



Solar Development in the Green Belt

Harriet Townsend . Richard Ground KC. Sam Fowles . Lois Lane

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Navigating the Green Belt policy framework

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Navigating the Green Belt policy framework

- **Which regime?** The 50 MW threshold for NSIPs is rising to **100 MW**
- **What difference does that make to the relevant policy?** Currently - very little. EN-1 and EN-3 refer to the NPPF. This with the PPG (25/2/25 version) effectively sets the Green Belt policy framework.
- **Is solar development 'appropriate' development in the Green Belt?** That depends on the answer to two questions: (1) Is your Green Belt grey? And if so, (2) Are the §155 tests met?
- **If 'appropriate' in the Green Belt, is there a presumption in favour of permission?** No.



Is your Green Belt grey?

- **Yes** if it is land in the Green belt comprising **PDL and/or any other land** that, in either case, does **not strongly contribute to any of purposes (a), (b) or (d)** in NPPF §143.
 - (a) to check the unrestricted sprawl of large built-up areas;
 - (b) to prevent neighbouring towns merging into one another;
 - (d) to preserve the setting and special character of historic towns.

But

- **No** if the application of the policies relating to the areas or assets in **footnote 7 (other than Green Belt)** would provide a strong reason for refusing or restricting development.

[NPPF Glossary]



Step 1 – contribution to purposes

§143 (a) to check the unrestricted sprawl of large built-up areas;
 (b) to prevent neighbouring towns merging into one another;
 (d) to preserve the setting and special character of historic towns.

- Questions of judgment yes but see PPG 64–05-20250225 for “illustrative features of a strong contribution”.
- “Assessment areas” are identified by the LPA when undertaking a GB Assessment. Until then, it is **the site** that is assessed [see PPG 64-09-20250225].
- And nb villages are not towns or large built up areas.



Step 2 – the grey belt exclusion

- A site or 'assessment area' does not make a strong contribution to purposes (a) (b) (d). Does that mean it's grey? Not if the policies relating to the areas or assets in **footnote 7** (other than Green Belt) would provide a **strong reason for refusing or restricting** development.
- **The PPG's curious introduction of the provisional grey:** Where areas of grey belt would be covered by or affect other designations in footnote 7, it may only be possible to "provisionally identify such land as grey belt in advance of more detailed specific proposals". [PPG 64-006-20250225].



Reflections on the provisional grey

- The provisional identification of grey belt might affect large swathes of rural land in the setting of heritage assets (for eg).
- It means that the Green Belt status of the land which dictates the policies applicable to the development (effectively whether the §155 route to appropriateness applies), depends itself on the acceptability of detailed proposals where they affect that protected asset.



If grey belt, so what?

- Solar development on grey belt land will be appropriate in the green belt if 3 of the 4 §155 tests are met:-
 - a) It would not **fundamentally undermine** the purposes (taken together) of the remaining Green Belt across the area of the plan;
 - b) There is a **demonstrable unmet need** for the type of development proposed;
 - c) The development would be in a **sustainable location**, with particular reference to paragraphs 110 and 115 of this Framework.



And if appropriate, so what?

- No presumption in favour of the development, but openness and purposes will be deemed protected/met for Green Belt policy reasons [PPG 64-014-2025-225].
- In other words: Green Belt policies become neutral in the planning balance insofar as site specific impacts are concerned. Other policies such as those protective of landscape character continue to apply and may require consideration of the impact on openness.





Case Law and Decisions

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Kenilworth Decision

- Development was Solar array and Battery Energy storage system over two LPA areas Warwick and Solihull. [24/3347315]
- Dealt with two issues
 1. Was the development inappropriate or was it appropriate because in Grey Belt
 2. Were there VSC in any event



Grey Belt definition Step 1 Kenilworth

- The definition of the Grey Belt in the glossary to the NPPF is land in the Green Belt
 - comprising previously developed land and/or any other land that, ...does not strongly contribute to any of the purposes (a), (b) or (d) in paragraph 143*
- a) is checking unrestricted sprawl,
- b) preventing towns merging and
- c) preserving the setting and special character
- In this case Inspector found that land did not contribute strongly to any of those purposes.
- PPG strong contribution to a where adjacent large built up weak where not adjacent

Grey Belt 155 tests Step 2 in Kenilworth

- In order to be appropriate development needs to pass all of the tests in 155 of the NPPF.

155 The development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where all the following apply:

a. The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;

b. There is a demonstrable unmet need for the type of development proposed;

c. The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework57; and

d. Where applicable the development proposed meets the 'Golden Rules' requirements set out in paragraphs 156-157 below.

