

MRPP

**MARTIN ROBESON
PLANNING PRACTICE**

*Town Planning Consultants
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**SUMMARY
PROOF OF EVIDENCE
OF
MARTIN GUY ROBESON
BA FRTPI FRICS FRSA
ON BEHALF OF MAIDSTONE
BOROUGH COUNCIL
LAND NORTH OF LITTLE
CHEVENY FARM,
SHEEPHURST LANE,
MARDEN, KENT,
TN12 9SD
APP/U2235/W/23/3321094**

19th DECEMBER 2023

Introduction

- 1.1 I am Martin Guy Robeson. I am a Fellow of the Royal Town Planning Institute in 1985 and a Fellow of the Royal Institution of Chartered Surveyors. I provide town planning advice with regard to development proposals across the United Kingdom.

Matters being addressed

- 1.2 I address the application of planning policy to the proposed development including the use of the 'Best and Most Versatile' ('BMV') agricultural land. I rely on the evidence of other witnesses in terms of landscape and heritage before addressing the overall planning balance.
- 1.3 RfR 1 is the primary reason addressed by me. The site includes a significant proportion of land which is of economic value. The proposal is contrary to National and local policies. These direct solar installations towards lower grade land.

The Development Plan

- 1.4 The most relevant development plan policies are DM24 Renewable and low carbon energy schemes; SP27 Countryside; SP18 The Historic Environment; DM1 Principles of good design; DM3 Natural environment; DM4 Development affecting heritage assets; and DM30 Design principles in the countryside. All are up to date and attract full weight.

The Emerging Local Plan

- 1.5 The emerging Local Plan Review carries forward DM24 (as LPRINF3) essentially unchanged without Modifications or outstanding objections. The emerging policy will have had regard to the NPPF (CD3.3) in casting its approach.

Policy DM24

- 1.6 Policy DM24 has three components. The first provides six criteria which must be taken into account. These relate to cumulative impact with other proposals, landscape and visual impact, impact on heritage assets, local residents', amenity, the local transport network and ecology. All of these criteria are couched in terms of 'impact' The proper test for assessing these impacts is such that any unacceptable impact against the six listed criteria results in a failure against part (1) of the Policy.
- 1.7 Part (2) of the policy provides that *"Preference will be given to existing commercial and industrial premises, previously developed land, or agricultural land that is not classified as the best and most versatile"*. I note that the interpretation of planning policy is a matter of law as per the Judgment in Tesco Stores Ltd v Dundee City Council. And national policy provides that development plans should, *"...contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals"* (NPPF 16(d)) **(CD3.3)**.
- 1.8 Part (3) requires that *"Provision for the return of the land to its previous use must be made when the installations have ceased operation"*. Whilst compliance with part (3) could be secured by condition, the Inspector will need to be cognisant of

the content of the NPPF's paragraph 158(c) facilitating extensions to existing renewable energy sites such that the environmental harms of a proposal may endure beyond the so called temporary, 27 year, period.

- 1.9 I see failure to comply with any of the three parts of DM24 (or any of the criteria its part (1) would result in conflict with DM24 as a whole.

