



Appeal Decision

Site visit made on 25 July 2017

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 8 August 2017

Appeal Ref: APP/A1910/W/17/3168760

Land North of Gaddesden Lane, Redbourn, Herts AL3 7AF

- 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 Padero Solar against the decision of Dacorum Borough Council.
 - The application Ref 4/02486/15/MFA, dated 30 June 2015, was refused by notice dated 30 November 2016.
 - The development proposed is described on the decision notice and appeal form as 'installation and operation of a solar farm (4.5 MW) and associated infrastructure including parking spaces and educational facility'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The solar farm is intended to operate for a temporary period of 25 years.
3. Only the original Applicants may submit an appeal. The appeal was initially made in the name of Drakes Renewables but the Appellant was subsequently amended to Padero Solar who were the original Applicants.
4. The planning application form was amended by hand to include the 4.5MW capacity of the proposed solar farm. That description corresponds to the updated Design and Access Statement (DAS) of November 2015 and followed an amendment of the scheme to reduce to 6.07ha (15 acres) the area to be covered by solar panels. That change was made in order to reduce the impact on the setting of a nearby scheduled ancient monument – a hillfort known as The Aubreys.
5. Prior to the determination of the application by the Council the Appellant submitted a further amendment to the layout that would again cut the area to be covered by solar panels with an associated reduction in capacity to 4.05MW. The stated reason is to avoid placing panels on part of the site which a geophysical survey had indicated to be of potential archaeological interest. The officer report makes reference to schemes of 4.5MW and 5MW. However the Council has confirmed in correspondence that the application was determined on the basis of the reduced 4.05MW scheme. That is the scheme shown on a drawing dated 27 June 2016 and described as 'Innings 4.05MW/p' which also includes landscape mitigation proposals.
6. The appeal has therefore been determined on the basis of the 4.05MW scheme and a revised description as: *'Installation and operation for a 25 year period of*

a solar farm (4.05 MW) and associated infrastructure including parking spaces and educational facility’.

Policy Context

7. Statute requires that the appeal be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan here includes the saved policies of the Dacorum Borough Local Plan 1991-2011 (2004) (the LP) and the Dacorum Core Strategy 2006-2031 (2013) (the CS).
8. CS Policy CS28 provides that opportunities for generating renewable electricity will be set out in further guidance. The officer report confirms that no such guidance has been adopted and that the development plan itself is otherwise silent on such proposals. In that case the officer concludes that paragraph 14 of the Framework is engaged. Accordingly, permission should be granted unless any adverse impacts of doing so would significantly or demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted. Importantly, in that latter regard Footnote 9 cites Green Belt policy as an example of such a restrictive policy. The appeal site is in the Green Belt.
9. Material considerations include the National Planning Policy Framework (the Framework), national Planning Practice Guidance (PPG) ‘Renewable and Low Carbon Energy’ which also includes reference to a speech by the then Minister for Energy & Climate Change in a previous Government on 25 April 2013 and to a Written Ministerial Statement (WMS) issued on 25 March 2015.
10. Included in the submitted evidence is the Council’s Supplementary Planning Document – Energy Efficiency and Conservation (2005) which is related to the LP 1991-2011. However that includes references to national and regional policy that is no longer in effect and it has little relevance to the subject proposal.

Main Issues

11. The main issue is considered to be whether the proposal would be an inappropriate form of development in the Green Belt and, if so, whether there are any considerations sufficient to clearly outweigh the harm by reason of inappropriateness, and any other harm, thereby providing justification on the basis of very special circumstances.

Reasons

Green Belt

12. CS Policy CS5 ‘Green Belt’ provides that the Council will apply national policy to protect the openness and character of the Green Belt. Whilst the policy also amplifies the local approach to some small-scale development in the Green Belt that does not materially affect the appeal proposal.
13. Paragraphs 89 and 90 of the Framework set out the forms of development deemed not inappropriate in the Green Belt. The proposal does not fall into any of the categories of development set out. Moreover, paragraph 91 of the Framework says that when located in the Green Belt, elements of many

renewable energy projects will comprise inappropriate development. On that basis, the proposal would be an inappropriate form of development that is by definition harmful to the Green Belt.

