

Appeal Decision

Site visit made on 7 June 2016

by Susan Heywood BSc(Hons) MCD MRTPI

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

Decision date: 17 October 2016

Appeal Ref: APP/Y2003/W/16/3146209

North Wharf Solar Farm, 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 North Wharf Solar Farm Ltd against the decision of North Lincolnshire Council.
 - The application Ref PA/2015/0942, dated 22 July 2015, was refused by notice dated 18 November 2015.
 - The development proposed is the installation of circa 4.99MW¹ ground mounted photovoltaic solar arrays with transformer stations; internal access track; biodiversity improvements; landscaping; security fencing; security measures; access gate; temporary construction compound and ancillary infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The Council adopted the Lincolnshire Lanes Area Action Plan (AAP) in May 2016, following the submission of the appeal. The parties' views were sought on the implications of this plan for the proposal. I have had regard to the representations received in reaching my conclusions below.

Reasons

3. The proposal would involve the use of 10.76 hectares of land within a larger agricultural holding to site photovoltaic ('PV') panels, intended to be in place for a period of 25 years, with a power generation of 4.99MW.
4. Having regard to the Council's sole reason for refusal, the **main issue** in this case is whether any harm caused by the loss of best and most versatile agricultural land (BMV) would outweigh the benefits of the proposed development.

Policy context

5. The development plan includes the saved policies of the North Lincolnshire Local Plan 2003 and the Core Strategy 2011. Both plans were adopted prior to the introduction of the National Planning Policy Framework (the Framework)

¹ The application was amended from 5.96MW prior to determination by the Council.

which is a material consideration in this appeal. The Framework, at paragraph 215, states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.

6. A number of policies from both the Local Plan and Core Strategy have been drawn to my attention. The most relevant of these are Core Strategy policy CS18, which, amongst other things, supports renewable sources of energy in appropriate locations. Saved Local Plan policy DS21 also supports proposals for the generation of energy from renewable resources, provided that any detrimental effects are outweighed by environmental benefits. Saved policy RD2 relates to development in the open countryside. Diversification proposals are one of the categories of development deemed acceptable in the countryside subject to a number of criteria.
7. 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.
8. The Lincolnshire Lakes AAP sets out a vision for an area of land within which the appeal site lies. The AAP envisages that the area will include 'a sustainable energy landscape with biomass and wind power'. Although solar arrays are not specifically referred to, the development objectives include exploring innovative approaches to delivering energy solutions.

The loss of best and most versatile agricultural land

9. Annex 2 to the Framework defines BMV as being land in grades 1, 2 and 3a of the MAFF² Agricultural Land Classification. There is no dispute that the site comprises 100% BMV of which 7% is grade 1, 70% grade 2 and 22% grade 3a. The landowner expresses concerns in relation to this classification. The appellants' agricultural statement indicates that the land offers limited benefits over the non-BMV land on the holding with crop performance closer to that on grade 3b land. It also cites crop failure and establishment problems, limited cropping opportunity and states that the land has been taken out of production and placed in an environmental stewardship scheme. As a result, a detailed land classification survey was undertaken to support the appeal proposal. However, this demonstrates that, despite the landowner's concerns, the land comprises 33% grade 2 and 67% grade 3a land. Consequently, even on the basis of the appellants' detailed survey, the entire site comprises BMV.
10. Core Strategy policy CS18 and Local Plan policy DS21 are both broadly consistent with the core principles set out in the Framework which include encouraging the use of renewable resources to support the transition to a low carbon future in a changing climate. However, the Framework also states, at paragraph 112, that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of higher quality. The Planning Practice Guidance (the Guidance) includes similar advice in relation to large-scale solar farms. The policies must therefore be seen in the context of this more recent Government advice.
11. The theme of protecting BMV was a constituent part of The Rt Hon Gregory Barker's speech to the Large Scale Solar Conference in April 2013.

