

Appeal Decision

Site visit made on 14 September 2016

by David M H Rose BA (Hons) MRTPI

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

Decision date: 22 November 2016

Appeal Ref: APP/G1630/W/16/3146600

Land to the North of Cursey Lane, Copse Green Farm, Elmstone Hardwicke, Gloucestershire, GL51 9TF¹

- 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 Good Energy Cursey Lane Solar Farm (No.6) Ltd² against the decision of Tewkesbury Borough Council.
 - The application Reference 15/00801/FUL, dated 22 July 2015, was refused by notice dated 24 November 2015.
 - The development proposed is a solar photovoltaic farm with associated landscaping, ground based racking systems, static mounted solar panels, associated infrastructure, site security fencing and security system.
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Decision

1. The appeal is allowed and planning permission is granted for a solar photovoltaic farm with associated landscaping, ground based racking systems, static mounted solar panels, associated infrastructure, site security fencing and security system at Land to the North of Cursey Lane, Copse Green Farm, Elmstone Hardwicke, Gloucestershire, GL51 9TF in accordance with the terms of the application, Reference 15/00801/FUL, dated 22 July 2015, subject to the conditions set out in the Schedule attached to this decision.

Preliminary Matter

2. The application was accompanied by an Environmental Statement which has been supplemented by further information in the form of a 'Response to Request for Clarification' under cover of an email dated 27 May 2016. This relates to clarification sought by the Planning Inspectorate on the proposed archaeological exclusion area within the site. I have taken all of the Environmental Information into account in reaching my decision.

Main Issues

3. The main issues are:- firstly, would the development, either in isolation or in combination with other solar parks around Stoke Orchard, change the perception of the landscape, sense of place and distinctiveness of the locality; secondly, whether any of the matters raised by interested persons weigh against the proposal; and, thirdly, the overall planning balance.

¹ Address as it appears on the application for planning permission (Appeal form refers to BA2 7FJ)

² Name of applicant as it appears on the application for planning permission (Appeal form refers to Good Energy Generation Ltd)

Reasons

Planning policy

4. Whilst there are a number of topic specific policies (e.g. landscape and countryside protection), in both the Tewkesbury Borough Local Plan to 2011 and the emerging Joint Core Strategy,³ the primary policies, relating to renewable energy, are saved Policy EVT1 and INF6 respectively.
5. The former predates, and is not fully consistent with, the National Planning Policy Framework (the Framework) in its qualified support for renewable energy generation (*'to approve the application if its impacts are (or can be made) acceptable'*) and the commitment to addressing climate change as a central plank to the economic, social and environmental dimensions of sustainable development. On this basis, the saved policy carries very little weight in the consideration of the appeal proposal.
6. However, Policy INF6 reflects the overall approach of the Framework by offering support to renewable energy development provided the wider environmental, social or economic benefits of such installations would not be outweighed by a significant adverse impact on the local environment taking into account a number of factors, including impacts on landscape character. The policy contains a second strand indicating that proposals are more likely to be supported when they fulfil four criteria, in short:- design, benefits, reversibility, and carbon savings.
7. Although the Joint Core Strategy has not been adopted, and the policy itself may undergo change as a result of examination, the overall thrust of Policy INF6 is broadly consistent with national guidance and it merits moderate weight.

Landscape effects

8. The appeal site lies within a predominantly flat agricultural landscape with a network of strong hedgerows and some tree cover. The wider area is bordered by large urban and suburban areas and interspersed with commercial and industrial premises, including a farm with allied commercial use on the opposite side of Cursey Lane. Major transport corridors and a wide network of pylons and transmission lines are also characteristic.
9. The site itself has well-defined hedgerow boundaries on its south-eastern and north-western sides. The south-western, Cursey Lane, boundary consists of a mixed hedgerow, with some gaps and low points, within which the site access would be formed. Beyond the north-eastern boundary woodland separates the site from the M5 motorway. Whilst the majority of the established planting is deciduous in nature, its general depth and density, when supplemented by new planting, would be sufficient, even in winter months, to provide a strong foreground filter to the proposed development. In addition, the comparatively short gap to facilitate the access would provide a very localised direct view into the site from Cursey Lane.

