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## Appeal Decision

Site visit made on 5 December 2023

**by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 December 2023**

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**Appeal Ref: APP/T3725/W/23/3319320**

**Land South of Banner Hill Farm, Banner Hill and Rouncil Lane,  
Kenilworth CV8 1NN**

- 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 Dan Taylor of Flexion Energy Storage UK Ltd against the decision of Warwick District Council.
  - The application Ref W/22/0941, dated 30 May 2022, was refused by notice dated 30 September 2022.
  - The development proposed is described as '*An energy storage facility, together with associated equipment, infrastructure and ancillary works*'.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The address given on the application form differs from that used on the appeal form and Decision Notice. The site's location is clearly shown on the submitted drawings and plans; including the site plan. I have proceeded on the basis that the site address is that given on the appeal form.

### Background and Main Issues

3. The Decision Notice sets out six reasons for refusal. The Council decided to not submit a Statement of Case. The reasons for refusal, together with the Appellant's Statement of Case, Council's Officer Report and observations made by interested parties, have informed my formulation of the main issues.
4. The main issues in this case are:
  - i) Whether or not the proposal would constitute inappropriate development in the Green Belt, and the effect of the proposals on the openness of the Green Belt; and,
  - ii) The effect of the proposed development on the character and appearance of the area; including on its landscape; and,
  - iii) Whether the proposal would preserve the setting of a nearby listed building and other heritage assets; and,
  - iv) The effect of the proposal on biodiversity; and,
  - v) The effect of the proposed development on surface water drainage; and,

- vi) The effect of the proposal on the Best and Most Versatile Agricultural Land; and,
- vii) If the proposal would be inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

## Reasons

### *Whether inappropriate development*

5. The proposal constitutes the installation of a battery energy storage facility together with associated equipment, infrastructure and ancillary works. These would be standby generation and energy storage facilities to support the local energy network – this would principally through assisting in ‘balancing’ services to the National Grid and the Local Distribution Network and ‘decentralising’ the grid system.
6. The site is located roughly 3km south-west of the village of Kenilworth and approximately 2km west of the village of Leek Wootton. The site extends to circa 0.84 hectares (ha) (developable area is 0.54 ha) and is currently in agricultural (grazing pasture) use. It is located within the West Midlands Green Belt.
7. The *National Planning Policy Framework*<sup>1</sup> (the Framework) sets out national policy on Green Belts and is an important material consideration. The Government attaches great importance to Green Belts. Paragraph 147 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In local policy terms, the Green Belt policies of the Framework are sought to be applied in Policy DS18 of the *Warick District Local Plan 2011 – 2029 (Adopted September 2017)* (herein LP).
8. Paragraphs 149 and 150 of the Framework indicate limited exceptions to inappropriate development. Those listed in Paragraphs 149 and 150 are of limited relevance in this case and it is not suggested by the parties that the proposal would fall into any of those exceptions: I concur. Indeed, the Appellant agrees in their Statement of Case, at page 24 of 40, that the proposed development is therefore considered to comprise inappropriate development in the Green Belt. Given the facts in this case, I agree.
9. Turning to openness, this is typically expressed as the absence of built form. Paragraph 137 of the Framework indicates that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
10. The erection of the modular batteries (with a total height of circa 2.8 metres, total width of 2.7 metres and total length of 15.3 metres), MV Skid, Switch room and control room, welfare container (12 metres in length at a height of 2.7 metres) poles with flood lights and/or infrared CCTV at a height of 4.5 metres, transformer compound of a height of 8 metres and

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<sup>1</sup> Last updated 5 September 2023 version

communications tower of around 15 metres, in what is currently an open field used for pasture, would erode the openness of the Green Belt.

11. Moreover, through the loss of countryside arising in this case, the proposal would fail to align with one of the five purposes of Green Belt set out in Paragraph 138 of the Framework. Paragraph 138 c) sets out that one of the five purposes that Green Belt serves is to '*assist in safeguarding the countryside from encroachment*'. I therefore find, in this case, that the proposal is inappropriate development and would reduce openness of the Green Belt.

#### *Character and appearance*

12. The proposed development would be situated in an isolated position within an open field and set away from the nearby abattoir and its associated buildings. Even with the use of planting and soft landscaping, which could be secured by means of a planning condition, the proposal would introduce an industrial feature into the wider landscape. This would be at odds with its currently rural character and appearance.
13. I note that the proposal could be for a 'temporary' period of around 40 years, and that the LVIA submitted in February 2023 suggests that there would be 'low cumulative landscape effects caused by this proposal'. Overall, the Appellant makes the case that '*the visual effect of changes on site will be barely perceptible from beyond the immediate landscape. The proposals will provide sustainable energy production in a rural location without having more than **moderate/slight** landscape effect on the wider rural landscape.*<sup>2</sup>
14. Given the proposal relates to battery energy storage system, which is about storage rather than energy creation, it is unclear as to how the proposal provides sustainable energy production. I concur with the summary above in respect of there being no more than a moderate / slight landscape effect if mitigation measures through the use of landscaping is taken into account.
15. Nonetheless, the proposal would still introduce an industrial appearing feature into the countryside. As such, the proposal would have an adverse effect on the character and appearance of the area. Accordingly, it would conflict with Policies NE4, CC2 and BE1 of the LP, which, amongst other aims, seek to ensure that the appearance of developments do not detrimentally impact the character of the local area.

