

SUPPORTING STATEMENT

**Application for a Lawful Development
Certificate for a ground mounted solar array
at
HMP Werrington, Staffordshire**

On behalf of Ministry of Justice

November 2021

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Version	Prepared by	Approved by	Date
Supporting Statement	Mark Jackson MRTPI	Clare Lucey MRTPI	November 2021

1. Introduction

- 1.1 Cushman & Wakefield (C&W) has been instructed by the Ministry of Justice (MoJ) to prepare and submit a Lawful Development Certificate application for the proposed installation of a 86,527kWh pa. Solar Photovoltaic (PV) generation system at HMP Werrington. This is further to pre-application dialogue with Staffordshire Moorlands District Council regarding the proposed development and that the applicant considers it constitutes Permitted Development under Schedule 2, Part 19, Class A and Class C of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO).
- 1.2 Section 192(b) of the Town and Country Planning Act 1990 requires the submission of a Lawful Development Certificate to confirm the proposed development constitutes permitted development, for which planning permission is not required.
- 1.3 Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of a Lawful Development Certificate application and how it must be submitted. The application must describe precisely what is being applied for (not simply the use class) and the land to which the application relates.
- 1.4 Government guidance and advice on Lawful Development Certificates is provided in the National Planning Practice Guidance (ID17c) noting that a Local Authority on receipt of a Certificate of Lawfulness needs to consider whether on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in such applications.
- 1.5 This application and the Supporting Statement have been produced to provide Staffordshire Moorlands District Council with a suitable level of information to properly assess and determine that the proposed development constitutes permitted development and therefore has deemed consent. Accordingly, this Supporting Statement is structured as follows:
 - Site Description – Section 2
 - Proposed Development – Section 3
 - Permitted Development Assessment – Section 4
 - Conclusion – Section 5.
- 1.6 The following plans and information are also submitted in support of the application:
 - Application Forms
 - Site Location Plan
 - Proposed Ground Mounted PV Generation Layout Plan
 - Letter from MOJ confirming their interest in the site and authorisation to submit the application
 - Pre-application discussion with Staffordshire Moorlands District Council (enclosed with this statement)
 - Detail of PV output (included within this statement)
 - PV Equipment Specification
 - Preliminary Ecological appraisal (LUC, November 2021)
 - Historic Environment Opinion (LUC, April 2021)
 - Landscape Opinion (LUC, November 2021))
- 1.7 A Screening Opinion request has been separately submitted to Staffordshire Moorlands District Council.

2. Site and Surroundings

Site Location and Description

- 2.1 The application site is located on Crown land immediately to the south of the main prison complex. HMP Werrington is located approximately 200m from the A52 on the southern outskirts of Werrington, a village within the Staffordshire Moorlands District, approximately 3 miles east of Stoke-on-Trent. Within the wider area the prison is predominantly surrounded by arable farmland.
- 2.2 The parcel of land that is the subject of this application is identified on the accompanying Site Location Plan drawing DR-A-0100 Rev 2 HMP Werrington - Site Location Plan.
- 2.3 The application site is 0.71 hectares (1.75 acres) in size and is in close proximity to the main prison complex within the wider HMP Werrington Estate. It currently consists of grassland and is land that has been reserved for operational use.
- 2.4 The site is bordered to the north by the prison site with agricultural land extending to the south, east and west.
- 2.5 The topography of the site is generally flat and is located within flood zone 1.

Crown Land Operational Purposes

- 2.6 The site is fully within Ministry of Justice (MoJ) ownership and is classified as Crown Land in accordance with Section 293 of the Town and Country Planning Act 1990 – *“land in which there is a crown interest or a duchy interest”*. The definition goes onto to note *“(b) an interest belonging to a government department or help in their trust for Her Majesty for the purposes of a government department”*.
- 2.7 Paragraph 002 of the Planning Practice Guidance ‘Crown Development’ also states that Operational Crown land is land owned or managed by Crown bodies which is used or held for operational purposes. These purposes relate to the carrying out of the functions of the Crown body. The Ministry of Justice is identified in the PPG as one of those Crown bodies.
- 2.8 As stated previously, the site comprises 0.71 hectares (1.75 acres) of Crown owned agriculturally improved grassland that has been reserved for operational prison use and is now proposed to be used for the generation of renewable energy to power the main HMP Werrington prison complex. It will generate 86,527kWh in total, which will be used solely for the energy requirements of the operational prison facility, generating 75% of the facilities minimum daytime load.
- 2.9 Pre-application advice has been sought from Staffordshire Moorlands District Council as the Local Planning Authority (LPA) in respect of this proposal and the written response is enclosed with this Supporting Statement. The LPA requested clarification on several matters in order to determine whether the proposal would constitute ‘permitted development’ by virtue of Schedule 2, Part 19 ‘Development by the Crown or for national security purposes’, Class A/Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015.