Use of BMV Agricultural Land

- 1.10 The proposed development would remove from agricultural use a significant quantity (i.e., 35.1 ha) of BMV land. My evidence first addresses the necessity of and justification for the use of BMV land. Then whether the available evidence proposed meets the tests for the use of BMV land within the development plan.
- 1.11 The Appellant's submissions relating to agricultural matters or soil quality fall to be considered under 'other material considerations'. Compliance with Policy DM24(2) relates only to the binary question of using BMV land in the site selection process.
- 1.12 The interpretation of this policy rests upon the use of the word 'preference', which in this context is to be defined as having 'precedence'. The policy's justifying text supports this. An assessment of alternative sites is necessary. Thus, proposals using BMV land can only be compliant if they could not be located on lower quality land. This needs to be demonstrated through consideration of alternative sites. Indeed, the appellant has undertaken a form of sequential assessment.
- 1.13 The question then is what would be an appropriate search area for alternative sites? The appellant has taken an overly limited and illogical approach in using the Maidstone administrative boundary. Proximity to the proposed grid connection that has been agreed should not provide the basis for the area of search. It is entirely inappropriate for grid connection to trump all other planning considerations determining acceptability of a site. In any event, the grid connection agreement has not been provided.
- 1.14 Ofgem's recent announcement relating to a change in the rules allowing stalled projects to be dismissed and for viable and deliverable generation scheme to be 'fast-tracked' (Appendix 1) supports my position that the site of the existing grid connection should not necessarily inform the extent of assessment of alternative sites. This allows the objectives of Policy DM24 to be more appropriately implemented.
- 1.15 It is not reasonable to use the Maidstone Borough boundary as the search area. I understand the Maidstone area neither has any relevance to possible connection to the grid at 132kV line, nor to the area in which the energy produced would be used. The February 2022 Sequential Analysis Study failed to provide any rational justification for its study area beyond the fact that this site happened to fall within the administrative boundary of Maidstone. The April 2023 Study seeks to justify the study area. But the background research undertaken by Carter Jonas is not provided, only a brief overview written three years after their instruction. There is no justification as to why the search was terminated at

Hartley, rather than more logically stretching between Northfleet and Ninfield, the two Grid Supply Points connected by the 132kV line.

- 1.16 The Study refers to constraints leading to a focus on the area south of the railway line between Ashford and Tunbridge Wells. Since the Carter Jonas exercise is not provided in full and all of the Plans focus on Maidstone itself, the Inquiry is unable to determine whether this was a reasonable decision. I consider it unlikely that all of the land between the railway line and Northfleet can be discounted.
- 1.17 I note that the reforms to speed up connection agreements could be such that if the Appeal were dismissed, the capacity would be freed up for another, more appropriately sited proposal(s). The Updated Sequential Analysis Study notes two sites were identified. The other site, further south in Tunbridge Wells was discounted as the landowner was said to be “...*not interested in pursuing a solar scheme at that time*” (paragraph 4.28). That was almost four years ago and it is perfectly reasonable to assume that circumstances may have changed.
- 1.18 Based upon overly restrictive parameters, the lack of supporting evidence and the self-serving Maidstone site preference notwithstanding the previous Sequential Analysis Study looking at a wider area, I find that this conclusion is a retrospective exercise with a pre-determined conclusion justifying the erroneous parameters and conclusion of the 2022 Study. There has been no justification provided to support the use of the Maidstone Borough administrative boundary as the study area. Instead, it would have been reasonable to consider the area which the proposed development in its generation of electricity would serve. And in that regard, I find no justification for using Maidstone’s administrative area at all. The 132kV line supplies Northfleet East substation, which in turn feeds substations across the southeast. A search area could therefore be adapted to include sites within 500m of any 132kV line that supplies the Northfleet East substation.
- 1.19 The Appellant has not provided any evidence to demonstrate that any of the electricity generated by the proposed development would be in Maidstone Borough. This further suggests that the Maidstone administrative boundary is not a relevant consideration.
- 1.20 The choice of a scheme aiming to be just below the 50MW threshold has also predetermined the site selection exercise in requiring a particularly large site area, connection to a 132kV connection, yet only examining a limited search area. These artificial limits serve to have justified the Appeal site, where a grid connection agreement has already been obtained outside of the planning process. I consider that the site selection analysis undertaken has not justified the use of BMV land thus conflicting with Policy DM24(2).

Compliance with other development plan policies

- 1.21 The evidence of Peter Radmall explains that the development would cause harm to the character and appearance of the area and would fail to comply with Policies SP17, DM1 and DM30. That in turn causes further conflict with DM24(1)’s criterion (ii).