#### *Heritage assets*

16. The Council's Officer Report<sup>3</sup> indicates that the site is located within proximity to the Grade II listed building known as Bannerhill Farmhouse, and also the locally listed Anti-Aircraft Battery site which is located towards Goodrest Farm. The significance of the listed building derives from its architectural interest, as detailed in its listing description, it dates from the 18<sup>th</sup> Century with some later additions. Little evidence has been submitted to demonstrate why the appeal site itself is of any direct or indirect link with this listed building beyond the fact it is there. Moreover, the listed building sits within its own plot and some distance away from the appeal site.

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<sup>2</sup> Statement of Case, page 36 / 40

<sup>3</sup> Pages 16 and 17 (of 22) in the pdf.

17. Likewise, the locally listed (or non-designated heritage asset) in the form of the Anti-Aircraft (AA) Battery, also sits some distance away from the appeal site, with intervening fields. There is very little that suggests the appeal site, which is essentially an open field, contributes to the significance or importance of this heritage asset.
18. In this respect, for both of these heritage assets, and being mindful of the importance and weight that should be afforded to the desire to preserve the setting of listed buildings in particular under s66(1) of the PLBCAA 1990, as amended, I concur with the findings of the submitted LVIA. This set out that;
- 'Consideration has been given to the potential for views to occur from heritage-related locations towards the site, including listed buildings. There is no intervisibility due to the distance and intervening vegetation and structures.*
- The setting of listed structures and scheduled monuments within 2km of the site will not be affected due to the distance to site and intervening screening vegetation. '*
19. I find that the proposal would, at the very least, preserve the setting of the nearby Grade II listed building and the significance of both this and the locally listed AA battery. Accordingly, the proposal would accord with Policies CC2 and HE1 of the LP, which, amongst other aims, seek to not permit development if it would lead to substantial harm or less than substantial harm to the significance of a designated heritage asset<sup>4</sup>.

#### *Biodiversity*

20. At the determination stage, the Council's ecological advisors raised concerns that without an off-setting scheme there would be a net loss of biodiversity. The proposal would therefore be contrary to Policy NE3 of the LP which requires that proposals protect, enhance, and/or restore habitat biodiversity. And that development proposals will be expected to ensure that they lead to no net loss of biodiversity.
21. At Appendix J of the Appellant's submission is a legal agreement under Section 106 of the *Town and Country Planning Act 1990*, as amended (TCPA) dated 24 May 2023 and agreed between five parties including the Appellant and the Local Planning Authority. Schedule 1 of this agreement secures Biodiversity Offsetting – either through an on-site mitigation or payment of a Biodiversity Contribution. I find that this would satisfy the requirements of Policy NE3 as set out above.
22. Accordingly, I find that the proposal, when considered in light of the submitted legal agreement, would accord with Policies NE2 and NE3 of the LP, which seek the aforesaid aims.

#### *Surface Water*

23. Policies FW1 and FW2 of the LP set out that planning applications should be submitted in line with validation checklists, and that all new major

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<sup>4</sup> Noting that if harm had been identified, and this was less than substantial, this would need to be weighed against the benefits in respect of the designated heritage asset in the form of the listed building. However, as I have not found harm on this matter, there is no requirement to then balance this absent harm against the benefits.

developments must incorporate Sustainable Drainage Systems (SuDS) that provide biodiversity, water quality and amenity benefits.

24. The Appellant has submitted a drainage strategy dated November 2022 (contained in Appendix L). I also note that there have been ongoing discussions with the Local Lead Flood Authority (LLFA) on this issue. The culmination of these activities are that it is highly likely that this matter could be resolved through the use of suitably worded planning condition(s). Indeed, the information before me indicates that there are solutions to addressing SuDS on this site – solutions which are pragmatic and proportionate to the development proposed.
25. Accordingly, I find that the proposal would accord with Policies FW1 and FW2 of the LP, which seek the aforesaid aims.

