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Dr Hilary Newport
Campaign for the Protection of Rural
England (Kent Branch)

Your Ref:

Our Ref: EN010085

By e-mail only

Date: 09 September 2019

Dear Dr Newport

Cleve Hill Solar Park Examination Matters

Thank you for the emailed letter of 6th June from Sir David Melville CBE and Mr Richard Knox-Johnson in response to my letter of 28th May. In my letter I set out the roles of the Inspector in Secretary of State casework and the steps that we take, on behalf of the Secretary of State, to appoint Inspectors. I also drew attention to the Inspectors' Code of Conduct which requires them to take an independent view of each case before them and in accordance with judicial principles that the evidence is the only basis for their impartial evaluation of each case. We are also covered by the Civil Service Code which you no doubt be familiar with.

In my earlier letter I also undertook to review the composition of the Examining Authority following the Preliminary Meeting, under the principles set out in the Guidance for Examinations and in accordance with s61 of the Planning Act 2008. You may therefore be aware that I issued a notice on 21st June to increase the size of the Examining Authority to a three-person panel. This was in response to the scale of written representations received and in recognition of the complexity of the issues raised. David Rose remains as lead member of the panel, but all members have equal roles in the recommendation to the Secretary of State, who is the ultimate decision taker.

Your letter makes reference to this being an Inquiry process, which is not correct as it is an examination undertaken under the Planning Act 2008. As such there is an open exchange of information by all parties which is accessible to everyone and of which a record is made via the National Infrastructure website and the hearing recordings. When the Secretary of State makes their decision that will also be published, with reasons, alongside the Examining Authority's report.

Please accept my apologies for the time to reply to your second letter. In response to the specific concerns you set out I have reviewed the conduct of the examination to date including listening to the relevant hearings and reviewing the sets of written questions. I can find no issues with the conduct of the examination as all parties have

been given a fair hearing and there is detailed engagement by the Examining Authority on all aspects. They have also encouraged parties to submit further information where relevant and the process is open and transparent as to the matters being considered and online access to all the evidence.

I hope all this can assure you that all Inspectors are trained to follow the evidence and to make recommendations on each case on the individual merits, with no assumptions around previous decisions, and the panel as a whole will test the evidence thoroughly. I fully appreciate the risk of a perception of any prior determination but I hope that the written and audio record of this case demonstrates how this is being conducted effectively and I would encourage you to continue to participate in the examination as I know you have already done from my review of the process.

Yours Sincerely

Pauleen Lane

Pauleen Lane
Dr Pauleen Lane CBE
Professional Lead National Infrastructure

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6th June 2019

By email only

EN010085: Cleve Hill Solar Park

Dear Dr Lane,

At the PM for the application by Cleve Hill Solar Park Ltd on 30th May the Inspector, Mr David Rose, raised the question of his role as the Lead Examiner in the Inquiry due to his involvement in the London Array inquiry on the site in 2006/2007.

He read out a statement based on your letter of the 28th May in response to approximately forty letters of concern.

This issue was raised as a procedural matter by the interested parties. As outlined in the Rule 6 letter dated 18th April 2019 under "Purpose of the PM" the first sentences state that "the PM enables views to be put to us about the way the application is to be examined".

CPRE Kent and the Faversham Society were active participants in the PM. Both organisations were concerned to be told by Mr Rose that there would be no further discussion on the topic and that if there were any further points to be made then they should be directed to the author of letter referenced EN010085 of 28 May 2019: this is the reason for this joint letter from both parties. In addition we and other recipients of this 'standard' letter were disappointed that it did no more than state the Examining Authority appointment process and failed to address the reasons for the many objections expressed and in particular the potential conflict of interest.

We would like to make it clear, as we did at the PM, that we are not questioning the integrity of Mr Rose as an individual. You will be aware that the concept of conflict of interest, which must apply to all public appointments, does not make assumptions about personal integrity. Rather it is aimed at ensuring that the outcomes of any deliberations are not only impartial but are seen to be impartial. In this case it is the perceived integrity of the Examining Authority's future recommendations which are at stake.

Our concerns over the appointment of Mr David Rose as Examiner are:

- That he was the examiner of the London Array Inquiry in 2006/7 and made a recommendation for the transfer station to be built.
- There is a view that if it were not for his recommendation then the current application may not have got to the inquiry stage.
- That in his recommendation of 2007 it became clear that he did not consider Graveney Marshes of sufficient importance to warrant protection from industrial development.
- That if, on this occasion, he were to decide to recommend refusal of the application, he would be seen to be questioning his original recommendation in 2006/7.

If the decision on this application is to have credibility then the Examining Authority must be seen to be free from conflicts of interest. Otherwise, there is a danger that the integrity of the Examination is questionable and that its recommendations will be challengeable.

Sir David Melville CBE
Vice Chair, Faversham Society

Richard Knox-Johnston
Vice President, CPRE Kent