Written Representation on: Decommissioning the Gate Burton Energy Park.

Introduction

It is easy to see how developers of solar farms, and especially large-scale solar farms, are seen as lucrative businesses for investors with deep pockets of funds. The global market for a few decades has been awash with opportunities, with Governments attempts in meeting net zero emissions by 2050.

Investors of large-scale solar projects have quickly learned to use the system of finding agreeable landowners, community engagement, local planning authority involvement and specialist consultants to overcome regulation and obligation routes to gain approvals to projects.

However, there appears to be an aspect that is not given a great deal of publicity or consideration and that is the financial risk and financial liability, in decommissioning a solar scheme.

The capital cost and risk of developing and implementing a solar project is largely in the hands of the project owner/investors in the expectation of resulting profits. The landowner is unlikely to be financially involved in the early stages prior to approval of the solar project and with little risk.

However, the capital cost of decommissioning has little to no return on investment, so project efficiency, regulatory compliance and achieving cost certainty, in decommissioning, is fundamental.

Regulations /Precedents/Conditions

Precedent Reference 1:

Town and Country Planning Act 1990 (Section 62A Applications) Development of a ground mounted solar farm with a generation capacity of up to 49.99MW, together with associated infrastructure and landscaping At Berden Hall Farm, Ginns Road, Berden.

The securing of decommissioning of the site **is capable of being (and is routinely) dealt with via planning conditions rather than planning obligations.**
Paragraph 27 of the UK Government's planning practice guidance for renewable and low carbon energy states that "**solar farms are normally temporary structures and planning conditions can be used to ensure that installations are removed when no longer in use and the land is restored to its previous use".**

It is, therefore, accepted practice to secure the **decommissioning of solar panels via condition.**
There is no policy basis to require an applicant to enter planning obligation and/or decommissioning bonds with a local planning authority.

This has been acknowledged in the Planning Inspectorate's recent S62A decision to grant consent for another solar scheme in Uttlesford's administrative area1.

Further, **such arrangements are not required for either of the much larger nationally significant solar schemes consented via the development consent order regime (Little Crow, 150MW; or Cleve Hill, 350MW).**
Such an S106 for this development would not meet the statutory test of CIL regulation.

Decommissioning of these sites is secured via requirements (the DCO equivalent of conditions) and there is no obligation within the DCOs to secure a decommissioning bond. **It therefore cannot be said that requiring a decommissioning S106/bond for a solar site of fewer than 50MW is necessary or fairly and reasonably related in scale and kind to the development regulation 122 and would, therefore, be unlawful.**

The precedent clearly identifies there is no policy basis to require an applicant to enter planning obligation and/or decommissioning bonds with a local planning authority and decommissioning is secured via requirement, the DCO equivalent of condition.

Precedent Reference 2:
Planning Application No. 18/0945, Variation of condition 2 (operational length) and condition 3 (solar farm decommissioning) to extend from 30 to 40 years attached to appeal approval APP/H0928/W/16/3147861, Land south of Dallan Bank Wood, Newby
Meeting of Planning Committee, Thursday, 14th February 2019 9.30 am (Item Pla/156/02/19)
RESOLVED that be GRANTED subject to the following conditions.

1. The development hereby permitted shall be implemented by 25 January 2020.**Reason:** To comply with the provisions of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

2. The permission hereby granted shall expire after 40 years following the date when electrical power is first exported ('first export date') from the development to the electricity grid network, excluding electricity exported during initial testing and commissioning. Written confirmation of the first export date shall be provided to the local planning authority no later than one calendar month after the event.
Reason: To avoid any ambiguity as to the duration of the approved development.

3. Within 6 months of the cessation of the export of electrical power from the site, or within a period of 40 years and 6 months following the first export date, whichever is the sooner, all infrastructure associated with the development shall be removed from the site and the site restored to its original condition in accordance with the submitted Construction, Decommissioning and Traffic Management Method Statement dated July 2015.
Reason: To ensure the site is restored once the development is complete and in the interests of the amenity of the area.

These precedents clearly identify there is no policy basis to require a solar farm owner to enter planning obligation and/or decommissioning bonds with a local planning authority and decommissioning is secured via requirement, the DCO equivalent of condition.

The solar farm owner is liable for decommissioning and may enter into an agreement with an investor/bank or insurance company or the incumbent landowner/s of the site through a bond.

However, should the solar farm fail, for any reason, resulting in liquidation of the solar farm owner, who then becomes financially liable for the decommissioning of the solar farm?