³ Joint Core Strategy Gloucester • Cheltenham • Tewkesbury Submission Version 2014 (including SD7, SD9, SD10, SD15, INF2 and INF3)

10. With these characteristics in mind, subject to the implementation of an approved landscaping scheme, the effects of the development from adjoining roads and from the public footpath running parallel with the motorway would not be unduly harmful.
11. The undefined north-eastern boundary of the site would be planted with a new native hedgerow. Although it is predicted that it would take some seven years for the hedgerow to reach a height of 2.5 metres, the landscaping proposals, which form part of the application, indicate the planting of feathered trees (up to 2 metres high) as part of these works. In combination, these measures would be capable of softening the impact of the installation, when viewed from the adjacent public footpath, at a relatively early stage in the lifespan of the project and, beyond that, to provide a robust screen. This would be consistent with Planning Practice Guidance: Renewable and Low Carbon Energy which records, as relevant, the potential to mitigate landscape and visual impacts through, for example, screening with native hedgerows.
12. In addition, whilst it is recognised that the north-eastern part of the site would contain higher elements (sub-station; CCTV poles; and communications pole), it would be possible through the detailed landscaping scheme, to be submitted as a condition of any grant of permission, to pay particular attention to achieving planting of sufficient height and depth, and appropriate species, to secure early mitigation of these elements.
13. In terms of landscape character, the proposed development would retain and reinforce the pattern of hedgerows and strengthen tree cover; it would be of limited scale and well-contained; and it would not be uncharacteristic of a landscape with considerable human influence. The visual effects would also be very limited and could be mitigated by additional planting. The bearing of the proposal, in isolation, on the character and appearance of the landscape would thus be slight.
14. Moving on to cumulative effects, the Council highlights its concern about the influence of large scale solar farms on a short drive or walk from Tredington to Stoke Road. However, it does not allege that the proposed installation and the much larger solar farm immediately to the north of Stoke Orchard would be visible either in combination or succession from any identified single viewpoint.
15. Even if (as stated in one of the letters of representation) the two installations were to be visible from the bridge over the motorway, the sites would be seen in succession rather than in combination; and the respective views would be nothing more than a glimpse of a small element of the existing installation or a more distant, heavily filtered, view of the proposal.
16. As to sequential effects, both projects are located on parallel routes into Stoke Orchard from the A38 and individuals entering or leaving the settlement from this direction would pass only one of the two solar farms. The northerly of the two, save for its prominent roadside substation and a limited glimpse of solar arrays within the vicinity of the site access, does not have a marked presence; and, for the reasons already given, the proposal at Cursey Lane would have a minimal impact.
17. Moreover, even if an individual were to enter the village from one route and leave by the other, for example as part of a longer journey with a specific 'stop-off', the developments would not appear as a key element sufficient to characterise Stoke Orchard.

18. Reference has also been made to a number of other solar installations in the wider locality. However, none of these are identified as being on a likely regular major route and the distances between them would be an added factor in limiting cumulative effects in terms of landscape character and/or visual impact.
19. Attention has also been drawn to views from Cleeve Hill (within an Area of Outstanding Natural Beauty), with the solar farm to the north of Stoke Orchard already visible as a distinctive band across part of the landscape. However, the panoramic view is of an extensively settled vale, containing built-up areas and a large area of glinting roofs, in the direction of Cheltenham, which are closer and more distinguishable elements in the landscape.
20. The proposed solar park would fall partially in the lee of established tree cover and, in combination with its limited east-west depth, and significantly smaller scale than the operational solar farm, it would not have a marked impact on the perception of the landscape as a whole or have a material adverse effect on the broad setting of the designated area.
21. Cursey Lane also contains a large group of poultry units at Walton Fields Farm and a storage facility, Western Arable, with further structures yet to be constructed. Whilst the proposed solar farm would be an added element to the journey along this route, the lane is narrow, winding and bordered for much of its length by hedgerows and the proposal would differ in form and character. The cumulative effect on the character and appearance of Cursey Lane would again be very minor.
22. With all of these factors in mind, I consider that the proposed development, either in isolation or in combination with other solar parks around Stoke Orchard, would not change the perception of the landscape, sense of place and distinctiveness of the locality. However, that is not to deny the limited harmful effects identified in my assessment which will be carried into the overall planning balance.