3. Proposed Development

- 3.1 The accompanying drawing 'DR-A-0101 - HMP Werrington - PV Generation Layout' presents the proposed layout of the Solar PV arrays and associated infrastructure. The main features of the proposed development are:
- the Solar PV Arrays;
 - Switch-gear units and cabling; and
 - Security fencing.
- 3.2 The installation proposes 2 sets of 100 of Solar PV arrays. The solar panels will be mounted in a portrait configuration, 2 modules on top of each other. The arrays themselves will be inclined to between 20 to 35 degrees. The lowest point of the panels will be around 70-80cm from the ground. The panels will be no higher than 3m from the ground and will be installed on a 2-post steel support. These will have a minimal impact on the ground and will allow the site to be returned to its current state at the end of its lifespan.
- 3.3 The arrays will be accompanied by inverters located on a concrete base within the solar panel arrays. These will transfer energy between the solar panels and the prisons main switchboard. Each inverter is 0.16 cubic metres. The final pieces of equipment to be installed are the feeder pillar that house the switchgear (maximum of 2 cubic metres) and the power meter to monitor the solar PV generation.
- 3.4 The site will be secured by a 1.8-metre-high deer stock fence with lockable gates. It will form a complete enclosure of the site and will be painted green. A gate and crossover for the access road will be located at the north west side of the compound leading onto a track which joins an existing access road. The access road shall be an earthen road to allow for infrequent light vehicles access.
- 3.5 A cable will be laid from the inverter's location at the north side of the compound and connected to the main switchboard in HMP Werrington. The cable route is mostly internal through the prison to the north east of the site.
- 3.6 Once operational, only maintenance visits to the solar arrays will be required. The designated contractor will install, operate and maintain the panels throughout their operational life.

Energy Generation

- 3.7 The proposed panels will provide energy solely for the operational prison with the objective of reducing mains energy usage and offsetting carbon emissions. This is a significant driver for the MoJ as the second largest central Government estate, accounting for more than 20% of central Government's total greenhouse gas emissions, which must be reduced to assist the UK government meet its net zero target.
- 3.8 The MoJ has therefore been awarded funding to invest in low carbon technologies on its estate and the proposed development is the first of its prison sites that will benefit from this important initiative.
- 3.9 The proposed development will, therefore, produce solar energy to generate electricity to power the operational prison complex. The proposed solar arrays are predicted to generate 86,527kWh/annum. This is expected to meet 75% of the site's minimum daytime load and contribute to 10% of the total prison yearly energy demands.

4. Permitted Development Regulations Assessment

Introduction

- 4.1 The proposed development for the installation of ground mounted Solar PV Arrays comprising 2 sets of 100 panels has been considered against the provisions of The Town and Country Planning (General Permitted Development) Order 2015 (GPDO). In order for permitted development rights to be exercised it is necessary for the LPA to have adopted a screening opinion that the proposed development is not EIA development. A screening opinion has been submitted to Staffordshire Moorlands District Council (the Council) separately to this application and a decision is awaited.
- 4.2 As stated previously, pre-application engagement has been undertaken with the Council, and a pre-application response has been received. This is appended to this Statement. The pre-application response indicates that the Council accept that the proposals would constitute 'permitted development' by virtue of Schedule 2, Part 19 'Development by the Crown or for national security purposes', Class A/Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
- 4.3 Part 19 of the GPDO makes provision for certain development to be undertaken on Crown Land without the need for planning permission. Class A of Part 19 permits '*general development by the Crown...for...and in connection with...operational purposes*' and Class C permits certain other '*developments on operational Crown Land*'. Please refer to Appendix 1 for the full details of Class A and Class C.
- 4.4 This statement has previously confirmed that the site is fully within MoJ ownership and is classified as Crown Land, which falls within the operational estate of HMP Werrington. The application site comprises grassland, which has been reserved for operational use, and is now proposed to be used for the generation of renewable energy to power the main HMP Werrington prison complex. This renewable power will be solely used for the energy requirements of the operational prison facility, generating 75% of the facilities minimum daytime load.

