

Appeal Decision

Site visit made on 13 April 2016

by Brendan Lyons BArch MA MRTPI IHBC

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

Decision date: 11 October 2016

Appeal Ref: APP/Y2003/W/16/3142032

Land adjacent to Flixborough Industrial Estate, Stather Road, Flixborough, North Lincolnshire DN15 8SG

- 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 INRG (Solar Park) 21 Ltd against the decision of North Lincolnshire Council.
 - The application Ref PA/2015/0434, dated 1 April 2015, was refused by notice dated 18 November 2015.
 - The development proposed is the installation of ground mounted solar arrays with transformer stations, internal access track, biodiversity improvements, landscaping, security fencing, temporary construction compound and ancillary infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of ground mounted solar arrays with transformer stations, internal access track, biodiversity improvements, landscaping, security fencing, temporary construction compound and ancillary infrastructure at Land adjacent to Flixborough Industrial Estate, Stather Road, Flixborough, North Lincolnshire DN15 8SG, in accordance with the terms of the application Ref PA/2015/0434, dated 1 April 2015, subject to the conditions set out in the schedule annexed to this decision.

Proposal

2. The appeal site forms part of an area of low-lying generally flat agricultural land close to the east bank of the River Trent. The site extends to some 12.91ha and comprises an irregularly-shaped area made up of most of two large fields currently in arable cultivation. To the north, on the opposite side of Stather Road, lies the extensive Flixborough Industrial Estate. On other sides, the site is surrounded by open fields and a small area of woodland. The farm track along the eastern boundary of the site is designated as a public footpath. Flixborough village stands on higher ground, some 600m to the north-east. The site is traversed by pole-mounted overhead power lines and by an underground gas pipeline. A row of four lombardy poplars near the centre of the site provides its only notable landscape feature.
 3. Permission is sought for the installation of some 20,000 photovoltaic ('PV') panels, intended to be in place for a period of 25 years. The panels would be mounted on frames laid out in linear arrays running east-west, so that the panels, tilted at 20 degrees to the horizontal, would face south. The typical
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height of each frame would range from 0.8m to 2.3m. The space between the frames and beneath the panels would be planted with species-rich grass and grazed by sheep. The arrays would be enclosed by a 2.0m high deer-proof wire fence, interspersed with 8 CCTV cameras mounted on 5.0m high poles. Power would be collected at two inverter/transformer stations, serviced by an access track. There would also be a small sub-station outside the fence, next to the road. A temporary site compound would be formed in a corner of one of the fields during the construction period.

Main Issue

4. Having regard to the Council's sole reason for refusal of the planning application, the main issue in the appeal is the effect on the use of best and most versatile ('BMV') agricultural land.

Reasons

Policy context

5. The Council's reason for refusal of the application does not refer to any development plan policy. However, it is clear from the Council officer's report and the appeal submissions that several policies of the North Lincolnshire Core Strategy Local Plan, adopted June 2011 ('CS'), and of the saved content of the North Lincolnshire Local Plan, adopted May 2003 ('LP'), are pertinent to consideration of the appeal proposal.
6. The most relevant of these is CS Policy CS18, which seeks to promote the efficient and sustainable use of natural resources. Among other objectives, the policy supports renewable sources of energy in appropriate locations. Saved LP Policy DS21 also supports proposals for energy generation from renewable sources, including solar, provided that any detrimental effects are outweighed by the benefits.
7. Since the appeal was submitted the Council has adopted a Supplementary Planning Document ('SPD') *Planning for Solar Photovoltaic (PV) Development*, which sets out its approach to the consideration of proposals for PV installations. The emerging SPD was taken into account at the application stage and both parties to the appeal have referred in submissions to the adopted document.
8. The CS objective is consistent with government policy set out in the National Planning Policy Framework ('NPPF'). The core principles of the NPPF include the encouragement of renewable energy development as part of the transition to a low carbon future. To meet the challenge of climate change and to secure radical reductions in greenhouse gas emissions, the NPPF emphasises the key role of planning to deliver renewable and low carbon energy and associated infrastructure¹. Local policy should seek to maximise renewable energy development, while ensuring that adverse impacts are addressed satisfactorily². Applications should be approved if the impacts are, or can be made, acceptable³.
9. The importance of an increased supply of renewable energy is reiterated by the national Planning Practice Guidance ('PPG'). While the PPG encourages

