



Appeal Decision

Site visit made on 19 November 2019

by R Cooper BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2019

Appeal Ref: APP/J3720/W/19/3235145

Radbrook Pastures, land to the west of Admington Lane, Preston-on-Stour CV37 8NH

- 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 TGC Solar Radbrook Limited, C/O Greenbridge Consultancy Limited against the decision of Stratford-on-Avon District Council.
- The application Ref 18/02378/VARY, dated 9 August 2018, was refused by notice dated 12 April 2019.
- The application sought planning permission for a solar farm and associated development without complying with conditions 2 and 4 attached to planning permission Ref APP/J3720/W/16/3164711, dated 10 August 2017.
- The conditions in dispute are Nos 2 and 4 which states that:
"2. This permission hereby granted shall expire no later than 25 years from the date of connection of the solar farm to the National Grid."
"4. The permission hereby granted relates to the following approved plans:
 - a) Location Plan 1:5,000 scale;*
 - b) Location Plan 1:10,000 scale;*
 - c) Site Design Rev.B7;*
 - d) Security Palisade Fence SFGA Rev.O;*
 - e) 33kw Looped Connection Building GCS0016-1 Rev.O;*
 - f) Indicative 66kV Single Circuit Tee-Off Connection (Underground) Proposed Site Layout and WPD Control Room Details GCS0021-2 Rev.O;*
 - g) 2.0m Deer Fence Typical General Arrangement: TGC/PV001-DEER Rev.A1;*
 - h) Standard Double Gate Configuration TGC/PV002 Rev.A1;*
 - i) CCTV System TGC/PV004 Rev.A2;*
 - j) 2V Racking System Rev.2;*
 - k) Comms Building: TGC/PV009/01 Rev A1."*
- The reasons given for the conditions are: *"Given the temporary nature of the proposed development, a condition would be necessary limiting the works to a twenty-five year period following the first export of electricity to the National Grid"; and "in the interests of certainty, a condition would be necessary specifying the approved plans."*

Decision

1. The appeal is dismissed.

Procedural Matters

2. Planning application Ref 15/00588/FUL (the application) for a solar farm and associated development was refused by the Council in June 2016. The proposals were subsequently allowed by appeal Ref APP/J3720/W/16/3164711 (the permission).

3. At the time of my site visit works had not commenced, however it is still within the three year time limit for the implementation of the permission. The conditions in dispute had not yet been breached because it requires only that the proposed development be carried out in accordance with the approved plans, and that the solar park was granted for a 25 year time period. I have therefore determined the appeal as one made under section 73 of the Act.
4. The variation of condition 4 relates to amended plans to change the site layout, which includes the relocating the substation compound, changes to the design and appearance of the buildings that house the control/meter room and the customer switch room, the re-siting of the construction compound and the addition of a temporary construction access track from Admington Road. The decision of the Council to refuse application Ref 18/02378/VARY, to vary conditions 2 and 4 relates to the longer term effect on the character and appearance of the area.
5. The application sought planning permission for a solar farm and associated development. The description of development upon which the Council consulted the public consisted of the following, 'Construction and 25 year operation of a solar farm (on a site area of 39.7 ha of land) and associated infrastructure for connection to the electricity network including underground cable, Inverter Cabins, comms buildings, 66kV Substation with associated switchgear, control and metering rooms, 4m high pole mounted CCTV cameras, 2m high security fencing and temporary construction compound, section of overhead powerline, access track and new vehicle access onto Admington Road and ecological and landscape enhancement measures.'
6. The above description has also included within the public consultation for application Ref 18/02378/VARY to vary conditions 2 and 4, which is the subject of this appeal. In the first instance I am required to consider whether or not this constitutes a materially different proposal.

Main Issues

7. In the context of the above, the main issues are (i) whether the requested variation of conditions 2 and 4 would lead to a substantially different development from that approved as part of planning permission Ref APP/J3720/W/16/3164711 and, if so, (ii) if the changes are not substantially different, whether the benefits of the proposal to produce electricity from a renewable resource, outweigh any adverse impacts, having particular regard to the effect on the character and appearance of the area.

Reasons

8. Whilst the application sought planning permission for a solar farm and associated development, the appellant's submission referred to the development being temporary in nature, with the site's reinstatement at the end of a 25 year operational period. This formed a significant part of the proposals outlined in the application which third parties were consulted, and upon which the previous Inspector made his decision. The appellant seeks to increase the operational time period to 40 years. I do not consider the proposed variation to condition 2 to be a minor amendment, as it would substantially lengthen the time period of the development, delaying the reinstatement of the land by 15 years. In my view the additional time period

significantly changes the development outlined in the application that the public were consulted on.

9. The proposed amendments to the scheme sought through the variation of condition 4 comprise of the re-siting of the sub-station compound by moving it from field B to C. According to the Council officer's report, this would be approximately 75m to the south east of the approved location. Changes to the design and appearance of the buildings, including an increase in floor area are also proposed, as well as amending the location of the temporary construction compound. The appellant also seeks permission for an additional temporary construction access track from Admington Lane, that would cross the eastern most field within the appeal site. The later proposal did not form part of the application. The proposed amendments to the layout and the buildings, as well as the additional construction access track, collectively, would be substantially different to the application.
10. The Planning Practice Guidance¹ states that, although conditions can be used to make a minor modification to a proposal, a condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used. In addition, there may be cases where removing a condition would significantly change the proposal.
11. Varying the condition would result in a material change in the proposal that would be prejudicial from a public consultation point of view. Therefore, I conclude that this appeal is not the appropriate mechanism for dealing with a proposal which represents a substantially and materially different type of development considered by the Council and allowed by the previous Planning Inspector. I have considered the implications of this decision and it does not affect the existing planning permission, which can still be implemented in accordance with the relevant planning conditions, which should remain in place.
12. Given my above conclusion, it has not been necessary for me to consider the benefits of the scheme and the effect of the proposal on the character and appearance of the area.

Conclusion

13. For the reasons given above, the appeal is dismissed.

R Cooper

INSPECTOR

¹ ID 21a-031-20140306 & ID 21a-012-20140306