
Appeal Decision

Site visit made on 22 June 2016

by R C Kirby BA (Hons) DipTP MRTPI

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

Decision date: 21 September 2016

Appeal Ref: APP/U1105/W/16/3144419

Land at Shepherds Farm, Oil Mill Lane, Clyst St Mary, Devon EX5 1AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Solstice Renewables Limited against the decision of East Devon District Council.
 - The application Ref 14/2952/MFUL, dated 12 December 2014, was refused by notice dated 11 December 2015.
 - The development proposed is installation of ground mounted photovoltaic solar arrays with power inverter systems; transformer stations; internal access tracks; landscaping; CCTV; security fencing and associated access gate.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Solstice Renewables Limited against East Devon District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The planning application was submitted following an earlier refusal of planning permission¹ on the site for a larger development of solar arrays and associated equipment. During the course of the planning application the appellant submitted an amended plan to the Council for consideration showing the solar panels located wholly within the field to the north east of the appeal site (Plan No.1.0 dated October 2015). The Council did not consider this revised plan or the associated agricultural land classification reports because it considered that the development was substantially different to that which had originally been submitted. Accordingly the Council determined the application on the basis that the layout of the scheme was as shown on Plan No.:1.0 dated October 2014.
4. The appellant has requested that I consider the revised siting as part of this appeal. I note the appellant's submissions that the field to the north east of the application site would result in an overall smaller scheme upon the site and that this part of the site was included in the earlier refused application and subsequent appeal². Whilst I accept that the Council, statutory consultees, neighbours and third parties have previously commented on the merits of the

¹ Application Ref 14/1379/MFUL

² Ref APP/G5750/W/15/3007994

proposed use of this part of the site, it is likely that the comments received related to a larger scheme upon the appeal site, as opposed to the north east field only. The development of the north eastern field only is not directly comparable to the earlier scheme on the site.

5. In light of the above, and having regard to the principles established by the Courts in *Wheatcroft*³ I find that to consider the revised siting of the equipment on the field to the north eastern part of the site would deprive those who should have been consulted on the change, the opportunity of such consultation. I have therefore determined the appeal on the basis of the plans considered by the Council.
6. Since the determination of the planning application, the Council has adopted the New East Devon Local Plan (LP). The draft policy of the LP was referred to within the Council's decision notice and both parties have referred to policies of this Plan in evidence.
7. Following the site visit, the appellant submitted a copy of the planning permission Ref 15/0123/MFUL relating to a solar array scheme at Kenniford Farm to the south of the appeal site. The DNO sub station proposed on the appeal site has planning permission under this scheme.
8. The Council has determined that an Environmental Impact Assessment (EIA) is not required for the scheme. Local residents consider that an EIA should have been submitted, because of the cumulative impact of the proposal and other developments in the locality on the character and appearance of the area. As the appeal is being dismissed for other reasons, I have not considered this matter further. I am satisfied that I have sufficient information before me to determine this appeal.

Main Issues

9. The main issues in this case are the effect of the proposal on best and most versatile (BMV) agricultural land; and whether any harm caused is outweighed by the production of renewable energy and other benefits of the scheme.

Reasons

The Proposal

10. The appeal site covers an area of approximately 20 hectares, including 9.3 hectares of agricultural land, currently in arable use upon which the solar park would be sited. The remaining land would remain in arable production. The photovoltaic panels would be laid out in arrays running east to west across the site. They would have a maximum height of 2.5 metres above ground level and would be installed at a gradient of approximately 25 degrees from the horizontal. The panels would be fixed. There would be associated equipment upon the site, including inverter stations, a sub-station, an internal track, fencing and CCTV cameras.

The Policy Background

11. Strategy 39 of the LP seeks to support renewable or low-carbon energy projects, providing that, amongst other matters, current best practice guidance

³ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

and the impacts of features of environmental and heritage sensitivity are satisfactorily addressed.

