Case Name: *Lullington Solar Park Ltd v Secretary of State for Levelling Up, Housing and Communities & Anor (Re Statutory Review under s.288 Town and Country Planning Act 1990)* [2024] EWHC 295 (Admin) (16 February 2024)

Full case: Click Here

Commentary: This case was an unsuccessful s.288 statutory challenge (the "Statutory Challenge") by Lullington Solar Park Ltd (the "Claimant") to the decision of an inspector appointed by the Secretary of State for Levelling Up, Housing and Communities (the "First Defendant") to dismiss the Claimant's s.78 appeal (the Appeal") against the refusal by South Derbyshire District Council (the "Second Defendant") of the Claimant's planning application for a 49.9MW solar farm at a site near Lullington in South Derbyshire (the "Site").

Facts

Nearly half of the Site contains what is known as best and most versatile ("BMV") agricultural land. At Appeal, the inspector attached significant weight to the provision of clean electricity to around 17,300 homes, and moderate weight to biodiversity gains, long term landscape benefits and job creation, however he found that the loss of 10.5 hectares of Grade 2 BMV land and 23.1 hectares of Grade 3a BMV land and associated food production over the 40 year period of the proposed scheme outweighed the benefits of the scheme and amounted to a conflict with the development plan and the NPPF. The Appeal was therefore dismissed.

The National Policy Statement ("NPS") for Energy (EN-1) recognises that the lowest cost ways of meeting government targets for net zero carbon emissions by 2050 are through wind and solar power electricity generation.

The NPS for Renewable Energy Infrastructure (EN-3) further provides that:
"while land type should not be a predominating factor in determining the suitability of the site location [...] poorer quality land should be preferred to higher quality land (avoiding the use of "Best and Most Versatile" agricultural land where possible)"
It was also accepted that policy and guidance require any proposal for a solar farm involving BMV land to be justified by the most compelling evidence.

The Claimant's site suitability assessment fixed the study area for the proposed development by a requirement to connect to a viable local electricity network and found that there were no suitable brownfield sites and very few areas of lower grade agricultural land within the study area which would be suitable for the siting of a solar farm of the proposed size. The inspector considered that the Claimant had not made a robust assessment of the grading of agricultural land within the remainder of the study area, outside of the Site, and accepted the Second Defendant's argument that 'compelling evidence' had not been provided to justify the proposed development at the Site.

The Claimant's statement of case at Appeal also made reference to a map produced by consultants Lanpro, which showed agricultural land class gradings in different colours, and appeared to show the Site as largely grade 3b land, with a very small corner in the north east shown to be grade 3a, however this was found to be limited and was only referred to very briefly in the statement of case.

Grounds

Both of the Claimant's grounds of challenge relate to the inspector's approach to the assessment of what other BMV land was available in other locations appropriately close to national grid lines and substations, for connection to the proposed development.

Ground 1

The Claimant's first ground of challenge was that the inspector's approach was contradictory, by accepting that:

(a) it was not practicable or reasonable to require the Claimant to fully investigate every possible location for the proposed development within the study area or to demonstrate that there are no possible alternatives to the Site; and
(b) the assessment carried out by the Claimant was deficient because of a lack of soil investigation outside of the Site.

His Honour Judge Jarman KC, hearing the Statutory Challenge, found no inconsistency in the inspector's conclusions in respect of these matters when reading the decision letter "fairly and as a whole". He held that a sufficiently robust assessment could have been achieved by sample surveys on other possible sites with the permission of the owner and that the search area could have been narrowed by reference to factors such as grid connection, landscape and ecology.

The Claimant also submitted that the inspector failed to deal with the Lanpro map, but the Judge found that, due to its limitations, the inspector was entitled to deal with it in the way he did.

Finally under Ground 1, the Claimant submitted that in referring to the 2015 Statement in the way that he did, the inspector failed to consider major developments in the approach to climate change and the consequent need for many more solar farms which post-dated a written statement by the then minister responsible for planning dated 25 March 2015. The Judge considered, however, that this would be an "unduly critical" view of the decision letter.

For these reasons, the Judge did not find that the high threshold of irrationality under Ground 1 had been reached, and the ground failed.

Ground 2
The Claimant's second ground of challenge was that the inspector's approach to another solar farm proposal at Oaklands Farm was flawed.

His Honour Judge Jarman KC found that as it was accepted there was little material before the inspector on the Oaklands Farm proposal, there was nothing wrong with the inspector clicking a hyperlink in the Second Defendant's evidence and seeing reference to a preliminary environmental report submitted for the purpose of obtaining a development control order for a 163MW solar farm at Oaklands Farm.

The Claimant also submitted that the inspector wrongly relied on the Oaklands Farm site as a potential alternative to the Site. The Judge agreed with the First Defendant's submissions that the inspector referred to Oaklands Farm not as an alternative to the Site, but instead as an example of why the Claimant's assessment was not robust.

For these reasons, Ground 2 also failed.

Conclusion
The Statutory Challenge therefore failed on both grounds.

Case summary prepared by Sophie Bell