

Appeal Decision

Hearing held on 12 October 2016

Site visit made on 13 October 2016

by Kay Sheffield BA(Hons) DipTP MRTPI

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

Decision date: 23 February 2017

Appeal Ref: APP/J1860/W/16/3142020

Land at Woodhall Farm, Wichenford, Worcestershire, WR6 6YE

- 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 KS SPV47 Limited against the decision of Malvern Hills District Council.
 - The application Ref 14/01658/FUL, dated 21 November 2014, was refused by notice dated 12 August 2015.
 - The development proposed is the construction of a solar park with attendant infrastructure including substation, replacement tower, centre station, inverters, cameras and fencing.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. The application was accompanied by an Environmental Statement (ES) and a Supplement was submitted as part of the appeal. The ES and the Supplement were together found satisfactory in meeting the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and have been taken into account in the determination of the appeal.
3. Although in force at the time the Council made its decision, the Malvern Hills District Local Plan 1996–2011 was replaced by the South Worcestershire Development Plan (SWDP) on 25 February 2016. The SWDP is therefore the relevant development plan for the purposes of determining the appeal and was addressed by the parties in their evidence.
4. During the application process the size of the site and the distance between the arrays were reduced which led to an overall reduction in the number of panels. The Council determined the application on the revised details and I have determined the appeal on the same basis.

Main Issues

5. The main issues in the appeal are the effect of the development on:
 - landscape character;
 - visual amenity particularly that of users of local public right of ways;
 - the setting of heritage assets in the locality; and
 - whether or not any identified adverse effects would be outweighed by the renewable energy and other benefits of the proposal.

Reasons

6. The appeal site forms part of Woodhall Farm which lies approximately 2.5 km south of Wichenford and a similar distance west of Lower Broadheath. The area is one of mixed farming with farmsteads and groups of dwellings scattered across the area some of which are Listed Buildings (LB). There is also a Scheduled Ancient Monument (SAM). The house and various outbuildings which formed Woodhall Farm are set back some distance from the B4204 Martley Road and are accessed from it by a private lane which then continues in an easterly direction as a farm track. The track is also the route of a public footpath. Most of the older outbuildings previously associated with the farm have been converted to residential use.
7. The site covers fifteen fields and extends to approximately 69 hectares of land currently in arable use. The site lies to the south of the public footpath, with the exception of one field which lies to the north. Although visually the land appears to be gently undulating, the topography generally falls from north west to south east and the ES records an overall cross fall of approximately 16m. There are scattered blocks of woodland and whilst the majority of fields comprising the site are bounded by existing hedges, a large section of the boundary with the footpath is open.
8. The lower edge of the proposed arrays of photovoltaic panels would be approximately 0.8 m off the ground and the upper edge a maximum of 3.0 m. There would be 33 inverter stations scattered across the site and the substation would be sited on the southern edge of an area of woodland with the centre station a short distance further south. The inverter stations at approximately 2.9 m above ground would be comparable in height to the top of the arrays. The approximate maximum heights of the substation and centre station would be 6.7 m and 4.8 m respectively. Connection to the grid would be into the power lines which traverse the site via a replacement tower.
9. The perimeter of the site would be enclosed by a timber post and wire security fence with cameras positioned at intervals along its length. Although the height of the fence is stated in the written evidence to be 3 m the Appellant indicated at the hearing it would be 2 m and the poles for the cameras would be 3 m. New boundary hedge planting would take place around the site where there is presently none and gaps within the existing boundary and internal hedges would be strengthened with new planting. All hedging would be allowed to grow to a maximum height of 3 m.

Landscape character

10. Policy SWDP 27 of the SWDP gives favourable consideration to stand-alone renewable energy schemes subject to regard being given to other relevant policies. These include Policies SWDP 21 and SWDP 25 which seek to protect landscape character by ensuring proposals are appropriate to, and integrate with, the character of the landscape setting. Moreover, demonstration that full account has been taken of the latest Landscape Character Assessment and its guidelines is required. A Landscape and Visual Impact Assessment (LVIA) formed part of the ES.
11. Although not covered by any national or local landscape designations, the site lies approximately 5 km to the north of the Malvern Hills Area of Outstanding Natural Beauty (AONB) at its nearest point. In the Council's Landscape

Character Assessment – Supplementary Guidance, 2012, the site falls within the Principal Timbered Farmlands landscape type. These are described as rolling landscapes with occasional steep sided hills and low escarpments. They have a small scale, wooded, agricultural appearance characterised by filtered views through densely scattered hedgerow trees. They are complex, in places intimate, landscapes of irregularly shaped woodlands, winding lanes and frequent wayside dwellings and farmsteads.

