



Appeal Decision

Site visit made on 4 August 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2023

Appeal Ref: APP/V2635/W/22/3313702

Land at Sedgeford Hall Estate, Fring Road, Sedgeford, Norfolk PE31 7NE

- 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 Mr Ashley Fromberg, Regener8 Power Ltd against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 22/00704/FM, dated 29 March 2022, was refused by notice dated 7 November 2022.
 - The development proposed is the construction and operation of a solar farm comprising an array of ground-mounted solar photovoltaic ('PV') panels with containerised batteries and associated infrastructure.
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Decision

1. The appeal is allowed and permission is granted for the construction and operation of a solar farm comprising an array of ground-mounted solar photovoltaic ('PV') panels with containerised batteries and associated infrastructure on Land at Sedgeford Hall Estate, Fring Road, Sedgeford, Norfolk PE31 7NE, in accordance with the terms of the application, Ref 22/00704/FM, dated 29 March 2022, subject to the attached schedule of conditions.

Main Issue

2. The main issue is whether the proposal would result in the significant loss of agricultural land.

Reasons

3. The proposal is for the erection of a 21 megawatt solar farm comprising about 31,800 ground mounted solar panels with an associated battery storage facility on three agricultural fields totalling about 45 ha north of Fring Road within the parishes of Sedgeford and Snettisham. The site concerned lies well away from the nearest villages in an open 18th century enclosure landscape characterised by large fields with hedgerow boundaries and the occasional tree.
4. The fields selected for the scheme are well chosen. The lack of nearby rights of way other than Fring Road itself, the high plateau position and surrounding hedgerows (strengthened with further planting) would all serve to limit external views of the rows of solar panels. With additional enhancement measures the biodiversity of the site would be considerably improved, and whilst construction would involve significant traffic flows through narrow country lanes this could be managed by a one-way system. The project would be operational for 40 years after which all equipment would be removed and the site returned to agriculture or some other agreed use.

5. The Council's objection relates to just one issue, that the proposal would result in the significant loss of agricultural land and thus conflicts with Policy DM20 of the Site Allocations and Development Management Policies Plan 2016 relating to renewable energy proposals. The policy includes criteria against which the benefits of energy generation will be balanced, but also states that the Council will resist proposals that involve best and most versatile agricultural land or where there is a 'significant loss of agricultural land'. The first of these is met, 98.7% of the site being classified as Grade 3b due to droughtiness, stoniness and erosion as a secondary factor¹. 1.3% is not in agricultural use. Poorer quality land limits its use to lower value conventional commodity crops, less important to the UK economy than specialist niche crops which can be grown on better quality land graded 3a and above.
6. The Council argue that the second issue, whether there is a significant loss of agricultural land, is a purely quantitative point with no reference to the productivity or circumstances of the land. However, the policy includes no guidance figure as to what would be an unacceptable loss and no previous decisions are put forward as a reference point. Interpretation of the phrase must therefore be subjective. Interestingly, the equivalent policy in the Local Plan Review now under examination drops this criterion and seeks to protect 'productive' agricultural land in addition to land classified as the best and most versatile. There is no evidence that this change is the subject of significant objection or is likely to be found unsound.
7. It is in fact illogical not to consider productivity and circumstances as a factor as quantity alone is not a measure of agricultural value which the policy rightly aims to protect.
8. The 45 ha concerned in this case is farmed by John Cross, a tenant farmer on the Sedgeford Hall Estate, who supports the proposal. The site represents just 9.1% of the total area of the business but more importantly the three fields are amongst the most drought prone on the farm due to the freely draining deep sand subsoil which severely affects their productivity in dry periods. The land has historically been used for a rotation of arable crops, potatoes, sugar beet and fattening pigs, with cereal crops being grown at the time of the site visit, but wheat yields from the site are only an average of 8 tonnes per ha rather than 10 t/ha achieved elsewhere on the holding. In fact, higher input costs combined with the increasing risk of drought periods now threaten the viability of cereal production on the land with lower risk sheep or other grazing a more likely use in future. Cereal and other crops are more profitably grown where yields are higher elsewhere on the farm where chalk-based subsoils are more drought resistant. The impact of the proposal on the agricultural output of the farm would thus be much less than the 9.1% land take would suggest.
9. Use of the site for solar power generation would provide a more predictable and steady income which would actually support the viability of the farming operation as a whole. Sheep grazing is planned to continue between and under the panels, continuing an agricultural use and improving soil fertility over time. The scheme would also be fully reversible with full agricultural use recommencing in 40 years' time.

¹ Report from Soil Environmental Services Ltd February 2021.

10. For these reasons, whilst 45 ha is a sizeable area, the proposal would not result in a significant loss of agricultural land and would therefore comply with Policy DM20 of the Site Allocations and Development Management Policies Plan.

