



Department for  
Communities and  
Local Government

Mr Dale Mayhew  
Dowsett Mayhew Planning Partnership  
63a Ship Street  
Brighton  
Sussex  
BN1 4AE

Our Ref: APP/M3645/W/15/3133066  
Your Ref:

30 March 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY BARROW GREEN SOLAR PARK LIMITED: LAND AT BARROW GREEN  
FARM, HAXTED ROAD, LINGFIELD, SURREY, RH7 6DE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI, who held a hearing and site visit on 1 and 2 December 2015 in relation to your clients' appeal against the refusal of Tandridge District Council ("the Council") to grant planning permission for the installation of a photovoltaic array (solar park), erection of control room and associated works in accordance with application ref: TA/2015/57, dated 13 January 2015, at Barrow Green Farm, Haxted Road, Lingfield, Surrey RH7 6DE.
2. The appeal was recovered for the Secretary of State's determination on 20 November 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because the proposal is significant development in the Green Belt.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation and dismisses the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Policy considerations**

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Tandridge

Jean Nowak, Decision Officer  
Planning Casework Division  
Department for Communities and Local Government  
3<sup>rd</sup> Floor, Fry Building  
2 Marsham Street  
London, SW1P 4DF

Tel 0303 444 1626  
Email [pcc@communities.gsi.gov.uk](mailto:pcc@communities.gsi.gov.uk)

District Core Strategy (CS) adopted in 2008, and the Tandridge District Local Plan Part 2: Detailed Policies (TDLP), adopted in 2014. The Secretary of State agrees with the Inspector that the most relevant development plan policies are those relied on in the reasons for refusal (IR17-IR18).

5. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework) and the associated Planning Guidance; along with the Written Ministerial Statement "Planning Update March 2015" which, amongst other matters, concerns solar energy and the protection of the local and global environment.

### **Main issues**

6. The Secretary of State agrees with the Inspector that the main considerations in this case are those set out in IR41.

### Green Belt policy

7. The Secretary of State agrees with the Inspector that due weight should be given to the TDLP as it is essentially consistent with the Framework (IR42). He notes that there is no dispute between the parties that the proposal represents inappropriate development in the Green Belt and that this would be, by definition, harmful to the Green Belt (IR19 and IR44). Overall, for the reasons in IR42-IR45, the Secretary of State agrees with the Inspector that the proposal is in conflict with development plan and national policy as it relates to the Green Belt, and would therefore cause definitional harm, additional harm to openness and harm to one of the purposes of designation (safeguarding the countryside from encroachment) (IR46). He agrees with the Inspector that this weighs heavily against the proposal (IR44). He has gone on to consider whether there are any very special circumstances which would outweigh the conflict he has identified.

### Agricultural land quality

8. The Secretary of State notes it has not been possible to determine the precise agricultural land classification of the appeal site but that it lies close to Grade 4, thereby suggesting it is not likely best and most versatile (BMV) land (IR52-IR53). Nevertheless, the Secretary of State gives this degree of uncertainty moderate weight in the planning balance.

### Effect on the landscape and visual amenity of the area

9. For the reasons set out in IR54-IR58 the Secretary of State agrees with the Inspector that the proposal would harm the character and appearance of the surrounding landscape and conflict with landscape policies. In particular, the Secretary of State agrees that, for the reasons given at IR56, the anticipated degree of visual effect in respect of Viewpoint 2 of the Landscape and Visual Impact Appraisal (LVIA) is probably underestimated and that, for the reasons given at IR57, the mitigation of the of views into the site from the footpath would not be effective. Hence, the Secretary of State agrees with the Inspector's conclusion at IR58 that, on balance, the effect on the rural landscape would be harmful; and he attaches significant weight to that.

### Flood risk

10. For the reasons given at IR59, the Secretary of State agrees with the Inspector that the proposal is unlikely to increase flood risk in the area and he considers this to be a neutral factor to which he gives no weight in the overall balance.

### Highway Safety

11. Similarly, for the reasons given at IR60, the Secretary of State agrees with the Inspector that, with the imposition of proposed conditions, the proposal would not result in adverse impacts of highway safety. The Secretary of State therefore also regards this as a neutral matter to which he attaches no weight.

### Biodiversity

12. The Secretary of State has carefully considered the Inspector's arguments on biodiversity at IR61-IR63 and agrees with his conclusion that, although the proposed scheme could result in a net ecological gain, this should be considered in the context of the existing biodiversity measures which have been and could be implemented in the absence of the appeal scheme. The Secretary of State therefore only gives limited weight to any potential biodiversity benefits.

### Benefit arising from the provision of renewable energy

13. For the reasons given at IR64-IR66, the Secretary of State agrees with the Inspector that the anticipated output from the appeal scheme would make a significant contribution to the production of renewable energy and the cutting of greenhouse gas emissions. He gives due weight to this benefit, while acknowledging that there may be alternative ways of achieving it without infringing Green Belt policy.

### **Conditions**

14. The Secretary of State has considered the proposed conditions, as set out in the Annex to the IR, and the Inspector's comments on them at IR67-IR69. He is satisfied that these conditions are reasonable and necessary and would meet the tests of the Framework and the guidance. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing the appeal.

### **Planning balance and overall conclusion**

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in this letter, the Secretary of State concludes that the appeal proposal would not be in accordance with the development plan. Most importantly, he agrees with the Inspector that the proposal is inappropriate development in the Green Belt, that it would harm the openness of the Green Belt and conflict with one of the purposes of its designation, and that this weighs heavily against the proposal. He has therefore gone on to consider whether there are any very special circumstances sufficient to outweigh that conflict.
17. In terms of sustainability, the Secretary of State gives significant weight to the delivery of renewable and low carbon energy as well as some limited weight to the short term

employment benefit during the construction phase, the diversification of the farm holding and the potential biodiversity benefits. Against this, however, not only would there be significant harm to the Green Belt, a loss of openness and encroachment into the countryside, but also additional harm by reason of the effect on the character of the countryside and the uncertainty as to the agricultural quality of the land required for the scheme. Like the Inspector, the Secretary of State considers that there would seem to be scope for alternative sites and options outside the Green Belt to provide similar benefits while avoiding the harmful effect on the Green Belt.

