



Appeal Decision

Site visit made on 24 September 2019

by P Mileham BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2019

Appeal Ref: APP/Z1510/W/19/3227800

Kentishes Farm, Kentish Farm Road, Stisted CM77 8BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Jamie Kelly of Push Energy Ltd against the decision of Braintree District Council.
 - The application Ref 18/02068/VAR, dated 20 November 2018, was refused by notice dated 20 February 2019.
 - The application sought the change of use of land from agriculture to mixed use for agriculture and use for the generation of renewable energy (solar) without complying with a condition attached to 18/01047/VAR, dated 17 September 2018.
 - The condition in dispute is No 3 which states that 'the permission hereby granted is for the development permitted to be retained for a period of not more than 25 years from the date that electricity from the development is first supplied to the grid, this date to be notified in writing to the Local Planning Authority within 5 working days of its occurrence. By the end of the 25 year period the solar panels must be decommissioned. No later than 6 months after decommissioning, all related structures shall be removed and the site restored in accordance with a restoration scheme which has been submitted to and approved in writing by the Local Planning Authority. The restoration scheme shall be submitted to the Local Planning Authority no less than 6 months prior to decommissioning and shall make provision for the dismantling and removal from the site of the solar PV panels, frames, foundations, and all associated structures, equipment and fencing, together with provision for any necessary repair of land drainage. The Local Planning Authority must be notified of the cessation of electricity generation in writing no later than five working days after the event.'
 - The reason given for the condition is to return the site to agricultural use when it ceases to generate electricity.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land from agriculture to mixed use for agriculture and use for the generation of renewable energy (solar) at Kentishes Farm, Kentish Farm Road, Stisted CM77 8BX in accordance with the terms of the application, Ref 18/02068/VAR, dated 20 November 2018, without compliance with condition number 3 previously imposed on planning permission Ref 18/01047/VAR dated 17 September 2018 and subject to the conditions set out in the attached schedule.

Procedural Matters

2. Planning permission was granted under reference 14/00922/FUL on 8 April 2016 for the change of use of land from agriculture to mixed use for agriculture and use for the generation of renewable energy (solar). Subsequent to that permission, a s73 application (Ref 18/01047/VAR) was submitted to vary condition 18 in relation to drainage matters. That resulted in a fresh permission for the entire scheme, albeit the description of development did not accurately reflect this. The application before me (Ref 18/02068/VAR) seeks to amend condition 3 on that permission, to extend the period of operation for the solar farm by a further 20 years, to a total of 45 years. I have determined the appeal on this basis.
3. The solar farm permission has been implemented, and a first phase has been built which appeared to be operational at the time of my visit.
4. My attention has been drawn to a number of policies from the emerging Braintree District Publication Draft Local Plan which is currently undergoing an Examination in Public. The National Planning Policy Framework (the Framework) sets out at paragraph 48 that local planning authorities can attribute weight to emerging plans depending on their stage of preparation. Whilst the examination is at an advanced stage, the plan is not yet adopted and policies may still be subject to some change. I have not been provided with evidence on the status of any unresolved objections to these policies, and as such, I can only attach limited weight to them at this time.

Main Issue

5. The main issue is the effect that varying the condition would have on the use of agricultural land.

Reasons

6. The appeal site is a large area of arable farmland bounded to the north by Braintree Wood and Pond Croft and to the south west by Clapgate Wood. The undeveloped part of the site is an agricultural field and due to the open aspect, long views are possible to the south across the gently undulating landscape. There are no nearby residential properties and whilst the site is isolated, there is a sense of enclosure as a result of the framing of the land by adjoining woodlands and hedgerows.
7. The permission that established the use as a solar farm was granted at appeal in 2016¹. The condition in dispute has the effect of allowing the operation of the site and requiring its subsequent decommissioning and return to agricultural use after a period of 25 years when it ceases to generate electricity. The condition was imposed by the appeal Inspector who considered the inclusion of an operation and decommissioning period to be necessary in order to ensure the development remained temporary and that this was important to the proposal's acceptability. The Planning Practice Guidance supports the use of conditions in order to ensure installations are removed when no longer in use and the land is restored to its previous use² and the original condition accords with the guidance.

