

STOP GREEN HILL SOLAR

RESPONSE ON FLOOD RISK AND POLICY COMPLIANCE

Introduction

1. This Note provides a response to GH8.1.13 Applicant Responses to Written Representations; and GH8.1.15 Applicant Responses to Deadline 1 Submissions, with regard to flood risk, policy compliance and site selection.
2. It also responds to the oral submissions by Ms Broderick for the Applicant at ISH-2 with regard to flood risk and the sequential test.
3. SGHS have made separate representations about the site selection process in the context of BMV land, a proper application of government policy, heritage and landscape impact. In summary:
 - a. the site selection process did not involve the carrying out of surveys of agricultural land, in particular to ascertain which land was Grade 3a rather than 3b do did not consider the use of Grade 3b land;
 - b. even in respect of the chosen sites, no explanation has been given as to why Grade 2 and Grade 3a land has been chosen for the siting of solar panels;
 - c. the search area has also extended far beyond an area that can reasonably be described as near to the point of connection; and the ultimate selection of sites has reflected large landholdings with willing sellers (commercial convenience/benefit rather than planning);
 - d. the consequence is that the Applicant is unable to demonstrate that it is not possible to avoid the use of BMV land and/or that the use of such BMV land has been minimised; that harm to designated heritage assets has been avoided or reduced to the lowest practicable level; and that landscape harms have been minimised.
4. These representations are on a similar vein but specifically relate to the additional matter of flood risk and the Sequential Test.

The Applicant's Flood Risk Sequential Assessment

5. The issue of Hydrology, Flood Risk and Drainage is addressed in Section 6.7 of the Planning Statement¹. Paragraph 6.7.22 it is acknowledged that as the Scheme is major development and parts of it are within Flood Zones 2 and 3, a Sequential Test is required by EN-1 and the PPG². The sequential assessment is set out in Appendix B³ of the Planning Statement. Paragraph 6.7.22 states that the Sequential Test shows there are no reasonably available, lower-risk sites, suitable for the Scheme. It also states that as the Scheme is essential infrastructure within Flood Zone 3, an Exception Test is also required. It is asserted by reference to Appendix C that the Scheme fulfils both elements of the Exception Test.
6. The Applicant's sequential assessment is set out in Section 3 of Appendix B. Reference is made to the 20 kilometre radius area of search⁴. Paragraph 3.1.2 sets out the criteria potential sites were required to meet in order to be "reasonably available". These include "land holdings being 'reasonably available' for such development subject to land agreements".
7. Section 3.2 of the assessment summarises the staged approach to site selection as described in ES Chapter 5 and Appendix 5.1. Flood risk was considered at Stage 4 where the identified PDAs were evaluated⁵. The site selection assessment considered other planning constraints in addition to flood risk. The conclusion of the assessment is that the proposed Sites for the Scheme were the most suitable locations within the area of search and there were no reasonably available sites in areas of lower flood risk⁶.
8. The conclusions are that the assessment which has been undertaken represents a sound and transparent approach to assess "reasonably available sites" within the defined area of search⁷ and that there are no reasonably available sites available which can be developed to facilitate a 2029 grid connection⁸.

¹ APP/GH7.15 (**APP-599**). Note that whilst the Planning Statement has been revised, there are no material changes to the parts dealing with the Sequential and Impact Tests (the only amendments are to update document references).

² This is also acknowledged at paragraph 1.1.9 of Appendix B to the Planning Statement.

³ Note that paragraph 6.7.22 of the Planning Statement incorrectly refers to the Sequential and Exception Test being Appendix C.

⁴ It notes that the justification for the area of search is set out in ES Chapter 5 Alternatives and Design Evolution [EN010170/APP/GH6.2.5] (**APP-042**), supported by ES Appendix 5.1 Site Selection Assessment [EN010170/APP/GH6.3.5.1] (**APP-077**).

⁵ Appendix B, paragraph 3.2.6.