18. Overall, the Secretary of State agrees with the Inspector that the benefits of the scheme do not clearly outweigh the harm to the Green Belt and the landscape and visual amenity of the area and that there are no very special circumstances to justify allowing the inappropriate development. He therefore concludes that there are no material considerations sufficient to overcome the conflict he has identified with the Framework and the development plan.

### **Formal Decision**

19. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the installation of a photovoltaic array (solar park), erection of control room and associated works in accordance with application ref: TA/2015/57, dated 13 January 2015, at Barrow Green Farm, Haxted Road, Lingfield, Surrey RH7 6DE.

### **Right to challenge the decision**

20. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

21. A copy of this letter has been sent to the Council.

Yours faithfully

*Jean Nowak*

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

---

# Report to the Secretary of State for Communities and Local Government

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 7 January 2016

---

TOWN AND COUNTRY PLANNING ACT 1990

TANDRIDGE DISTRICT COUNCIL

APPEAL BY BARROW GREEN SOLAR PARK LTD

Hearing held on 1 December 2015

Land at Barrow Green Farm, Haxted Road, Lingfield, Surrey RH7 6DE

File Ref(s): APP/M3645/W/15/3133066

---

**File Ref: APP/M3645/W/15/3133066**

**Land at Barrow Green Farm, Haxted Road, Lingfield, Surrey RH7 6DE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Barrow Green Solar Park Ltd against the decision of Tandridge District Council.
- The application Ref TA/2015/57, dated 13 January 2015, was refused by notice dated 25 February 2015.
- The development proposed is described as installation of Photovoltaic Array—revised resubmission of application TA/2014/1014.

**Summary of Recommendation: That the appeal be dismissed.**

---

**Procedural Matters**

1. I conducted a Hearing on 1 December and undertook an accompanied visit to the site on the following day, 2 December 2015. I also walked the local footpaths to assess the viewpoints submitted in the appellant's Landscape and Visual Impact Appraisal (LVIA). It was agreed by all parties that Viewpoint 02 is incorrectly identified and I shall come back to this in my report.
2. The appeal was recovered for decision by the Secretary of State on 20 November 2015. The reason for recovery is that the proposal is significant development in the Green Belt.

**The Site and Surroundings**

3. The proposed installation would be located in attractive open countryside about 400m to the east of the large village of Lingfield from which it is separated by the London-East Grinstead railway line. The site currently comprises part of the adjacent Park Farm, which is included within the larger Barrow Green Farm land holding. The land is gently undulating, with small copses, ponds, and well maintained hedgerows and the meandering Eden Brook. Particular features are the mature trees that line the footpaths and also grow as individual specimens.
4. To the north-west, is a short terrace of houses, known as Park Farm Cottages, and open agricultural fields, beyond which is Eden Brook and Haxted Road. To the east of the site is Billeshurst Wood and to the west are the farm buildings of Park Farm, a telecommunications mast and agricultural land. Beyond these are two dwellings, known as Park House and Mulberry Cottage. To the south the land is currently used for arable crops.
5. The agricultural land hereabouts is crossed by several footpaths that provide links between Lingfield and the countryside to the east<sup>1</sup>. These provide pleasant routes for walkers, far reaching vistas and good access to the rural landscapes hereabouts. There are clear views towards the site of the proposed installation from the footpaths that cross the agricultural land to the west and north-west, because the field is elevated above the lower land closer to the Eden Brook and its tributaries and rises to a slight ridge. To the south and east views of the site are limited by the topography and woodland.

---

<sup>1</sup> Figure 01 rev 01 Landscape and Visual Impact Appraisal (LVIA)

6. The red line on the application plan extends around a group of fields totalling about 22.3ha in area<sup>2</sup>. These are located to the south of Haxted Road and border either side of Park Lane, a private road. The application site includes the access road from the site north along Park Lane to its junction with Haxted Road and the associated visibility splays. The land within the red line is currently used as pasture land and for arable crops.
7. There is a fall across the field parcels, from south to north, of some 9.5m; from a high point in the southwest corner at 54.9m AOD, to a low point some 45.5m AOD in the north<sup>3</sup>. The agricultural land falls further towards Eden Brook to the north. Although the red line encompasses several fields, the solar installation is proposed in only one of these<sup>4</sup>. This would be the most southerly parcel comprising about 9.65ha<sup>5</sup> south of the private lane to Park Farm<sup>6</sup>. The fields to the north of the installation site are generally flat around Eden Brook, before gently rising to Haxted Road. To the south, the topography rises towards Margaret's Hill, to the southwest of Billeshurst Wood; the proposed installation would be located on this rising land.
8. The boundary of the installation site is defined by mature, indigenous hedgerows to the south; the eastern boundary and part northern boundary are enclosed by the edge of Billeshurst Wood. To the west are agricultural buildings and the telecommunications mast. The remainder of the boundary is defined by hedgerows and intermittent trees. This 9.65ha parcel of land rises steadily from the north east corner to the south where it forms a slight ridge in the undulating landscape. Within the proposed installation site there are three individual trees which would be retained.