² Ministry of Agriculture, Fisheries and Food

Furthermore, in the Written Ministerial Statement (WMS) of 25 March 2015 the Secretary of State for Communities and Local Government said: "...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.." and "...any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence". The Council's SPD reflects the Framework, Guidance and WMS.

12. The Framework and Guidance do not define the meaning of the terms 'significant development' or 'large-scale'. The appellants argue that other Regulations and Government documents identify schemes of up to 5MW as small-scale.³ However, this does not necessarily mean that such development is to be treated as small-scale in the different context of assessing the planning implications of a proposal. In this respect I note that the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) classes development of a site greater than 1 hectare in area as 'major development'.
13. Furthermore, the appellants contend that the 20 hectare threshold for consulting Natural England on proposals for the loss of BMV⁴ supports their view that the proposal cannot be considered to be significant development. However, this does not necessarily follow, particularly in light of the WMS. The Framework does not set such a threshold for the consideration of 'significant development' in the context of paragraph 112. I consider the proposed development, at over 10 hectares, to be 'large-scale' and to constitute 'significant development'.
14. The appellants' search for alternative sites concludes that there is no suitable, viable or available previously developed land, non-agricultural land or agricultural land of lower quality (in its entirety) to accommodate the development. The Council has not disputed this in so far as it relates to the area of search. However, they argue that the area of search, being limited to within 5km of the grid connection point, is overly restrictive. I would agree with this view. I note the evidence which demonstrates that the potential areas of grid connectivity within North Lincolnshire are restricted compared to West Lindsey and North East Lincolnshire. But there is no explanation as to why those less restricted areas have not been included in the search. I have had regard to correspondence with Northern Powergrid which indicates that the grid connection is not transferrable, but this does not appear to preclude a separate application being made for an alternative site elsewhere.
15. The Framework states that local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources (para. 97). Although both the Council and appellants refer to 'local targets' for renewable energy, no specific targets have been drawn to my attention by either party and I note that neither Core Strategy policy CS18 nor Local Plan policy DS21 are framed in such a way. The Guidance states that "*whilst local authorities should design their policies to maximise renewable and low carbon energy development, there is no quota which the Local Plan has to deliver*". Consequently, I am not satisfied that it is necessary to confine the search to the North Lincolnshire area. I am of the

³ The appellants refer to DECC Renewables Obligation Order 2012: DECC UK Solar PV Strategy Part 1: Roadmap to a Brighter Future; Ofgem Feed-in Tariff: Guidance for renewable installations (Version 5).

⁴ Schedule 4(y) of the DMPO

view that the use of a 5km search area in this case does not constitute the most compelling evidence to demonstrate that it is necessary to use agricultural land for this development.

16. The appellants argue that, in avoiding grade 1 agricultural land, the proposal satisfies the test of siting the scheme on poorer quality agricultural land in accordance with the Framework. However, this is the second 'limb' of a two stage process set out in paragraph 112 of the Framework. It must first be demonstrated to be necessary to use agricultural land. Moreover, even if the first 'limb' had been satisfied in this case, the evidence falls short of demonstrating that there would be no poorer quality land which could be used. I note that 54% of land in North Lincolnshire falls within grades 1 or 2, but the holding at Park Ings Farm includes 17.6 hectares of grade 3b land, but there is no explanation given as to why this land could not be used as an alternative⁵. Furthermore there is only a partial assessment of alternative agricultural land within the restricted 5km area.
17. The appellants point out that the Council considered the proximity to a viable grid connection to be a suitable restriction for the purposes of the sequential test in relation to flood risk. The assessment of flood risk involves different considerations to those involved in the use of BMV. The Council's views on this matter do not alter my considerations set out above.
18. The government's message, reinforced by the WMS is clear. Whilst there is no defined test to identify what evidence can be considered to be 'compelling', the 'bar' is evidently set at a high level. I am not satisfied that the evidence provides sufficient justification in this case.
19. I have noted the Norfolk appeal decision (ref:APP/V2635/W/14/3001281) but consider that the evidence and circumstances in that case are not directly comparable to the appeal before me. In particular weight was given in that case to the scale and significant generation capacity (27.75MW), the proposed sheep grazing supporting an existing butchering business and the particular soil characteristics present on that site. This does not justify the development in this case.