12. LP Policy EN13 states that the best and most versatile agricultural land (Grades 1, 2 and 3a) will be protected from development not associated with agriculture or forestry. Where there is an overriding need for the development, planning permission may be granted exceptionally, providing that either sufficient land of a lower grade is unavailable or is designated as having environmental or heritage value, or the benefits of the development justify the loss of high quality agricultural land.
13. This strategy and policy broadly accord with the National Planning Policy Framework's (the Framework) core planning principles of supporting the transition to a low carbon future in a changing climate, the encouragement given to the use of renewable resources (for example, by the development of renewable energy); the account that should be given to the different roles and character of different areas; the conservation and enhancement of the natural environment and the conservation of heritage assets.
14. The Planning Practice Guidance (PPG) states that particular factors which a local planning authority will need to consider in respect of large scale ground-mounted solar photovoltaic farms include focussing such development on previously developed and non agricultural land, provided that it is not of high environmental value. Where a proposal involves greenfield land, the PPG requires that poorer quality land should be used in preference to higher quality land, and that the agricultural use of the site should be continued where applicable and/or biodiversity improvements should be encouraged around arrays. This advice reflects that contained within the UK Solar Strategy Part 2: Delivering a Brighter Future (April 2014).
15. There is no definition of 'large scale' within either national or local planning policy. The appellant submits that the proposal would not result in a large scale solar park because of the energy that would be generated by the scheme. However, a scheme producing between 5.06MW and 7.5MW⁴ would fall within the definition of 'large scale' as set out in Box 3 of the UK Solar PV Strategy Part 1: Roadmap to a Brighter Future. It is on this basis that I have considered the appeal proposal.
16. A Written Ministerial Statement (WMS) 'Solar Energy – Protecting the Local and Global Environment' (25 March 2015) stated that 'Meeting our energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high quality agricultural land where a proposal involves agricultural land, being quite clear this is necessary and that poorer quality land is to be used in preference to land of a higher quality. The WMS makes it clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence. This WMS represents the most recent guidance in respect of BMV agricultural land and is a significant material consideration to which I must have regard.

⁴ Figures taken from appellant's evidence

Reasons

The Effect on Agricultural Land

17. The appellant's originally submitted agricultural land classification by Kernon Countryside Consultants (Kernon report) did not assess the whole of the appeal site. The proposed construction access, the DNO sub station, temporary construction compound and position of some of the arrays are excluded from the survey area. The report identified that 58% (9.5 hectares) of the surveyed site was grade 2 agricultural land, and that 42% (6.9 hectares) was grade 3a. In the main, the solar arrays and associated equipment would be sited on grade 3a agricultural land.
18. As part of the appeal submissions, the appellant submitted agricultural land classification reports from Courtyard Agriculture Ltd (Courtyard report) and Reading Agricultural Consultants Ltd (RAC report). Although the Council did not consider these reports as part of its consideration of the planning application, it has commented that the findings of the reports contradict the findings of the Kernon report, and each other.
19. The RAC report identifies that 44% (9.5 hectares) of the site surveyed (which includes land not forming part of the appeal site) was grade 2 agricultural land; that 39% (8.4 hectares) was grade 3a and that 17% (3.5 hectares) was grade 3b. The appeal proposal would be sited on grade 2 and 3a agricultural land as identified by the RAC report.
20. The Courtyard report uses a different categorization to the other reports, identifying 38.7% (8.06 hectares) of the site to be grade 3a and 2; 45.4% (9.45 hectares) as grade 3b and 3a and 15.9% (3.3 hectares) as grade 3b. The appeal proposal would be sited on grade 3a and 2, and 3b and 3a agricultural land. Although there are differences in the grade of agricultural land and areas within these 2 reports, they are in agreement that the field to the north eastern part of the site is grade 3b land.
21. There are clearly differences in opinion in the respective reports as to the agricultural land classification of the appeal site. However, both parties agree that the area of the site where the equipment would be located would be largely grade 3a. Class 3a agricultural land falls within the definition of BMV agricultural land. It is therefore necessary to identify whether there would be areas of poorer quality land to locate the development, in accordance with national and local planning policies.
22. The appellant's Alternative Site Search Assessment (ASSA) submitted with the planning application shows that there are severe constraints in the search area, including national landscape and nature conservation designations, gradient of the land, orientation and grid access. The ASSA found that there were no suitable, viable or available alternative sites in the search area (brownfield or poorer quality agricultural land) that were capable of accommodating the proposal.
23. Whilst I appreciate that the ASSA was undertaken prior to the Courtyard and RAC reports, it is clear that there is land within the appellant's control that does not comprise BMV agricultural land. This is the field at the north east part of the appeal site. There would therefore be scope to use this part of the site for part of the development. Accordingly I find that there is poorer quality land

upon the appeal site, where the development could be sited. Although it is likely that a lesser number of arrays could be sited upon this area of grade 3b agricultural land than the scheme before me, I have not been provided with evidence that a smaller scheme with less output would not be viable or unacceptable to the appellant.