12. The proposed development would result in a large area of open land being covered with raised straight lines of panels on metal supports which, together with the attendant infrastructure, would all be enclosed by metal fencing with CCTV cameras. It is accepted that the development would be within the existing field layout and the hedges would be retained and allowed to grow in height. The new hedgerow planting would also in time help screen the development. These measures would generally accord with the guidelines for the Principal Timbered Farmlands as set out in the Council's Landscape Character Assessment. Nevertheless, the general scale of the proposal, the extensive coverage of the fields by panels and the attendant substation and other structures dotted across the development would, in my opinion, create an industrialised landscape which would not be made acceptable by the mitigation.
13. The Council agrees with the LVIA that the landscape has a medium sensitivity to change and I accept that it has the potential to tolerate some change. However, in this instance I consider the scale of the proposal would constitute a fundamental change to the character of the landscape and the magnitude of the impact would be high. Taking into account the medium sensitivity of the landscape to change, I conclude the overall significance of the landscape effect would be moderate/major.
14. Whilst at the time of the planning application there were no known developments of a similar nature in the area, the Council has subsequently granted planning permission for a solar panels on land at Allsetts Farm. Plans submitted to the hearing confirmed that the developments share a common boundary and if both went ahead they would appear as one continuous development in the landscape. Although the approved scheme is significantly smaller than the appeal proposal, cumulatively the effect on the character of the landscape would be heightened.
15. On this basis I conclude that the development, individually and cumulatively with the approved scheme on Allsetts Farm, would have a significant adverse effect on the rural character of the area, contrary to Policies SWDP 21, SWDP 25 and SWDP 27 of the SWDP and the guidance given within the National Planning Policy Framework (the Framework) and National Planning Practice Guidance (NPPG) which seek the enhancement of the natural and local environment by protecting and enhancing valued landscapes.

Visual amenity

16. The LVIA considered the potential visual effect of the development on receptors using public rights of way and roads in the vicinity of the site and occupants of nearby properties. However the Council disputed the high visual sensitivity attributed in the LVIA to road users in the assessment of viewpoint 1 and the medium visual sensitivity of those using the public rights of way in viewpoints 2, 3, 7 and 8.

17. The Guidelines for Landscape and Visual Impact Assessment third edition (GLVIA3), on which the LVIA was based, states in paragraph 6.33 that visual receptors most susceptible to change are generally likely to include residents at home and people engaged in outdoor recreation, including use of public rights of way, whose attention or interest is likely to be focussed on the landscape and on particular views. Travellers on road, rail or other transport routes tend to fall into an intermediate category of moderate susceptibility to change. It is recognised that in reality there will be a gradation in susceptibility to change and the basis for the judgements made must be clear and linked back to the evidence from the baseline study.
18. Whilst the baseline visual sensitivity of road users is identified in paragraph 4.5.15 of the LVIA as high, the definitions given in Table 4-3 rate it as low and the assessment is made on the same basis. I am therefore satisfied that the LVIA was consistent in its assessment of the visual sensitivity of road users.
19. The views from public rights of way are accorded a medium level of sensitivity in table 4-3 of the LVIA whereas the Council is of the opinion they should be rated as high. The guidance in GLVIA3 in identifying receptors using public rights of way as most susceptible to change suggests that their sensitivity should be high, particularly as in the case of the appeal site the attention of walkers would be focussed on the landscape and views towards distant hills.
20. In the absence of any satisfactory clarification by the Appellant at the hearing, I do not consider that the LVIA clearly justifies its reasons for attributing receptors of the right of way with medium susceptibility to change. I agree with the Council that the LVIA has underestimated the effect of the proposal on the visual amenity of receptors using the public rights of way in the area.
21. Although the map showing the Zone of Theoretical Visibility (ZTV) indicates that the development would be visible over a large part of the study area, it is based on bare terrain topographical data. In reality the woodlands and hedgerows in the local landscape would restrict many views of the development to the extent it would only be readily apparent within 1 km of the site. It is the receptors closest to the site that have the potential to be affected to the greatest degree and in particular those using the public footpath which follows the northern boundary of the site for approximately 2 km.
22. From the west the footpath crosses open fields before following the farm track to the eastern end of the site. It is a pleasant route which takes approximately 30 minutes to walk. Although the path is bounded or passes through three areas of woodland, the lack of hedges along a large proportion of the southern boundary presently allows walkers open views across the fields and towards the Malvern Hills, Ankerdine Hill and Suckley Hills.
23. The proposal would alter this view and instead receptors would see the development on their southern side. These views would include the fence with the 3 m high solar arrays beyond it. On some parts of the footpath the panels would only be approximately 10 m away. As the panels would face south the view for large sections of the route would be of the structural supports as illustrated by the photomontage for viewpoint 3. The new hedge planting and increase in the height of the existing hedges would help screen the panels. However, the planting would take time to become established and it is likely that it would be longer than the 10 years indicated by the Appellant before it effectively screened the development. In the meantime the existing rural view

