



# Old Wood Energy Park

## App Ref: 24/00161/FUL

### Note of Advice regarding NSIP Development

#### 1 Introduction and Background

- 1.1 We are instructed by Exagen Development Limited to advise on the planning status of two solar farms, Old Wood Energy Park (hereafter referred to as Old Wood) and Highfields (the **solar farms**), which are situated adjacent to each other between the villages of Wysall and Costock in Nottinghamshire.
- 1.2 Whilst Highfields has already been consented by Rushcliffe Borough Council under application reference 22/00303/FUL, Old Wood is currently being determined (application reference 24/00161/FUL).
- 1.3 Old Wood is being promoted by Exagen Development Limited. Highfields has been promoted by another company, Boulton Brooks (Renewables Costock) Limited.

#### 2 Executive Summary

- 2.1 The solar farms are separate projects and do not, individually or together, constitute a nationally significant infrastructure project (**NSIP**) for the purposes of the Planning Act 2008 (the **PA 2008**).
- 2.2 The solar farms have been promoted separately, at different times, by different developers, under different planning applications. They will operate independently of each other. There is nothing to suggest that the solar farms should be treated as a single project for the purposes of the PA 2008 and there is no legal requirement for them to be treated as such.
- 2.3 The correct consenting route for Old Wood is therefore a planning application submission to Rushcliffe Borough Council under the Town and Country Planning Act 1990.

#### 3 Legal Background

- 3.1 Under the PA 2008 development consent is required “to the extent that the development is or forms part of a nationally significant infrastructure project” (section 31).
- 3.2 A NSIP includes a project consisting of “*the construction or extension of a generating station*” (section 14(1)(a)). This is subject to section 15, which provides that:  
  
“*(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.*”  
  
Accordingly, if a solar farm in England exceeds 50MW capacity, it will be a NSIP and require development consent under the PA 2008.
- 3.3 There is nothing in the PA 2008, or any other legislation, that says that solar farms within a certain distance of each other should be treated as a single generating station.

- 3.4 The question of whether two solar farms located near to each other, each with an individual capacity of less than 50MW, together constituted a NSIP was the subject of a recent High Court case<sup>1</sup>. The Court concluded that the two projects did not together constitute a NSIP, even though in that circumstance they even shared some components. The Court considered various criteria in reaching this conclusion.

#### **4 Advice**

- 4.1 Neither solar farm individually constitutes a NSIP because the individual capacity of each, measured in AC by reference to the maximum combined capacity of the installed inverters as per National Policy Statement EN-3, is less than 50MW.
- 4.2 The only way in which the solar farms could therefore constitute a NSIP is if they in fact constitute a single generating station that exceeds the 50MW threshold.
- 4.3 By reference to the criteria considered in the recent High Court case cited in section 3, the following factors demonstrate that the solar farms are not a single generating station and therefore do not together constitute a NSIP:
- (a) The solar farms are promoted by different companies. The companies are unrelated.
  - (b) The solar farms were not developed at the same time. The solar farms are on separate parcels of land and the planning applications were submitted independently and at different times. Whilst Highfields is already consented, the planning application for Old Wood has not yet been determined.
  - (c) There will be separate distribution and connection agreements and the solar farms will be separately metered.
  - (d) The solar farms will operate independently of each other, both in contractual terms and in terms of physical infrastructure.
  - (e) Different companies will own and operate the solar farms.
  - (f) The generating capacity of the solar farms is not interconnected.
- 4.4 In our view, taking all of these factors into account, there is nothing to support a claim that the solar farms together constitute a single generating station. They are, quite plainly, separate projects, and this conclusion is supported by recent case law.

**TLT LLP**  
**26 April 2024**

---

<sup>1</sup> *Durham County Council, Hartlepool Borough Council v Secretary of State for Levelling Up, Housing and Communities v Lightsource SPV 206 Limited, Lightsource Development Services Limited* [2023] EWHC 1394 (Admin)