*Best and Most Versatile Agricultural Land (BMVAL)*

26. The Appellant's *Agricultural Land Classification Report* indicates that the site comprises roughly 0.54ha of Grade 3a land. It is, therefore, within the Best and Most Versatile Agricultural Land (BMVAL) classification as set out in the glossary to the Framework. Paragraph 174 b) of the Framework sets out that planning decisions should contribute to and enhance the natural and local environment by recognising the wider benefits from natural capital – including the economic and other benefits of the best and most versatile agricultural land.
27. Footnote 58 of the Framework sets out that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. Given the quantum of development proposed in this instance – comprising around 0.54 ha of Grade 3a land – I do not consider that it comprises 'significant development' in this case.
28. Policy NE5 of the LP sets out that development proposals will be permitted provided that they ensure that the district's natural resources remain safe, protected, and prudently used. Development proposals will be expected to demonstrate that they avoid the best and most versatile agricultural land unless the benefits of the proposal outweigh the need to protect the land for agricultural purposes.
29. The proposal here is reversible, being for a period of 40 years, after which the site could be restored to its former use as solely agricultural land. There exist various means in which this could be secured, including through the use of planning condition. In practical terms, this means that the land would continue to be protected for agricultural use, albeit for a period of 40 years it would be used for other purposes. I also note the Appellant's point that this location has been chosen as it is near to power line infrastructure. In this respect, there is a persuasive argument that this is a good place to put such a facility. At the same time, beyond linking into existing electricity infrastructure, there is little specific reason as to why this particular location is favourable to any other in respect of any new infrastructure.
30. Taken in the round, whilst I find that there would be some temporary loss of BMVAL over 40 years, I do not find that this would equate to its permanent loss nor would the proposal constitute significant development of agricultural land.

As such, the proposal would accord with Policy NE5 of the LP, which seeks the aforesaid aims.

### *Other Considerations*

31. I have found the proposal would constitute inappropriate development within the Green Belt. Paragraph 148 of the Framework makes it clear that substantial weight should be given to any harm to the Green Belt and 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. The Appellant's evidence suggests that the following very special circumstances provide justification for it to be permitted in Green Belt terms.
32. There is a clear indication from both central and local government – expressed in terms of statements, national policy statements, and planning policy – that the move is towards sustainable energy generation and towards a low carbon / zero carbon future. Battery storage facilities will be an important component of this delivery. They can help regulate and balance the flow of electricity through the network. Whilst the proposal would not generate renewable power itself, it would contribute to decarbonising the energy sector. I afford this factor modest weight in favour of the proposal.
33. In terms of its location, the need for it to be located close to a substation or 132kV overhead line, and the fact that the site provides this, is a modest benefit in favour of the proposal. I note that the Site Selection and Green Belt Assessment document provides a sequential assessment of potential alternative sites. However, I note that this is restricted to the Warwick district<sup>5</sup>, which means that its evidential basis is limited geographically. This factor is afforded little weight in favour of the proposal.
34. In terms of the Council's performance on delivery of renewable energy projects against its declaration of a climate emergency, this is noted. However, I afford it minimal weight given that the local authority is, in part, reliant upon other parties coming forward with proposals in order for them to be implemented.
35. With regard to the temporary nature of the proposal, I afford this little weight in favour of the proposal. This is because there would remain a period of at least 40 years when the harm to the Green Belt arising from inappropriateness would be in place.
36. In terms of other planning decisions, including appeal reference 3292837 at South Staffordshire and a recent planning permission at Wychavon District Council (ref W/22/02326/FUL), these are noted. I have not been provided with the full details of those decisions. Nonetheless, the Appellant points out that in the appeal decision, the Inspector judgment was that the '*environmental benefits of the proposal outweighed the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the proposal do exist and the scheme would not conflict with local policy or the NPPF*'.<sup>6</sup> However, in the case before me I have found that there would be harm arising – not only in Green Belt terms but also in relation to other issues, and as such it would not accord with local policy. Accordingly, I afford this factor minimal weight.

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<sup>5</sup> Statement of case, page 30 / 40

<sup>6</sup> Ibid, page 33 / 40

37. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

### **Conclusion**

38. Paragraph 148 of the Framework requires decision-makers to ensure that substantial weight is given to any harm to the Green Belt. In this case the proposal is inappropriate development and would reduce openness of the Green Belt.
39. Other considerations weighing in favour of the development must clearly outweigh this harm. Principal among these are the benefits of balancing electricity supply during the networks transition to a low/zero carbon future. Whilst I acknowledge these, and all other considerations put forward by the appellant, it is clear that all development in the Green Belt is subject to stringent planning policy tests which I have applied here.
40. In light of this, I conclude that those considerations put forward which weigh in favour of the proposal fail to clearly outweigh the substantial harm by reason of inappropriateness. The very special circumstances needed to justify the proposal do not therefore arise. The proposal conflicts with the Policies of the LP and of the Framework, the aims of which I have aforesaid.
41. Whilst I have not found the proposal would result in harm to the setting of the listed building, biodiversity, surface water flooding or BMVAL this does not provide justification for overcoming the harm identified in respect of the Green Belt.
42. I have also found that the proposal would result in harm to the character and appearance of the area, including its landscape. Taken in the round, I find that the proposal would not accord with the adopted development plan for the area when considered as a whole and that material considerations do not indicate a decision otherwise than in accordance with it. There would also be conflict with Policies contained in the Framework.
43. Accordingly, I conclude that the appeal should be dismissed.

*C Parker*

INSPECTOR