



1. Introduction

This note responds to comments made by Lincolnshire County Council (LCC, no date given) and confirms the wider legal position.

In summary, LCC have objected on the grounds that the development will have a serious impact on food security and the local rural economy, and it is contrary to NPPF para 180b which recognises the benefits of maintaining best and most versatile (BMV) land. It refers to a recent High Court case known as Lullington, but it should be noted that LCC do not provide any commentary on the relevance of this judgement to the proposed application, and in fact their comments relate to the appeal rather than the High Court ruling on the case. It also objects on visual grounds, but this note does not address this as this matter has been addressed in other materials.

2. Impact on food security and the rural environment

LCC state that the development will have a serious impact on food security and the local rural economy but provide no evidence to substantiate this or to contradict Section 4.5 of the applicant's Site Search (February 2024). We do not repeat this here, but the Search concluded: "the use of a small area of BMV land for a solar farm, which will be removed at the end of its life, will have a negligible effect on food production. Indeed, the impacts that climate change is already having on food production on the site illustrates how important tackling this issue is."

The total site area is 73.4ha. The land permanently lost from agriculture encompasses the access tracks, substation, transformers, and inverters is 1.69ha or 2.3% of the site. Land covered by solar arrays and temporarily used for mix of grazing, biodiversity and solar is 30.88ha or 42% of the site. 41ha or 55.8% of the site is land free of any development and managed for grazing and biodiversity.

Other appeals have confirmed the impact of individual projects is not significant, even cumulatively:

APP/C1570/W/23/3319421 (Cutler's Solar Farm, Land West of Thaxted, Uttlesford DC):

concluded no compelling evidence that taking land out of production for 40 year duration, would have significant negative impact on food security either on its own or cumulatively.

APP/G2713/W/23/3315877 (Feltham Lane solar, North Yorkshire Council): noted that current

Government schemes actually encourage farmers to take land out of production and put it to grass, meadows or trees for carbon capture. As such, Inspector was satisfied proposed use would not be detrimental to the nation's food security.

APP/B3030/W/21/3279533 (Southwell, Newark & Sherwood DC): the value of the proposed solar farm measurement in terms of national energy production and security against the net value of arable crop production in the UK is not an assessment that an individual appellant or LPA could realistically undertake for any one proposal.

The appellant considers this should have neutral weight in the planning balance.

Neither do they substantiate the claim that it will seriously impact on the local rural economy or contradict Section 4.6 of the applicant's Site Search. This section notes the benefits of the scheme on farm diversification and supporting a strong economy and should be assessed positively in the planning balance.

3. Legal position on the Site Search and use of BMV agricultural land

LCC also comment that the proposals are contrary to NPPF para 180b in terms of the benefits of maintaining BMV land. This is covered at length in the Site Search and is not repeated here. It goes onto refer to a recent High Court case known as Lullington. They do not provide any commentary on the relevance of this judgement to the proposed application however the applicant has considered this and other relevant decisions. Specifically, the following High Court decisions:

Bramley Solar Power Residents Group v SSLUHC in which [2023] EWHC 2842 (Admin).
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.]

Additionally, the following appeal: Land west of Berrington, Shrewsbury, APP/L3245/W/23/3332543.

For context, in the Lullington case, the High Court decision in Bramley was not before the Court. An application has been made by the developer for permission to appeal to the Court of Appeal.

The applicant considers the Bramley decision to be correct and preferred. This concluded:

There is no legal or policy requirement for applicants to consider alternative sites (relating to BMV or otherwise).

However, it is appropriate to justify why a solar farm is located where it is including any impacts which may result, which is what the applicant's Site Search and planning documentation has done.

The Lullington High Court judgement is narrow in its application and doesn't seek to lay down universally applicable principles. LCC's comments actually relate to the appeal rather than the High Court ruling itself and should be considered in this context. Lullington was a challenge based on demonstrating that seemingly inconsistent language used by the Inspector was irrational (i.e. while there is no requirement to assess the land grade on undifferentiated grade 3 land offsite, the absence of this meant the site search was not robust). It failed on these challenges, but LCC are wrong to draw the conclusion that this means planning should be refused. They conclude this for the following reasons:

It leaves the balancing exercise up to decision maker, including on use of BMV.

Lullington is only directly relevant to sites involving undifferentiated Grade 3 land – the proposed site is differentiated as are parts of the study area.

There are other means to assess land quality than soil sampling. The applicant's Site Search draws on the landowner's experience.

Bramley is more applicable to the proposed site, and this places greater importance on explaining the whole site selection process and assessing the impacts. Section 4.3 of the Site Search has justified the study area and appraised land parcels within it in an appropriate way (i.e. whether they are suitable and available for development), of which land quality is just one part and not the most important as directed by NPS EN-3. Beyond the red line, where there is

undifferentiated Grade 3 (and therefore where Lullington has some relevance) the applicant has drawn on the landowner's experience of farming the land to better understand the land quality.

Applying this to the Site Search, officers queried Parcel D. While indications are that the parcel may comprise lower grade agricultural land than the proposed site (Parcel E), they have been guided by NPS EN-3 that land grade should not be the predominating factor in choosing a site. The applicant has demonstrated a broader assessment of material considerations, including landscape, visual, heritage and landowner requirements, and concluded the proposed site is preferable. This approach is consistent with Lullington, as far as it is relevant, since the applicant has taken reasonable steps to understand the grade of land within the wider study area where the publicly available maps are unreliable. It is also entirely consistent with the more broadly applicable ruling in Bramley.

The weight given therefore to the harm arising from not making the most effective use of high-quality agricultural land might be moderate. National guidance (in this case, whether some higher-grade land has been used in preference to lower grade) is a material consideration but these are matters of weight and accordingly for consideration in the overall planning balance.

The applicant does not see any reason why the balancing exercise would conclude anything differently from the original Officer Report, which concluded that the harms from use of higher grade land would be outweighed by the benefits of the scheme.

4. Summary

LCC have drawn the wrong conclusions from Lullington. Their comments relate to the appeal decision rather than the High Court ruling on it, and appeal decisions are persuasive only and not binding.

Bramley is more relevant than Lullington – it is the process of assessing sites that is of most important and it is up to the decision maker to do the balancing exercise.

The applicant's approach is consistent with Lullington, as far as it is relevant, since the applicant has taken reasonable steps to understand the grade of land within the wider study area where the publicly available maps are unreliable. It is also entirely consistent with the more broadly applicable ruling in Bramley.

The applicant agrees with the Inspector at Berrington that the harm arising from the failure to make the most effective use of high-quality agricultural land is a factor which is likely to attract moderate negative weight.

National guidance (in this case, whether some higher-grade land has been used in preference to lower grade) is a material consideration but these are matters of weight and accordingly for consideration in the overall planning balance.

The Site Search demonstrates that there would be no "loss" of agricultural land (contrary to what LCC suggests) and it provides the compelling evidence expected of the Written Ministerial Statement.