¹ NPPF paragraph 93

² NPPF paragraph 97

³ NPPF paragraph 98

focussing large-scale solar farms on previously developed and non-agricultural land, it acknowledges the potential for ground-mounted installations using greenfield agricultural land⁴.

10. National planning policy reflects the context of the government's energy policy. My attention has been drawn to a number of government documents, including the UK Renewable Energy Strategy (July 2009), the Renewable Energy Roadmap Update (November 2013), and the UK Solar PV Strategy Part 1 (October 2013). Solar energy is clearly seen as having an important role in achieving national binding targets for the reduction of emissions and obligations on production of energy from renewable sources.

BMV land

11. The proposal was amended during the course of the application to omit a number of panels and thereby reduce the power generation from 6.0MW to 4.99MW. The appellants argue that definitions used in the regulation of tariffs for renewable energy set a threshold capacity of 5MW for 'a large solar PV station'⁵, and that the appeal proposal should not therefore be considered 'large-scale' for the purpose of planning policy consideration.
12. In my view, it is not appropriate to read across between very different regulatory regimes. The PPG does not define 'large-scale', but in planning terms, any development proposal occupying almost 13ha of land can normally be taken as large-scale. It is relevant to note that the Town and Country Planning (Development Management Procedure) (England) Order 2015 ('the DMPO') classes development of a site greater than 1ha in area as 'major development'. In my view, the guidance of the PPG on large-scale solar farms is relevant to the consideration of the appeal.
13. The NPPF advises that the economic and other benefits of BMV land should be taken into account, and that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be used in preference to that of higher quality⁶.
14. The PPG applies the NPPF policy to large-scale solar farms, adding that the proposed use should allow for continued agricultural use and for biodiversity improvements around arrays. Reference is made to the Written Ministerial Statement ('WMS') of 25 March 2015, which emphasises government concern about the unjustified use of high quality agricultural land and states that any proposal for a solar farm involving BMV land would need to be justified by the most compelling evidence. This approach is echoed by the Council's SPD⁷.
15. The Council disputes the appellants' submission that more than 20ha of BMV land⁸ must be involved for a proposal to amount to 'significant development' in terms of the NPPF policy. The wording is not defined in the NPPF, but I agree that the appellants' interpretation would set a higher bar than the context provides. The stipulation is framed as a first step to apply to the use of any agricultural land, before considering the relative need for use of BMV land. In this case, the appeal proposal can be counted as 'significant development'.

