

Building Products

Edmund Robb provides specifiers with an outline guide to planning law as it effects solar PV installations, and reassures them that gaining planning permission is not as difficult as it may seem.

Anyone attending the Ecobuild exhibition at Excel last month will have been left in absolutely no doubt as to the huge level of interest in UK based solar PV projects interest which is coming from overseas panel and inverter manufacturers as well as UK based installation and construction firms. This is becoming an important industry in the UK and one which will develop at a tremendous pace over the next five to ten years.

On a practical level however, as many involved in the construction and energy industries – as well as ordinary householders – are finding out, the installation of PV systems is not fully established.

Both roof and ground based PV schemes are impacted in many respects by the same points of planning law.

Commercial PV schemes require planning permission whether ground or roof based. Domestic scale PV systems which are roof based may not require planning permission since householders may benefit from amendments made in 2008 to the General Permitted Development Order 1995 provided two main exceptions are not breached as follows:

“Development is not permitted by Class A, in the case of solar PV or solar thermal equipment installed on an existing wall or roof of a dwelling house or a building within its curtilage if –

(a) the solar PV or solar thermal equipment would protrude more than 200 millimetres beyond the plane of the wall or the roof slope when measured from the perpendicular with the external surface of the wall or roof slope;

(b) it would result in the highest part of the solar PV or solar thermal equipment being higher than the highest part of the roof (excluding any chimney)...”

However, it is also vital to bear in mind three conditions which attach to the 1995 Order and which have caused both controversy and confusion, particularly amongst local planning authority officers:

“Development is permitted by Class A subject to the following conditions—

(a) solar PV or solar thermal equipment installed on a building shall, so far as practicable, be sited so as to minimise its effect on the external appearance of the building;

(b) solar PV or solar thermal equipment shall, so far as practicable, be sited so as to minimise its effect on the amenity of the area; and

(c) solar PV or solar thermal equipment no longer needed for micro generation shall be removed as soon as reasonably practicable.”

A decision of a planning inspector on an appeal against the refusal of planning permission for a PV scheme at Poole in Dorset in July 2010 has, to some extent (although his decision is not binding on subsequent decision makers), helped to clarify the situation since he expressed the view that as regards condition (a), the proposed scale of the PV system on a rooftop was not an issue which serves to limit PD rights for PV schemes and that what matters is the siting of the PV system rather than the size of any roof based domestic PV system. The Inspector also found that as regards condition (b), the only amenity impact causing potential harm was visual and that no harm was caused.

In truth however, the problem facing many people wanting to install roof based PV systems is that many local authority planning officers are themselves unsure as to the extent to which planning permission is required for PV schemes. That confusion means that anyone involved in the construction or PV industries as well householders resort to seeking written approval for their plans in the form of a simple letter of approval.

If an authority does indicate that full planning should not be required for a domestic scale scheme then perhaps the most straightforward way forward is for an application to be made for a certificate of lawful development. These can either be retrospective (i.e. a certificate of lawfulness for an existing PV scheme, a CLEUD) or it can be for a proposed PV installation (i.e. a certificate of lawfulness for a proposed development, a CLOPUD). Certificates of lawfulness have one great advantage over planning applications: Council's are not entitled to impose planning conditions on the grant of certificates of lawfulness whereas fairly onerous conditions can be and frequently are imposed on the grant of planning permission.

Bearing in mind that local authorities cannot be bound subsequently by any positive (or negative) views expressed by an officer on a planning matter or written enquiry, many Councils are refusing to give any written confirmation as to the requirement or otherwise of planning permission for PV installations and this lack of real certainty in

many Councils' responses to initial queries on PV schemes is inevitably leading to the submission of full planning applications.

Clearly it is wise to seek proper professional help with any application for either a certificate of lawfulness or for planning permission. Applicants who do seek professional help should require certainty to be given as to likely costs through fixed fee agreements. Fixed fee arrangements are particularly suitable in the case of applications for PV schemes since, in our own view and despite the obvious uncertainties I have already described, planning permission should, in most cases be relatively straightforward to achieve.

I make this point not least because the planning system is geared favourably towards renewable energy schemes. Any roof (or ground based) PV scheme which is the subject of a planning application will be considered in the context of: (i) the policies of the Council's Development Plan; (ii) Government Planning Policy guidance and advice; and (iii) what are euphemistically termed other "material considerations."

If proposals are not in accordance with the Development Plan then they should, according to the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, be refused unless there are material considerations (i.e. significant and compelling reasons) for the local planning authority to grant permission i.e. planning determination "*must be made in accordance with the plan unless material considerations indicate otherwise*".

In truth many if not most local planning authorities have little specific Development Plan policy guidance on PV schemes. This increases the weight to be attached to Government guidance and advice on planning and renewable energy developments much of which is summarized in various Planning Policy Statements (PPSs).

PPS1 – Planning and Climate Change – states that it is the primary PPS and that it takes precedence over others. The PPS makes clear that:

"Tackling climate change is a key Government priority for the planning system. The ambition and policies in this PPS should therefore be fully reflected by regional planning bodies in the preparation of Regional Spatial Strategies, and by planning authorities in the preparation of Local Development Documents."

PPS 1 obliges Councils to:

"...provide a framework that promotes and encourages renewable and low carbon energy generation. Policies should be designed to promote and not restrict renewable and low carbon energy and supporting infrastructure."

Clearly, the provisions of PPS1 provide highly favorable policy context for the promotion of both ground and roof based solar power (and indeed other renewable energy) schemes.

PPS22 sets out the Government's land use planning objectives and planning policies for renewable energy, which planning authorities should also have regard to when preparing local development documents and when taking planning decisions. The PPS reiterates the Government's desire to actively encourage renewable energy projects, to reduce green house gas emissions and to maintain security of energy supplies. It further underlines the wider environmental and economic benefits of all proposals for renewable energy projects, whatever their scale, and makes clear that these positives constitute material considerations of significant weight.

Any planning application will need to consider a wide range of potential material considerations from the longevity of the scheme (PV installations should be treated as temporary structures) to visual impacts in relation to the amenities of local neighbours or even members of the public (e.g. if you front a public footpath). Which considerations need to be considered and addressed within any statement accompanying an application should be brought out by Council planning officers in pre application meetings and discussions which we strongly advise all our clients to undertake.

It is clear therefore that where PV installations do not benefit from permitted development rights there does exist much policy that favours granting them planning permission, although please note that any PV scheme on the roof of a Listed Building or on a building which sits within a Conservation Area requires Listed Building and /or Conservation Area consent. These two regimes lie alongside the planning system and, not infrequently, much more stringent visual impact and other harm tests will be applied by Council officers prior to the grant of permission for any PV installation.

Finally, it is in Prospect Law's view, highly important that the planning considerations listed above are given coordinated thought in the context of any of the other legal issues which may need to be considered for a PV scheme. Depending on the parties involved in the PV scheme, these issues may revolve around option agreements, leases, commercial agreements, supply and installation contracts as well as service and maintenance agreements over the longer term lifetime of the project.



Edmund Robb is a planning and environmental barrister and a founder of Prospect Law Ltd. The company specialises in providing planning, property and commercial law advice for renewable energy firms, developers and landowners. Prospect is involved in commercial and residential scale roof and ground based PV schemes around the country. Its clients include local authorities, large agricultural estates, farmers and rural businesses, as well national organizations and property owning financial institutions.

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Published Date: April 5th, 2011