

## **Final Policy DBE Solar Panels**

### **Background**

The Diocese has been keen to support schools to understand the importance of good stewardship of the earth's resources through active participation in projects, and as part of general education within our schools. To this end we have encouraged our schools to investigate renewable options to sustain the planet and reduce both costs and the carbon footprint of Church school sites. The Diocese along with various Church schools within the Diocese over the last few years have been approached by a number of companies, including LA-sponsored organisations, to encourage investment in renewables, principally solar panels.

Over the last decade the government has also encouraged this through feed in tariffs and selling back excess generation of energy to the National Grid. The feed in tariff income percentage has significantly reduced over the last few years and is due to cease April 2019. Hence the final push for many companies towards solar panels. This needs to be seen in the context of ever changing technology, and new products and options coming to market.

The Diocese has on an ad hoc basis reviewed and supported various community based schemes but has also advised against some proposals that appear on the surface to offer benefits but where the legal ramifications are not in the long term interests of the schools and have hidden liabilities. Much of this is contained within the fine print of the proposed Agreements and Leases that are portrayed as Licences.

It should be noted that the Diocese and the DBE and the trustees of a Church school site are charitable and must therefore exercise their duties of care towards the Church school. They are required by various statutory provisions, so far as possible, to obtain appropriate professional advice, to protect their assets and to maximise those assets.

### **Policy**

The Diocese wishes to encourage Church schools to consider various different and new renewable options, including the changing face of solar panels. Proactively we have already supported many schools particularly where they have benefited from owning the solar panels on their roof space, community investment schemes, and obtained tariff income.

The Chichester Diocesan Board of Education (DBE) will, under The *Diocesan Boards of Education Measure 1991*, require Church schools to seek appropriate advice from independent professionals, for example, surveyors and lawyers, on proposed options and agreements. The DBE is required to approve Church schools that wish to undertake changes to their school buildings that sit on the diocesan land. There are additional implications meaning that the Secretary of State should frequently be informed of any Lease or long term agreement, particularly over a period of 25 years, affecting the land and buildings which can be viewed as a restriction that should be registered with the land registry.

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The DBE will require the governing body of a Church school to look at the pros and cons of agreements, including obtaining their own independent legal and/or surveying advice and researching alternative options.

### **Obligations to consult with DBE**

Specifically, the DBE is the Diocesan Authority for church schools within the Diocese. The *Diocesan Boards of Education Measure 1991* imposes a legal obligation on the Governing Body of any Church school and the trustees of any Church educational endowment held in connection with any Church school to obtain the advice of the DBE and to have regard to that advice before making any application to or entering into agreement with any one for or in connection with any disposal.

Even where the arrangements do not constitute a leasehold arrangement, they will necessarily include a grant of rights (over the trustee land) for the purposes of installation, maintenance and repair, which constitutes a disposal.

Where a Governing Body looks into the arrangements, there is always a likelihood that the trustees may have to sign the agreement.

Furthermore, were any school to wish to join a Multi-Academy trust run by the Diocese, there is a real risk of the MAT having to take on such an agreement with the financial consequences that this may entail for all the schools in the MAT.

Failure to consult with the Diocese over such a proposed scheme may result in the school not being allowed to join the MAT or its conversion to academy status being significantly delayed while financial models or other consequences are considered.

We therefore always advise that any GB or trustees wishing to have the benefits of solar power or other renewable energies obtain, as a minimum, the advice of qualified professionals and look at different alternatives before making any firm decisions.

### **Consideration should be given to the following**

Pros and cons should be investigated in detail to understand the benefits of savings on electricity or free electricity that need to be weighed against up front capital costs, and future liabilities. The agreement should not take the form of, or have the effect of, a lease. The landowner (usually either the Diocese Board of Finance or Vicar & Church Wardens for both Voluntary Aided and Voluntary Controlled schools) will not sign the agreement.

Hidden clauses to consider:

- Provision for change and if trustees wish to terminate the agreement are restrictive
- Site maintenance provisions onerous, more complicated and expensive
- Responsibility for removal of panels at the end of economic life
- Impact of removal and maintenance obligations if the company becomes insolvent
- Lengthy documents and agreement of landowner to install required
- Schools to pay set or variable amounts for energy generally set by the provider and buy back
- No guarantee that energy will be generated and provide expected savings and locked into one provider for several years

- Percentage of actual energy provided can be as low as 30%
- Governing Body and trustees are tied in for 20 or 25 years
- Feed in tariffs assigned to solar panel provider (to cover their capital outlay and generate their profit from the scheme)
- Strict and major penalty clauses (running to 125% of the value of the panels and FITS)
- Consequences if the Governing Body of school opts to change status to academy, or is required/chooses to relocate, or if closure of school is possibility
- Penalties particularly where a MAT (involving other church schools) would be expected to take over this agreement and liabilities and the potential consequences for those other schools.

## **Process**

Once the Governing Body of a Church school has undertaken due diligence and can evidence that they have thoroughly investigated, and considered their legal and/or surveying advice they should request the DBE to consider and agree to the Governing Body entering into the proposed agreement. The request from the Governing Body should include, as a minimum, a copy of the land ownership information where known for the school site, a copy of the school site trust deed (if available), a copy of the proposed agreement, a copy of the independent legal and/or surveying advice taken by the Governing Body (or a detailed explanation as to why this was not obtained), details of any negotiations undertaken on the proposed agreement and any further relevant information.

The DBE will agree or not agree dependent on a variety of considerations, including among others, land and buildings designation and advice on proposed legal agreement, each considered on its merits. Each will be reviewed on an individual basis. The DBE may require the Governing Body to obtain independent professional (legal or surveying) advice as a condition of proceeding. The DBE may seek its own independent professional advice (legal or surveying) and commission any report it considers reasonably necessary on any aspect of the site, buildings or proposed legal agreement or other key aspects depending on the nature of the proposed agreement, the Governing Body of the Church school will be required to meet that expense.

The Governing Body will generally, at the discretion of the DBE, be asked to sign an indemnity to the DBE and DBF/site Trustees if it proceeds with the proposed legal agreement, particularly (but not exclusively) in circumstances where the DBE and DBF/site Trustees note an adverse impact on the site of the Church school, its buildings and land and particularly where there are significant potential liabilities.

A copy of the signed agreement together with any supporting documentation and building survey should be sent to the Capital Assess Programme Manager post installation.

The DBE and DBF/site Trustees will not accept liability for any faulty equipment or legal claims made by either party in the future, or provide funding to support this.

