



Appeal Decision

Site visit made on 21 November 2023

by Hollie Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2023

Appeal Ref: APP/Q3115/W/22/3308675

Land to South West of Cowley Substation, Nuneham Courtenay OX44 9PA

- 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 (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Cowley Baldon Green Limited against the decision of South Oxfordshire District Council.
- The application Ref P22/S1541/FUL, dated 13 April 2022, was refused by notice dated 21 September 2022.
- The application sought planning permission for *installation of renewable led energy generating station comprising ground mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping and biodiversity enhancements without complying with a condition attached to planning permission Ref P20/S4360/FUL, dated 11.01.22.*
- The condition in dispute is No 3 which states that: *Planning permission is hereby granted for a temporary period of 35 years from the date of the first commercial export of energy. No later than one month after the first commercial export of energy the applicant shall supply written notice to the local planning authority. Following the expiry of the 35 years temporary period all ancillary equipment and structures shall be decommissioned and removed from the site within 12 months in accordance with the Decommissioning Method Statement agreed pursuant to Condition 19.*
- The reason given for the condition is: *Because of the temporary nature of the development and in order to safeguard the amenities of the area and protect the rural character of the area in accordance with Policies STRAT6, ENV1, DES1 and DES9 of the South Oxfordshire Local Plan 2035.*

Decision

1. The appeal is allowed and planning permission is granted for installation of renewable led energy generating station comprising ground mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping and biodiversity enhancements at Land to South West of Cowley Substation, Nuneham Courtenay, OX44 9PA, in accordance with the application Ref P22/S1541/FUL dated 13 April 2022, without compliance with condition number 3 previously imposed on planning permission Ref P20/S4360/FUL dated 11 January 2022 and subject to conditions in the attached schedule.

Procedural Matters

2. The original application was accompanied by an Environmental Statement (ES) (dated November 2020) prepared under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended). An

Environmental Statement Addendum (dated July 2022) was also submitted with the appeal proposal. I have had regard to the original ES, the Addendum and responses from statutory consultation bodies in reaching a determination on the appeal.

Main Issues

3. The main issues in this appeal are the effects of the proposal on:
- the openness of the Green Belt;
 - the landscape and visual amenity of the surrounding area;
 - designated heritage assets in the surrounding area;
 - Best and Most Versatile Agricultural Land; and
 - whether any harm by reason of inappropriateness, and any other harms, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Context

4. The established fallback position is that there is an extant planning permission for the Solar Farm which must be implemented prior to 11 January 2025 and for a lifetime of up to 35 years following the first commercial export of energy to the grid under the terms of Condition 3. The Solar Farm scheme would also incorporate associated infrastructure, including battery storage, landscaping measures and biodiversity net gain measures.
5. However, Condition 19 of the permission refers to the temporary period of the planning permission being for 40 years, which has created a degree of conflict and ambiguity between the conditions. The appeal proposal seeks to create consistency between the conditions to secure a 40 year lifetime of the permission, consistent with the lifespan of the solar panels. The officer's report which recommended approval of the extant planning permission refers to the permission being sought for a 40 year operational period.

Green Belt Openness

6. The site is entirely within the Oxford Green Belt. It is not disputed that the proposed development of a Solar Farm would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and the relevant development plan policies.
7. The site consists of six arable fields extending to around 123 hectares which form part of a functioning agricultural landscape, but excludes the central Nineveh Farm complex. The site is open and contributes to the aims of the Green Belt which are to limit the unrestricted sprawl of large built-up areas, prevent neighbouring towns merging into one another and assist in safeguarding the countryside from encroachment.
8. The location of the site has been chosen based, in part, on its proximity to Cowley Substation and its associated infrastructure which has capacity to accept the scheme. This is also within the Green Belt.