Other matters

23. Both Harrow Farm and Bramble Cottage have windows overlooking the appeal site. The nearest solar panels would be more than 100 metres away, generally somewhat oblique to both properties with new foreground orchard planting. Although the efficacy of fruit tree planting is disputed, sufficient space would be allocated to create a filtered and softening effect to the proposed development. As to the potential for glint and glare, the appellant's study reasonably concludes that neither of these dwellings would be affected by such conditions; and claims to the contrary are without convincing technical foundation.
24. In terms of wildlife and ecology, trees and the majority of hedgerows would be retained and new habitats would be created and managed through additional planting and a landscape and ecological management plan. On this basis, there is no reason to suppose that the proposed installation would interfere with foraging or roosting bats; and a precautionary method of working could be secured by condition to ensure that pre-construction and site preparation checks are made for ground nesting birds, great crested newts and badger activity.

25. Whilst criticism has been made of the ecological and great crested newt surveys, I am satisfied that these were proportionate having particular regard to the previous arable use of the site and the intention to leave margins and boundaries generally undisturbed.
26. Moving on to archaeology, fieldwork has identified buried remains within part of the site which delineate an Iron Age settlement, perhaps of some local status, with peak activity between the first century BC and the first century AD.
27. Although intrusive ground-works could damage the integrity of the site, the area of particular interest could be safeguarded by requiring details of ground-works (including foundation details and appearance) within that zone. In this regard, the Response to Request for Clarification confirms that there would be no excavation within the ground-work exclusion zone; the solar arrays would sit on surface concrete shoes; cabling would be surface laid or affixed to the panel mountings; and vehicle surfaces during construction would take the form of prefabricated trackways.
28. Similarly, the process of tree planting, and/or the development of root systems, within the exclusion zone could impinge on the preservation of the below ground asset. However, the need to submit a detailed landscaping scheme, including tree species and potential ground-modelling, would provide the appropriate mechanism to ensure that the proposed orchard planting would not result in unacceptable disturbance.
29. Looking next at flood risk, the majority of the site lies within Flood Zone 1 and vulnerable infrastructure would be sited outside Flood Zones 2 and 3. Hard surfaces would be permeable with calculated excess run-off mitigated through a sustainable drainage scheme incorporating storage; and there is nothing to suggest that the proposal would increase flood risk of properties downstream. Whilst the effectiveness of the flood risk management measures has been questioned, particularly in relation to the attenuation pond, the Flood Risk Assessment makes plain that such details are approximate; and further details, including any revisions to the run-off calculations arising from changed foundation design, could be required by condition.
30. The highway authority has confirmed that compliance with the submitted construction traffic management plan would ensure safe access, and appropriate routing and timing of construction traffic. I see no basis to disagree. Whilst the management plan does not address works along the highway to connect the site with the sub-station at Bishops Cleeve, there is no reason to suppose that these would not be organised, managed and implemented to minimise disruption to traffic.
31. It is claimed that the site cannot be described as being of poor agricultural quality and a truer description would be land of moderate quality. Planning Practice Guidance indicates that where a solar farm involves greenfield land particular consideration will need to be given to whether *'the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays'*.