Part 19 Class A

- 4.5 The pre-application advice from Staffordshire Moorlands District Council indicates that the proposed development constitutes 'permitted development' by virtue of Class A / Class C under Part 19 of Schedule 2 of the GPDO.
- 4.6 Class A permits the erection or construction and the maintenance, improvement or other alteration by or on behalf of the Crown of (a) any small ancillary building works, or equipment on Crown Land required for operational purposes.
- 4.7 The PV panels and inverter units/switchgear proposed in support of the Solar PV arrays would fall within the definition of equipment on Crown Land that is required for operational purposes. The inverter units and panels will provide the prison complex with renewable energy to ensure its continued operation during the national and local move towards net zero carbon.
- 4.8 The inverters and switchgear required in association with the Solar PV Arrays, will convert and channel the power to the prison's main switchboard.
- 4.9 The plant and machinery which comprises the solar array equipment and panels can be considered equipment required for operational purposes. No definition of equipment is provided

in the TCPA 1990 or the General Permitted Development Order. The Oxford English Dictionary however defines equipment as “*the things that are needed for a particular purpose or activity*”.

- 4.10 In this case the solar PV panels and associated inverters are the things that are needed for the purpose of collecting solar energy to power the Prison estate.
- 4.11 In addition to this relevant case law comes from the *Cardiff Rating Authority V Guest Keen Baldwin's Iron and Steel Co 1964* which identified three tests. These tests are:
- a) Whether the size was such that normally it would have to be built on site rather than brought to the site ready-made;
 - b) Whether the construction suggested some degree of permanence meaning it could only be removed by pulling down or taking to pieces; and
 - c) Whether the construction was physically attached to the ground.
- 4.12 Taking into account the above tests the solar arrays comprise of frames and panels which are brought to site ‘ready-made’ and installed for a temporary period of time. As is common with most plant and machinery or equipment it is often delivered to site for installation rather than having to be built on site.
- 4.13 The installations can be easily removed, and the site restored to its previous condition. The PV arrays, therefore, do not have a permanence to them which would normally be associated with a building.
- 4.14 The solar arrays do not require any traditional foundations as part of the installation and therefore, the equipment is not physically attached to the ground in the same way that a building would be. Therefore, the proposed development can be considered under Class A ‘equipment’ on Crown Land.
- 4.15 For the purposes of this certificate the proposed Solar PV Arrays are considered to be equipment¹ and are required for operational purposes (to power the operational prison), meaning that they fall within the provisions of Class A.
- 4.16 Sub-paragraph (b) includes ...barriers for the control of people and vehicles and similar structures or works require in connection with the operation purposes of the Crown. The proposed deer stock fence would fall within this category of works. The fence will prevent people from entering into the Solar PV array field, except for operational purposes such as maintenance and eventually dismantling.
- 4.17 The interpretation of Class A notes that the reference to any small ancillary building, works, or equipment should not exceed 4 metres in height or 200 cubic metres in capacity. The security fence is below the 4m threshold. The top of the PV panels in the proposed configuration will be less than 3 meters above ground level and will not therefore exceed the maximum 4 metre height parameter specified under Class A.
- 4.18 Each inverter is 0.16 cubic metres and the feeder pillar that houses the switchgear is a maximum of 2 cubic metres. Cumulatively this creates a volume significantly less than the 200

¹ NPPG Paragraph 020, reference ID: 22-020-20141017

cubic metres permitted under Class A. The height of these equipment enclosures is also significantly less than the maximum 4 metre height parameter specified under Class A.

- 4.19 The proposed works therefore benefit from deemed consent under Class A of Part 19 of Schedule 2 of the GPDO (2015).

Part 19 Class C

- 4.20 Class C permits development consisting of:

- a) The installation of additional or replacement plant or machinery
- b) The provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus...

- 4.21 Within Class C development is not permitted if it would materially affect the external appearance of the premises; or any plant or machinery would exceed a height of 15 metres above ground level or the height of anything replaced, whichever is the greater.

- 4.22 The Solar PV arrays also benefit from deemed consent under Class C of Part 19.

- 4.23 The cabling that will connect the PV Solar installation to the main powers will run through the southern boundary of the Prison Complex. This will benefit from the provision of Class C(b) that permits the provision of a ... cable ... for operational purposes carried out by or on behalf of the Crown.