- 155 (a) brings back all of the purposes and Inspector in this case said there was encroachment into countryside (ie purpose c 143 NPPF) by this 47ha array in particular but said this was fact specific

Lessons from Kenilworth for 155 test

- Inspector ruled that purpose of assisting in urban regeneration not breached because solar farm unlikely to be suitable in urban land
- In terms of other 155b unmet need there was no dispute that was satisfied
- Para 155c sustainable location he said not of great relevance but that it was satisfied and there was no highway objection

Issue 2 VSC many repeatable

- Harms.
 - Significant impact on spatial openness and visually significant from some locations
 - Not national landscape or valued landscape
- Benefits most are fairly repeatable.
 - Substantial weight to urgent need to generate and store renewable energy in support of the national imperative.
- More specific
 - Met objectives of LPA [significant weight]
 - Fact there is grid connection offer [significant weight]

Case 2 Carrington Battery Storage



This was Battery Storage permitted because

1. appropriate development as it was in Grey Belt and
2. passed tests in 155 Appeal Reference 3354822

Carrington Grey Belt Definition lessons

- Limited size of Battery storage and distance from Towns meant it made limited contribution to purposes
 - 143 a unrestricted sprawl of large built up areas
 - 143(b) neighbouring towns merging
 - 143(d) setting and special character of historic towns

Carrington 155 tests Step 2

- Limited size and containment meant not harm safeguarding of countryside so would satisfy 155 a “not fundamentally undermine purposes taken together”
- 155b demonstrable need passed. Relied on NPPF 161 and EN-1 material.
- 155c sustainability test says relates to other types of development significant levels of vehicle movement. Passed no objection from LPA.
- 155 d Golden Rules do not apply.
- Where appropriate development Courts [Lee Valley] found that not harmful to Green Belt. That is consistent with Framework Fn 55 and end of PPG on Green Belt.

Case 3 VSC Cases Wickford

- Wickford 26 November 2024 Solar and battery 24/3344509
 - Very repeatable positive factors
 - Urgent need for renewable energy and enable energy security substantial weight paras 107-111
 - Only real bespoke specific benefit bng of 85% hedgerow or 137%habitat and “a grid connection offer has been secured
 - This was sufficient for VSC to significantly outweigh mod harm to openness and one purpose and moderate landscape harm and lsh to Grade 1 church [see 137ff]

Case 4 Secretary of State July 2024

- Honiley Road Secretary of State Matthew Pennycook 23 July 2024 solar & battery
- Benefits mostly very repeatable
 - Substantial weight to need for renewable [para 24].
 - Recovery of soil
 - Efficient use of land
- Particular factors
 - grid connection that could be used quickly which got moderate weight BNG substantial weight
 - 135% BNG
- All of this sufficient to outweigh harm to GB, openness spatial and visual and one purpose (c)
- Secretary of State decision

Case Law R (Galloway) v Durham CC

- This was case where it was very close to the 50MW limit but was quashed on the basis that it did not address whether the

“permission was approving more panels than were required for a 50MW solar farm”



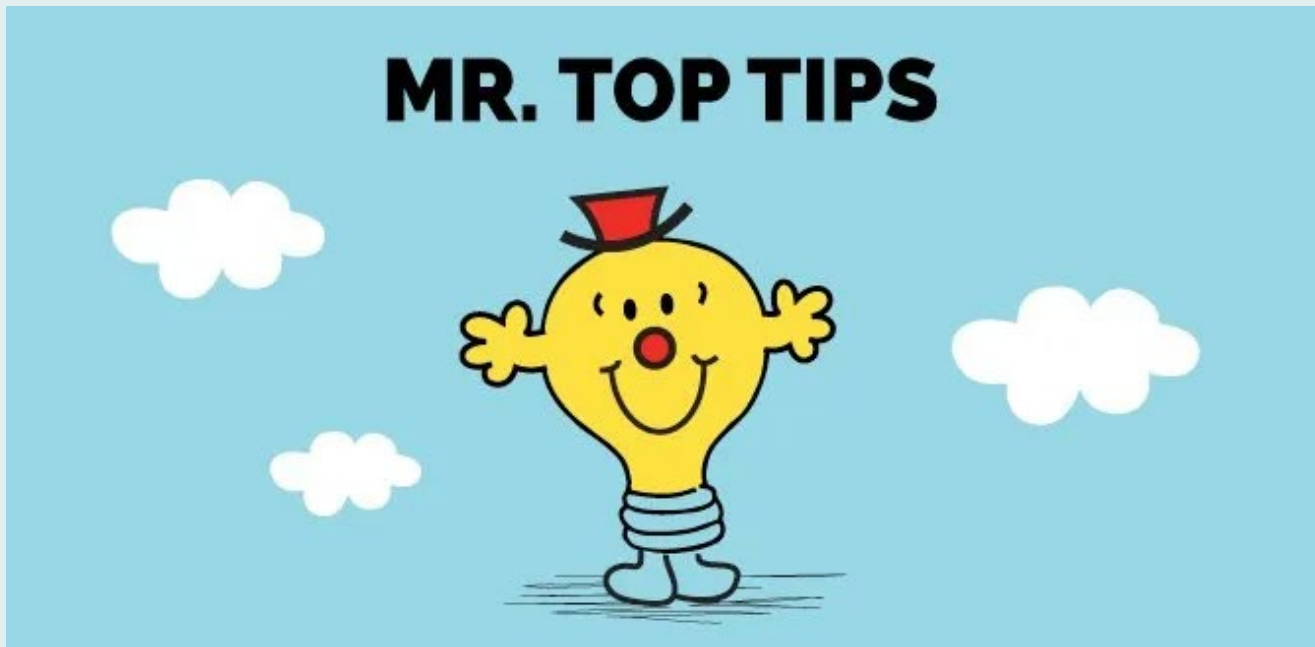
Practical Guidance

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Practical Guidance: Sam's 5 Top Tips for Solar Farm Applications