- 1.22 The evidence of Jeremy Fazzalero explains that the development would harm the significance of Little Long End and Little Cheveney Farm, through harm to their settings including additional buildings and oasthouses at the latter.
- 1.23 Policy DM24 requires conservation and enhancement of assets and notes the application of tests within the NPPF. This therefore applies the 'great weight' to the asset's conservation as per paragraph 199 and the tests at paragraphs 201-203, including whether harm is outweighed by public benefits . I therefore note the "*great weight*" to be given to relevant asset's conservation and special regard paid to preserving heritage assets and their settings (Section 66 of the Planning (LBCA) Act). The less than substantial harm to multiple designated assets, noting the 'great weight' and 'special regard', would not be outweighed by the asserted public benefits of the proposal. The proposal would not accord with the NPPF's paragraph 202 and Policy DM4.

Compliance with the development plan as a whole

- 1.24 Conflict with DM24 is fundamental and on multiple grounds. Harm to the character and appearance of the landscape and countryside would be significant and cause conflict to Policies SP17, DM1 and DM30. The proposal would fail to preserve and enhance nearby designated heritage assets, in conflict with Policy DM4 and DM24(1).
- 1.25 The proposal would not accord with the development plan when taken as a whole, Permission should therefore be refused unless there are other material considerations which would indicate otherwise.

Other relevant Planning Policy and Guidance

- 1.26 In terms of NPPF 155(b) the Council has considered whether or not to identify suitable areas and has chosen not to do so. In terms of the NPPF 158(a), the overall need for renewable energy has not been disputed. In terms of paragraph 158(b) directing authorities to approve an application "*if the impacts are (or can be made) acceptable*", This is not applicable. The 2015 Written Ministerial Statement ('WMS') states that "*...any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence.*" The WMS is a statement of Government Policy. The 'most compelling evidence' is a very high threshold.
- 1.27 National Policy Statements EN-1 and EN-3 are due to come into force in early 2024. Regarding the extent that NPS's are material to decisions under the 1990 Act, paragraph 1.2.2 of EN-1 states this "*will be judged on a case-by-case basis and will depend upon the extent to which the matters are already covered by applicable planning policy*". Development plan Policy DM24 is considered up-to-date and addresses relevant consideration.
- 1.28 I see EN-1 and EN-3 (2023) with other statements concerning climate change and renewable energy as important considerations to which significant weight should be given.

Renewable energy generation

1.29 Whilst the most substantial benefit that would arise from the proposal derives from the generation of renewable energy, there is no component to DM24 requiring the Council to grant a given amount of solar power, or to make agricultural land available of this scale. References to 9,300 new homes benefiting in Maidstone should not be afforded any weight in the planning balance. It attempts to create a spatial reason to justify the proposal in this Borough.

1.30 The scheme does not benefit from a more balanced and resilient supply afforded by battery storage. The substantial landscaping intended to 'hide' the proposal results in a lower efficiency of output per land area used. Notwithstanding my observations I conclude that the generation of renewable energy should attract **substantial positive weight**.

Other matters for the planning balance

1.31 Biodiversity net gain - **moderate positive weight**.

1.32 Introduction of two permissive footpaths – **neutral weight**.

1.33 Economic benefits from farm diversification – **neutral weight**.

1.34 Economic benefits from construction and maintenance – **limited positive weight**.

1.35 Even if acceptable under DM24(2), the loss of an intensive agricultural use on high quality land for a very considerable (hardly 'temporary') 37 year period, must attract **significant negative weight** (see Inspector's Swadlincote Appeal Decision).

1.36 Harm to the character and appearance of the area and the countryside – **moderate to significant negative weight**.

1.37 The use of land for grazing would be a very non-intensive use of this significantly BMV rated resource. And I do not consider it could be enforced by condition.

Conclusions: the outcome of the planning balance

1.38 The proposed development would fail to accord with the development plan as a whole, The 'other material consideration' identified, both positive and negative, would not indicate when all weighed in the balance that determination ought to be made other than in accordance with the development plan.

1.39 The appeal should be dismissed, and planning permission refused.