- 4.24 Development is not permitted by Class C(a) if it would materially affect the external appearance of the premises or would exceed a height of 15 metres above ground level or the height of anything replaced, whichever is the greater.

- 4.25 A Landscape Opinion has been prepared in support of the development to demonstrate that the Solar arrays comply with the conditions of Class C and the development does not materially affect the external appearance of the premises.

- 4.26 The extent of any impact will be local to the immediate vicinity of the Solar PV installation. The proposal lies entirely within the Crown Land.

- 4.27 The LUC opinion concludes that direct effects on the landscape will be minor and localised. Specifically, the proposed development will result in unavoidable direct landscape effects through the change in land use from open farmland to a solar farm development, and the potential removal of vegetation to accommodate access tracks. However, these direct effects will be localised due to the small extent and height (3m) of the proposed solar development and surrounding high weld mesh fencing.

- 4.28 Further, given the proximity of residential receptors to the proposed development, there will be a minor change to the landscape within views, as the field will be overlaid by an array of PV panels. However, these changes will be seen in the context of the existing prison buildings and therefore it is unlikely to be more than a minor effect on visual amenity from these properties.

- 4.29 Some filtered views from the public footpath are judged to have a moderate potential impact, which can be reduced through mitigation in the form of screening.

- 4.30 The proposed arrays will lie 3m above the ground and therefore fall within the 15m threshold set out within the conditions of Class C.

- 4.31 This section demonstrates that the proposed development complies with the relevant interpretations and conditions of Class A and Class C of Part 19 of the GPDO and can therefore benefit from deemed consent.

5. Conclusions

- 5.1 The Ministry of Justice (MoJ) is formally requesting a Lawful Development Certificate from Staffordshire Moorlands District Council for a proposed PV Solar Array installation and associated equipment that is required for operational purposes and is to be located on operational Crown Land directly adjacent to the main HMP Werrington prison complex.
- 5.2 The site location plan and accompanying documentation demonstrate MoJ's ownership and interest in the site, whilst acknowledging that Cushman & Wakefield have been instructed by the MoJ to submit this application on their behalf in accordance with legislation.
- 5.3 This Supporting Statement and the accompanying plan (ref: DR-A-0101 Rev.2) determines the exact location and layout of the proposed development and explains why it constitutes permitted development under Schedule 2, Part 19 Class A and Class C of the GPDO (2015).
- 5.4 The development conforms with the provisions and interpretations of Class A and Class C and therefore benefits from deemed consent under the GPDO.
- 5.5 The proposed panels will provide energy solely for the operational prison with the objective of reducing mains energy usage and offsetting carbon emissions. This is a significant driver for the MoJ as the second largest central Government estate, accounting for more than 20% of central Government's total greenhouse gas emissions, which must be reduced to assist the UK government meet its net zero target. The MoJ has therefore been awarded funding to invest in low carbon technologies on its estate and the proposed development is the first of its prison sites that will benefit from this important initiative. By investing in renewable energies, the MoJ can reduce their energy consumption at Werrington by up to 10% annually, thus contributing towards the national priority to move towards net zero carbon.
- 5.6 To meet these objectives and targets, the proposed development must be installed and operational before Summer 2022. The timescales for the project are challenging and we respectfully request that a Lawful Development Certificate is issued as soon as possible to ensure this sustainable development can go ahead in line with the necessary project priorities and timescales.

Appendices

- 1. Schedule 2, Part 19 Class A and Class C of the GPDO (2015)**
- 2. Staffordshire Moorlands District Council Pre-application Response**

Appendix 1

Schedule 2, Part 19 Class A and Class C of the GPDO (2015)

Schedule 2, Part 19 of the Town and Country Planning (General Permitted Development) Order (2015) (as amended) – Development by the Crown or for national security purposes.

Class A – General Development by the Crown

A. The erection or construction and the maintenance, improvement or other alteration by or on behalf of the Crown of –

(a) any small ancillary building, works or equipment on Crown Land required for operational purposes;

(b) lamp, standards, information kiosks, passenger shelters, shelters and seats, telephone boxes, fire alarms, drinking fountains, refuse bins or baskets, barriers for the control of people and vehicles, and similar structures or works required in connection with the operational purposes of the Crown.

Interpretation of Class A.

A.1 The reference in Class A to any small ancillary building, works or equipment is a reference to any ancillary building, works or equipment not exceeding 4 metres in height or 200 cubic metres in capacity.