⁴ PPG paragraph 5-013-20150327

⁵ Referring to the Renewables Obligation Closure (Amendment) Order 2015/920

⁶ NPPF paragraph 112

⁷ SPD Policy C

⁸ The threshold set by the DMPO for consultation with Natural England

16. However, the Council has not disputed that the use of agricultural land is necessary for an installation of this scale, or challenged the conclusions of the appellants' search for alternative sites on previously developed or non-agricultural land. The evidence suggests that there is an acknowledged shortage in North Lincolnshire as a whole of previously developed and non-agricultural sites, with greenfield land being identified for residential and commercial development. I find it reasonable to conclude that use of agricultural land is necessary in this area for large-scale solar PV development.
 17. The Council's concern relates to the quality of the land involved, and the effect on BMV land. However, in this case the amount of BMV land would be small. The appellants' Agricultural Assessment has established that 10.5ha of the site area fall within sub-grade 3b of the Agricultural Land Classification, and 2.4ha within sub-grade 3a, which is the lowest category of BMV land. Thus only some 19% of the site area would be classed as BMV land.
 18. The Assessment shows that the surrounding area to the north-west of Scunthorpe comprises some 163.6ha, of which 143.4ha would be BMV land, with the majority in grade 2, and 2.6ha urban or non-agricultural. The remaining 17.6ha would all lie within sub-grade 3b. The appeal site is therefore at the poorer end of the local spectrum and the proposal would account for almost 60% of the poorest quality, non-BMV land in the immediate area, which is a high proportion.
 19. The low level of grade 4 and 5 land in the local area is said to be typical of North Lincolnshire as a whole. The appellants' alternative site search has examined the potential for use of grade 4 land within a 5km search area. In my view, the search area is very tightly drawn, being based on the availability of a grid connection within the site itself rather than on a more comprehensive assessment. But given the small area of BMV land involved, the search area can be considered reasonable in this case. The Council has not challenged the report's conclusion that none of the sites identified by the search would be suitable and available. I have found no reason to take a different view.
 20. The evidence shows that the sub-grade 3a land on the appeal site land forms only part of the eastern field, whose cultivation regime has therefore been based on the lower quality of the remainder of the field. For that reason, there are grounds to conclude that the entire field, and hence the entire site, should be regarded as effectively of poorer quality, in accordance with PPG guidance.
 21. The appeal site makes up only 2% of the 545ha farmed by the landowners. The evidence suggests that removal of this area from arable cultivation would have negligible effect on the operation of the farm business, whereas the income arising from leasing the land would provide a guaranteed revenue stream over a 25 year period, which would assist in offsetting fluctuations in crop prices. While no detailed figures have been provided, I accept that this would be likely to enhance the viability of the business.
 22. The grazing of sheep on the site once the panels were installed would also ensure some productive agricultural use, albeit of reduced value. Because of the limited physical impact of the installation, the land would be capable of restoration to full arable use following removal of the arrays at the end of the operational period. There should be no permanent harm to the quality of the land or its productive capability. Biodiversity improvements to be implemented as part of the proposal should be of lasting benefit.
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23. For the above reasons, and in the light of the very small isolated area of BMV land involved, I consider that the proposal seeks to make use of poorer quality land and that the economic and other consequences of removing the BMV land from intensive farming for the life of the permission would be minimal.

Other matters

24. The Council does not raise any concern on matters of landscape and visual impact, effect on heritage assets, flooding, highway safety or effect on neighbours. I agree that subject where necessary to suitable mitigation measures, which can be secured by planning conditions, the proposal's impacts in these respects would be acceptable.

Balance of considerations

25. The appellants calculate that the proposed solar farm would be capable of exporting up to 4.99GWh of power annually, which would equate to the energy consumption of 1515 average households. There would be a predicted CO₂ displacement after one year of generation of some 2150 tonnes. Although the proposal would not be large in solar farm terms, these are significant benefits entirely in accordance with national and local policy objectives. The NPPF advises that planning for reduction in greenhouse gas emissions and the delivery of renewable and low carbon energy is central to the economic, social and environmental dimensions of sustainable development⁹. I give substantial weight to the proposal's renewable energy benefits.
26. There would be economic and social benefits from the employment generated by the construction and management of the installation and by the contribution to farm diversification. Further environmental benefits would arise from the proposed ecological enhancements.
27. Set against these would be the minimal impact on the economic and other benefits of use of the small area of BMV land.
28. On balance, I consider that the proposal would produce net benefits across each of the three dimensions of sustainable development. There is a compelling case in favour of the limited proposed use of BMV land. The proposal would comply with CS Policy CS18, saved LP Policy DS21 and the SPD. The presumption in favour of sustainable development set by the NPPF would apply.

Conditions

29. The appellants do not contest the conditions proposed by the Council, all of which I agree would be reasonable and necessary, subject to some amendment and amalgamation in the interests of greater precision.
30. In addition to standard conditions on commencement time and the identification of approved plans, further conditions are necessary to specify time limits for the requested period of operation and the decommissioning and restoration of the site at the end of that period or in the event of the installation earlier falling out of use, in order to limit the development's permanent impact on the landscape. This would accord with the guidance of the PPG.