1. Location Location Location

- **What's close by? (Remember the setting of AONB is relevant)**
- **Flat or undulating?**
- **Join up settlements?**
- **Grid access?**
- **What about the locals?**



2. Size Matters

- **Can you “hide” your farm?**
- **Profit margin vs likelihood of success**
- **Small farms very difficult to refuse**
- **Large farms will likely antagonise the community**
- **The larger the farm the larger the impacts**
- **Policy can express preference**





3. Permanence isn't everything

I acknowledge the appellant's argument that the proposal is temporary in nature (40 years) and that the development would be removed and the land restored to its former condition – in essence openness would be restored at that point. Leaving aside the discussion as to what may happen at the end of the 40 year period – which can only be speculation - I do not find this argument to be persuasive in terms of reducing the effect on Green Belt openness. Although the proposal is for a limited period, the length of that period is very substantial. But even more importantly, the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open. With that well established policy background it cannot be right that the fact that approval is sought for a 40 year period is accorded more than very limited weight in favour of the scheme in relation to the loss of openness. To do so would go against the concept of permanence. [Re. Little Heath Lane, 2023]



4. Looks Count

- **Beware CGI**
- **Sometimes low-tech is better**
- **Get your boots on**
- **Show the real thing**
- **Site visit**



5. It's The Policy Stupid

- **Climate change is important but not necessarily determinative**
- **If the local authority doesn't have an alternative, then it's difficult to justify opposition**
- **Urban regeneration purpose must be a real prospect**
- **Rooftop solar?**
- **Biodiversity – an opportunity not a freebie**



Looking ahead...

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NSIP thresholds

- **The Infrastructure Planning (Onshore Wind and Solar Generation) Order 2025**
 - Draft order laid before Parliament on 13 March 2025
 - Amends s.15 of the Planning Act 2008
 - Increases NSIP threshold for solar schemes from 50MW to 100MW (but not the 150MW previously consulted upon).
- Implementation from 31 December 2025.
- Transitional provisions for projects already in Planning Act 2008 system

NSIP thresholds

- Targeting the **'planning dead zone'** of 50MW – 100MW projects.
- Can expect to see lots of applications for 99.9MW projects



NSIP thresholds

- **Planning and Infrastructure Bill:**
 - Clause 3 – would insert new s 35A into Planning Act 2008 giving Secretary of State the power to direct on a case-by-case basis that projects which qualify as NSIPs may be dealt with under alternative consenting regimes.
 - Can expect to see some larger projects attempt to opt out of NSIP regime – especially where no CPO powers required.



Jumping the grid connection queue?

- **Planning and Infrastructure Bill:**
 - Chapter 2 deals with grid connections
 - Time limited powers for Secretary of State and Ofgem to prioritise connections queue
- Supporting Ofgem and NESO's shift from **'first come, first served'** to **'first ready, first connected'**



What other reforms might we see?

- **‘Streamlining Infrastructure Planning’ working paper** (26 January 2025):
 - Some reforms taken forward in draft legislation but other potential reforms in the pipeline?
 - Flexibility for Examining Authority in solar DCO examinations to streamline process e.g. by combining written and relevant representations.



Overall, we can expect to see...

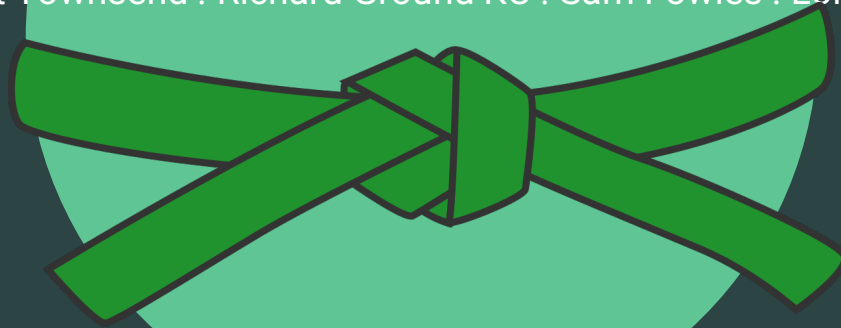
- A lot more solar farms everywhere – including the Green Belt!
- Disagreements between officers and elected members.
- Even more decisions overturned on appeal.
- Prioritisation of sites with grid connections.
- Arguments about BMV?





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