The benefits

20. The 5MW of electricity generated by this proposal would equate to the annual energy consumption of approximately 1,515 households and would offset the emission of some 2,150 tonnes of carbon dioxide per year. The proposal would contribute towards the Government's long-standing and well documented commitment to renewable energy generation. The Framework confirms that even small scale projects provide a valuable contribution to cutting greenhouse gas emissions. The renewable energy generation therefore merits significant weight in this appeal.
21. The replacement of arable farmland by a grassland habitat, and additional landscaping, would result in ecological benefits and sheep grazing would provide a continuing agricultural use. There would also be potential for local employment during the construction of the facility. These are factors of moderate weight.

⁵ I note that the landowner also proposes the use of 12.9 hectares of land within the holding for a further solar array (appeal ref: APP/Y2003/W/16/3142032). Even if that is entirely to be sited on grade 3b land (and I do not have that detail in the evidence to this appeal) some lower grade land would remain on the holding.

22. It is not disputed that the proposal would generate additional income to support the viability of the landowner's agricultural operations. However, there is no evidence relating to the viability of the holding, the importance or otherwise of the funds likely to be generated by the appeal proposal, or their application. Consequently only limited weight is attached to this benefit.
23. While the effects of the development would be reversible, it is likely that the solar panels would be in place for 25 years. This is a considerable period of time and therefore I attach little weight to this matter.
24. It is to be noted that the proposal has not been opposed on any other grounds by the local planning authority and that there are no objections from the local community. But the absence of harm to such matters as landscape, heritage, highways, flooding and residential amenity, and the compliance with relevant policies in relation to these matters, is neutral rather than supportive in the overall planning balance.

The planning balance

25. The Framework seeks to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is seen as central to the economic, social and environmental dimensions of sustainable development (para. 93). The contribution made by the proposal to this aim is a significant consideration in favour of the appeal and the development would comply with Core Strategy policy CS18. The ecological and economic benefits provide moderate weight in favour of the proposal and the farm diversification benefits limited weight.
26. Nevertheless, the conservation and enhancement of the natural environment, including soils, is a material strand in the golden thread of sustainable development as set out in the Framework. Subsequent clarification of Government policy through the WMS highlights the importance the Government places on the protection of BMV. This is a significant material consideration in this appeal which reduces the weight to be given to policy CS18 in accordance with paragraph 215 of the Framework.
27. The proposal would not conflict with the vision or policies in the Lincolnshire Lakes AAP and it would comply with Local Plan policy RD2⁶ which indicates that farm diversification schemes are appropriate in principle in the countryside. Nevertheless, although the appeal site could be returned to full food production following the decommissioning of the solar farm, its loss for a period of up to 25 years would be at odds with saved policy RD7 of the Local Plan which seeks to ensure that farm diversification schemes do not have an adverse impact on high quality agricultural land.
28. Moreover, without a rigorous and convincing process to demonstrate that the use of higher grade farm land is necessary, my overall conclusion is that the loss of BMV agricultural land is an adverse impact which would significantly and demonstrably outweigh the combined benefits of the proposed development. The proposal would therefore conflict with Local Plan policy DS21 which only supports renewable energy proposals where the detrimental effects are

⁶ This policy is generally consistent with the Framework so far as it is relevant to the considerations in this appeal.

outweighed by the environmental benefits. It would also fail to comply with the Council's SPD on Solar PV Development.

29. The policies of the development plan pull in different directions. Whilst the proposal would comply with some policies it would conflict with others. The conflict with Local Plan policies RD7 and DS21 leads me to conclude that the proposal would not comply with the development plan as a whole. Furthermore, the proposal would not constitute sustainable development having regard to the Framework.
30. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Susan Heywood

INSPECTOR