Conclusion

11. The proposal would generate about 18,000 megawatt hours of electricity per annum, enough to power about 3,500 homes, would improve the biodiversity of the site, not significantly harm the wider landscape, would occupy low-quality agricultural land and would benefit the farm holding concerned. The visual impact of the associated transformers, batteries, fencing and other infrastructure would be relatively minor in their rural setting and would be mitigated by landscaping. Whilst solar panels could be installed on south facing commercial roof space across the UK and the loss of attractive open countryside is to be regretted, the need to move to a low carbon economy² tips the planning balance firmly in favour of the scheme.
12. The Council suggest 19 conditions should the appeal be allowed. The appellant accepts all but one of these and they have been assessed against the relevant tests, making minor adjustments for clarity as necessary. In addition to the standard implementation time limit it is necessary to define the approved plans in the interests of certainty. Conditions 3-5 are necessary to ensure any archaeological interest on the site is investigated and recorded, conditions 6-7 to minimise the impacts of any emergency and conditions 8-9 to protect the interests of highway safety and efficiency.
13. Conditions are also necessary to restrict the hours of working and deliveries and to control external lighting to protect the amenities of local residents and reduce light pollution. Further conditions to ensure the implementation of a landscaping scheme and its maintenance, the protection of existing trees and hedges, the implementation of ecological enhancement measures, the provisions of the environmental statement and the preparation/implementation of a Construction and Environmental Management Plan, all to ensure the satisfactory appearance of the development, the promotion of biodiversity and protection of local amenity. Finally, a condition is necessary to ensure the cessation of the use and the restoration of the site at the end of the 40-year operational period.
14. The Council also seek a condition to control grazing and pastoral farming within the site during the operational period but the detail of agricultural operations are not within the remit of planning control. It is in the appellant's interests to manage the site effectively and utilising grazing opportunities between and under the solar panels form part of the current plans.
15. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR

² National Planning Policy Framework paragraph 8(c).

Schedule of conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 4173-REP-012 Site Location Plan
 - 4173_DR_P_0001 Rev. - Site Entrance Junction
 - edp6676_d020f Landscape Strategy
 - edp6676_d021b (x3) Cross Sections
 - RNR1003-100 Rev. N PV Layout
 - RNR1003-180 Rev.- Construction Compound Layout
 - RNR1003-200 Rev. A PV Array Details
 - RNR1003-202 Rev.- Inverter Elevations
 - RNR1003-221 Rev.- Customer Cabin Details
 - RNR1003-220 Rev.- DNO Details
 - RNR1003-229 Rev.- DC/DC Converter Details
 - RNR1003-230 Rev.- Access Track Section Details
 - RNR1003-231 Rev.- Fence & Gate Section Details
 - RNR1003-232 Rev.- CCTV Pole Mounting Details
 - 01SEDG-CDAMET-E1 Battery Container Details
- 3) No development shall take place until an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions, and
 - a) The programme and methodology of site investigation and recording
 - b) The programme for post investigation assessment
 - c) Provision to be made for analysis of the site investigation and recording
 - d) Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - e) Provision to be made for archive deposition of the analysis and records of the site investigation and
 - f) Nomination of a competent person or persons/organization to undertake the works set out within the written scheme of investigation.
- 4) No development shall take place other than in accordance with the written scheme of investigation approved under condition 3 and any addenda to that WSI covering subsequent phases of mitigation.
- 5) The development shall not be put into first use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological written scheme of investigation approved under condition 3 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.
- 6) Prior to the installation of any battery storage facility:
 1. A Fire Safety Risk Reduction and Mitigation Strategy (FSRRMS) shall be submitted to and agreed in writing by the Local Planning Authority. The FSRRMS shall include the design, construction, installation, operation and decommissioning phases of the project. The agreed FSRRMS shall be complied with during all stages of the development.
 2. A Fire Safety Emergency Response Plan (FSERP) shall be submitted to

and agreed in writing by the Local Planning Authority. The FSERP shall include site specific information regarding hazards, locations of hydrants and electronic isolators, measures to be taken during an incident and responses required post incident. The FSERP shall also include regular onsite training and familiarisation for operational fire service personnel. The site shall be constructed, operated and decommissioned in accordance with the agreed plan.

3. A Fire and Emergency Transport Strategy (FETS) shall be submitted to and agreed in writing by the Local Planning Authority. The FETS shall identify the construction and decommissioning road network and produce a strategy to mitigate conflict and prevent an increase in the potential number of traffic incidents along those routes. The construction and decommissioning phases of the development shall be carried out in accordance with the agreed strategy.

4. Details of automatic detection systems shall be submitted to and agreed in writing by the Local Planning Authority. The details shall include an automatic fire, heat, smoke and gas detection system linked to an external alarm receiving centre and include redundancy in the design to provide multiple layers of protection. The systems must be capable of detecting off-gases in low concentrations, provide an early warning of an impending thermal runaway and trigger shutdown systems to electrically isolate the individual or bank / rack of battery cells and thus avoid thermal runaway occurring in a single cell. The development shall be constructed in accordance with the approved details and shall thereafter be maintained and retained as agreed.