14. Paragraph 80 of the Framework sets out five purposes of the Green Belt. The only purpose claimed by the Council to be infringed is that of safeguarding the countryside from encroachment. The Council acknowledges that the positioning, the proposed partial screening, and the temporary and reversible nature of the proposal moderate the impact in this regard. Nevertheless there would be some harm due to the presence of structures across a significant area of land in the countryside during the life of the development.
15. Paragraph 87 of the Framework explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 clarifies that: 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
16. Paragraph 79 of the Framework tells us that openness is an essential characteristic of the Green Belt. Openness is generally defined as the absence of built form. As the proposal includes arrays of solar panels raised above ground level, fencing, a classroom, and other built form, the proposal would inevitably reduce physical openness. The solar farm would cover a large area but the impact on perceived visual openness would be moderated by the low height of the solar panels which would follow the land contours and by the relatively small scale of the other structures. Screening could also moderate the impact on visual openness by reducing the number of places from which some or all of the development would be seen. The development would be reversible but would still remain in place for a generation. Consequently there would remain harm to openness during the long life of the development and that would add to the harm to the Green Belt by reason of inappropriateness.

Any Other Harm

Landscape Character

17. CS Policy CS1 seeks amongst other things to conserve the rural character of the Borough whilst supporting development that causes no damage to areas surrounding villages and which is compatible with other policies to protect the Green Belt and the Rural Area.
18. In order to protect the countryside CS Policy CS7 limits the uses that are acceptable in the 'Rural Area' (which includes the appeal site). The acceptable uses include 'essential utility services' [undefined] and also '*uses associated with a farm diversification project which can be demonstrated to be necessary for continuing viability of the farm business and consistent with the principles of sustainable development*'. The Appellant suggests that solar farm development would stabilise the farmer's income and secure his business but this assertion is not supported by any figures to demonstrate that it is necessary to continuing viability. There is insufficient information before me to conclude as to whether or not the appeal proposal qualifies under either heading but neither has the Council claimed in its decision that there is a conflict with Policy CS7.

19. The proposal would be located within the gently undulating Revel End Plateau Landscape Character Area (LCA). This is characteristically a medium to large scale open arable landscape where views are filtered by vegetation such as hedgerow trees and high verges. The area has also experienced hedgerow loss as noted in the response from the Hertfordshire Biological Records Centre. In the vicinity of the appeal site the landscape has been downgraded in parts by the busy M1 motorway corridor (which passes on a north south embankment to the east of the appeal site and has both noise and visual impacts) and by a high voltage powerline on tall pylons that passes on an east-west alignment along the northern edge of the appeal site within the same large field.
20. The development would not result in the loss of any significant landscape features on-site but the appearance of the structures would result in a change in the landscape character of the field in which it would be sited. Its impact on the character of the wider area would be less and can be mitigated by the proposed planting of native hedges as advised in national Planning Practice Guidance (PPG). The planting shown on the application drawing for the 4.05MW scheme would be of most value along the south west boundary with Gaddesden Lane and also along the western boundary of the site where it would involve the filling of gaps in an existing hedgerow.
21. The indicated hedge planting to the northern and eastern field boundaries might have its own landscape benefits but it would not provide screening to the solar panels or to the security fencing and other structures owing to the slope of the land and the distance of the planting from the panels and structures. Moreover that hedging to the northern and eastern boundaries involves land outside the application site as defined by the area shaded red on the submitted application plan. There is no confirmation that the Appellant owns or controls the land outside the application site. That landscape screening could not therefore be required by the imposition of a positive planning condition. Its delivery and retention is thus uncertain and could not be readily enforced. The available remedy would be to require by planning condition a scheme for hedge planting within the application site and closer to the northern and eastern edges of the development. That would be enforceable and would provide more effective screening. The smaller field pattern would accord with the area's historic character after the field enclosures.
22. I conclude that the development would alter the landscape character of the field in which it is sited. It would result in some harm to the rural character of the wider area however mitigation by hedge planting would reduce that harm to a low level if the mitigation were to be enhanced by additional hedge planting to the north and east of the development, close to the proposed security fence. It is acknowledged that the development could not be fully screened and that native hedge planting would take some time to mature as well as providing reduced screening in winter. There would still be some long distance views of the site. However those longer views would also include the motorway and pylons such that the area already has a mixed landscape character that includes large man-made structures and heavy traffic as well as farmland.