⁹ NPPF paragraph 93

31. Part of the site has been identified as having archaeological potential and the proposal was amended to reflect this. To protect the heritage significance of the site, conditions are required to ensure implementation of the submitted Archaeological Mitigation Strategy, which involves non-intrusive construction in the identified zone, and to ensure adequate investigation of the limited areas of essential excavation.
32. The approval and implementation of a construction phase traffic management plan is necessary to protect highway safety. Approval of the placing of sensitive equipment and the disposal of surface water from the site are needed to minimise the risk of flooding, while measures to deal with any unexpected contamination are necessary in order to protect public health and the local environment.
33. The approval and implementation of measures to protect existing trees and of the proposed planting are necessary for the protection and enhancement of the landscape character of the site. The approval and implementation of a landscape and ecological management plan are necessary in the interests of nature conservation and biodiversity.
34. Control of external lighting and of the non-reflective finish of the PV panels would also protect wildlife, as well as residential amenity and aviation safety, respectively. A condition limiting noise generation is necessary to ensure that living conditions of nearby residents would be protected.

Conclusion

35. For the reasons set out above, and having taken careful account of the representations made, I conclude that the appeal should be allowed and planning permission granted subject to conditions.

Brendan Lyons

INSPECTOR

Annex

Appeal Ref APP/Y2003/W/16/3142032

Land adjacent to Flixborough Industrial Estate, Stather Road, Flixborough, North Lincolnshire DN15 8SG

Schedule of conditions Nos. 1-17

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
 2. The development hereby permitted shall be carried out in accordance with the following approved plans: PV-0194-01 Revision 9; PV-0194-02 Revision 5; PV-0194-03 Revision 4; PV-0194-04 Revision 3; BRS.5842.005.A; 1412-53 Figure 3.2; 1412-53 Figure 3.4.
 3. Within 12 months of completion of construction of the development hereby permitted a scheme for the decommissioning of the solar farm and restoration of the site to agricultural use shall be submitted to and approved in writing by the local planning authority.
 4. Within 25 years and 6 months following completion of construction of the development hereby permitted, or within 6 months of the permanent cessation of electricity generation by the solar photovoltaic (PV) facility, whichever is the sooner, the facility shall be decommissioned and the solar PV panels, frames, foundations, inverter/transformer stations and associated infrastructure and fencing shall be dismantled and removed from the site. The local planning authority shall be notified in writing no later than 28 days following completion of construction and 28 days following permanent cessation of electricity generation. The site shall be restored in accordance with the restoration scheme approved under Condition 2 above, not later than three months following the clearance of the site.
 5. Development shall take place in accordance with the Archaeological Mitigation Strategy (Ref September 2015/FS/BRS.5842). Within the areas of non-intrusive installation shown on drawing no.PV-0194-01 Revision 9, no ground excavation shall take place other than in connection with those works specified in the Archaeological Mitigation Strategy, and the construction method for the installation of PV solar panel support frames and access tracks shall use non-penetrating techniques as described in the Archaeological Mitigation Strategy and shown on drawing no. PV-0194-07.
 6. No development shall take place until a written scheme of investigation for the programme of archaeological monitoring and recording of the excavation works specified in the Archaeological Mitigation Strategy has been submitted to and approved in writing by the local planning authority. The strategy shall include details of the following:
 - i.measures to ensure the preservation by record of archaeological features of identified importance;
 - ii.methodologies for the recording and recovery of archaeological remains, including artefacts and ecofacts;
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- iii. post-fieldwork methodologies for assessment and analysis;
 - iv. report content and arrangements for dissemination, and publication proposals;
 - v. archive preparation and deposition with recognised repositories;
 - vi. a timetable of works in relation to the proposed development, including sufficient notification and allowance of time to ensure that the site work is undertaken and completed in accordance with the strategy;
 - vii. monitoring arrangements, including the notification in writing to the North Lincolnshire Historic Environment Record of the commencement of archaeological works and the opportunity to monitor such works;
 - viii. a list of all staff involved in the implementation of the strategy, including subcontractors and specialists, their responsibilities and qualifications.
- The archaeological programme of monitoring and recording shall be carried out in accordance with the approved details and timings.
7. A copy of any analysis, reporting, publication or archiving required as part of the Archaeological Mitigation Strategy shall be deposited at the North Lincolnshire Historic Environment Record within six months of the date of completion of the development hereby permitted.
 8. No development shall take place until a construction phase traffic management plan showing details of all associated traffic movements, including delivery vehicles and staff/construction movements, any abnormal load movements, contractor parking and welfare facilities, storage of materials and traffic management requirements on the adjacent highway, has been submitted to and approved in writing by the local planning authority. The approved traffic management plan shall be implemented throughout the construction period.
 9. No development shall take place until a scheme to demonstrate that all sensitive equipment is set at or above 3.5m AOD has been submitted to and agreed in writing by the local planning authority. The development shall be implemented and retained in accordance with the approved scheme.
 10. Notwithstanding the contents of the submitted flood risk assessment, no development shall take place until a scheme for the disposal of surface water from the scheme has been submitted to and agreed in writing by the local planning authority. The development hereby permitted shall not be brought into first use until the approved drainage scheme has been implemented in full.
 11. If, during development, any odorous, discoloured or otherwise visually contaminated material is found to be present at the site then no further development shall be carried out until a written method statement detailing how this contamination shall be dealt with has been submitted to and approved in writing by the local planning authority. The development shall subsequently be carried out in accordance with the approved method statement.
 12. No development shall take place until details of the method of protecting the existing trees on the site throughout the construction period have been submitted to and approved in writing by the local planning authority, and the approved works shall be carried out before development is commenced and retained until completion of the development. None of the trees so protected shall be willfully damaged or destroyed, uprooted, felled, lopped or topped, nor any other works
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carried out which would cause damage to the root systems or otherwise threaten the lives of the trees without the previous written consent of the local planning authority. Any trees removed without such consent or dying or being severely damaged or becoming seriously diseased during that period shall be replaced with trees of such size and species as may be approved by the local planning authority.