### **The Proposal**<sup>7</sup>

9. The scheme proposes the construction of a solar farm designed for a 30 year lifespan<sup>8</sup>. The panels would be aligned in rows running from east to west across the site, with spacing between each row of some 3.25m. The panels would be mounted on a metal framework driven into the soil by up to 1.5m.
10. Each panel would be some 1.1m in width and 1.6m in depth, arranged in landscape format with 2 panels per alignment. They would be retained in a fixed position at an angle of 25<sup>o</sup>, facing south. The lowest part of the panel would be positioned 0.8m above ground level and the highest part 2.3m above ground level.
11. Associated infrastructure would include 3 inverters housed in cabins located centrally in the site together with a switch gear station in the north-east corner of the field. Each inverter would be 3m in height, 8.9m in length and 3.2m in width and these are proposed to be installed on concrete bases. The link to the grid would be via an underground cable.

---

<sup>2</sup> Site Plan for Barrow Green Farm (unnumbered)

<sup>3</sup> Paragraph 9.5: Statement of Common Ground (SoCG)

<sup>4</sup> Plan STHSLR1000-10-rev 10

<sup>5</sup> Paragraph 2.2 Appellant's Statement of Case

<sup>6</sup> Paragraph 4.14: SoCG

<sup>7</sup> Paragraphs 4.15-4.19: SoCG

<sup>8</sup> Paragraph 11.14: Planning Statement

12. Other works include access tracks within the field, CCTV cameras installations and a 2.1m security deer fence. Access would be via the existing private track, Park Lane.

### **Planning History**

13. The proposal is the resubmission of a previously refused application (LPA Ref: TA/ 2014/1014). That proposal (the 2014 scheme) sought permission for a larger installation of solar arrays on 4 fields totalling an area of approximately 22.3ha with an anticipated generation of about 12.5MW<sup>9</sup>.

### **Planning Policy**

14. The installation site is within the Metropolitan Green Belt<sup>10</sup>.
15. The development plan comprises the Tandridge District Core Strategy (CS), adopted in 2008, and the Tandridge District Local Plan Part 2-Detailed Policies, adopted in July 2014 (TDLP)<sup>11</sup>.
16. The reason for refusal relies on 2 TDLP policies, DP10 and DP13.
17. Policy DP 10 says, amongst other matters, that: *"(b) - within the Green Belt, planning permission for any inappropriate development which is, by definition, harmful to the Green Belt, will normally be refused. Proposals involving inappropriate development in the Green Belt will only be permitted where very special circumstances exist, to the extent that other considerations clearly outweigh any potential harm to the Green Belt by reason of inappropriateness and any other harm"*.
18. Policy DP13 states, amongst other matters, that: *"Unless very special circumstances can be clearly demonstrated, the Council will regard the construction of new buildings as inappropriate in the Green Belt..."*

### **Other Agreed Facts**

19. It is a matter of common ground between the main parties that the appeal site and its environs are within the designated Metropolitan Green Belt and that the proposal represents inappropriate development. They agree that as set out in paragraph 91 of the National Planning Policy Framework (the Framework), the appellant will need to demonstrate very special circumstances if the project is to proceed. The parties also agree that such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources<sup>12</sup>.

### **The Case for the Appellant**

20. There are very special circumstances in support of the proposed scheme, which outweigh the harm by reason of inappropriateness and the alleged harm to openness. As noted within paragraph 91 of the Framework, these very special circumstances principally flow from the scheme's delivery of a significant

---

<sup>9</sup> Paragraph 5.11 Council's Hearing Statement

<sup>10</sup> Paragraph 9.5: SoCG

<sup>11</sup> Paragraph 9.2: SoCG

<sup>12</sup> Paragraph 9.11: SoCG



quantum of renewable energy, the environmental benefits associated with this form of energy, and the associated energy security benefit of an increased energy supply from within the UK.

21. The proposed solar park would provide up to approximately 5MW of renewable energy. This is equivalent to the electrical energy requirements of about 1,400 homes in the local area on an annual basis<sup>13</sup>. Because the electricity is fed into the National Grid in the local area, the energy generated is also therefore most likely to benefit properties within the immediate area, such as Lingfield and Dormansland.
22. This would make a significant contribution towards the generation of renewable energy in order to meet the European-wide commitments for the reduction in CO2 emissions and production of renewable energy within the UK. The proposed scheme would result in carbon saving of some 9,800 tonnes per annum<sup>14</sup>.
23. In March 2007, the European Union announced a legally binding commitment on the member states to reduce carbon emissions by 20% by 2020, when compared to the 1990 levels. This includes a 20% saving of EU energy consumption by 2020 over estimated projections and a reduction of carbon emissions by 20% by 2020 and 30% internationally. The UK is legally committed to delivering 15% of its energy demand from renewable sources by 2020<sup>15</sup>.
24. The circular letter dated 29 October 2015 from the Secretary of State for the Department of Energy and Climate Change (DECC) to the Foreign and Commonwealth Office, HM Treasury and the Department for Transport says that the UK continues to make progress towards the target and has met the interim milestone for 2013/14. However, on current forecasts, there is likely to be a shortfall against the target in 2020<sup>16</sup>. In these circumstances, and in the light of the Energy White Paper 2007, the UK Renewable Energy Strategy 2009, and the UK Renewable Energy Roadmap July 2011, updated December 2012, it is imperative that renewable energy schemes are supported because renewable energy has a key role to play in reducing carbon emissions and achieving security of supply.
25. It is a matter of common ground between the main parties that the proposal would not result in harm to the character and landscape of the area<sup>17</sup>. Similarly it is agreed that the agricultural land proposed for the solar array is classified as 3b<sup>18</sup>.
26. Consequently the harm arising from the appeal proposal on the Metropolitan Green Belt is limited to the works comprising inappropriate development in principle, and any resulting impact on openness. Openness has been assessed in the light of the LVIA and this concludes that the proposed PV installation could be successfully accommodated within the existing landscape without causing undue

---

<sup>13</sup> Paragraph 6.10: SoCG

<sup>14</sup> Paragraph 4.21: SoCG

<sup>15</sup> Paragraph 8.2: SoCG

<sup>16</sup> Document 2 submitted at the Hearing

<sup>17</sup> Paragraphs 9.12-9.16 of the Statement of Common Ground

<sup>18</sup> Paragraphs 9.28, 9.30-9.31 of the Statement of Common Ground

harm to its existing character and visual resource<sup>19</sup>. The alleged harm pertaining to encroachment in the countryside would be similarly mitigated by planting.