32. The Framework indicates that *'local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. 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 a higher quality'*.
33. The appellant's assessment of alternative sites is limited to sieve map constraint processing which does not by itself demonstrate that the use of agricultural land is necessary. However, the appellant's further claim, pointing to an absence of available brownfield sites to accommodate a solar farm of the scale proposed, is not challenged by the Council.
34. Moreover, the Council accepts that the site is Grade 3b agricultural land; it is not best and most versatile agricultural land and, as such, it is to be considered as lower quality as defined by the Planning Practice Guidance. On this basis, whilst a number of representations state that the landowner's farm contains some 14.7 hectares of Grade 4 land, the local planning authority endorses the appellant's assessment.
35. For my part, although a 'sequential approach' has not been followed, the proposal would nonetheless be consistent with the aim of Government policy to avoid higher quality (i.e. Grades 1, 2 and 3a) agricultural land. In addition, the site would support sheep grazing for part of the year; it would provide for biodiversity improvements; and, following decommissioning, the site could be returned to full agricultural activity.
36. It is claimed that *'it cannot ever have been the Government's intention to plague the countryside with highly visible, intrusive and industrialised black panels and now, because of their proliferation and inconsiderate siting, public support for ground-mounted solar panels is now diminishing'*. The views of the local community, and its overwhelming level of opposition, are important considerations. However, the Framework confirms that applications for renewable energy development should be approved if their impacts are (or can be made) acceptable.
37. I have also noted the references to errors, omissions and inaccuracies in some of the documents provided on behalf of the applicant/appellant during the course of the planning application and the appeal. As to the location and dimensions of the sub-station, drawing GE-SL-160-PL R07 Issue 2 sets its location and GE-DNO-160-PL R01 defines its dimensions.

The planning balance

38. The proposal would generate renewable energy equivalent to the usage of some 900 households (offsetting about 1,500 tonnes of carbon dioxide emissions per year). The Framework makes plain that even *'small-scale projects provide a valuable contribution to cutting greenhouse gas emissions'* and this is a factor of significant weight.
39. Although the proposal would markedly improve the biodiversity of the site through a new wildflower, tree and hedge planting scheme, this is neutral in the planning balance insofar as it is an expectation of the Planning Practice Guidance. Similarly, the reversibility of the development does not merit a positive benefit as the development would be in place for a considerable period of time (up to thirty years).

40. Drawing together the threads of my earlier considerations, the harm to the character and appearance of the landscape and to the outlook of two residential properties, would be limited; and the matters relating to biodiversity, reversibility, the archaeological interest of the site, flood risk, highways and agricultural land quality would be neutral.
41. The relevant renewable energy policy in the Tewksbury Borough Local Plan is out of date and, in light of paragraph 14 of the Framework, I consider that any adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposal and it would reflect the presumption in favour of sustainable development. In addition, the proposal would be consistent with the parallel aim in Policy INF6 of the Joint Core Strategy.
42. In reaching this conclusion, I have paid particular attention to the role of local people and elected representatives in shaping their area in light of the Localism Act 2011. Planning Practice Guidance also confirms, in short, that the need for renewable energy does not automatically override the concerns of local communities. With this firmly in mind, I have nonetheless found insufficient reason, on the balance of all considerations, to dismiss the appeal.

Planning conditions

43. Moving on to the conditions sought by the Council, in the event of planning permission being granted, the development is to be commenced within the statutory period of three years;⁴ it is important to specify the approved drawings for certainty; and to limit the duration of the permission in accordance with the terms of the application. In identifying the approved plans, I have not found it necessary to list those which do not relate to works to be carried out as part of the proposal (e.g. Landscape Designations Plan and Cumulative Schemes Plan). [Conditions 1 - 3]
44. Conditions are required to secure the integral landscape mitigation and biodiversity gains and a supporting implementation mechanism through a Landscape and Ecological Management Plan and a Construction Environmental Management Plan. [Conditions 4 and 5]
45. It is important to require further details to be submitted, to secure appropriate safeguards, in relation to drainage and archaeology; and to tie the permission to the measures in the submitted Construction Traffic Management Plan and the Great Crested Newt - Appraisal for the same reason. [Conditions 6 - 9]
46. The protection of a dark sky can be achieved by precluding the installation of external lighting; and the decommissioning of the site will be required, consistent with the period of operation sought. [Conditions 10 and 11]
47. I have reworded some of the conditions for clarity and precision; and reordered them having regard to Planning Practice Guidance: Use of Planning Conditions.
48. I have considered all other matters raised but find nothing of sufficient weight to change my decision. I shall therefore allow the appeal.