from the footpath would be replaced with one more akin to an industrial landscape and once the planting had reached the required height would provide a different and more enclosed experience to that currently enjoyed by walkers.

24. The setting back of the fence line some distance from the track on sections of its southern side and the wild flower verges would enhance the character and biodiversity of the right of way. Nevertheless, I consider that the change which would be brought about by the development would have a significant adverse impact on the visual amenity of receptors walking the route, which would remain throughout the development. This would be contrary to paragraph 75 of the Framework which states that planning policies should protect and enhance public rights of way.
25. The development would also feature in views from the right of way to the south of the site which follows Frenchlands Lane and passes the SAM and continues through The Elms, a LB. Views of the development would be possible from this direction and would include the substation. However, it would generally be the faces of the panels which would be seen and there would be greater separation between them and the receptors. Consequently the effect on visual amenity would not be as great as that experienced on the footpath to the north.
26. From longer distances the proposal would be visible from high points in the landscape, as demonstrated by the visualisations for the elevated view from North Hill within the AONB (viewpoint 12). However, given the separation distance, the exact nature of the development would only be discernable by the change in colour and texture of the existing field patterns. It would also form only a small part of the panoramic view of the wider landscape. I found the effect to be similar from other elevated viewpoints referenced in the evidence and one on the B4197 south west of Martley brought to my attention by a local resident. The AONB Partnership was satisfied that, subject to the panels and frames being black, the development would not be unacceptably visible from within the AONB. I agree with its conclusion and consider the effect of the proposal on visual amenity in these wider views would be minor.
27. Intermediate distance views of the site would be possible from several highways and public rights of way. However, depending on the vantage point, the views would be glimpsed and not extend to the entire solar park. I agree with the Council that there would be negligible impact on visual amenity in these views. There are also several residential properties within the vicinity of the site. However, the local topography and landscaping, intervening buildings and direction of view would effectively reduce the impact of the proposal on the visual amenity of residents.
28. Whilst in the longer and intermediate distance views the effect of the proposal on visual amenity would be minor or negligible, in views from the neighbouring public right of way the effect on receptors would be major. On this basis, I conclude that the development would cause significant harm to visual amenity, contrary to Policies SWDP 21, SWDP 25 and SWDP 27 of the SWDP and the guidance given within the Framework and NPPG which recognise the intrinsic character and beauty of the countryside.

Heritage assets

29. The ES statement identified 13 heritage assets within 1 km of the site which comprise one Scheduled Ancient Monument (SAM) and 12 Grade II LBs.

Interested parties noted that one of the submitted drawings incorrectly recorded Woodend Farm and Hucks Farm as non-designated assets instead of LB and in respect of The Kedges only 3 of the 4 LB were identified. However, the assets were correctly identified in the text of the ES and the assessment was made on that basis.

