

INSTALLATION OF SOLAR PV ON SCHOOL ROOFS

Background

The background circumstances to the preparation of this paper is that schools are being approached by various companies ('PV Owners/Investors') offering to install and operate solar panels on school roofs. Commonly the PV Owner/Investor retains ownership of the solar power installation, but is granted a lease to put it on the roof for a period of 25 years. The school is offered free electricity, or a reduced electricity bill during this period, but the PV Owner/Investor retains all of the feed in tariff income (which is much the larger sum) over the period. The offer is presented to the school as a "no brainer" since the PV Owner/Investor offers to pay all the costs and the school gets something for free. In reality it is the PV Owner/Investor who is securing most of the financial benefit from the proposed transaction.

Our advice

1. Schools and particularly church schools supported by Diocesan Boards of Education and other schools with foundation trustees should not be naive about this. Foundation trustees should NOT jump into long term arrangements with PV Owners/Investors upon poor commercial terms from the foundation trustees and schools point of view when there are far better opportunities for foundation trustees and their schools to take advantage of this. Often if the foundation trustees have the capital available best use of the opportunity can be taken by the foundation trustees deciding to be a PV Owner/Investor themselves.
2. School Governing Bodies and foundation trustees (if there is a foundation) faced with this issue and others like it for the first time need to understand the commercial background and what the PV Owners/Investors are looking to gain from all this. Remember the old adage "there's no such thing as a free lunch." Also remember a school which belongs to a group of schools, perhaps with a single foundation (a church school for example) don't have to work in isolation. Take full advantage of belonging to a wider grouping of schools in responding to this opportunity and securing commercial terms which might represent a significant improvement on terms you might otherwise only secure by acting in isolation. Indeed if you are a community school you should work with your Local Authority in responding to this.
3. It is not maintained school GBs who have the power to enter into long term arrangements, leases and the like, with PV Owners/Investors in relation to their schools. It is the foundation trustees who have power to do this if the school has a foundation, or otherwise it is the Local Authority. If the school is an academy it will be the academy trust company which has power to enter into arrangements with the PV Owners/Investors provided that the academy trust company has a long lease of the site – usually 125 years. If it does not have a lease it will be the owners of the site who have this power – generally the foundation trustees.

4. If you are a foundation school you are reminded that all trustees have a fiduciary duty to secure the best price/value for their beneficiary – the school. As charity trustees if they do not propose to be PV Owners/Investors themselves, but instead propose to enter into a lease or otherwise grant rights/ consents to third parties to install solar panels there is section 36 of the Charities Act 1993 to be complied with. Indeed even if the particular circumstances are such that one might conclude that section 36 does not apply we consider these are circumstances where trustees are well served by following section 36 requirements in any event. These require:
 - a. A focus on what can be offered for sale and on what terms.
 - b. Advice on how to approach and advertise what is on offer in this market sector so as to achieve the best price.

It would seem that those who have the capital to buy and install solar power installations themselves can make the best financial returns and avoid the cost of lease or other arrangements with third party PV Owners/Investors.

If the school GB, any foundation trustees or the LA (in the case of a community school) don't have the capital to take advantage of the investment opportunity, then lower returns can be achieved through negotiation with the solar panel installers. We understand these installers are offering various deals and working with different business models.

5. We understand the common approach is that the roof owner (here not the school GB, but it could be the foundation trustees, the LA or an academy trust company if it has a long lease) will at least get the energy produced at no cost and probably the income for any exported power. The PV investor/Owner gets the benefit of the feed in tariff income. We understand there is a significant reduction in the tariff from 1st April 2012. There again the cost of the installations has come down already dramatically and will fall further. Commonly Solar PV Owners/Investors are looking for 25 year lease arrangements with income return to them index linked. However we understand there are other terms on offer.
6. In relation to schools with foundations the key points which occur to us are:
 - a. We anticipate a section 36 surveyors report is needed supported by specialists with the necessary expertise in the Solar PV market sector. For foundation trustees with a large grouping of schools in any particular area we suggest this need not be focussed on any particular school at this stage, but designed to advise the foundation trustees more generally what the various operators in this sector are offering and how the foundation trustees might approach advertising what they have to sell so as to secure the best terms.
 - b. A shorter report on specific sites will supplement the above principal report and site specific issues will need to be considered, but one might expect there to be one PV Owner/Investor chosen for each grouping of schools to secure best value at this point and standard legal documentation settled to apply to all schools where solar power installations are installed.

7. Foundation trustees, school GBs (who control their sites under the Education Acts), LAs and academy trusts all need to consider with their lawyers what might be offered for sale to PV Owners/Investors and upon what terms. There are all sorts of issues to consider:
- site suitability in terms of operational performance, health and safety, risk of theft
 - terms which ensure flexibility for the school's operation, later development and school closure etc. The opportunity to earn income and reduce a school's carbon footprint must not hamper in any way the main purpose of a school.
 - terms which place upon the installer responsibility for the installation of the solar panel on the chosen roof in accordance with all requisite consents (which it should be the responsibility of the installer to obtain) and thereafter responsibility for maintenance and management thereafter. Please remember increased roof maintenance costs need to be factored in. You should expect the installer to be MCS and REAL registered (a consumer protection thing so not directly relevant other than the knowledge that someone is monitoring them). We understand they must be MCS accredited for the installation to qualify for the feed in tariff which is where most of the money is at the moment.

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