27. The selection of sites for field scale solar installations within the south-east is heavily constrained by the capacity of the grid to accommodate the power generated and also by site specific constraints in terms of landscape and other designations<sup>20</sup>. It is accepted that the UK Power Network Generation Capacity Maps show that there are areas in the south-east where there is grid capacity<sup>21</sup>. The selection process demonstrates that this site is the preferred location within Tandridge because its impact on matters of acknowledged importance would be less than other potential sites<sup>22</sup>. Moreover any site outside urban areas within the District would be in the Green Belt. It is not reasonable to reject sites due to their location in the Green Belt because paragraph 97 of the Framework says that there is a responsibility on all communities to contribute to energy generation from renewable or low carbon sources.
28. It is incumbent on the Local Planning Authority to consider the potential for solar installations (PV) within the Metropolitan Green Belt within their District as suitable for the installation of a PV array. This is wholly in accordance with the Framework guidance. In this case, having regard to the conclusions on the impact of the array and having regard to other matters, the site is suitable for a PV array, with the exception of its conflict with Green Belt policy<sup>23</sup>.
29. The Framework says there is a responsibility on all communities to contribute to renewable energy generation, and that within Green Belts, very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. In the absence of any more preferable sites, the proposal is thus in compliance with the Framework and the policies relied upon in the Development Plan.
30. Overall the PV installation would firstly, amount to sustainable development, secondly, would provide the benefits associated with increased production of energy from renewable sources, thirdly, would deliver energy security by reason of energy production for the UK being located within the UK, and finally, the impact of the works would be wholly reversible at the end of their predicted life (estimated to be not more than 30 years<sup>24</sup>). These amount to very special circumstances which mean that permission should be granted.

### **The Case for the Council**

31. The fundamental aim and essential characteristic of the Green Belt is to prevent urban sprawl by keeping land permanently open. Openness in this context means, in its simplest terms, a physical absence of built development and structures.
32. Currently the site is agricultural farmland and therefore wholly undeveloped. The provision of fencing, access tracks, inverter housings, a switchgear station and

---

<sup>19</sup> Paragraph 8.6.4 and Table 07: LVIA

<sup>20</sup> Paragraphs 6.26-6.29 Appellant's Statement of Case

<sup>21</sup> Appendix B: Site Search Assessment, and paragraph 6.29 : Appellant's Statement of Case

<sup>22</sup> Table 3-Site Assessment Matrix: Site Search Assessment.

<sup>23</sup> Paragraphs 6.33 Appellant's Statement of Case

<sup>24</sup> Paragraph 11.4 Planning Statement

- the panels themselves would constitute significant structures and would be substantial features in an otherwise open undeveloped field. This would significantly diminish the openness of the Green Belt.
33. Furthermore the proposal would result in extensive development across a wide area which is surrounded by open fields and pockets of woodland. Provision of roads and structures up to a height of 3m would result in a significant encroachment into the countryside with the scale and extent of the proposal creating the greatest harm. The operational period of the development would be 30 years which would be a very long period of time during which there would be significant harm. Consequently substantial very special circumstances would be needed in order to justify this actual and defined harm.
  34. Case law has confirmed that these very special circumstances can be a single factor, or a combination of factors that in themselves are not very special but cumulatively amount to very special circumstances. Such circumstances, furthermore, should not be easily repeatable elsewhere.
  35. It is acknowledged that the site selection process is highly constrained by the limited opportunities to connect into the National Grid. Moreover any other potential site in the countryside in Tandridge would be similarly located in Metropolitan Green Belt because all land outside the main settlements of the District is designated as Green Belt. It is also accepted that the land does not comprise best and most versatile land<sup>25</sup>. However the site selection analysis shows that there are parts of the south-east outside Green Belt and outside landscapes nationally designated for landscape quality that could be suitable and this is accepted by the appellant<sup>26</sup>. In weighing the suitability of sites, their location in the Green Belt should be considered at an early stage in the sift process and that has not happened in this case<sup>27</sup>.
  36. It is accepted that the generation of renewable energy would have national benefits and this is a significant factor to be weighed in the balance in favour of the proposal and should be given considerable weight. But it has not been adequately demonstrated that this site in the Green Belt is the most suitable and appropriate. A site outside the Green Belt could offer similar benefits. Moreover progress towards the national renewable energy target could be met by other means, including the use of large agricultural or commercial roofs, and this approach is favoured by national policy and would not result in the use of Green Belt land.
  37. Furthermore, the quantum of electricity would be significantly less than the previously refused 2014 application and as a result the benefits of the development in terms of renewable energy are not as great as that under the previous scheme. Accordingly the benefits would be fewer and this would not outweigh the harm to openness.
  38. Although there are benefits, in terms of the generation of renewable energy, insufficient very special circumstances have been demonstrated to outweigh the harm that would be caused.

---

<sup>25</sup> Agricultural Appraisal prepared by Humberts on behalf of the Council

<sup>26</sup> Paragraph 6.29 :Appellant's Statement of Case

<sup>27</sup> Table 1 Criteria for PV array site selection and assessment: Site Search Assessment

## **Other Representations**

39. Representations were received from Dormansland Parish Council, Lingfield Parish Council, the District Council ward member and from local residents. These all objected to the proposal and raise the following matters:

- insufficient very special circumstances to outweigh Green Belt harm;
- adverse highway safety implications;
- does not overcome previous reasons for previous refusal;
- risk of flooding;
- adverse visual effect on the character of the rural locality;
- loss of agricultural land;
- creation of 'brown-field' situation vulnerable to future development;
- less harmful ways to generate electricity;
- harmful effect on wildlife.