David MH Rose

Inspector

⁴ Sections 91(1)(a) and (5) of the Town and Country Planning Act 1990

Schedule of Planning Conditions [1 – 11]

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:-
 - G.0246-01-A (Site Location Plan);
 - GE-SL-PL R07 Issue 2 (Site Layout);
 - GE-CL-160-PL R02 (Site Clearances);
 - GE-DNO-160-PL R01 (Substations Elevations and Layout);
 - GE-EL-160-PL R02 (Site Elevations);
 - GE-EL-160-PL R05 (Inverter/Transformer Housing Elevations);
 - GE-SC-160-PL R01 (CCTV Elevations);
 - GE-SC-160-PL R02 (Comms Link);
 - GE-SF-160-PL R02 (Site Fence);
 - GE-SR-160-PL R02 (Site Boundary)
 - GE-ST-160-PL R01(Storage Container); and
 - G.0246_12-A (Site Layout and Planting Proposals)
3. The planning permission hereby granted is for a period of 30 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 14 days after the event.
4. Notwithstanding the submitted details, no development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; hard surfacing materials; planting plans, specifications and schedules and details of tree and hedgerow protection and long term maintenance for existing planting, to be retained, in accordance with BS 5837: 2012 (Trees in relation to design, demolition and construction). All approved tree and hedge protection measures shall be in place prior to the commencement of the development and shall be retained thereafter until the development is complete. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.
5. No development, including site clearance works, shall be carried out until a Landscape and Ecological Management Plan (LEMP) and a Construction Environmental Management Plan (CEMP) have been submitted to and approved in writing by the Local Planning Authority. The LEMP shall cover how retained habitats and newly planted areas will be managed to maximise their biodiversity value and achieve the objectives of ecological mitigation and

compensation. The CEMP shall detail how the habitats within and surrounding the site will be protected during the construction phase. The LEMP and CEMP shall include the recommendations set out on pages 30 – 39 (inclusive) of the Ecological Survey carried out by Clarkson and Woods dated July 2015.

6. Notwithstanding the submitted details, development shall not begin until drainage details, incorporating sustainable drainage principles, have been submitted to and approved in writing by the Local Planning Authority and the scheme shall be implemented in accordance with the approved details before the development is brought into use.
7. No development shall be carried out until details of the construction method of any development proposed within the area of archaeological interest (including foundations, cable runs and trackways) have been submitted to and approved in writing by the Local Planning Authority, and the subsequent works shall be constructed in accordance with the approved details.
8. The Construction Traffic Management Plan (reference: 1508-75/CTMP/01/B: Transport Planning Associates – October 2015) shall be adhered to throughout the construction period.
9. The development hereby permitted shall be carried out in strict accordance with the recommendations set out in section 4 of the Great Crested Newt - Appraisal carried out by Johns Associates dated 9 July 2015.
10. No external lighting shall be installed on the site.
11. Not less than 12 months before the cessation of the development hereby permitted, a Decommissioning Method Statement (DMS) shall be submitted to and approved in writing by the Local Planning Authority. The DMS shall include a detailed method statement and timetable for the removal of the panels, supports, inverters, cables, buildings and all associated structures and fencing from the site and a scheme of proposed site restoration. The site shall be decommissioned in accordance with the approved DMS no later than a period of 6 months following the expiry of this permission.

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