¹ APP/Z1510/W/15/3130930

² Paragraph: 013 Reference ID: 5-013-20150327

8. The proposed variation of the condition would allow the solar farm to be operative for a period of 45 years and therefore the land would continue to be unavailable for the growing of crops for an additional 20 years beyond the currently approved timeframe. Policy CS5 of the Braintree District Council Local Development Framework Core Strategy (2011) ('the BDCS') seeks to strictly control uses appropriate to the countryside in order to protect and enhance landscape character and biodiversity, geodiversity and the amenity of the countryside. The principle of the solar farm has been accepted and the proposed variation of the condition would not alter the appearance of the scheme and as such, its effect on landscape character would be unchanged.
9. Policy CS8 of the BDCS seeks, amongst other things, that development should protect Best and Most Versatile Agricultural Land (BMV). The vast majority of the land falls within BMV (grade 3a), and whilst the previous appeal Inspector concluded there was conflict between the original proposal and policy CS8, the proposal accorded with other policies in the plan and greater weight was given to these in the planning balance. However, the proposed variation would have the effect of stopping the land from being used for the growing of crops for an additional 20 year period. As a result, a significant area of BMV would be lost from production for a much longer period. As such, I consider there remains conflict between the proposal and policy CS8 in this regard.
10. The appellant draws my attention to recent published research which concluded that solar panels could continue to provide a high proportion of their original output (80%) after 40 years, well beyond their previously suggested lifespan. This indicates that even at 80% of its' initial output, the fully implemented solar farm would continue to generate the equivalent energy as the annual average consumption of 2,584 homes. As such, this would result in a substantial benefit of the scheme in terms of energy production over and above that predicted when the scheme was originally permitted. This counts significantly in favour of the proposal. The Framework supports renewable and low carbon development, with Paragraph 154 stating that authorities should approve such applications if the impacts can be made acceptable. Accordingly, I attach significant weight to the Framework in this regard.
11. The previous appeal Inspector concluded that the current 25 year time period would be a 'substantial length of time' for the solar farm to be operational. However, extending the period to 45 years would still result in a temporary use of the site and installation of structures. The proposed variation of condition would require these to be removed and the land repaired and restored once the operational period ends. Therefore, whilst an additional 20 years would be a lengthy operational period, there remains provision to bring the land back into agricultural use via a planning condition. The site would still be able to be used for the grazing of sheep in the meantime, as per the requirements of the condition attached to the planning permission, and whilst this would not be for arable use, it would still remain in use for agriculture. These provisions in the proposed condition would be necessary to provide certainty that the development would remain temporary.
12. Policy CS5 of the BDCS seeks to control uses appropriate to the countryside in order to protect and enhance landscape character and biodiversity. Matters relating to the appearance of the site were addressed through the previous appeal and would be unchanged as a result of this proposal. Therefore, the relevant aspect of Policy CS5 in relation to this appeal relates to the protection

of biodiversity. A condition was imposed on the original permission requiring a biodiversity enhancement scheme as part of the long term management plan to address any harm arising. Any effects on biodiversity would last for a significantly longer period than originally envisaged as a result of an extended operational period. The Council has indicated that imposing a condition which requires the update of the ecological enhancement plan at regular intervals for the lifetime of the development would be capable of ensuring any harm arising from the proposed variation could be addressed. As such, I consider this is a matter that could be dealt with by a condition which would ensure the ecological enhancement scheme is updated for the lifetime of the development which would mitigate any remaining conflict with Policy CS5.

13. In light of the above, I conclude that varying the condition would be acceptable in terms of the use of agricultural land. Whilst the development would conflict with Policies CS5 and CS8 of the BDCS (2011), I consider the benefits of the further renewable energy generated that would be brought about by the variation of the condition outweigh the policy conflict identified with Policy CS8, and any conflict with policy CS5 addressed via a planning condition.
14. I consider that the proposal would also accord with Paragraph 154 of the Framework which supports renewable and low carbon development, and I have afforded the Framework significant weight in reaching my decision.

Conditions

15. The Council has suggested a number of conditions which the appellant has had the opportunity to comment on, and these have been carried over from the existing permission. This permission has been implemented, albeit I have not been provided with any information to establish which of the conditions have been discharged either in whole or in part. As such, I have re-imposed the conditions in their entirety and only amended them where necessary for the sake of clarity and precision.
16. As the development has been implemented, no time limit condition has been imposed. No new plans were submitted as part of this appeal, and as such, I have amended the proposed plans condition to require adherence to the originally approved plans.