30. There is no dispute between the parties that the significance of the heritage assets detailed in the ES is their evidential and historical values. Whilst the development would not physically impact on the heritage assets, it would bring about a fundamental change to the landscape in which they are set. There is a clear connection between the agricultural past of the area and the current buildings and the change in the landscape as a result of the development would have an effect on the setting of the heritage assets.
31. The importance of setting lies in what it contributes to the significance of the heritage asset and the degree of change to the setting would be dependent on the surroundings of the individual assets and their relationship to the proposal. Whilst I accept that the development would not harm the setting of most of the heritage assets in the local area, those nearest the site have the potential to be adversely affected. These include the SAM and the Grade II LBs at Woodhall Farm and The Elms.
32. The SAM is one of several moated sites in the area and from the number of pathways which are shown to converge on it in the historic maps, it is considered to be a site which was of great importance in the past. The SAM lies to the south east of the appeal site and is contained within wooded boundaries which limit the views out over the surrounding landscape. The reduction in the size of the appeal site and the relocation of the substation during the application process increased the separation distance between the development and the SAM. Although the proposed hedge planting would help screen the development it would nevertheless feature in views of the SAM from within the landscape, including the right of way along Frenchlands Lane. I consider that this would result in adverse changes to its wider setting of the heritage asset although the level of harm would be less than substantial.
33. Whilst the development would be glimpsed from upper floor windows in Woodhall Farm, the views would generally be restricted by tree planting and the range of outbuildings in residential use which are curtilage buildings. These factors, together with the separation distance, affect the relationship of the LB with the appeal site. I am satisfied that the proposal would not harm the setting of the LB.
34. The Elms comprises the farmhouse, attached cider house and animal sheds. Subject of a separate listing are the range of farm buildings including the dovecote. The farmhouse was clearly designed to oversee and create great connectivity with the surrounding landscape, which is still evident. In views from the north the range of buildings which make up The Elms present a prominent feature within the landscape and from the frontage of the buildings the view is presently uninterrupted by modern intrusions.
35. Views from The Elms would feature all the elements of the proposed solar park, including the substation, changing those rural views to ones of a more industrialised landscape. Although the impact this change would have on the setting of the assets is acknowledged in the ES, I disagree with the conclusion reached that the change would be minor. I consider the visual impact would be

moderate with a moderate overall effect which would cause less than substantial harm.

36. According to the Framework where a proposed development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including its optimum viable use. Although the production of a substantial amount of electricity and the limited life of the development would constitute public benefits I do not consider these outweigh the harm I have identified to the heritage assets.
37. An interested person contended that the introduction of new hedges would alter and cause detriment to the historic landscape. Whilst this may be the case, the landscape is constantly evolving and new hedges could be planted whether or not the development went ahead.
38. On balance I conclude that the proposed development would fail to preserve the setting of heritage assets, contrary to Policy SWDP 6 and SWDP 21 of the SWDP and the guidance given within the Framework and NPPG which seeks to conserve heritage assets in a manner appropriate to their significance.
39. I am required by s66(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of the listed buildings. The courts have held that in this context 'preserving' means doing no harm. Where, as in this case, a degree of harm has been found, that harm must be given considerable importance and weight in the overall balancing exercise.

Benefit arising from the provision of renewable energy

40. The provision of renewable and low carbon energy is central to the economic, social and environmental dimensions of sustainable development set out in the Framework. There is strong national policy support for the development of renewable energy sources, including solar power, to ensure the country has a secure energy supply, and to reduce greenhouse gas emissions. Moreover the Appellant is not required to demonstrate the overall need for the proposal.
41. It is anticipated that the proposed scheme would generate 45 MW which, on the basis of average household electricity consumption, has the potential to produce sufficient electricity for 12,000 homes. The development would produce only negligible CO₂ emissions and would therefore provide significant savings in carbon emissions over its life time when compared with existing established methods of energy production.
42. Whilst the scheme would provide a valuable contribution to cutting greenhouse emissions the policy support for renewable energy given in the Framework is caveated by the need for the impacts to be acceptable or capable of being made so. Moreover local policies require development which is clearly appropriate to and integrates with the character of the landscape setting. Nevertheless the renewable energy benefit of the proposal must be accorded substantial weight in favour of the appeal.

Other material considerations

43. Whilst many of the interested parties contended that the use of open land for a solar park was unacceptable, according to NPPG it is an appropriate use of

greenfield land. However NPPG advises that poorer quality land should be used in preference to higher quality, and proposals should allow for continued agricultural use. The Agricultural Land Report submitted by the Appellant classified the land as grade 3b and although currently in arable use the development would allow sheep to graze the land below the arrays. I am not persuaded that the wild flower margins to many of the fields would prevent such grazing from taking place.