Visual Amenity

23. Most public views of the site from Redbourn village would be screened by the intervening motorway embankment. Views from Gaddesden Lane could be

adequately screened by hedge planting. Views available to travellers on the M1 would be brief due to the landform, woodland to the north and an existing sound barrier to the south. Moreover most drivers would be forward facing and concentrating on the road and would thus be less sensitive to views of the landscape. The development would only be seen at right angles to the travel movement in an area which is already dominated by the busy motorway itself and is affected by the overhead power lines that also cross the motorway. There would still be open agricultural land between the motorway and the solar farm. Additional hedge planting closer to the eastern edge of the development could further mitigate the impact on views from the motorway. Other views from the surrounding area would be typically partial and distant.

24. In spite of the mitigation I conclude that there would remain some residual harm to the landscape and visual amenity during the life of the development and associated literal conflict with CS Policy CS1. That harm would need to be added to the harm to the Green Belt and weighed with the benefits of the development.

Heritage Assets

25. CS Policy CS27 'Quality of the Historic Environment' generally provides that heritage assets and their setting will be protected, preserved and enhanced and that features of known or potential archaeological interest will be surveyed, recorded and wherever possible retained. The reasoned justification notes amongst other things that renewable energy installations can affect the setting of a building.
26. The PPG provides amongst other things when considering renewable energy development that: *'great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting'*.
27. The appeal site is located within an identified Area of Archaeological Significance. LP Policy 118 'Important Archaeological Remains' provides amongst other things that planning permission will not be granted for development which would adversely affect scheduled ancient monuments or other nationally important sites and monuments, or their settings. Also, where advice indicates that a proposed development will affect remains of archaeological significance or areas of archaeological potential, developers will be expected to provide the results of an archaeological evaluation as part of their planning application.
28. Historic England in their comments indicated that the original layout (which I take to be the largest 5MW scheme) would have been harmful to the significance of the hillfort as a designated heritage asset but did not explain why. They acknowledged they had had discussions with the Applicants on a revised plan (which I take to be the smaller 4.5MW scheme) and urged that this be consulted upon so that they could advise the Council on the impact on the designated assets. However when they were consulted on the revised submission they unhelpfully declined to offer any comments.
29. In this case the Council's own conservation advisers took into account the high sensitivity of the scheduled monument, the revised layout for the solar farm and the anticipated clearance of vegetation from the fort and concluded that there is less than substantial harm to the heritage significance of The Aubreys

hillfort. That scale of that harm was assessed as falling between slight and moderate. Negligible or low level harm was assessed to the listed buildings at Stags End House (negligible), Flowers Farm House (negligible) and Great Revel End Farm House (low level), each of which is some distance from the appeal site. I agree with those assessments which also broadly reflect the Appellant's assessment. In particular whereas inter-visibility between the fort and the appeal site is currently restricted by vegetation, that is proposed to be cleared to enhance the setting of the hillfort by allowing views to and from the adjacent countryside. Open agricultural land would be closer in character to the historic setting of the fort as compared to modern man-made structures such as the solar farm or the motorway. The revised layout would retain such land directly to the north of the fort and adjacent to the motorway (albeit traversed by powerlines) but after the vegetation clearance from the fort it is likely that there would be some available views of the solar farm to the north west as well as more open views of the motorway to the north east.

30. Whilst there would be associated conflict with CS Policy CS27 and LP Policy 118, it is a material consideration that national policy at paragraph 134 of the Framework provides that where there is less than substantial harm to the significance of a designated heritage asset, as in this case, the harm should be weighed against the public benefits of the proposal. Statute provides that any harm to setting merits considerable importance and weight when such a balance is applied.