5. Details of automatic fire suppression systems shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details and shall thereafter be maintained and retained as agreed.

6. Details of ventilation and air conditioning systems to maintain the temperature of batteries and charging equipment within their recommended safe operating range shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details and shall thereafter be maintained and retained as agreed.

7. Details shall be submitted to and agreed in writing by the Local Planning Authority of design features that will contain and restrict the spread of fire through the use of fire-resistant materials and adequate separation between elements of the BESS (battery storage). The design must include a safe access route for fire appliances to manoeuvre within the site including turning circles. An alternative access point and approach route should be provided prior to any battery installation to enable appliances to approach from an up-wind direction if necessary. The development shall be constructed in accordance with the approved details and shall thereafter be retained and maintained as agreed.

- 7) Prior to the installation of any battery storage facility a scheme for the provision and maintenance of fire hydrants shall be implemented in accordance with a scheme that has previously been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for an external fire hydrant in close proximity to the BESS (battery storage) containers with a water supply capable of providing a minimum of 1900 litres/min for at least 2 hours, and additional hydrants

within the site. The development shall be constructed in accordance with the approved scheme and shall thereafter be maintained and retained as agreed.

- 8) For the duration of the construction and decommissioning periods of the development hereby permitted all traffic associated with the construction/ decommissioning of the development will comply with the Construction Traffic Management Plan, use only the 'Construction Traffic Access Route' as contained within the revised Outline Construction Traffic Management Plan dated July 2022 (Technical Appendix A5.1 to the ES), and park within the approved Construction Compound unless otherwise agreed in advance in writing by the Local Planning Authority.
- 9) Prior to the commencement of the development hereby permitted the vehicular access as shown on approved drawing no: 4173_DR_P_0001 Rev.- shall be provided with a minimum width of 4.5 metres and provided with kerb radii of 10 metres in accordance with the Norfolk County Council industrial access construction specification for the first 5 metres as measured back from the near channel edge of the adjacent carriageway. Arrangements shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.
- 10) No deliveries shall be taken at or despatched from the site outside the hours of 08:00 to 18:00 on weekdays and 09:00 to 13:00 on Saturdays. There shall be no deliveries at any time on Sundays, Bank or Public Holidays.
- 11) Construction or development work on site shall only be carried out between the hours of 07:30 and 18:00 on weekdays, and 09:00 - 13:00 on Saturdays, with no work allowed on Sundays and Bank/Public Holidays.
- 12) Prior to the installation of any external lighting associated with the development hereby permitted, a detailed outdoor lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the type of lights, the orientation/ angle of the luminaries, the spacing and height of the lighting columns, the extent/levels of illumination over the site and on adjacent land and the measures to contain light within the curtilage of the site. The scheme shall be implemented in accordance with the approved details and thereafter maintained and retained as agreed.
- 13) Prior to the first use of the development hereby permitted, or within the first planting season thereafter, all landscape works shall be carried out in full accordance with the Landscape Strategy Plan (Figure 4.7), drawing no.edp6676_d020f including ecological enhancements. Any trees or plants that within a period of 5 years from the time of planting die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted, unless the Local Planning Authority gives prior written approval to any variation.
- 14) No existing trees, shrubs or hedges that are shown on approved drawing no.edp6676_d020f to be retained, other than those shown to be removed to enable the access as approved on drawing no.4173_DR_P_001 Rev.-, shall be removed.

shall be felled, uprooted, willfully damaged or destroyed, cut back in any way or removed without the prior written approval of the Local Planning Authority. Any trees, shrubs or hedges removed without such approval or that die or become severely damaged or seriously diseased within 5 years from the completion of the development hereby permitted shall be replaced with trees, shrubs or hedge plants of a similar size and species in the next available planting season, unless the Local Planning Authority gives prior written approval to any variation.

- 15) The development hereby permitted shall not be put into first use unless carried out in full accordance with the mitigation contained within Chapter 5 of the Ecological Appraisal that accompanied the application (Ref. edp6676_r003f, dated Feb 2022 produced by The Environmental Dimension Partnership Ltd)
- 16) The development hereby permitted shall not be put into first use unless carried out in accordance with the mitigation measures set out in the Environmental Statement except as provided for in any other conditions attached to this planning permission.
- 17) Prior to the commencement of the development hereby permitted a Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in full accordance with the agreed CEMP.
- 18) The development hereby permitted shall cease operation no later than 40 years from the date of first use, and within six months of the cessation of electricity generation by the solar facility, all above ground infrastructure shall be dismantled and removed from the site. The site shall be restored to its condition prior to the implementation of the planning permission or in line with a scheme, the details of which shall be submitted to and approved in writing by the Local Planning Authority no later than three months following the cessation of power production.