

**HILFIELD SOLAR FARM, LAND NORTH OF BUTTERFLY LANE,
SURROUNDING HILFIELD FARM AND LAND WEST OF HILFIELD LANE,
ALDENHAM**

APPELLANT'S SUBMISSIONS ON CAPACITY

1. The Planning Act 2008 (“the 2008 Act”) creates a control regime for development of nationally significant infrastructure projects (“NSIP”).

2. S.31 dictates that:

“Consent under this Act (“development consent”) is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.”

3. S.32 of the 2008 Act gives “development” the same meaning as that contained in the Town and Country Planning Act 1990. Accordingly, development of a NSIP requires consent under the 2008 Act. Any development of a NSIP without gaining such a consent would amount to a breach of planning control and would be liable to enforcement.

4. S.14(1)(a) of the 2008 Act defines NSIP as including “the construction or extension of a generating station”. Further detail on this is provided in s.15:

“(1)The construction or extension of a generating station is within section 14(1)(a)

only if the generating station is or (when constructed or extended) is expected to be within subsection (2), (3), (3A) or (3B).

(2)A generating station is within this subsection if—

(a)it is in England,

(aa)it does not generate electricity from wind,

(b)it is not an offshore generating station, and

(c)its capacity is more than 50 megawatts...”

5. As such any solar farm with a generating capacity of more than 50MW would be a NSIP and would require consent to be granted for its development under the 2008 Act.
6. The appeal proposals have not sought consent under the 2008 Act and have sought planning consent under the 1990 Act. This means that if planning permission were granted the scheme that was then built out could not have a capacity of more than 49.9 MW as to do so would be to operate as an NSIP. If it did have a capacity of more than 49.9 MW then it would be liable to enforcement under the planning legislation as it would not benefit from the requisite planning consent, that being consent under the 2008 Act.
7. The consequence of this for the appeal is that there is no need to impose a condition limiting the generating capacity of the appeal scheme as this is already limited by the legislation. Imposing a condition would simply act to duplicate a planning control that already exists; it would be akin to imposing a planning condition to remove a permitted development that did not exist.
8. If, contrary to the above, the Inspector was of the opinion that there was a need to impose a restriction on the operating capacity of the appeal proposal then this could only be done by way of condition. As per the principles in *I'm Your Man Ltd v Secretary of State for the Environment* [1998] 9 WLUK 37 there is no power under the planning acts to impose a restriction on a planning permission through the description of development, it can only be done by condition.

PAUL G TUCKER KC

FREDDIE HUMPHREYS

3RD NOVEMBER 2022

KINGS CHAMBERS

MANCHESTER – LEEDS – BIRMINGHAM