IN THE MATTER OF

LAND SOUTH OF RUNWELL ROAD, RUNWELL, WICKFORD

APPEAL REFERENCES: APP/W1525/W/24/3344509 & 10

OPENING SUBMISSIONS

ON BEHALF OF THE COUNCIL

INTRODUCTION

1. These opening submissions on behalf of the Local Planning Authority ("**the LPA**"), Chelmsford City Council ("**the Council**"), will provide an overview of the Council's case at the outset of this inquiry. This is an appeal made by Enso Green Holdings J Limited against the refusal by the Council of planning permission for a proposed solar farm with battery storage and associated infrastructure at Land South of Runwell Road, Runwell, Wickford ("**the Appeal Site**").[1]

2. The Appeal Site lies within the Green Belt. One of the main questions for this inquiry is, therefore, whether, pursuant to paragraph 153 of the National Planning Policy Framework ("**the NPPF**"), "the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations" such that **very special circumstances** exists (meaning that the development should be approved pursuant to paragraph 152 of the NPPF). The Council submits that the answer to that question is no. Very special circumstances do not exist such that this appeal ought to be refused.

3. That is not to say that the Council does not understand, nor properly appreciate, nor place weight upon the climate crisis or the need for more renewable energy generation. Of course it does. There is, perhaps, little that needs to be said about the need for more renewable energy, and solar energy generation, in opening this case; not least because there is

[1] Rochford District Council having devolved its decision making powers to the Council – see Overarching SofCG, [1.3].

comprehensive common ground in the Need Statement of Common Ground. There are, however, a number of preliminary points which the Council makes in opening its case.

4. As I said, no one, least of all the Council, doubts that there is a climate emergency (the Council having declared a Climate Emergency[2]) and that there is a continued need for the deployment of renewable energy generation, including solar farm developments, throughout the UK. Equally, no one doubts the remarkable advances which have already been made towards that deployment. It is remarkable to see the sheer number which have been consented outcross the UK, including within this borough. But, of course, there any equally many appeal decisions where the opposite is true and permission has not been granted.

5. The Council is plainly committed to enabling and supporting renewable energy and solar developments, where appropriate, but this appeal proposal is, quite simply, **the right idea in the wrong place**. The need to meet renewable energy targets, establish energy security and to generate more solar energy in particular does not mean, however, that each and every proposed solar farm development ought to be permitted, irrespective of, for example, the harm to the Green Belt and the other harm which would arise. The need for renewable energy cannot, and does not, automatically override, for example, harm to the Green Belt or landscape character/visual impact harm. What is required in a case such as this is a judgement to be reached.

6. It is important to remember the use of the word "may" in paragraph 156 of the NPPF, i.e. the wider environmental benefits of increase production of energy from renewable sources **may** constitute very special circumstances. Not **always**. The onus falls squarely upon the Appellant to demonstrate very special circumstances.

7. The evidence of the Council at this inquiry will demonstrate that this appeal is one such instance where, despite the very real climate crisis and the contribution that this appeal proposal will make to the generation of renewable energy, the benefits of this proposal, as acknowledged by the Council, do not outweigh the potential harm to the Green Belt by reason of inappropriateness and the other harms which would result from the appeal proposal. Very special circumstances do not, in this instance, exist.

[2] Need SofCG, [2.6].

8. These Opening Submissions will now briefly address the main issues, and the other issues, in this appeal as identified by the Inspector in her CMC Note.

THE COUNCIL'S CASE

Impact of the development on the openness and purposes of the Green Belt

9. The great importance placed on the Green Belt is reflected in national and local polices, including in the local development plan. The appeal scheme is inappropriate development in the Green Belt and the harm to the Green Belt must, in accordance with paragraph 153 of the NPPF, be afforded substantial weight.

10. "The fundamental aim of Green Belt policy is", as per paragraph 142 of the NPPF, "to prevent urban sprawl by keeping land permanently open"; "the essential characteristics of Green Belts are their openness and their permanence".

