



Appeal Decision

Site visit made on 28 April 2015

by Mike Robins MSc BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 June 2015

Appeal Ref: APP/Y1138/W/14/3001908

CJ Ware and Son, Quartley Farm, Bowdens Lane, Shillingford, Tiverton, Devon EX16 9BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Johnny Wearmouth of Wessex Solar Energy against Mid-Devon District Council.
 - The application Ref 14/01452/MFUL, is dated 27 August 2014.
 - The development proposed is installation of a solar energy facility utilising solar photovoltaic panels to produce up to 5.5 MW of renewable energy.
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Decision

1. The appeal is allowed and planning permission is granted for a solar energy facility utilising solar photovoltaic panels to produce up to 5.5 MW of renewable energy at CJ Ware and Son, Quartley Farm, Bowdens Lane, Shillingford, Tiverton, Devon EX16 9BU in accordance with the terms of the application, Ref 14/01452/MFUL, dated 27 August 2014, subject to the conditions set out in the attached Schedule.

Application for costs

2. An application for costs was made by Mr Johnny Wearmouth of Wessex Solar Energy against Mid-Devon District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development included the address of the site; for clarity, I have removed this detail.
4. Although the Council failed to reach a formal decision on the scheme, an initial report was taken to the Planning Committee on 5 November 2014. Members resolved at that meeting to defer their decision, but were minded to refuse. It is reported that it was further deferred at the 3 December 2014 meeting. Subsequent to the appeal for non-determination, an implications report was taken to the Planning Committee on the 11 February 2015. Members resolved that were they to have made a decision, they would have refused the application on two grounds.
5. The reasons for refusal were that the scale, design and siting of the installation would have significant adverse affects on the visual amenity and the rural landscape character of the area, and that the proposal would represent unacceptable development of Grade 3 agricultural grazing land.

6. The planning application for the appeal scheme was accompanied by an Environmental Statement (ES) dated August 2014. The ES was produced in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (EIA Regulations). I am satisfied that the ES reasonably complies with the provisions of Schedule 4 of the EIA Regulations. I have taken into account the Environmental Information, as defined in the EIA Regulations, in determining the appeal.
7. Temporary planning permission is sought for an operational period of 25 years, after which the land would be restored to agricultural use.

Main Issues

8. I consider the main issues to be as follows:
 - The effect of the proposed installation on landscape character and the visual amenity of the area;
 - The effect on agricultural land; and
 - Whether any harm caused is outweighed by the production of renewable energy.

Reasons

9. The appeal site is farmland set in a valley near the village of Shillingford. Comprising five linked fields, the proposed solar installation would cover approximately 13 Hectares. It would comprise some 26,300 panels with associated inverter/transformer cabins; the site would be surrounded by a deer fence. The panels would be mounted on frames and be up to 3.5 metres high.
10. Overhead power lines, a former railway and the B3227 run along the floor of the valley to the south of the site. The road is separated by fields and a number of mature woodland copses. Outside of the nearby village of Shillingford, there are a number of dispersed farmsteads. The valley sides rise steeply to the north, where a minor road leaving Shillingford and passing the host farm buildings rises up and over the ridge. On the southern slope of the valley, a minor road with a junction with the B3227 at Lower Rill runs eastward past Middle Rill and Ferndale Farm.

Policy Context

11. The development plan for the area includes the Mid Devon Core Strategy, adopted 2007 (the CS) and the Mid Devon Local Plan Part 3, adopted 2013 (the Local Plan). The Council in their reasons for refusal refer to CS Policies COR2 and COR5 as well as Local Plan Policies DM2 and DM5.
12. Policies COR2 and DM2 are wide-ranging policies seeking high quality development that will sustain the quality and character of the area, whereas COR5 and DM5 refer specifically to renewable energy. These policies are generally supportive of renewable energy development, subject to it having acceptable local impacts, not leading to significant adverse impacts on the character, amenity or visual quality of an area, and where the benefits have been weighed against the impacts.
13. This balanced approach in Policy DM5 is reflective of the national policy and guidance set out in the National Planning Policy Framework (the Framework) and the national Planning Practice Guidance (PPG). Section 10 of the Framework sets out the national policy position with regard to climate change and renewable and low carbon energy. Policies therein are supportive of renewable energy

infrastructure and make specific reference to the need for a positive strategy to promote energy from such sources. There is no requirement for developers to demonstrate an overall need, but the Framework sets out that such development should be approved if impacts are, or can be made, acceptable¹. Paragraph 14 of the Framework sets out a presumption in favour of sustainable development that identifies three components: economic, social and environmental.

