPO resolution
 - *R (Trillium) v. LB Tower Hamlets* – alleged "improper" designation of conservation area
 - *Newcastle City Council v. NE Barns Ltd*, Court of Appeal – injunctions in statutory nuisance
 - *Manley v. New Forest DC*, Divisional Court – best practicable means in statutory nuisance
 - *Circular Facilities (London) Ltd v. Sevenoaks DC* – first ever case to reach the courts concerning a contaminated land remediation notice under Part IIA of the Environmental Protection Act 1990
 - *Bugbugs Ltd v. TfL* – cycle rickshaws and hackney carriage licensing
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