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SOLAR PANELS – ALL SUNSHINE?

BY PETER BERTRAM OF LEXSTONE LAWYERS

Solar panels are making news. They offer the prospect of clean renewable energy which is hugely desirable not least when steps are taken to mitigate their visual impact upon the environment. But are there any downsides or is it all sunshine?

One of the first issues is the technology can be challenging. As can the terminology. For example a landlord can be required to warrant that the land is sufficient to maintain a “power factor” of X or above during the term of the lease. I certainly do not understand the scope of that warranty and it is but one example. If you are entering into a lease letting out your land for use as a solar farm, do you really understand the agreement of the lease, the obligations and the consequences? If not, can you truly evaluate what is the value of the electricity produced for the benefit of the tenant as against the return made by the landlord? Is it, in the circumstances, a good commercial return?

Looking online at articles from the United Kingdom and the United States, the big issue seems to be the costs of decommissioning, which are the costs of clearing the site, disposing of any redundant equipment and restoring the land to its original state at the end of the lease. Some articles suggest that some solar panels contain heavy metals and other components which are both difficult and expensive to dispose of. Virtually every article suggests that very clear obligations should be placed upon the tenant to decommission the solar farm site in an effective manner at the end of the lease, whenever that might be, and that a good and substantial bond is put in place to ensure that there are funds available to effect such decommissioning. Solar farm leases tend to be for a period of about 25 years, and of course, businesses can come and go during that time. And it is accordingly fundamentally important that any obligation to decommission is backed up by wholly adequate financial assurances.

Again, there are suggestions online that the solar panels and associated components last for something like 25 to 30 years before they need to be replaced. One wonders if the Jersey salt air might not prematurely age them! And in a world where technology advances at an ever-faster rate one perhaps needs to think what happens if solar panels become redundant during the term of the lease and need to be replaced with some other form of technology. What impact might that have upon the landowner?

A practical issue with entering into a long-term lease of land for a solar farm is in the normal course of events, the landlord will not have the right to cancel or break the lease if the tenant is not in breach of the terms of the lease. It might well be the landlord wishes to do so because



the opportunity arises to utilize the land in some far more financially beneficial manner or to develop it. Without a right to cancel or break the lease, the landlord is bound to honour the lease until it expires. A solar panel lease can accordingly be a block on future development and an opportunity to otherwise profit from the land. This is perhaps even more of a consideration in the case of brownfield sites or buildings, which, in many ways, would seem to be the ideal location for solar farms.

It is suggested that if you are considering granting a lease for the use of land as a solar farm, it would be sensible to discuss the proposal with your bank. Given the possibility that the costs of decommissioning a solar panel farm could be excessive it is possible that a bank would look at such as being a liability it would not wish to incur. This could be relevant if you already have a loan secured against your property or might wish to do so in the future. Obtaining some written assurance or guidance from your bank if possible, would seem desirable.

In certain circumstances, if only from a point of view of aesthetics the presence of a solar panel farm on your property might have an adverse effect on the market value of that property.

The above points hold good in respect of solar farms established upon the soil. It seems, however, that further issues should be taken into account if one is considering granting an electricity company a right to establish solar panels upon the roof of one of one's buildings. These leases are often referred to as "air space" leases. Creating such a lease in respect of one of your buildings can, to an extent, sterilize it for the term of the lease, which, as noted, is usually 25 years. Such a lease will also place the landlord under onerous obligations to ensure that the structure of his building remains sufficient throughout the term to carry the load of what could be hundreds of solar panels. That obligation to maintain could be very expensive. There might also be issues arising in respect of the insurance of the property.

And to end with everyone's favorite topic perhaps one should also have a word with one's accountant to ensure that changing the nature of your property to that of a solar farm does not have an adverse impact on its tax treatment or entitlement to grants or other concessions. Certainly, even if not an issue in Jersey it is an issue in other jurisdictions.

Clearly there is much that is laudable about solar farm initiatives. Who can argue against the concept of clean, renewable energy compared with some of the grubbier traditional forms? Not least if it also promotes some beneficial diversification of the local agricultural industry. But the message must be clear that all relevant advice (probably including advice from a specialist lawyer in the United Kingdom) should be obtained, and as in virtually all cases, that advice should be obtained sooner rather than later.

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Peter Bertram is a Jersey advocate with 45 years of experience. Previously, he was a partner at Ogier. Now, again living in Jersey, he is actively involved in commercial and residential property law work on the island. Peter also hopes that he will contribute towards the reform of the island system of registering titles.