14. The PPG advises that large-scale solar farms can have a negative impact on the rural environment, and the Council note the referenced Ministerial speech in April 2013², which encouraged development on brownfield land, low grade agricultural land and on buildings. The guidance also notes that while solar farms can have an impact on landscape and local amenity, the local topography is an important factor and it considered that there is potential to mitigate landscape and visual impacts through, for example, screening with hedges.
15. The application was accompanied by a Site Selection and Consideration of Alternative Sites, dated August 2014. This provided an initial desk search based on electrical connection, environmental considerations including heritage assets, existing land use and agricultural land quality. A further detailed assessment was then carried out on the nine identified sites, which further included visual assessment, access and topography among other matters. I am satisfied that in policy terms, this addressed suitable alternatives.
16. There is some local guidance on renewable energy. The appellant addressed the Devon-wide *Assessment of Landscape Sensitivity to Onshore Wind Energy and Large Scale Photovoltaic Development*, dated June 2013, in some detail, but the Council subsequently referred to *An Assessment of Landscape Sensitivity to Onshore Wind Energy and Large Scale Photovoltaic Development in Mid Devon District*, dated October 2013 (the ALS). The relevance of this guidance in the context of the landscape sensitivity of the site is dealt with below.
17. In terms of agricultural land, paragraph 112 of the Framework states that the economic benefits of the best and most versatile (BMV) agricultural land should be taken into account, with preference being given to areas of poorer quality land. The Framework defines BMV land as being classified as grades 1, 2 and 3a.

Landscape Character and Visual Amenity

18. During my site visit, in addition to a review of the condition of the site itself and the immediately surrounding land, I was able to view the appeal site from the principal viewpoints identified by the appellant, those recommended by the Council and as detailed specifically by an objector to the scheme, where such sites were publically accessible. Thus the views from the minor roads to the north, east and south, as well as views from the B3227, were all considered. During the visit I noted a number of trees were just gaining their summer foliage, but others remained bare.
19. The application was supported by a Landscape and Visual Impact Assessment³ (LVIA). At the request of the Council this was subsequently reviewed by another consultancy⁴. While this review identified a number of matters that could be addressed in the original report, it concluded the LVIA as being generally thorough

¹ Paragraph 98

² Rt Hon Gregory Barker

³ Land Lizard Ltd August 2014

⁴ SLR October 2014

and relevant and that the site was an acceptable candidate for a photovoltaic solar farm in landscape and visual terms, subject to conditions.

20. While objectors have referred to the identified areas for improvement, the overall conclusion of this independent review supports the scheme, and I note that the appellant has commissioned a further rebuttal LVIA⁵, which also assesses the proposal against the later local ALS guidance identified by the Council.
21. This is a landscape of broad valleys and sweeping, open hilltops. From the tops of the ridges there are extensive views along the valley. On the lower slopes, there is a tighter grain to the field boundaries, and views are curtailed by natural and man-made features. Although located relatively close to the Exmoor National Park, and I note residents' and, to a certain extent Council, concerns over this, it is separated by very significant high ground. Any effects can only be concluded against the perceptions of those driving towards the Park, and therefore realistically only to views from the B3327. I note that the Exmoor Park Authority, whose Landscape Officer did look at the details of the application⁶, raised no concerns and chose not to make any representations. Other than this, there are no formal nationally designated landscapes, albeit the Council have identified that at some stage it is their intention to seek Area of Outstanding Natural Beauty status for the Exe Valley, of which this site is part.
22. The site itself is in the lower part of the valley, set below increasingly steeply sloping fields to the north. The valley here is characterised by relatively large pockets of woodland with some further linear wooded features associated with the road and particularly the former railway line. The scheme includes a Landscape Masterplan, which identifies proposals to strengthen a hedge line to the south with trees, as well as further coppicing, scrub planting and wildflowers. The proposal would retain the natural topography along with all other hedges and trees across the site.
23. Turning to landscape character, the site is identified as lying within LCT3E⁷, Lowland Plains, with the northern boundary of the site representing the change to LTC3A, Upper Farmed and Woodland Slopes. Key characteristics include gently rolling middle to low ground, primarily managed farmland, with medium to large scale field patterns, including copses and discrete woodlands with scattered farmsteads located on the valley sides. It is noted as a landscape with highly variable views. The Upper Farmed and Woodland Slopes landscape characteristics include the rounded ridges with occasional steep slopes, with the lower slopes often damp in character with rough pasture and small areas of carr woodland.
24. While I note that the ALS generally identifies these landscape types as being of moderate to high sensitivity to solar farm developments, my own view of this landscape is of a merging of the two types, and while there is generally perceived to be an open and strongly rural character across the area, surrounding the site there is a greater degree of woodland cover, notably increasing the containment of this site. The ALS identified the need for development in this area to be located in more enclosed areas on lower slopes and away from sensitive landscape types; this proposal complies with this approach.