## Inspector's Conclusions

[Numbers in square brackets denote source paragraphs]

### *Background and Main Considerations*

40. The site comprises an open agricultural field located on gently rising land within the Metropolitan Green Belt. The proposal is for a solar farm and associated infrastructure [9-12, 14].
41. Given this background it seems to me that the main considerations are:
- whether the proposal constitutes inappropriate development in the Green Belt; and the effect on openness and the purposes of the Green Belt;
  - any other harm;
  - the benefits arising from the provision of renewable energy; and
  - whether those benefits clearly outweigh the harm by reason of inappropriateness together with any other harm, including any effects on the openness of the Green Belt, such that very special circumstances have been demonstrated.

### *Green Belt Policy*

42. Tandridge District Local Plan Part 2-Detailed Policies, adopted in July 2014 (TDLP) postdates the National Planning Policy Framework (the Framework) and Green Belt policies are consistent with it. The general policy approach is to resist inappropriate development other than that set out at paragraph 89 of the Framework. The policies relied upon in the TDLP contain no references to renewable energy developments.[15,14]
43. The Framework says that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. In terms of the purposes of Green Belt, the parties agreed at the Hearing that the relevant consideration is the effect of the development in respect of encroachment in the countryside.[26,33]
44. It is common ground that the proposed solar installation constitutes inappropriate development and that this would be, by definition, harmful to the Green Belt. This is a matter to which substantial weight should be given. [19,20,31-33]
45. In addition to the harm caused by inappropriate development, openness is an essential characteristic of the Green Belt. There is no dispute that the solar farm, by reason of the quantum of development, the extent of the arrays and the associated infrastructure including fencing, CCTV cameras and 3 cabins, would result in a loss of openness. The argument that the visual effect of the development would be mitigated within 5-10 years by existing and proposed planting and thus the effect on openness would not be harmful appears to misunderstand the concept of openness in the Green Belt. In my view this is focussed on 'absence of development' rather than the visibility of development. In these circumstances the development would have an impact on the openness of the area and this would cause an additional harm to the Green Belt.[26,33]

46. The appellant accepts that he has not addressed encroachment as a separate consideration but says that the purpose of safeguarding countryside is akin to the considerations in respect of openness. He relies on the LVIA which had found that over time any effects would be mitigated by planting and the temporary nature of the PV array. A planning condition could require reinstatement of a solely agricultural use but I also note that the appellant envisages a possible scenario that the 'panels could be replaced'<sup>28</sup>. But whether or not the intention is to remove the installation after 30 years, that period in itself is a considerable time during which the proposal would constitute encroachment into the countryside. [26,30,32,33]
47. The appellant's reliance on paragraph 91 of the Framework needs to be considered within the context of the Framework as a whole and the specific circumstances of the proposed development. In this case, it was acknowledged that, despite the constraint of nationally designated landscape in the south-east, that other sites could be suitable and these are not all in the Green Belt. Whilst the site selection process appears to support development of this site no cogent reason has been given as to why the initial sifting of sites excluded any consideration of whether or not a site is within Green Belt. Nor does it seem that it is essential that the solar panels are located in the Green Belt. There appear to be other areas in the south-east outside of the Green Belt where there is grid capacity. Thus it appears that equal benefits of renewable energy generation could be secured elsewhere beyond the Green Belt. [27, 35]
48. Paragraph 97 of the Framework is supportive of energy for renewable or low carbon sources but does not indicate or require that such provision is in the form of solar farms. Thus it seems to me that the argument that it is incumbent on all communities to accommodate field scale solar installations appears to be misguided. There appears to be other schemes within the administrative area of Tandridge, in particular the use of commercial roof spaces, which have and would increase the supply of renewable energy in accordance with the objectives of the Framework. [36]
49. In terms of local benefits, there is no evidence that the energy would be used by homes in the locality. Once the power is transferred to the National Grid there is no mechanism to ensure that the generated power is used by local residents. [21]
50. Overall, the proposal is in conflict with the development plan and national policy as it relates to the Green Belt. There would be harm, by reason of inappropriate development, loss of openness and harm to one of the purposes of the Green Belt because of the encroachment into the open countryside. These collectively would weigh heavily against the proposal.

*Any other harm*

51. There is substantial agreement by the parties in respect of other material considerations including highway safety, flood risk, effect on designated assets and heritage including archaeology, biodiversity, aircraft safety and the impacts on residential amenity and these are catalogued in the Statement of Common Ground (SoCG). Third parties have raised some concerns about the agreed matters and these are considered below. There is also agreement in terms of the

---

<sup>28</sup> Paragraph 2.12: Appellant's Statement of Case

effect on the agricultural land and the character and appearance of the countryside.