Financial Considerations

Two main elements of a project contribute to emissions: the manufacturing and the decommissioning, and if you are not looking at both, you are not looking at the whole impact of the project on the environment."

Decommissioning in the renewable energy sector will be a challenge. It is currently the tip of the iceberg compared to the more urgent problem the industry faces in the future as assets become stranded or obsolete.

There is a risk that some solar farm owner may not be able to fully fund the decommissioning programs for which they are responsible and may ask for the setting aside of decommissioning funds.

The decommissioning element may sit outside any 1st or 3rd party financing arrangement with decommissioning not seen as a major risk. It may be an increasing focus for all parties, and something not easily ignored in the future.

Sustainability/Environment

Ultimately, however, increasing disclosure and accountability amounts to nothing if it does not solve the problem in hand: the mountains of fibreglass, composite materials, solar panels, and batteries heading for landfill.

Much renewable energy infrastructure is resource-rich and includes rare earth elements and other valuable materials, such as steel, copper and glass. Recovering these and reintroducing them into the production cycle can present a commercial opportunity and reduce the reliance on raw minerals.

The EU predicted that, by 2030, the following would be recycled annually: 95% of 1.5 million tonnes of photovoltaics, up from just 5,000 tonnes in 2020; and 100% of 240,000 tonnes of lithium-ion batteries (40,000 tonnes last year).

Billions of pounds are pouring into the clean energy that is seen as crucial for the transition to net-zero emissions. But the financial sector is not taking sufficient account of what happens to such assets when they reach the end of their life. It may soon have to.

Renewable energy investment is growing fast, but the similarly rapid build-up of non-recyclable waste is an environmentally and **financially costly risk that cannot be ignored.**

Regulations will put more onus on banks and investors to consider waste management and decommissioning in renewables financing plans.

A small percentage of solar panels and batteries are now recycled but that figure is forecast to shoot up in the coming decades. Globally, 60 to 78 million tonnes of photovoltaic solar panels must be decommissioned by 2050, according to respective studies by Cambridge University and the International Renewable Energy Agency. Meanwhile, the boom in electric vehicles is raising concerns about what will be done with the thousands of tonnes of spent batteries.

Summary

The capital cost of decommissioning has little to no return on investment, so project efficiency, regulatory compliance and achieving cost certainty, decommissioning, is fundamental.

A significant effort across the UK in both Central and Local Governments, as well as industry is needed to ensure that processes are put in place to cover any long-term potential risk to the environment, public health and including financial risk.

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Renewable energy investment is growing fast, but the similarly rapid build-up of non-recyclable waste is an environmentally and financially costly risk that cannot be ignored.

With up to 78 million tonnes of panels forecast to be decommissioned by 2050, more sustainable solutions other than landfill will need to be developed.

Decommissioning of renewable energy assets has not been a focus of financing arrangements or corporate relationships, with the issue typically seen as someone else's problem.

For any significant renewable energy development linked to green bonds, it would be expected to have to be qualitative disclosures on how the end of life is managed.

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The precedents clearly identify there is no policy basis to require a solar farm owner to enter planning obligation and/or decommissioning bonds with a local planning authority and decommissioning is secured via requirement, the DCO equivalent of condition.

Will the ExA Confirm that if the Scheme is approved it will be conditioned by the provision of an Agreement between the Landowner and the Applicant in respect of their joint legal responsibility to the approved decommissioning plans of the Scheme?

It is highly likely that the incumbent solar farm operator or incumbent landowner will dispose of its asset at some time or cease to exist.

This raises some complex and interesting questions. What happens if the operator ceases to exist by the time an environmental or safety issue occurs? Just how recoverable these costs will be, is a relative unknown with few past examples.

Will the ExA ensure that the incumbent solar farm operator and/or incumbent landowner absolve any commitment they have in decommissioning through contract exchange, or for whatever reason, be unable to continue and enter liquidation? An up-to-date Agreement between all the parties involved in decommissioning should be maintained by the ExA.

Will the ExA ensure that financial due diligence is undertaken to ensure that there will be no financial burden as a result of decommissioning the Scheme, on the public and **especially the local community. The financial risk must be dealt with by the incumbent landowner and the asset owner.**
Will the ExA also agree to identify the specific start date, and completion date of decommissioning the Scheme?

Will the ExA also identify the period in the Scheme from cessation of exporting of electrical power from the site to the start date of decommissioning?

Roy Clegg