24. The appellant intends to plant crops alongside the arrays and allow sheep to graze between them. The remainder of the site where the equipment is not located would be planted with arable crops. This would accord with the objectives of the PPG. However, by the appellant's own admission, the growing of crops alongside the arrays is in its preliminary stage in terms of viability. It is likely that there would be difficulties in harvesting the crops given the limited space between and around them. In the absence of convincing evidence to demonstrate otherwise, I cannot therefore be certain that there would be no adverse effect as a result of the proposal upon the economic and other benefits that this area of BMV agricultural land provides.
25. The appellant has drawn my attention to other schemes in the area where the Council considered that the development on grade 3a agricultural land was acceptable (Crannford House, Broad Clyst and East Hill Strips). Whilst noting these examples, I have not been provided with drawings or the particular circumstances of those cases. I am therefore only able to attach very limited weight to them in my overall Decision.

Benefits of the Scheme

26. The WMS requires that where the use of BMV agricultural land is necessary 'the most compelling evidence' should be provided.
27. Within the appellant's Planning Statement, reference is made at page 8 to the proposal generating up to 7.5 MW of power annually, which equates to the annual energy consumption of approximately 2,250 households, and an annual carbon dioxide displacement would be approximately 3,225 tonnes per year. However, later in the report at page 24 the scheme is described as a circa 5.06 MW solar park, with the generation of renewable energy sufficient to power the equivalent of 1,507 average homes, with a reduction in carbon dioxide emissions of approximately 2,100 tonnes per year (as set out on page 30). Even taking the smaller output, the proposal would make a contribution to achieving the United Kingdom's targets of achieving 15% of its energy consumption from renewables by 2020 (Renewable Energy Directive 2009) and significant weight is afforded to this matter.
28. Although I have not seen a mechanism to secure a connection to Crealy Great Adventure Park, I have no doubt that if this occurred it would result in cost savings to this park. Such provision would open up a potential revenue source and a learning opportunity for visitors and local school children to visit the solar park and learn about renewable energy and biodiversity as part of their visits to Crealy.
29. The proposal would result in short term construction jobs and jobs associated with the operation of the solar park. The appellant submits that an investment of approximately £5 million would be made in the local economy, and a community benefit fund of approximately £1,000 a year per MW installed, index linked for 25 years, plus an addition £2,000 per year for educational

resources linked to the solar park would be provided. This would be of benefit to the local economy.

30. Furthermore, the proposed scheme would bring about biodiversity improvements due to the addition of screening hedgerows incorporating local species. It is submitted that the appeal site has been intensively farmed for many years and setting the land aside from intensive farming for 25 years would be likely to result in the quality and soil structure of the land to be improved when it comes back into agricultural use. Taken as a whole, I attach significant weight to the benefits of the scheme.

Overall Conclusion and Planning Balance

31. A balance must be drawn between the competing considerations of this proposal. On the one hand, even taking the lower output of energy set out above, the scheme would have the benefit of generating a significant amount of renewable energy over its lifespan and would assist in agricultural diversification, whilst on the other hand it would result in the reduction in productive arable land for up to 25 years.
32. Strategy 39 of the LP supports renewable or low-carbon energy projects, but it requires that this is provided in accordance with current best practice. In this case, that includes using poorer quality land in preference to higher quality land as set out in national planning policy and LP Policy EN13. The part of the appeal site where the equipment would be located would be BMV agricultural land. There is part of the appeal site that is classed as grade 3b. Although it is likely that the energy generated upon this grade 3b land would be less than that produced under the scheme before me, it would nevertheless make a valuable contribution to cutting greenhouse gas emissions, as recognised by paragraph 98 of the Framework. This would however be the subject of a new planning application, which would be considered on its merits, by the Council in the first instance.
33. As stated in paragraph 98 of the Framework, an application for renewable energy should only be approved if its impact is (or can be made) acceptable. The impacts in this instance are not and cannot be made acceptable.
34. Taking all the matters into consideration, and acknowledging that the lifespan of the solar farm would be limited, and is largely reversible, I find that the harm that would result from the proposed scheme would significantly and demonstrably outweigh the benefits. As such there would be conflict with LP Strategy 39 and Policy EN13, and the Framework. The location of the development upon the appeal site has not been justified, and consequently, I conclude that the planning balance is firmly against allowing the development.
35. The appeal is therefore, dismissed.

R C Kirby

INSPECTOR