11. Both parties agree that there would be harm to the openness of the Green Belt.[3] Mr Etchells concludes, however, that the appeal scheme will result in both "a significant reduction in the openness of the Green Belt, and in the perception of that openness" resulting in "significant harm to the openness of the Green Belt".[4]

12. The Appeal Site is located within open countryside, and it is also common ground that the appeal scheme would conflict with the one of the purposes of the Green Belt, i.e. safeguarding the countryside from encroachment.[5] Mr Etchells concludes that there would be significant harm to that purpose.[6]

13. Granting planning permission will result, therefore, in a development which, as a matter of common ground, will result in harm to the openness of the Green Belt and conflict with one of the purposes of the Green Belt.

14. That militates strongly against the grant of planning permission.

[3] Overarching SofCG, [8.19].
[4] Mr Etchells PofE, [8.12].
[5] Overarching SofCG, [8.19].
[6] Overarching SofCG, [8.12].

Impact on landscape character and visual amenity of the area

15. Mr Etchells concludes that the appeal scheme will give rise to "significant harm to the character of the area".[7] With respect to landscape character within the Appeal Site, Mr Etchells identifies a high adverse effect whilst for the landscape character beyond the Appeal Site, he identifies moderate adverse landscape effects.[8]

16. His evidence can be contrasted with that of Mr Cook who, despite stating that the landscape character beyond the Appeal Site is of a medium sensitivity, concludes that there is no change to, and no adverse impact upon, that landscape character.[9] That conclusion is plainly not tenable.

17. Turning to the visual impact of the Appeal Scheme, Mr Etchells identifies "significant adverse visual effects", particularly for users of the footpath which runs across the Appeal Site.[10]

18. The negative impact on landscape character and visual amenity results in important conflicts with development plan policies and again militates against granting planning permission.

Flood Risk

19. The parties are agreed that the Inspector must consider whether, and be satisfied that, the sequential **and** exception tests are met before planning permission can be granted.[11] The Appellant must demonstrate, therefore, that there are no "reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding".

20. It is if the Appellant can demonstrate that the answer to that question is no that the exception test (the parties agree that that test is met) will be engaged. Put simply, a failure to comply with the sequential test cannot be dismissed or brushed away simply because the exception test might be met.

[7] Mr Etchells PofE, [6.7.1].
[8] Mr Etchells PofE, [6.7.1].
[9] Mr Cook PofE, [4.54].
[10] Mr Etchells PofE, [6.7.3].
[11] Flood Risk SofCG, [4.8].

21. The Appellant has now produced a further Flood Risk Sequential and Exception Tests Assessment.[12] That addendum largely repackages and repeats information contained in the previous Alternative Site Assessment and does no more than identify four broad locations which might potentially be more liable to flooding over wider areas than the Appeal Site.[13]

22. It does not, however, identify any sites which were actually considered by the Appellant and rejected in favour of the Appeal Site. It is, therefore, not robust.

23. And, in some respects, the methodology would appear to be flawed. The Appellant says that "there is no reasonable prospect of a series of small alternative sites adding up to 49.9MW being developed in time".[14] We know, however, that the Appeal Scheme will not "add up" to 49.9MW, or anything close to it; rather the export capacity here is far less at 24.7MW.[15] The evidence adduced by the Appellant has, therefore, set out to prove a different proposition to that actually in issue. The proposed development is a solar farm with an export capacity of 24.7MW, not 49.9MW.

24. The Appellant has plainly failed, therefore, to demonstrate that the sequential test has been satisfied.[16] It cannot, therefore, rely on the exception test. This is a serious failure to comply with important national and local planning policies relating to flood risk to which the Inspector ought to attach weight.[17] The location of the Appeal Scheme here on this Appeal Site has not been justified.

Whether any harm by reason of inappropriateness, and any other harm, would clearly be outweighed by other considerations so as to amount to Very Special Circumstances

25. It is trite that the words "any other harm", for the purposes of paragraph 153 of the NPPF, means non-Green Belt factors or non-Green Belt harm. Here, in addition to the harm to the Green Belt, and the adverse landscape character and visual impact harm, there is also a degree of heritage harm to be weighed in the balance.

