
Appeal Decision

Site visit made on 24 August 2016

by Brendan Lyons BArch MA MRTPI IHBC

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

Decision date: 06 December 2016

Appeal Ref: APP/B3410/W/16/3151520

Land at Green Lane, Marchington, Staffordshire

- 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 TGC Renewables Ltd against the decision of East Staffordshire Borough Council.
 - The application Ref P/2015/01310, dated 14 September 2015, was refused by notice dated 27 January 2016.
 - The development proposed is a standby electricity generation plant and associated communications and welfare building, fuel tanks, control building, substation and acoustic fencing.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The description of development set out in the heading above was adapted by the Council from that shown on the planning application form, and the change was accepted by the appellant.

Main Issue

3. The main issue is whether the appeal proposal would comprise sustainable development in accordance with national and local policy, having regard to its location in the open countryside.

Reasons

4. The appeal site lies some 1.2km to the east of the rural village of Marchington, accessed by a narrow lane. The site comprises some 0.13 hectares of a large field immediately to the south of an elevated stretch of main railway line, from which it is screened by a line of trees. Other open fields lie to the east and west, while to the south the appeal field is adjoined by the sheds of a large poultry farm, beyond which can be seen the roofs of a complex of prison buildings. Two power lines cross the field running parallel with the railway line.
5. Planning permission has previously been granted for the development of the field with solar farms to each side of the appeal site¹. Permission is now sought to add a standby electricity generation plant, made up of nine diesel-powered generators, which together with two large fuel storage tanks, four

¹ Permissions Ref P/2015/00405, P/2015/00791

transformers, a welfare building, and two control and communications units would be enclosed within a 3m high acoustic fence. Outside the fence would be a sub-station and a paved turning head for service vehicles.

Policy context

6. The reason for refusal of the application is based on the policies of the East Staffordshire Local Plan ('LP') adopted in December 2015. The development plan now also comprises the Marchington Neighbourhood Plan ('NP'), which was at submission stage at the time of the Council's decision and has since been 'made'. The NP policies were not cited in the reason for refusal but have been referred to by interested parties.
7. As a recently adopted plan, the policies of the LP are strongly consistent with national policy as set out in the National Planning Policy Framework ('NPPF'). LP Strategic Policy 1 ('SP1') seeks to apply the NPPF presumption in favour of sustainable development at the local level, setting out principles by which such development is to be assessed. Among the core principles of the NPPF is recognition of the intrinsic character and beauty of the countryside. LP Policy SP8 relates to development outside settlement boundaries, and seeks to balance the principle of countryside protection with the need to support rural enterprise. The policy resists development outside settlement boundaries unless it complies with one of a number of exceptions. The Council's case is that the appeal proposal would not meet any of these exceptions and should be rejected as contrary to development plan policy.
8. The proposal would be intended to feed electricity into the national grid at peak times, normally on winter evenings, and at times of exceptional demand, such as when a major power station was offline. The appellants state that it would form part of the National Grid's Short Term Operating Reserve ('STOR') programme, by which resilience of electricity supply is protected at times of pressure. Reference is made to national energy policy statements in support of enhanced supply and resilience. However, these statements appear to be targeted at a larger scale of generation, so that only limited specific policy support can be drawn for generation at the scale and oil-based means of production offered by the appeal proposal.
9. The support for enhanced supply has not been translated into any clear NPPF policy on the provision of small-scale generation. The appellants refer to NPPF policy on renewable and low carbon energy but, notwithstanding the possible use of bio-diesel to provide some of the proposal's fuel needs, do not claim that it would comprise renewable or low carbon energy as defined by the NPPF.
10. For that reason, the proposal could not avail of the exception envisaged by LP Policy SP8 for provision for renewable energy generation, of a scale and design appropriate to a location outside settlement boundaries. The lease of the appeal site would provide income to support the existing farm business, but there is no evidence of the effect this would have or that it would be essential for viability. The appellant states that the appeal proposal would be separate from the adjoining proposed solar farm, so that there would be no mutual financial support. Therefore, in terms of compliance with LP Policy SP8, the proposal can be regarded as a new business comprising infrastructure development. The issue is whether it needs to be located in the countryside outside a defined settlement boundary.

Need for proposed location

11. The proposal is founded on making use of available grid capacity in Marchington. The appeal is accompanied by a plan showing electricity network constraints across the East Midlands, and by supporting information on the scope for connectivity throughout East Staffordshire. The Council does not dispute the material presented but questions whether, in the light of these constraints, a connection within East Staffordshire is actually required.
12. Clearly, a connection to the grid is essential for the purpose of providing standby generation. I accept that there must be a benefit in availing of existing capacity, with minimum costs and environmental disruption of additional infrastructure. However, limited detail has been provided of the comparative costs of other locations, and the point at which they are said to render a proposal unviable. The planning application was accompanied by details of a site search, which showed an area of viability up to 1.5km from the proposed point of connection to the grid near the centre of the village. The appeal site lies just within the identified zone. This would suggest that a range of sites should be open to consideration at any point of available connection.
13. The network plan does not appear to offer conclusive evidence of lack of potential connectivity. It is notable that Marchington is itself identified on the plan and in the supporting commentary as suffering from voltage constraints, but it still seen as able to accommodate the appeal proposal. It is not clear why the same might not be true of other settlements discounted for this reason. Within Marchington, the scope for other potential options appears to be ruled out in principle because capacity has been reserved for the appeal proposal.
14. However, I agree with the Council that even if these constraints were shown to be conclusive, that would not in itself provide compelling support for departure from the development plan, when the management of the grid can be a regional or national matter, and other sites beyond East Staffordshire might be capable of addressing the perceived need, but in accordance with policy. No clear evidence has been provided of the benefit to the national grid or to the local area of making an input in this location. The appellant refers to a dip in power output from the proposed solar installation over the winter months, and the potential for this to be 'topped up' by the appeal proposal, but has also confirmed that they would be separate operations. The variability in output from solar farms must be a known constraint in managing the national grid, but it is not clear why there should be justification to compensate for this by a standby installation in close proximity.
15. Solar farms have their own particular locational needs, and their own specific national policy context. For that reason, the Inspector's conclusion on the need for alternative site search in the appeal decision referred to by the appellant² cannot necessarily be applied to the circumstances of the current appeal. In order to comply with LP Policy SP8, some justification must be provided of the lack of potential to accommodate the development within a settlement boundary.
16. In this case, I agree with the Council that the characteristics of the proposed development suggest a location in an area with an existing or allocated use for general industry. This would most likely, but not necessarily, involve previously