44. Interested parties found fault with the methods used to assess the quality of the land and the awards received by the former tenant of the farm were cited as proof that the land was better quality than grade 3b. Whilst the awards may be evidence of the past productivity of the farm, the appeal site forms only part of the total holding which amounts to approximately 130 hectares. Furthermore, there is no substantive evidence that the report was incorrect in its conclusion that the land subject of the appeal is grade 3b.
45. Although the site falls within Flood Zone 1 it is within a short distance of the Laugherne Brook. Interested parties expressed concerns regarding surface water run-off and the potential to exacerbate existing problems of flooding of nearby land. It was confirmed that the appeal site had not flooded in the past. Furthermore there is no substantiated evidence that an appropriate sustainable surface water drainage scheme could not be designed for the development, a matter which could be addressed by condition. I am therefore satisfied that suitable arrangements could be put in place to ensure the development would not exacerbate existing problems from flooding.
46. Whilst other cases drawn to my attention raise similar issues to the appeal, there are significant differences in the detail. I have therefore been unable to draw any meaningful comparison between them and the appeal, which has been determined on its merits.

Conclusions

47. The Framework sets out a presumption in favour of sustainable development and renewable energy is central to achieving a sustainable future. The scale of the development would ensure that it would make a valuable contribution to cutting greenhouse gas emissions, and this attracts substantial weight.
48. Set against this the development would cause significant harm to the character of the landscape and to receptors using the public footpath to the north of the site. The setting of heritage assets would also be harmed. Whilst these effects would be reversible, the harm would extend over a substantial area and for a significant period of time. Furthermore the impacts would not be made acceptable by the mitigation proposed. This would not be in line with national policy which advises that renewable energy projects should be located where impacts are, or can be made, acceptable. On balance the harm identified is not outweighed by the benefits.
49. For the reasons set out above, and having had regard to all other matters raised, the appeal is dismissed.

Kay Sheffield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alexander Arcache	Managing Director of Kronos Solar Projects
Frank Bohne	Director of Kronos Solar Projects

FOR THE LOCAL PLANNING AUTHORITY:

Stuart Castle BSc(Hons) MA MRTPI	Senior Planning Officer
Aidan Smyth	Conservation Officer
Charles Potterton BA DipLA CMLI	Director of Potterton Associates

INTERESTED PERSONS:

Heather Rendall BS(Hons) MPhil	Representing Kenswick and Wichenford Parish Council and Wichenford Local Heritage Group
Georgina Britten-Long	Representing Kenswick and Wichenford Parish Council
Peter Parson	Local Resident
Victor Reed	Local Resident
Nigel Bruen	Local Resident
Peter Burgoyne	Local Resident

DOCUMENTS

- 1 List of suggested conditions
- 2 Location and site plans, Allsetts Farm submitted by the Council
- 3 Consultation response by Charles Potterton on Allsetts Farm submitted by the Council
- 4 Estate Plan submitted by the Council
- 5 Diagram of layout of Medieval fields submitted by the Council
- 6 Photographs taken from the B4204 submitted by Kenswick and Wichenford Parish Council
- 7 Appeal Decision APP/J1860/W/15/3016539 submitted by the Council
- 8 Appeal decision APP/J3720/W/15/3029788 submitted by the Council
- 9 Location of views of the development from footpath along Frenchlands Lane submitted by Kenswick and Wichenford Parish Council
- 10 Map showing public rights of way submitted by the Council
- 11 Plan and geophysical survey of the site
- 12 Details of heritage assets in the area submitted by Kenswick and Wichenford Parish Council
- 13 Schedule of the history of the area submitted by Kenswick and Wichenford Parish Council
- 14 Letter from William Banks, undated
- 15 Summary of the representations made by local residents
- 16 Letter of August 2016 from Department for Environment Food & Rural Affairs submitted by Kenswick and Wichenford Parish Council
- 17 Examples of solar parks next to public rights of way submitted by the Appellant
- 18 Analysis of scenic interests and nature reserves near solar parks submitted by the Appellant