⁵ Land Lizard Ltd 21 March 2015

⁶ Email dated 14 November 2014

⁷ Based on Mid Devon's Landscape Character Assessment 2011

25. A solar farm can introduced hard edged features with an industrial character into rural areas, and I consider there would be a very obvious change to the landscape character within the site. However, the contained location and scale of the proposal means effects on the landscape character of the wider area would be more limited, such that I consider there would be a low-moderate adverse impact from the proposal. This would be further mitigated by the landscaping proposals, including the retention of the natural features and the introduction of planting to form new or to strengthen existing features characteristic to the site.
26. Turning to visual amenity, having considered all of the submissions and the proposed viewpoints, I consider that the site is well contained within this landscape. No public footpaths provide notable views of the site, and short to medium range views tend to occur only at points where the enclosed roads have breaks in the hedge banks. I noted that there were no obvious views available from the B3227. Very minor glimpses of part of the site may be available to walkers, although the road does not make provision for pedestrians, but I judge these to only be realistically achieved in winter and certainly not readily perceived when travelling by car. At no point along this road can the full extent of the site be perceived.
27. From the northern minor road, a gated opening allows clear views over the site. However, this is a narrow road, car drivers would not perceive this view and it is not identified as a footpath. Similarly other views, albeit more limited could be achieved from gated entrances along the minor road that drops from the ridge towards the B3277. Walkers, should they choose to use these routes, may stop at these points and the panels would be seen within the extensive views of the landscape available.
28. The LVIA correctly identified that there would be views of part of the site from the road alongside Middle Rill Farm and from the upper floors of the farmhouse fronting the road. The roadside hedge here would appear to have been significantly reduced, but this view would perceive only part of the site over the appeal site boundary hedge proposed to be strengthened. Thus, there would be short term views of the panels from this property and part of the road, albeit at a distance of approximately 500 metres.
29. Further views would be available from the minor road near Doddiscombe, further to the south, although these would be approximately 2 kms from the site. Objectors refer me to potential views from a property known as Popes and possibly part of the access road. While I have photographs, I did not have access to this site. When looking back from the appeal site, it would appear that the intervening woodland would provide effective screening to views.
30. Therefore, while there would be occasional glimpsed views that would register as of significant adverse effect, these are in locations where use by receptors would be limited. While these may be sensitised receptors, the overall significance would be low. Other views would be of moderate adverse effect, but at some distance and of parts of the development that will be mitigated through landscaping proposals. In the short term, these would be of moderate significance, decreasing to low adverse significance in the medium term. While I note the concerns that the woodland elements would only screen the development for part of the year, deciduous trees when in copse or woodland settings can provide effective screening when not in leaf.

31. I consider that there would not be significant cumulative effects from other renewable energy installations.
32. Overall, I have found moderate adverse effects on the landscape character, decreasing with time and distance, and significant visual effects only on occasional glimpsed views that therefore are of limited significance. There would be conflict with the objectives of Policies COR2 and COR5, but these would not be the significant effects referred to in Policy DM5 of the Local Plan, nonetheless, these effects must be considered in the overall balance.

Agricultural Land

33. The appellant submitted an Agricultural Land Classification and Soil Resources report, dated July 2014. This concluded that the quality of the land is limited by soil wetness and workability and the majority is Grade 3b, with a small area to the north limited to Grade 4. This assessment would accord with my own observations and has not been substantively challenged by the Council. Such land can be productive, but does not fall into the characterisation of BMV agricultural land, and as here, is often used for grazing.
34. The appellant confirms that the intention would be to continue grazing activity. While there would be a small loss of productive agricultural land for 25 years, this would not be the BMV land, for which the Framework seeks a measure of protection. Similarly Policy DM5 explicitly sets out the requirements to consider only the quality of agricultural land within Grades 1, 2 and 3a. The Ministerial Speech referred to earlier, expressed a preference for development on brownfield land, it also allowed that development may occur on low grade agricultural land with visual screening and continued grazing around the panels. The PPG also refers to poorer quality land in preference to higher quality, but does not require that this is at Grades 4 or 5.
35. I conclude on this matter, that there would be only limited conflict with national policies and guidance, and very limited harm to agricultural production.