² Appeal Ref APP/N2739/W/15/3129522

developed land. The appellant maintains that the particular attributes of the proposed development, in particular its noise and air quality effects, require a rural location.

17. Nevertheless, the appellant has acknowledged the need for further justification by the submission with the appeal of a further site search exercise, covering the defined settlements of East Staffordshire. The search is confined to areas of open or vacant land, and reaches conclusions based on a number of factors, including likely effects on amenity of nearby uses, especially residential, and landowners' expectations of development potential and land value.
18. The Council is critical of the absence of independent evidence of lack of suitability or availability of certain sites, and I agree that it is difficult to verify some of the report's conclusions for that reason. However, the Council will be aware of land allocated or with permission for housing or mixed development. I consider it reasonable to conclude that such sites would not be suitable on amenity grounds to share with the appeal proposal and hence probably unavailable for the proposed development. I also acknowledge the difficulty of finding a suitable site, sufficiently removed from existing housing, in tightly defined smaller settlements.
19. However in some other respects the study relies on assumptions about potential availability and amenity impacts that are less robust. I agree with the Council that potential viability concerns alone would not be seen as conclusive reason to discount potential locations. I also find some doubt about the comprehensiveness of the search. Given the very small area of land required for the proposal, it is difficult to accept that no potential options would arise in an urban area such as Burton upon Trent. In particular, the search seems to focus on large parcels of land, with development prospects. The decision to omit from the search areas that appeared to be in less intensive operational use such as external storage or HGV parking must be open to question.
20. The Council also considers that sites outside settlement boundaries but not in the open countryside should have been taken into account. The appellant is correct that the policy test strictly relates to settlement boundaries, so that such sites would not be sequentially preferable. Nevertheless, in terms of meeting the policy objective of countryside protection, the possibility of a potentially less harmful location could be material to the decision. The appellant does not offer evidence to support the response that all such previously developed land would be under pressure for other more valuable development and that all agricultural complexes should be discounted because they would include a farm dwelling. The number of potential options might be small, but they would add to the site search evidence.
21. However, as earlier outlined, even if a more comprehensive search were to show a lack of suitable and available sites in the borough, there is no reason to conclude that the benefit to electricity supply could not be met elsewhere in a more appropriate location. The appellant refers to the guidance of NPPF paragraph 98 that applicants should not be required to demonstrate overall need, but that policy is specifically related to proposals for renewable and low carbon energy generation, and would not apply in this case.
22. For these reasons, I find that it has not been shown that there are no other suitable sites that could accommodate the appeal proposal without locating it in the countryside.

Other matters

23. A number of concerns have been raised by interested parties, including Andrew Griffiths MP, that have not been endorsed by the reason for refusal of the planning application. I accept the Council's assessment that these matters, subject where necessary to mitigation secured by planning conditions, would not give rise to unacceptable adverse effects.
24. In particular, while the site is located in Flood Zone 3 the Council does not dispute the conclusions of the submitted evidence on flood risk and the potential for mitigation. The Council also does not dispute the predicted delivery schedule of 3-5 tanker visits per year. Therefore, significant transport impacts would be confined to a relatively short construction period and could be managed to avoid conflict with school traffic, and to ensure restoration of any damage caused. Expert evidence on operational noise and air quality concludes that, subject to the provision of mitigation and normal operation, the effect on the nearest receptors would be well within the acceptable range. There is no firm evidence of potential harm to wildlife, farm animals or poultry. The proposal would not be prominently sited and would be low in height. Any minor adverse visual impact could be mitigated by additional landscaping.
25. Interested parties have also referred to the policies of the NP. I consider that Policy RE1 is not relevant as it deals with renewable energy, and so offers no support for the proposal. I have found no clear evidence of adverse effect on the setting of heritage assets, and as the immediate character of the site has already been significantly affected by overhead power lines, I accept the appellant's response that the proposal would not conflict with Policy BE1.

Conclusion

26. I have found that the proposal would comprise infrastructure development, but that the need to locate it outside a settlement boundary has not been conclusively shown. Therefore the proposal would be contrary to LP Policy SP8. There are no other development plan policies that would pull in a different direction to suggest compliance with the plan as a whole.
27. The proposal would have modest economic benefits during its construction, but also some environmental harm during this period due to increased traffic through the village. As a small-scale plant, its contribution to the resilience of the national grid would be limited, but would have minor economic and social benefits. Set against that would be the environmental harm of introducing a quasi-industrial development into the countryside. The Council accepts that the negative effect would not be substantial, and I agree. Nevertheless, the proposal would not fulfil the three dimensions of sustainable development. The conflict with the development plan would not be outweighed by other considerations. The presumption in favour of sustainable development set by the NPPF would not apply.
28. Therefore, having taken all representations into account, I conclude that the appeal should be dismissed.

Brendan Lyons

INSPECTOR