Conclusion

17. In light of the above and having regard to all matters raised, the appeal is allowed subject to conditions.

P Mileham

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan - Plan Ref: 07/PA001B
Planning Layout - Plan Ref: 07/PA002B
General – Plan Ref: 07/PA004A
General - Plan Ref: 07/PA005
General - Plan Ref: 07/PA006A
General – Plan Ref: 07/PA007
Enclosures etc – Plan Ref: 07/PA008
- 2) The approved details in regards to the PV panels, the mounting frames and fixings, the boundary fencing, the external appearance of the switchgear/transformer/inverter enclosures, the grid connection/communications cabinets and the substation, and the locations and design of any CCTV cameras as approved under 16/01518/DAC shall be adhered to and permanently retained as such.
- 3) The permission hereby granted is for the development permitted to be retained for a period of not more than 45 years from the 13th December 2016 (the confirmed date of the first export of electricity to the National Grid from the solar farm hereby approved). By the end of the 45 year period the solar panels must be decommissioned. No later than 6 months after decommissioning, all related structures shall be removed and the site restored in accordance with a restoration scheme which has been submitted to and approved in writing by the Local Planning Authority. The restoration scheme shall be submitted to the Local Planning Authority no less than 6 months prior to decommissioning and shall make provision for the dismantling and removal from the site of the solar PV panels, frames, foundations, and all associated structures, equipment and fencing, together with provision for any necessary repair of land drainage. The Local Planning Authority must be notified of the cessation of electricity generation in writing no later than five working days after the event.
- 4) If the development hereby permitted fails for a continuous period of 12 months to produce electricity for supply to the electricity grid network, then the solar panels and the ancillary equipment relating to it shall be decommissioned and removed from the site in accordance with a scheme to be submitted to the local planning authority no more than 3 months after the end of the 12 month period. The scheme shall make provision for the dismantling and removal from the site of the solar PV panels, frames, foundations, and all associated structures, equipment and fencing, together with provision for any necessary repair of land drainage. The land shall be reinstated in accordance with the scheme within a period of 6 months after the end of the 12 month period.
- 5) The approved details in regards to Landscaping as approved under 16/01518/DAC shall be maintained in accordance with the approved scheme for the period during which the permitted solar farm is in operation. Any trees, shrubs or other plants which, during such time as the solar farm operates, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 6) The details submitted in regards to the long term management plan as part of 16/01518/DAC shall be adhered to for the lifetime of the development. As referenced in correspondence from the Local Planning Authority in reference to 16/01518/DAC, the Management and Monitoring Timetable in section 12 of the Biodiversity Management Plan as submitted under 16/01518/DAC details annual monitoring. The reports generated by this should be open to external audit by the Local Planning Authority for the lifetime of the site to ensure planning conditions are adhered to.
- 7) All habitat creation and ecological enhancement works contained in the long term management plan approved under condition 6) shall be carried out in accordance with that plan, and the site shall be operated and maintained in accordance with that plan.
- 8) The approved scheme in regards to a scheme of investigation and reporting of archaeological works as approved under 16/01518/DAC shall be adhered to.
- 9) The approved details submitted in regards to the Construction Traffic Management Plan (CTMP) as approved under 16/01518/DAC shall be adhered to. For the duration of the construction period, all traffic associated with the construction of the development will comply with the CTMP and use only the 'Construction Traffic Access Route' and no other local roads.
- 10) Notwithstanding the provisions of Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fencing or other means of enclosure shall be erected other than that which has been expressly authorised pursuant to condition 2) above.
- 11) For the duration of the construction and decommissioning periods, works (including the starting of machinery and delivery or despatch of materials) shall take place only between the hours of 0800 and 1800 hours Monday to Friday, 0800 and 1300 hours on Saturdays and not at all on Sundays and Bank Holidays.
- 12) The approved details in regards to the Solar Farm Grazing Management Plan (SFGMP) as submitted under 16/01518/DAC shall be adhered to. If for any reason grazing by sheep fails to occur for a period of more than 12 months then, the solar panels and the ancillary equipment relating to it shall be decommissioned and removed from the site in accordance with condition 4) above.
- 13) The details of lighting to the substation, including equipment and Operation as submitted under 16/01518/DAC shall be adhered to. As referenced in correspondence from the Local Planning Authority in reference to 16/01518/DAC, lighting should be positioned at a zero degree tilt and controlled in a way so not left on unnecessarily.
- 14) The approved details submitted in regards to the Construction Method Statement (CMS) as submitted under 16/01518/DAC shall be adhered to.

- 15) The noise emissions during the periods of construction and decommissioning of the development hereby permitted shall not exceed a LAeq10 min noise level of 65 dB, 1 metre from the façade of any occupied residential dwelling.
- 16) The height of any of the solar panels hereby permitted shall not exceed a height of 1.7 metres above existing ground level.
- 17) The development hereby permitted shall be implemented in conformance with the Flood Risk Assessment by Ingent Consultants dated May 2018.

End of Schedule