Other Matters

36. The Council and opponents of the proposal have referred me to a number of appeal decisions⁸, including one that was dismissed located only a relatively short distance to the west of the appeal site⁹. Each application or appeal must be considered on its own merits, but I note that the Keens Farm appeal Inspector clearly identified the landscape as small-scale and devoid of trees, having important views from well used routes. The conclusion, consistent with the other cases noted, was that there would be significant adverse effects, both on landscape and visual receptors; this contrasts with my own findings as regards the scheme before me.
37. Although not pursued as a reason for refusal, I am conscious that there were local concerns regarding highway matters. The ES considered transport matters and reviewed appropriate responses to the delivery of materials to the site, in light of the narrow rural roads on some parts of the network. A Construction Management Plan was submitted identifying a proposed route for the period of construction as well as hours of operation. This included an escorted provision for HGV traffic.

⁸ Including APP/Y1138/A/13/2204410; APP/W1145/A/14/2212551

⁹ APP/Y1138/A/13/2201297 – Keens Farm

38. I can understand local residents' concerns and, for the period of construction there would be an increase in HGVs on the local roads. The imposition of suitable conditions to require compliance with the Construction Management Plan will limit the temporary impact of this such that I concur with the findings of the highway authority, that there would be no severe cumulative residual impacts from this proposal.
39. The Council consider that some of the woodland, which I have noted as providing screening and containment of the site, lies outside of the appellant's control and cannot be guaranteed to be retained. I also note that the Council have confirmed that the Forestry Commission have not identified any felling licences associated with this woodland.
40. There is an area of managed woodland to the south, Haynemoor Wood. However, while some of those around the site may have developed from managed coppice plantations, the copses are now mature, mixed deciduous woodland. They appear to be of some age and standing in the landscape and while there may be a theoretical risk of their removal for some reason, I have no evidence to suggest that such an event is likely to happen. In this case, I can give little weight to the assertion that such screening as is currently present, cannot be relied on.
41. Further concerns were raised regarding the economic impacts of the proposal, although these were not pursued by the Council at the appeal. These included reference to the value of shooting and of tourism to the area. In light of my principal findings on the effects of the proposal, I consider that there will not be material impacts on the local economy sufficient to outweigh the overall economic benefits of the scheme.
42. I note concerns regarding drainage, lighting, noise and activity on the site. Drainage matters were addressed in a flood risk assessment and swales are to be provided. I see no reason, following construction, for there to be significant activity on the site, nor would there be significant noise effects. Security is a necessity on these sites, but I note that security cameras are to be infra-red and no external lighting is proposed.

Planning Balance - Whether any harm outweighs the benefits

43. The scheme has been promoted as offering up to 5.5 MW of renewable electricity capable of supplying approximately 1,400 homes. This is a factor of significant weight in favour of the proposal. The enhancement of the field boundaries, other planting and continuation of grazing also add weight in favour of the scheme. The development would have to be removed after 25 years of operation and the land would then be returned to full agricultural use.
44. Against this, there would be some moderate adverse effects on the local landscape, visual impacts for walkers using the minor roads and for private residents, albeit these are limited in their locations and would diminish significantly with distance. This is as a result of the contained nature of the site, with the very steep slope to one side and woodland to the other. It has been demonstrated that the development would not materially impact on BMV agricultural land.
45. The proposal overall represents benefits that would outweigh the harm identified and would therefore be considered as sustainable development that accords with the broad aims of national policy and the balanced approach promoted in Local Plan Policy DM5.