#### *Agricultural land quality*

52. The SoCG says that it is agreed that the proposed development will not take place on higher quality agricultural land and that there is no conflict with planning guidance in the National Planning Practice Guidance (NPPG) or paragraph 112 of the Framework<sup>29</sup>. But the SoCG also says that it has not been possible to determine the precise agricultural land classification, beyond Grade 3<sup>30</sup>; Grade 3a is categorised as best and most versatile whereas 3b is not so highly valuable.
53. The Agricultural Appraisal commissioned by the Council says that it has not been possible to determine the precise agricultural land classification, but because the land lies close to Grade 4 land this may suggest it is of lower quality overall<sup>31</sup>. I was unable to establish any further clarification of the quality of the agricultural land subject of the appeal because it has not been investigated by either party. In these circumstances, it is not certain whether or not the installation would be on best and most versatile land<sup>32</sup>. [35]

#### *Landscape character and appearance*

54. The landscape hereabouts is not specifically protected for its natural beauty. The LVIA describes the surrounding area as largely agricultural in nature and that the landscape is characterised by small/medium scale fields which are edged by mature tree specimens, hedgerows, small woodland blocks and tree lines, and says these are key characteristics of the 'Open Weald' character area<sup>33</sup>. It appeared to me that the landscape is pleasant and essentially rural in character and the footpaths in the locality seem to be well used, possibly by, amongst others, the residents of the nearby village of Lingfield. None of the footpaths cross or border the proposed solar installation. [3,5]
55. The installation site rises from Park Lane so that the southern boundary is about 7m higher than the level of the lane. The land thus appears as an inclined plane in the gently undulating landscape and it is prominent from viewpoints to the north and north-west. The installation would be particularly prominent from the footpath linking Park House and Haxted Road. Between Park Farm Cottages and the field boundary to the north of Viewpoint 2<sup>34</sup>, a distance of about 500m, there are clear views of the appeal site and because it is on rising land it is very prominent. The telecommunications mast is already a feature readily visible from this footpath, but the panels would in my view result in a man-made incongruous intrusion into the pastoral scene. The parties accept that the visual representation, Viewpoint 2, does not seem to have been taken from the specified location and should be given little or no weight. [3,5,8]

---

<sup>29</sup> Best and most Versatile land is classified in the Framework as Grade 1, 2 and 3a

<sup>30</sup> Paragraph 9.28 Statement of Common Ground

<sup>31</sup> Agricultural Appraisal prepared by Humberts on behalf of the Council.

<sup>32</sup> Written Ministerial Statement March 2015 "Planning Update March 2015"

<sup>33</sup> Paragraph 5.1.3: LVIA

<sup>34</sup> Figure 01-rev 01, Appendix B LVIA

56. Consequently the anticipated degree of visual effect<sup>35</sup> in respect of Viewpoint 2 is probably underestimated<sup>36</sup>. From my observations it is unlikely that the proposed landscaping would mitigate the adverse effect on the users of this public footpath in the suggested period of 5-10 years. This is because the appearance of the installation and supporting infrastructure would be unlikely to integrate successfully into the pleasant pastoral scene and also because the landscaping would take some time to mature. In any event such planting would only screen the lower part of the field and the panels on the upper levels of the field would remain visible from this footpath even in summer months. [3,7]
57. The countryside hereabouts is attractive and both the Written Ministerial Statement (WMS) of 27 March 2015 and the Framework say such landscapes should be protected. The LVIA concludes that the effect of the development on the installation site would be Moderate Adverse<sup>37</sup> and from what I have seen this effect would extend beyond the site boundary to the north and west. Whilst this effect would be partially mitigated in the longer term, it seems to me that such mitigation would not be effective in views from the footpath.[5]
58. On the other hand, the effect on residential amenity, by reason of distance and intervening screening, would be low and walkers on footpaths to the south and east would not be affected. But, given the degree of harm to the site itself and the visual effect of the installation on the character and appearance of the countryside as experienced from the footpath to the north-west, I consider, on balance, the effect on the rural landscape would be harmful.[5]

#### *Flood risk*

59. Residents have said that the area is prone to flooding and this would be exacerbated. The submitted flood risk assessment confirms that land to the north and west bordering the Eden Brook and its tributaries has a high risk of flooding<sup>38</sup>. It also confirms the anecdotal representations suggesting that the access to the site would be liable to flooding. However the site itself is on higher land and not within the flood zone. Measures are proposed to ensure that runoff from the site is controlled. Thus the proposal would be unlikely to increase flood risk in the area. [39]

#### *Highway safety*

60. Vehicular access to the site both during the construction phase and subsequent future maintenance is proposed to be directly off Park Lane, a private road off Haxted Road. During the construction phase of 8-12 weeks up to 4 HGVs and 12 other vehicle movements per day are anticipated<sup>39</sup>. Following the construction period the site would be unmanned and monitored on a remote basis. Residents say that Haxted Road has a history of accidents, but adequate visibility zones are proposed and these and a construction transport management plan could be

---

<sup>35</sup> Table 07 page 32: LVIA.

<sup>36</sup> Table 07 anticipated overall degree of visual effects and paragraph 7.5.4 LVIA

<sup>37</sup> Paragraph 8.3.4 LVIA

<sup>38</sup> Flood Zone Map: Flood Risk Assessment and surface water drainage strategy.

<sup>39</sup> Paragraph 20.3 Planning Statement.



secured by conditions. Subject to such conditions it seems to me that the proposal would not result in adverse impacts to highway safety<sup>40</sup>. [39, Annex]

### *Biodiversity*

61. Barrow Green Farm is subject to a Higher Level Stewardship Environmental Scheme incorporating 22 hectares sown with traditional meadow grasses, a further area of 4.68 hectares planted with wild bird seed and areas of the farm are left fallow for the benefit of wildlife as part of the overall cropping rotation.<sup>41</sup>
62. The impact on ecology has been assessed by consultants acting on behalf of the appellant. The findings of this report are that future development of the site, if implemented in a sensitive and timely manner, would avoid damage to areas of habitats. Reseeding with a species rich mix could increase the availability of pollen and nectar and increase biodiversity. In addition hedgerow planting and provision for mammal access through the fencing would be beneficial. The report also notes that the field is currently managed so that there is a grass margin as part of an agri-environment scheme and that this provides for commuting amphibians.<sup>42</sup> A condition could require such measures to be implemented and/or continued.[39, Annex]
63. If a suitable condition were to be imposed it would be likely to overcome any harm to biodiversity and possibly there would be a net ecological gain. The evidence also shows that the farm is currently managed to encourage biodiversity, including fallow periods within the arable rotation which appear to include the installation site. Thus this benefit of the proposal should be considered in the context of the existing biodiversity measures which have been and could be implemented in the absence of the development.<sup>43</sup>