⁶ *Ibid*, paragraph 3.2.12

⁷ *Ibid*, paragraph 3.3.2

⁸ *Ibid*, paragraph 3.3.3

Commentary

9. EN-1 points to the NPPF and PPG in respect of flood risk⁹.
10. The SGHS Written Representations¹⁰, Section 4 considers flood risk and drainage. Paragraph 4.11 states that the Sequential Test relies on the assessment of alternative sites and site selection. The response of the Applicant¹¹ is, in summary, that that it considers the Sequential Test and Exception Test set out in the Planning Statement Revision A¹² address the necessary policy requirements.
11. PPG paragraph 027a Reference ID: 7-027-20220825 addresses the question of defining an area of search for the purposes of the Sequential Test. It refers to a need for realism and pragmatism and that

“For infrastructure proposals of regional or national importance the area of search may reasonably extend beyond the local planning authority boundary. It may also, in some cases, be relevant to consider whether large scale development could be split across a number of alternative sites at lower risk of flooding, but only where those alternative sites would be capable of accommodating the development in a way which would still serve its intended market(s) as effectively.”

12. In this case whilst the area of search comprises a 20 kilometre radius, as has been explained in the context of the issue of BMV land, analysis has is effectively confined to the land identified with willing landowners and which have large areas of land.
13. Paragraph 027a also refers to the disaggregation of proposals into smaller sites to see if a large scale development could be split across a number of sites at lower risk of flooding. In this case the site search criteria is based on the landholdings of willing landowners and a minimum plot size of 40 hectares¹³. This is said to be based on viability. However, as has been noted elsewhere in the submissions of SGHS, no evidence of viability nor feasibility is before the Examination.
14. As noted above, the Sequential Test was addressed at Stage 4 of the site selection process. It is apparent that the Sequential Test has only sought to investigate the

⁹ This is stated at Appendix B, paragraph 2.1.2.

¹⁰ **REP1-230**

¹¹ The Applicant's Responses to Written Representations at Deadline 1, (EX2/GH8.1.13) (**REP2-048**)

¹² **REP2-43** (clean version), **REP2-44** (tracked version). However, there are no material changes to the parts of this Statement that deal with the Sequential Test and the Exception Test.

¹³ ES Appendix 5.1 Site Selection Assessment [EN010170/APP/GH6.3.5.1] (**APP-077**). See Paragraphs 2.2.8 and 2.2.9.

suitability and availability of identified land with willing landowners and with plots of a minimum size of 40 hectares because all other land had been filtered out of the site search before Stage 4¹⁴.

15. PPG paragraph: 028 Reference ID: 7-028-20220825 considers what is a reasonably available site. It identifies three criteria:
- That the location is suitable for the type of development proposed,
 - That they are able to meet the same development needs and
 - That they have a reasonable prospect of being developed at the same time as the proposal.
16. Paragraph 028 also states a sequential assessment can include a 'series of smaller sites' if capable of accommodating the proposed development. Apart of an assertion about the need for a minimum plot size of 40 hectares otherwise the development would be unviable, for which no evidence is provide in support, no sites or areas less than 40 hectares have been considered and no land outside of the identified ownerships.
17. Regarding ownership, paragraph 028 also states that alternative sites do not need to be owned by the applicant to be considered 'reasonably available'. In this case, the availability of compulsory purchase powers places a different complexion on the issue of availability compared to normal circumstances with a planning application. The availability of these powers means that land which might otherwise not be available can be legitimately considered. Of course, the Applicant has only considered land which has been identified by agents with a willing landowner. That is not sufficient.

Summary and Conclusion

18. The assessment which has been undertaken for a sequential assessment is unrecognisable as a Sequential Test. Whilst notionally an area of search comprising a 20 mile radius has been defined for the site search (generally), but only land identified as having a willing landowner and plots in excess of 40 hectares have been considered as part of the assessment. Land ownership has been a determining factor. With the availability of compulsory purchase powers, which cannot be justified from a policy perspective.
19. The Applicant cannot demonstrate there are no areas available of lower flood risk compared to the sites selected:

¹⁴ *Ibid*, paragraph 2.2.9.

- The area of search is contrived because only land in particular ownerships have been considered and with a minimum plot size of 40 hectares;
- The availability of other land within the 29 kilometre radius defined for the site search is not a constraint because compulsory purchase powers are available; and
- No evidence is provided to justify a minimum site size of 40 hectares.

20. The onus falls on the Applicant to demonstrate compliance with the Sequential Test¹⁵. The assessment undertaken by the Applicant is driven by the identification of willing landowners with plots of land in excess of 40 hectares. It patently fails to address policy for directing development to areas with lower flood risk.
21. Yet again, the site search undertaken is flawed.

¹⁵ PPG paragraph: 029 Reference ID: 7-029-20220825