Conditions

46. I have considered the conditions put forward by the Council, and the comments of the appellant against the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale condition (1), I have imposed a condition requiring submission of an Environment Management Plan (3) to protect existing habitat and ensure provision of additional planting to protect the character and appearance of the area. For similar reasons, I have required there to be no external lighting (4), that all cables be underground (5), that the colour palette is restricted for any housings or buildings (6) and I have restricted permitted development rights (7).
47. To address highway safety, I have sought compliance with the submitted Construction Traffic Management Plan (8), and to address flood risk, compliance with the Flood Risk Assessment, including the provision of swales (9).
48. It is necessary that the scheme is restricted to the 25 year temporary permission sought (10) and I have imposed a condition to require restoration to agricultural use (11). Otherwise than as set out in this decision and conditions, for the avoidance of doubt and in the interests of proper planning, it is necessary that the development shall be carried out in accordance with the approved plans (2). Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Conclusion

49. The Council have criticised the proposal for failing to consult with the public. The appellant submitted Statements of Community Involvement with the appeal. It would appear that the previous application, withdrawn to allow for the review of the LVIA, was subject to public consultation. A public information day took place before the application, 15 May 2014, as well as a post application public information day on the 16 July 2014. The withdrawn and the submitted schemes are the same and relied on effectively the same information, and there was substantial public response to the proposal. I do not set aside the concerns of those members of the public who have made comments lightly, but must consider the proposal on its merits against the national and local planning policy and the presumption in favour of sustainable development.
50. In this context, I have found the proposed site to be well located in a contained landscape where views are limited. The scheme would alter little of the existing topography or natural features and would introduce additional strengthening to hedgerows, tree planting, wildflowers and limited coppice woodland. It would provide an important contribution in terms of renewable energy and the limited harm that I have identified would be outweighed by the associated benefits.
51. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Mike Robins

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan A Sheet 1; Plan A Sheet 2; Figure 1.2 Sheet 1; Figure 1.2 Sheet 2; Plan B; Plan C; and Plan D.
- 3) No development shall take place, including any works of demolition, until an Environment Management Plan has been submitted to, and approved in writing by, the local planning authority, to include the site itself and the access and access track during construction and operation of the facility. The approved Plan shall include: details of measures to protect habitats and wildlife on and surrounding the site and access route during the construction period; buffer zones between the panels and fencing, hedges, trees and woodland; details on any tree/hedge removal and planting/landscaping scheme, including any changes proposed to existing ground levels; and details of ongoing management of the site and its boundary vegetation.

The approved details including the planting scheme shall be carried out in full by the planting season following substantial completion of the development. All retained and new trees on the site as identified in the Environment Management Plan shall be retained and maintained in accordance with the approved scheme for at least the lifetime of this planning permission, and any trees or plants which have been provided as part of the landscaping scheme and which, within a period of five years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 4) No external lighting shall be installed on the site.
- 5) All cables shall be placed underground.
- 6) The external colour of the inverter enclosure/housings and control buildings shall meet with either BS4800 12B25, BS4800 18B29 or BS4800 10B25. Once provided the structures shall be maintained in one of these approved colours.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls or other means of enclosure shall be erected within the application site.
- 8) The development shall be carried out in accordance with the submitted Construction Traffic Management Plan, dated August 2014, with the addition of road sweeping facilities, should the wheel washing facilities provided be insufficient to ensure that no mud or detritus is deposited on the public highway.
- 9) The development shall be carried out in accordance with the submitted Flood Risk Assessment, dated August 2014, and before the development is substantially completed, swales shall be provided in accordance with the submitted drawing Figure 1.2 Sheet 2 Rev A, dated 3 August 2014, and shall be permanently retained and maintained for that purpose while the development hereby permitted is sited on the land.

- 10) The planning permission hereby granted is for a period of 25 years from the date of first export of electricity from the development to the grid (the 'first export date') after which the development hereby permitted shall be removed. Written notification of the first export date shall be given to the Local Planning Authority no later than 28 days after its occurrence.
- 11) The developer shall notify the local planning authority of the permanent cessation of electricity generation in writing no later than five working days following this event. Prior to the permanent cessation of electricity generation, a scheme for the decommissioning and restoration of the site shall be submitted to and approved in writing by the local planning authority. Such a scheme shall include the following:
 - i) Details of the removal of the Solar PV panels, frames, inverter modules, substation, fencing, cabling, foundations and access track and restoration of the land;
 - ii) Parking of vehicles for site personnel and operatives;
 - iii) Loading and unloading of plant and materials;
 - iv) Storage of plant and materials;
 - v) Programme of works including measures for traffic management;
 - vi) Provision of boundary hoarding behind any visibility zones;
 - vii) Vehicle wheel wash facilities;
 - viii) Highway condition surveys;
 - ix) Extended Phase 1 habitat survey, which covers the whole of the site and predates the date of cessation of electricity generation by no more than 12 months; and
 - x) A soil management strategy to bring the site back into agricultural use.

The approved decommissioning and restoration scheme shall be fully implemented within 12 months of the cessation of electricity generation.