13. The scheme of landscaping and tree planting shown on drawing no. BRS.5842.005.A shall be carried out in its entirety within a period of twelve months from the date on which development is commenced. Any trees, shrubs or bushes removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees, shrubs or bushes of similar size and species to those originally required to be planted unless the local planning authority have given written consent to any variation.
 14. No development shall take place until a landscape and ecological management plan has been submitted to and approved in writing by the local planning authority. The plan shall include:
 - i. details of measures to avoid harm to nesting birds, badgers, hedgehogs, reptiles and other protected and priority species during construction and ongoing management;
 - ii. proposals for badger access gates in fencing with reference to existing runs and the main sett;
 - iii. measures for the conservation of existing and target grassland plant communities, including details of any seed mixes to be used and proposals for the semi-improved grassland area identified in the submitted Phase 1 Habitat Survey;
 - iv. details of enhanced tree and hedgerow management measures, including hedge planting, gapping up with mixed native species and sensitive hedge trimming;
 - v. details of bat boxes and nest boxes to be installed;
 - vi. proposed timings for the above works;
 - vii. restrictions on external lighting to avoid impacts on bat foraging areas and sensitive habitats.The landscape and ecological management plan shall be carried out in accordance with the approved details and timings, and the approved features shall be retained thereafter. Prior to the completion of the development, evidence of compliance with the landscape and ecological management plan shall be submitted to and approved in writing by the local planning authority.
 15. No external lighting shall be installed at the site unless approved in writing by the local planning authority. The scheme shall include details of the number, type, position, height, location, luminance and timing of the lighting. The development shall be carried out in accordance with the approved details and thereafter retained.
 16. The solar PV panels hereby permitted shall be constructed with a non-reflective finish and thereafter retained as such.
 17. The total rating level of sound emitted from the operation of all plant shall not exceed 35 dB LAeq,15min at any residential boundary. The definition of rating level shall be as described in British Standard BS4142:2014.
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