Archaeology

31. A further reason for refusal was that the Council considered that there was insufficient information to assess whether there would be harm to features of archaeological significance on the appeal site itself.
32. Paragraph 128 of the Framework states '*Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.*' Archaeological interest is defined in Annex 2 : Glossary, of the NPPF, as '*There will be archaeological interest in a heritage asset if it holds, or potentially may hold, evidence of past human activity worthy of investigation at some point*'.
33. The submitted desk-based assessment concluded that the site has archaeological potential in relation to Iron Age or Roman dates. The DAS indicated that an archaeological investigation made up of a geophysical survey and trial trenching was planned to identify any significant unknown assets and that impacts to previously unknown assets would be through design of the scheme to preserve assets in situ for nationally important remains and excavation and recording of less sensitive assets.
34. In the event a geophysical survey was submitted which indicated that there may be archaeological remains on the site within the area proposed in the application for the location of solar arrays but no trenching has been carried out.
35. The subject 4.05MW scheme avoids the area identified by the geo-physical survey. However my understanding is that this is not conclusive evidence that archaeological evidence elsewhere would not be disturbed. There thus remains

the potential for further harm to undesignated heritage assets. There is also a possibility that the proposed development site could contain heritage assets of archaeological interest of such significance that NPPF Paragraph 139 applies: *'139. Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets'*.

36. It would not be appropriate to apply a pre-commencement condition as trial trenching could reveal that the archaeology is of national significance and should be preserved and not covered by development.
37. In the absence of the trial trenching deemed necessary by the archaeologist as part of the field evaluation sought by Paragraph 128 and LP Policy 118 it is not possible to conclude whether or not there would be harm to a heritage asset. Neither is it possible to conclude that there would be no significant effect. I note in that latter regard that the Council issued a screening opinion which concluded that an Environmental Impact Assessment was not required because (amongst other things) the proposal would be unlikely to have a significant impact on archaeology. However that conclusion was qualified by the phrase *'subject to the submission of sufficient information.'* As it is I agree with the Council's archaeologist that sufficient information has not yet been provided.

Agricultural Land and Brownfield Land

38. There is no development plan policy concerning the location of solar farms in Dacorum. However national policy at paragraph 111 of the Framework seeks to encourage the use for such purposes of previously developed brownfield land. The PPG at paragraph ID 5-013-20150327 similarly seeks to encourage the effective use of land by focussing large scale solar farms on previously - developed and non-agricultural land, as did the Ministerial speech in 2013 and the WMS. The PPG does advise as a factor to be considered in relation to large scale solar farms that *'where a proposal involves greenfield land, (i) whether the proposed use of agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays'*.
39. The officer report states that the Applicant had undertaken a sequential report addressing potential brownfield sites which is said to have demonstrated that the proposed application site is most suitable with regards to: connection to the grid, access for construction, irradiation levels, landowner willingness and agricultural land classification. However there is no such sequential report in the submissions before me and upon making enquiries the Appellant has instead referred me to the DAS which only considers alternative locations on agricultural land within the same landholding and does not cover these other matters.
40. In my experience it is unlikely that there would be available and developable previously developed sites nearby with willing landowners and convenient grid connections that could be developed at a similar scale, particularly if in competition with higher value uses. It is possible that there are smaller sites but the Council would have local knowledge of its area and has not suggested that there are any sequentially preferable locations in the Borough for a solar farm, whether on previously developed land or otherwise.

41. If development does need to be on agricultural land then national policy at paragraph 112 of the Framework seeks to use areas of poorer quality land in preference to that of high quality. The WMS also seeks to avoid the use of high quality agricultural land. The best and most versatile land is held to be that of Grade 3a or above. However during the application the Applicant commissioned a survey which demonstrated that most of the appeal site is Grade 3b and thus of suitably low quality. The Appellant also intends to mitigate the loss of arable land during the development by introducing sheep grazing between the panels. The respite from intensive arable farming may also improve soil quality.
42. I conclude that there is a lack of evidence before that an equally significant contribution to national renewable energy targets could be accommodated in Dacorum without solar development using agricultural land. On the basis that it is necessary to use agricultural land then I also conclude that there is evidence that the appeal proposal would use lower quality agricultural land in line with national policy and guidance.