Class C – Developments on operational Crown Land

C. Development carried out by or on behalf of the Crown on operational Crown Land for operational purposes consisting of –

(a) the installation of additional or replacement plant or machinery

(b) the provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus; or

(c) the provision, rearrangement or replacement of a private way, private railway, siding or conveyor.

Development not permitted:

C.1 Development described in Class C(a) is not permitted if-

(a) it would materially affect the external appearance of the premises; or

(b) any plant or machinery would exceed a height of 15 metres above ground level or the height of anything replaced, whichever is the greater.

Appendix 2

Staffordshire Moorlands District Council Pre-application Response

RE: GEN/2021/0015 - installation of solar panels at HM Prison Werrington



Curley, Jane <jane.curley@staffs Moorlands.gov.uk>
To: Mark Jackson/GBR

You replied to this message on 06/04/2021 16:49.

External Mail

Thanks for the update. I presume you will be applying for a LDC too in due course so will wait to receive that.

Jane

Jane Curley (Mrs)
Senior Planning Officer (Majors & Commercial)
01538 395400 ext 4124
Mobile 07794 768397

From: Mark Jackson/GBR <mark.jackson@cushwake.com>
Sent: 29 March 2021 12:16
To: Curley, Jane <jane.curley@staffs Moorlands.gov.uk>
Subject: RE: GEN/2021/0015 - installation of solar panels at HM Prison Werrington

Jane,

I hope you're well.

Apologies for the delay in responding. A set of plans and baseline assessment work has now been completed to inform our response and the proposal.

I have set out a brief response in red to your email below for ease of reference.

I will shortly be submitting an EIA Screening request to your authority.

Please give me a call if you have any questions.

Mark Jackson MRTPI
Partner, Planning, Development & Strategic Advisory

Direct: +44 (0)121 697 7227
Mobile: 07921 499854
mark.jackson@cushwake.com

RE: GEN/2021/0015 - installation of solar panels at HM Prison Werrington



Curley, Jane <jane.curley@staffs Moorlands.gov.uk>
To: Mark Jackson/GBR

You replied to this message on 06/04/2021 16:49.

From: Curley, Jane <jane.curley@staffs Moorlands.gov.uk>
Sent: 04 February 2021 16:50
To: Mark Jackson/GBR <mark.jackson@cushwake.com>
Subject: RE: GEN/2021/0015 - installation of solar panels at HM Prison Werrington

External Mail

Dear Mark
Thank you for your e-mail. Before I comment further please can you advise on the following :-

1. What is the land used for on which the solar panels are to be sited? I am referencing in particular the definitions of 'operational Crown land' and 'operational purposes' in the GPDO. The site comprises grassland located within the operational prison estate and is proposed to be used for the generation of renewable energy.
2. Is the track leading from the Prison an existing track rather than a new one? The track will be an earthen road to allow infrequent light vehicle access. The majority of the track is an existing route around the prison site.
3. What is the height of the mesh fenced compound? 1.5m
4. Is the access route within the compound hard surfaced? No
5. Have the other LPA's commented on a similar sized array within a mesh fenced compound? Yes. Attached is Breckland Council's response to a similar scheme for HMP Wayland.
6. Have the other LPA's considered it to fall under Part 19 Class A (a) or Class C (b) or another? Yes. As above

What's your view on this – do you feel it is permitted development? Yes

Jane

Jane Curley (Mrs)
Senior Planning Officer (Majors & Commercial)
01538 395400 ext 4124
Mobile 07794 768397

RE: FAO Mr Ben Haywood - INSTALLATION OF SOLAR PHOTOVOLTAIC PANELS ON HER MAJESTY'S ... 



Curley, Jane <jane.curley@staffs Moorlands.gov.uk>

To  Mark Jackson/GBR

 Reply

 Reply All

 Forward



Thu 28/01/2021 12:30

 You forwarded this message on 16/03/2021 14:32.

External Mail

Dear Mark,

Thanks for your message. Having looked through the documents/e-mails provided it seems to me that PD would be the easiest route for all but I need to understand how other LPA's are interpreting the GPDO to enable Class 19 to be triggered. Have any obtained a legal view ?

Look forward to hearing from you

Jane

Jane Curley (Mrs)
Senior Planning Officer (Majors & Commercial)
01538 395400 ext 4124
Mobile 07794 768397

