

From: David Justham [REDACTED]@talk21.com>
Sent: 28 October 2024 16:33
To: West Burton Solar Project
Subject: Your Ref: E010132 re: EN010132-001961-SoS Consultation 2 Letter.pdf

Dear Sir or Madam

Your reference: EN010132

Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010

Application by West Burton Solar Project Limited ("the Applicant") for an Order granting Development Consent for the proposed West Burton Solar Project.

I write on behalf of the Parochial Church Council of the Parish of Stow-with-Sturton in response to your letter of 15th October 2024 requesting further information in relation to point 9 of that letter. The PCC is grateful for the guidance given by Louise Harraway, Case Manager, National Infrastructure Planning in her email of 16th October 2024 to David Justham. Our objection cannot be withdrawn. I outline our reasons below.

By way of introduction, HM Land Registry's Practice Guide 66 defines Chancel Repair Liability as *"the liability of the owner of the land to pay for the repair of the chancel of a parish church.....In England the Parochial Church Council....have the right to collect the money. ... These owners are known as lay-rectors."*

At this point in time, we have had no dialogue with the applicant to seek satisfactory clarification to our concern regarding rights over land expressed in our letter to the Land Referencing Team at Dalfour Maclaren dated 27th July 2022. We note that in The Applicant's Responses to Relevant Representations (November 2023) at PCC-05 that the applicant considers that Article 23 of the draft Development Consent Order *"broad enough to include Chancel Repair Liability"* (p251) but considers it *"unlikely that the powers in the DCO would extinguish any chancel repair liability"* (p252). This suggests uncertainty on behalf of the applicant. This uncertainty is further evidenced as they continue *"in the event that the exercise of the compulsory acquisition powers did result in the chancel repair liability ceasing..."*. Within PCC-06 in The Applicant's Responses to Relevant Representations (November 2023). The applicant regret's failure to respond to a telephone request by the churchwarden on behalf of the PCC (p252). Despite this regret there is no recorded attempt by the applicant to enter dialogue with the Parochial Church Council at any further point in the application process. We note, however, that in the document "5.13 Consultation Report - Appendix 5.13" that the applicant has *"entered into a lease agreement with the landowner for West Burton 3"* (p483). Despite this, compulsory acquisition powers *"are being sought"* (p483), and on p484 the following text appears *"In the event that compulsory acquisition powers are exercised in respect of West Burton 3, Article 23(6) of the draft DCO enables [my emphases] the Applicant to notify the holder of a right that the powers to extinguish or suspend rights do not apply in respect of that right. The Applicant would therefore notify PCC that power did not apply to the chancel repair liability."* It is clear from the wording of this text, that notification would only be made after the *"compulsory acquisition powers are exercised"*, whereas the Draft DCO itself at 23(6) clearly indicates that notice must be given **before** [my emphasis]. There is no confidence that due process would be followed. Evidence, to date, of the lack of communication with the PCC compounds our uncertainty about the preservation of the Chancel Repair Liability attaching to the land at Stow Park. Furthermore, uncertainty is compounded by the applicant not only entering a lease agreement but also reserving powers to compulsorily acquire land.

Even if the Chancel Repair Liability was not extinguished, Article 23 (3) of the draft Development Consent Order states that *“all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable”* If this applies to the Chancel Repair Liability it has the potential to have a serious and deleterious effect on the maintainance of an internationally renowned and significant Anglo-Saxon building that is the Grade 1 listed St Mary’s Church, Stow (also known as Stow Minster).

Turning to the issue of compensation, the applicant has failed to adequately address this stating only *“in the event that the exercise of the compulsory acquisition powers did result in the chancel repair liability ceasing to have effect, any loss would be reflected in the calculation of compensation due under Article 23(4)”* (Applicant’s Responses to Relevant Representations (November 2023) at PCC-05, page 252). Article 23(4) of the draft Development Consent Order determines that compensation is payable in *“accordance with the terms of section 152”* of the Planning Act 2008. No response has been made in respect to the existing legislation that addresses the compounding of the liability for the repair of chancels, the amended Ecclesiastical Dilapidations Measure 1923, which we would expect to be used in the event of any assessment for compensation. We would expect that an acknowledgement that use of this measure would be part of and form the basis of the calculation of compensation (should it become necessary) to be made prior to the issue the Development Consent Order.

Finally, we would respectfully point out that the Government’s own guidance on implementation of the Planning Act 2008 *“Guidance related to procedures for the compulsory acquisition of land”* published in 2013 by the then Department for Communities and Local Government, states in paragraph 8, *“The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.”* In our opinion, as explored above, the applicant has failed *“to demonstrate to the satisfaction of the Secretary of State”* by i) failing to adequately address our concerns about the impact of the proposed development of the West Burton Solar project on our right to payment upon request from the landowner of land which carries the Chancel Repair Liability, ii) failing to enter into dialogue directly with the Parochial Church Council for the Parish of Stow-with-Sturton, and iii) suggesting that Chancel Repair Liability would be suspended and unenforceable and thus not recognising the implications of such action. It is also the opinion of the Parochial Church Council that the national guidance issued on implementation of the Planning Act 2008 in relation to compulsory acquisition is deficient in addressing Chancel Repair Liability and updated guidance would be helpful not only to the present application but for future infrastructure planning projects which may involve land over which other Parochial Church Councils have rights to Chancel Repair Liability.

In conclusion, we seek a categorical statement that the Chancel Repair Liability attaching to land at Stow Park, some of the land is to be used within the proposed West Burton 3 facility, will be unaffected by the proposed development, and that the uncertainties that are within the Applicant’s responses to our concern are clarified. Until this matter is resolved our objection cannot be withdrawn.

Yours faithfully

Dr David Justham
Churchwarden
on behalf of the Parochial Church Council of the Parish of Stow-with-Sturton

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