Any Benefits

43. The Appellant has submitted a statement of claimed very special circumstances in support of the appeal. 18 matters are listed at paragraph 4.1.7. Some of these matters (i), (ii), (iv), (xiv), (xvi) should be discounted as they concern mitigating factors that nevertheless would not prevent residual harm. Whilst they may moderate greater harm they thus do not qualify as positive benefits to set against the net harm to the Green Belt and other identified harm.
44. The claim at (xviii) that the development is needed to secure the farm income and otherwise maintain its openness is not supported by any financial or other evidence and is also discounted. Other development in the Green Belt affecting openness and requiring planning permission would in any event also be subject to Green Belt policy requirements.
45. The remaining public benefits in the Appellant's list are mainly the positive environmental benefits associated with renewable energy and the contribution which this development could make to local production, national targets and energy security in that regard: (v), (vi), (vii), (viii), (ix), (x). These benefits merit substantial weight, particularly where, as here, there is a lack of evidence before me that the community (Dacorum) is otherwise making a significant contribution to national targets for energy generation from renewable or low carbon sources. That is relevant because Paragraph 97 of the Framework provides amongst other things that to help increase the supply of renewable and low carbon energy local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources. Paragraph 93 provides amongst other things that planning plays a key role in supporting the delivery of renewable and low carbon energy and associated infrastructure which is central to the economic, social and environmental dimensions of sustainable development.
46. It is highly material that Paragraph 91 of the Framework does allow that the very special circumstances needed for projects for inappropriate development to proceed in the Green Belt may include the wider environmental benefits associated with increased production of energy from renewable sources.

47. Other benefits claimed by the Appellant are to: the local economy (xii) and (xiii); education (xvii); long term agricultural improvement and enhancements to landscape and nature conservation (iv). These are relatively minor benefits that may nevertheless be included in the planning balance.
48. Whereas (xi) claims that no alternative locations have been identified for the development that are available and deliverable and which meet the development objectives, that claim is not supported by any evidence extending beyond the farmholding itself and is therefore to be accorded limited weight.

The Planning Balance

49. National policy at Paragraph 98 of the Framework provides amongst other things that an application for renewable or low carbon energy should be approved if its impacts are or can be made acceptable (unless material considerations indicate otherwise). The PPG guidance is not policy but it provides amongst other things that the need for renewable energy does not automatically override environmental protections. However it does not follow that the reverse is true
50. In summary, there would be harm to the Green Belt by reason of inappropriateness, and moderate harm to the openness of the Green Belt and in the form of an encroachment on the countryside. Paragraph 88 of the Framework requires that substantial weight is given to any harm to the Green Belt.
51. There would, after mitigation, also be some residual harm to the landscape character and visual amenity, contrary to CS Policy CS1. There would be some less than substantial harm to the significance and setting of heritage assets contrary to CS Policy CS27 and LP Policy 118. That merits considerable importance and weight. However it is a material consideration that national policy provides that harm to the heritage assets is to be weighed with public benefits and that the harm to the setting of individual designated assets has in this case been assessed as falling between negligible and slight/moderate. However it has not been possible to fully assess the effect that the development could have on undesignated archaeological assets.
52. National policy allows that there may be very special circumstances sufficient to outweigh the harm to the Green Belt and other harm that would justify inappropriate development in the Green Belt.
53. National policy in the Framework is supportive of renewable energy and specifically provides that very special circumstances may include the wider environmental benefits of renewable energy. Those benefits must necessarily also merit substantial weight. Only modest weight is to be accorded to the other benefits referred to above.

Conclusions

54. My overall conclusion is that the environmental benefits of renewal energy, supported by the other benefits, do here outweigh the identified harm to the Green Belt, and to the designated heritage assets and that, with a modification to the hedging mitigation, they would also outweigh the harm to landscape and visual amenity. Were those the only matters at issue then I could conclude that all the benefits clearly outweighed all the harm. However in the absence of the trench trial which the archaeologist advises as necessary to fully assess

the on-site archaeology in a location of identified archaeological interest, I am unable to assess what the impact on archaeology may be, whether they can be made acceptable in the terms of Framework paragraph 98, and also whether or not there would be a significant effect in relation to Environmental Screening. In these circumstances I am unable to conclude that very special circumstances have been demonstrated to clearly outweigh the harm to the Green Belt and all other harm. There is thus conflict with the national policy and the development plan and the appeal should therefore be dismissed.

Robert Mellor

INSPECTOR