[12] CD9.13.
[13] Ms Hutchinson PofE, [6.15].
[14] CD9.13, [4.53].
[15] Appellant's Response to Inspector's Pre-Inquiry Note, [3a].
[16] Ms Hutchinson PofE, [5.16].
[17] Ms Hutchinson PofE, [5.16].

26. The Council's case on landscape character and visual impact harm has been summarised above. As to heritage harm, there is a certain degree of common ground between the parties as set out in the Heritage SofCG. Nevertheless, the heritage harm which the Council arises must be afforded weight in the planning balance, including the agreed less than substantial harm to the setting of the Grade I All Saints Church in Rettendon. That is all harm which must be weighed in the balance in deciding whether or not Very Special Circumstances exist.

27. Ms Hutchinson, in her written evidence, undertakes the planning balance as required and considers whether Very Special Circumstances are made out. Of course, and as set out at the start of these Opening Submissions, the Council, and Ms Hutchinson recognise that there would be certain benefits which would flow from the implementation of the appeal proposal. Chief amongst those would be the generation of renewable energy that contributes to meeting climate change objectives. That is a benefit to which Ms Hutchinson attaches significant weight.[18]

28. It is misconceived, however, to seek to attach additional, independent beneficial weight to other matters, such as energy security, which are not additional benefits, but rather form part of the same overall benefit. To seek to attach additional weight in the planning balance is double counting. Equally, it will also be clear that there are matters, such as good design, to which the Council considers that no weight should be attached. There are also other matters, such as economic benefits, to which the parties simply disagree as to the weight to be attached.

29. There is another important point to make in opening this case. As to alternatives, this is a case where the Appellant has claimed as a benefit weighing in favour of the appeal scheme the fact that, they say, there is no alternative site for the appeal scheme.

30. That assertion, having been advanced by the Appellant, must be scrutinised (as per, for example, the approach adopted by the Inspector in the *Kingston Estate* appeal). Ms Hutchinson has concluded that the assessment put forward by the Appellant is not robust and that it has not demonstrated that there is, in fact, no alternative site.[19] And indeed, to a

[18] Ms Hutchinson PofE, [6.15].
[19] Ms Hutchinson PofE, [6.28].

certain extent, this part of the Appellant's case must stand or fall with the Appellant's case on the sequential test.

31. All in all, Ms Hutchinson considers that the appeal scheme conflicts with the development plan read as a whole.[20] The development plan led outcome is, therefore, that planning permission ought to be refused. Ms Hutchinson has considered whether the material considerations here indicate a decision other than in accordance with the plan but has concluded that they do not; it follows, therefore, that she does not consider that Very Special Circumstances have been made out.[21]

CONCLUSION

32. In the light of all the foregoing, and for the reasons set out more fully in the Council's Proofs of Evidence, the Inspector will, in due course, be respectfully requested to dismiss this appeal. The appeal scheme should not be granted planning permission.

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29 October 2024

[20] Ms Hutchinson PofE, [7.2].
[21] Ms Hutchinson PofE, [7.4].

APPENDIX ONE: LIST OF APPEARANCES

IN THE MATTER OF

LAND SOUTH OF RUNWELL ROAD, RUNWELL, WICKFORD

APPEAL REFERENCES: APP/W1525/W/24/3344509 & 10

APPEARANCES

On behalf of the Local Planning Authority

Mr Mark O'Brien O'Reilly, of counsel (Francis Taylor Building, Inner Temple, London EC4Y 7BY), instructed by Chelmsford City Council, will call:

- **Mr Jon Etchells** MA BPhil CMLI – Director of Jon Etchells Consulting Limited – Landscape and Visual Impact & Green Belt Matters
- **Ms Alison Hutchinson** BA MRTPI – Partner in Hutchinsons – Planning