### *The benefits arising from the provision of renewable energy*

64. It is common ground that national guidance supports the delivery of renewable and low carbon energy and that this is central to the economic, social and environmental dimensions of sustainable energy development. Moreover a core principle of the Framework is support for the transition to a low carbon future and the development of renewable energy.
65. The provisions of various Acts<sup>44</sup>, Directives<sup>45</sup>, Strategies<sup>46</sup> and statements<sup>47</sup> relating to renewable energy, including the 2007 Energy White Paper<sup>48</sup> are similarly supportive. These all reflect the Government's commitment to renewable energy and are important matters to weigh in the planning balance. Moreover the NPPG and the WMS of 6 June 2013 and 25 March 2015 and the UK Solar Strategy Part 1 and Part 2 reiterate support for solar energy schemes. The

---

<sup>40</sup> Paragraph 20.7 Planning Statement

<sup>41</sup> Paragraph 3.8 Agricultural Appraisal prepared by Humberts on behalf of the Council

<sup>42</sup> Page 12 Ecological appraisal

<sup>43</sup> Agricultural Appraisal on instructions from Tandridge District Council (Doc 4)

<sup>44</sup> The Climate Change Act 2008

<sup>45</sup> Renewable Energy Directive 2009/28/EC

<sup>46</sup> Including the UK Renewable Energy Strategy (2009) and the UK Renewable Energy Roadmap and its updates

<sup>47</sup> Department of Energy & Climate Change Annual Energy Statement (2013)

<sup>48</sup> 'Meeting the Energy Challenge' DTI (May 2007).

letter submitted by the appellant<sup>49</sup> suggests that the 2020 target for renewable and low carbon energy may not be met. However, recent Ministerial Statements indicate a revised direction of travel which gives particular support to the use of 'brownfield land' and commercial roofs for the generation of solar energy. This supports the argument that alternative means of achieving sustainable energy in the District are possible and are already in use [36].

66. The output of the panels would be about 5 MW. This is described as being equivalent to about the energy consumption of 1,400<sup>50</sup> homes. This would be a significant contribution to the production of renewable energy and the cutting of greenhouse gas emissions. Consequently the renewable energy that would be generated is a significant benefit of the proposal, subject to the consideration of alternative ways to achieve this benefit. [23,24,36],

### **Conditions**

67. A list of conditions is agreed between the parties as part of the SoCG and these were discussed and amended at the Hearing. The parties also acknowledged that additional conditions are necessary to require that the site reverts to agricultural use after a period of 30 years. These conditions have been modified in the light of the NPPG and are set out in the Annex to this report.
68. The solar farm is proposed as a temporary development, operational for a period of up to 30 years. It is therefore necessary to set the maximum period for the operation of the solar farm (3). In addition to the standard commencement condition (1) a condition is necessary to confirm the start date of generation in order to define the beginning of the 30 years. Because the installation site may be valuable agricultural land, and to ensure that there is no delay to the return of the land to solely agricultural use, a decommissioning plan should be agreed prior to the first commissioning (4). To minimise the effect on the rural landscape and specify the approved plans (2) conditions are also necessary to secure biodiversity management (12) and landscape mitigation in accordance with submitted details, and to ensure tree and hedge protection is in place prior to the commencement of any works or the first generation of electricity as specified (7,8, 9, 10 & 11).
69. In the interests of highway safety and the amenity of neighbouring occupiers including, and particularly during the construction phase, conditions are necessary to require a construction transport management plan and adequate visibility splays (5, 6,). But the suggested requirements in terms of routing to the site and the bulk movement of materials have been omitted because they would be unenforceable and duplicate other conditions. Finally, because of the extensive scale of the site it is necessary to allow for programme of archaeological investigation prior to the commencement of works (14).

### **Planning balance and conclusion**

70. Demonstrable benefits would arise from the proposal, in particular the generation of renewable energy. This would be in accordance with a key principle of the Framework, which says that a core objective of the planning system is to seek

---

<sup>49</sup> Letter from the Secretary of State for Energy and Climate Change dated 29 October 2015.

<sup>50</sup> Paragraph 4.20, Statement of Common Ground

mitigation of climate change including moving to a low carbon economy. In these circumstances the Framework says, unless material considerations indicate otherwise, such proposals should be approved if its impacts are (or can be made) acceptable. These impacts include whether such national objectives can be achieved, without unacceptable harm, in the context of site specific and local circumstances.

71. The proposal is inappropriate development in the Green Belt and would harm its openness. It would also encroach into the countryside and thus be contrary to one of the five purposes of the Green Belt. Collectively these factors should weigh heavily against the proposal. On balance, the proposals would also cause some harm to the character and appearance of the countryside and that should also weigh against permission. For these reasons there would be serious conflict with the aims of TDLP Policies DP10 and DP13.
72. In terms of the three strands of sustainable development I find that there would be some economic benefit particularly during the construction phase, but this would cease after the initial period of 8-12 weeks. The landowner would benefit from the ongoing income from the rent of the land but this does not form a major part of the appellant's case<sup>51</sup> and there is little or no suggestion that it would be a critical element of the viability of the farming enterprise.
73. No cogent case was made as regards the social strand of sustainable development and there is no evidence that the energy generated would remain local.
74. Finally, in respect of the environment, planning has a key role in helping to secure radical reductions in greenhouse gas emissions, increasing fuel security and supporting the delivery of renewable and low carbon energy. I also accept that there could be some biodiversity benefits. But in this case there would be significant harm to the Green Belt, a loss of openness and encroachment into the countryside. Moreover, there would be additional harm by reason of the effect on the character of the countryside. This is likely to be limited to 30 years but this is a long period in terms of the effect on users of footpaths in the locality.
75. Although site selection is constrained by grid capacity, it appears that alternative sites outside the Green Belt could and would provide similar benefits and there are other options such as the use of roofs for generating renewable energy in this highly constrained District. In these circumstances the harmful effect on the Green Belt could be avoided.
76. Thus it seems to me that the harm arising from the development significantly and demonstrably outweighs the benefits of the generation of low carbon energy and, for the purposes of the Framework it would not comprise sustainable development.
77. In the light of these considerations it appears to me that, the benefits of the scheme do not clearly outweigh the harm to the Green Belt and to the landscape of the area. Hence very special circumstances to justify development do not therefore exist.

