

Written Representation on DCO application for Fosse Green Energy Solar Farm

- 1 I am a jurist living in a village near this proposed development (and two other proposed solar farms and associated infrastructure). I'm writing to make you aware that:
 - a. as I outline below, the constitutional legitimacy of the legislative and regulatory framework underlying this process has been called into question; and
 - b. if the Secretary of State decides to approve this application without having properly considered the constitutional legitimacy of his powers in the matter, his failure to do so might provide grounds for a successful application for judicial review.
- 2 I note that (from annex B of the Rule 6 letter) "the ExA will not spend time examining representations that challenge policy set out in NPSs, or the validity of NPSs themselves". I suggest that, while it would indeed not be appropriate for the Examining Authority to consider such questions itself, the Inspectorate has a responsibility to ensure that the Secretary of State is aware of them.
- 3 At issue (as far as the current application is concerned) is the question of:
 - a. whether it is legitimate for central government to override local government in matters of this kind;
 - b. whether it is legitimate for a decision of this kind to be taken by a prominent member of a political party which is ideologically committed to developments of this kind; and
 - c. whether, in the absence of expert consensus, it is legitimate, in administrative decision-making, for clearly identifiable harms to be set aside in favour of benefits that are essentially speculative.

Constitutional Questions

Background

- 4 At the end of July 2024, I wrote to the Law Commission¹ suggesting that five fundamental principles of governance should be formally recognised as essential features of the rule of law.
- 5 In February 2025, the Constitution Committee of the House of Lords opened an inquiry into the rule of law. My written evidence to the inquiry² drew the Committee's attention to a number of ways in which the UK's constitution is incoherent and clearly inadequate for a mature society, and I again suggested that these five fundamental principles of governance should be formally recognised as essential features of the rule of law.

1 A copy of my letter to the Law Commission was included as an annex to my initial comment on the Springwell Solar Farm project: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010149/EN010149-000319-Springwell%20DCO%20submission%202.pdf>

2 Written evidence to House of Lords Constitution Committee rule of law inquiry: <https://committees.parliament.uk/writtenevidence/140697/pdf/>

- 6 Since formal recognition of these five principles would lead to a radical restructuring of government and dilute both the power of central government and the influence of political parties, I was not surprised that neither the Government nor the House of Lords Constitution Committee engaged with the arguments I had put forward.
- 7 However, since constitutional law is wholly man-made, the Crown can reasonably be deemed to have a responsibility to ensure that it is fit for purpose, and this responsibility is presumably vested in the Government — who might therefore be deemed negligent if they fail to take reasonable steps to remedy aspects of it which are clearly deficient.

Relevance to this application

- 8 Three of the five principles I have proposed are directly relevant to the matter at hand:
 - 8.1 that operational decisions about where sovereignty lies on any particular issue – e.g. with local or central authority – should be made by a body which gives equal representation to all claimants;
 - 8.2 that, as far as possible, the institutions and processes of government should be structured so as to avoid conflicts of interest;
 - 8.3 that, as a general rule, agents of the state should not themselves be the cause, through the application of policy, of harm or mischief which in the normal course of events it would be the state's responsibility to prevent, mitigate or remedy.
- 9 The question of whether central government should have the power to override the wishes of local government is obviously of prime importance in the case of Nationally Significant Infrastructure Projects. As things stand, the decision on such matters is wholly in the hands of central government, which is clearly incompatible with the principle outlined above at paragraph 8.1.
- 10 As things stand, the final decision on whether projects like this are given permission to proceed rests with a government minister who is a prominent member of a political party which is ideologically committed to expansion of this kind. This is a clear violation of the principle that conflicts of interest should be avoided wherever possible.
- 11 There is currently a presumption in favour of large solar farms which, as I understand it, rests on a number of beliefs which have, until now, been regarded as essentially political and therefore outside the sphere of the courts – but which would come into their domain if the principle outlined above at paragraph 8.3 were recognised.
 - 11.1 In particular (as discussed in my letter to the Law Commission) the claim that there is a scientific consensus that climate change is being driven by human activity would almost certainly not stand up to forensic scrutiny; in which case, I would expect the presumption in favour of large solar developments to be regarded as a violation of that principle.

12 Finally, I would like to make it clear that any legal challenge will not be directly on the question of whether the five principles I have proposed should be formally entrenched in the constitution: it will be on the much narrower basis that the Government has not considered with due diligence the possibility that those principles should be entrenched; and, until they have done so, no discretionary government business which might violate those principles should be allowed.

Malcolm Ramsay

20th January 2026