---

<sup>51</sup> Paragraph 9.3 Appellant's Statement of Case

## **Recommendation**

78. I recommend that the appeal be dismissed and planning permission be refused.
79. In the event that the Secretary of State disagrees with me and allows the appeal and grants planning permission, I recommend that the conditions contained in the Annex below be applied.

*Sukie Tamplin*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Dale Mayhew BA (Hons) BTP MRTPI	Dowsett Mayhew Planning Partnership
Chris Sowerbutts	Solar Specialist

### FOR THE LOCAL PLANNING AUTHORITY:

Chris Hall BSc MPhil MRTPI	Appeals Officer, Tandridge District Council
----------------------------	---

### INTERESTED PERSONS:

Cllr Lesley Steeds MA	Councillor Tandridge District Council
Maureen June Young	Vice Chairman Dormansland Parish Council
Harry Fitzgerald	Dormansland Parish Council
Elaine White	Local Resident

## **DOCUMENTS received at the Hearing**

1. Statement of Common Ground signed 1 December 2015
2. Letter from the Secretary of State for the Department of Energy and Climate Change dated 29 October 2015: Submitted by the appellant.
3. Appeal decision by the Secretary of State for Communities and Local Government dated 24 November 2015. Appeal reference APP/C3620/W/14/30000674: Submitted by the Council.
4. Agricultural Appraisal of land at Barrow Green Farm, prepared on behalf of the Council by Humberts

## **Annex – Recommended conditions if permission were granted**

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan for Barrow Green Farm (Red edged plan), STHSLR1000-A-10-Rev 10, STHSLR1000-B-01, STHSLR1000-C-01, STHSLR1000-D-01, STHSLR1000-E-01, STHSLR1000-F-01, and STHSLR1000-H-01.
3. The Local Planning Authority shall be notified within one month of the date that the solar array hereby approved has started to export electricity (the 'First Export Date'). The development shall cease to generate electricity no later than 30 years from the date of the first export.
4. The solar panels, frames, inverter housings, grid connections cabin, fencing, CCTV cameras and all associated structures shall be permanently removed from the site and the land shall be returned to solely agricultural use within 30 years and 6 months of the First Export Date, or within 6 months following electricity ceasing to be generated if in advance of that date. Within 6 months of the First Export Date, a scheme for the decommissioning and restoration of the site shall be submitted to and approved in writing by the Local Planning Authority. The decommissioning and restoration of the site shall be carried out in accordance with the approved scheme.
5. The development hereby approved shall not be commenced unless and until the existing vehicular access to Haxted Road has been provided with visibility zones, in accordance with drawing number 140822-02-D and the visibility zones shall be maintained and kept clear of any obstruction above 1.05m in height above ground level, for the duration of the construction period.
6. No development shall commence until a Construction Transport Management Plan, to include details of:
  - a) Parking for all vehicles associated with the construction works;
  - b) Loading and unloading of plant and material;
  - c) Storage of plant and materials;
  - d) Programme of works (including measures for traffic management);
  - e) Measures to prevent the deposit of materials (mud and debris) on the highway;
  - f) Before and after construction condition surveys of the highway in the vicinity of the site and a commitment to refund the repair of any damage caused;
  - g) Signs to be provided on Haxted Road on approach to the site access during the works, to warn highway users of construction vehicles entering and exiting the access;
  - h) Banksman to supervise vehicle movements when entering and exiting the site access;
  - i) On-site turning for construction vehicles;

- j) Controls to limit working hours during the construction phase including the use of plant and machinery, necessary for the implementation of the consent.
- has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented during the construction of the development.
7. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and this work should be carried out as approved. These details shall include means of enclosure and access servicing materials. Soft landscaping details shall include planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities, where appropriate; implementation programme).
  8. A Landscape Management Plan, including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas shall be submitted to and approved in writing by the Local Planning Authority prior to the First Export Date. The Landscape Management Plan should be carried out as approved.
  9. All hard and soft landscaping work should be carried out in accordance with the approved details. The work shall be carried out prior to the First Export Date, or in accordance with a programme agreed with the Local Planning Authority.
  10. In This Condition, "retained tree" means an existing tree which has been retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the date of first use of the development.
    - a) No retained tree should be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped, other than in accordance with the approved plans and particulars, without written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with the British standard BS3988 (tree work).
    - b) If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted in the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the local planning authority.
    - c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made without the written consent of the local planning authority.
  11. Prior to the First Export Date all the ecological enhancements outlined within the Ecological Appraisal undertaken by Complete Land Management shall have been completed and evidence of such submitted to the Local Planning Authority.

12. Prior to the First Export Date the surface water drainage mitigation measures contained within the Flood Risk Assessment by Cole Easdon Consulting, dated November 2014, shall have been carried out, in particular the proposed swales.
13. No development shall take place until the applicant has secured the implementation of a programme of archaeological works, which has been submitted by the applicant and approved by the Local Planning Authority.





## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.