9. The proposal to cover a substantial extent of the site with solar panels would have a significant effect on openness. Under the extant permission, the harm would endure for its 35 year lifetime. Under the appeal proposal, the harm to openness would endure for a further five years. Despite the absence of alternative sites based on the detailed selection criteria, the harms to the Green Belt's openness that would arise from the development and endure for a further 5 years conflicts with Policies STRAT6 and DES9 of the South Oxfordshire Local Plan (Local Plan) (adopted 2020). Amongst other things, these Policies seek to protect the Green Belt from harmful development. For similar reasons, the scheme would be in conflict with the expectations of the National Planning Policy Framework (the Framework) to protect the Green Belt.

Landscape and Visual Impacts

10. The site is located within the *Nuneham Courtney Ridge* landscape character area (LCA)¹ and within the *Open Farmland Hills and Valley* landscape character type. The site and surrounding landscape are primarily agricultural in nature and have a value for recreational activities.
11. Other than for the two public rights of ways (PROWs) that cross through or close to the site, the site's visual connection to the wider landscape is limited by the extensive tree planting on the boundaries and established woodland block on the ridgeline. All of the boundaries would be retained and enhanced. In addition, panels would be omitted from the central, elevated part of the site to minimise the visual effects. Nonetheless, users of the PROWs would still experience significant visual effects.
12. Under the proposal, the effects would not materially differ during the years 35 – 40, although the tree planting and landscaping required by condition would be at its most established and thus, most effective by then.

Heritage effects

13. The extant scheme was found to result in less than substantial harm to the significance of a number of heritage assets. My duties under S66(1) of the Listed Building and Conservation Areas Act 1990 and the Framework require a consideration of the heritage impacts of the proposal.
14. A very low level of harm would arise to the significance of the grade II* listed Old Saints Church from the extant scheme through development within its setting. The settings of Toot Baldon Conservation Area, Marsh Baldon Conservation Area and Nuneham Courtenay Conservation Area will also be affected by the extant scheme in terms that conflict with the heritage protection aims of the Framework. The harms were considered to be of a minor magnitude, thus at the lower level of the scale of less than substantial harm. There was also expected to be a very low level of harm to the significance of Grade I registered Nuneham Park and its respective listed buildings and structures from the extant scheme. I find no reason to disagree with the respective conclusions.
15. Paragraph 202 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. There would be a number of instances of less than substantial harm to the

¹ Landscape Character Assessment for the Local Plan 2033

significance of various heritage assets of high significance. The public benefits of the scheme are weighed against these harms further below.

Best and Most Versatile Agricultural Land

16. The extant scheme would use around 10.9 hectares of Best and Most versatile land (BMV) for 35 years contrary to the expectations of Policy DES7 of the Local Plan to avoid its use, unless demonstrated to be the most sustainable choice. The proposed scheme would extend the period of the unavailability of the BMV for agricultural production by a further 5 years. Whilst longer term than originally permitted, this harm would still be a temporary one.

Planning Balance

17. By reason of its prolonged harm to Green Belt openness, effects on the landscape and harms to the significance of heritage assets, the proposal conflicts with the development plan.
18. However, the extension of the operational life of the Solar Farm would maximise the period over which it could generate renewable electricity and contribute to carbon reduction and Net Zero targets² to 2050 and beyond. The c. 45MW Solar Farm would have the ability to supply the demand of around 13,000 family homes and offset the production of around 23,000 tonnes of CO₂ per annum. To do this for a further five years whilst the solar panels were still within their operational lifespan would contribute further towards the achievement of local and national emission targets. Local Plan Policy DES9 is supportive of renewable energy generation.
19. The scheme would also deliver biodiversity net gains equivalent to around 38.99% which also attracts modest weight in favour of the scheme.
20. The landscape and visual effects would be well contained by the established landscaping by year 35, and their ongoing maintenance for a further five years would continue to minimise the impacts. The extension of the operational lifetime would not generate any different harms or increased adverse effects to those arising from the extant scheme in terms of drainage, archaeology, transport, trees, contamination, cumulative effects and effects on neighbours. The scheme would still remain fully reversible at the end of the 40 year period, or earlier, should the technology cease to export energy to the grid.
21. I therefore conclude that the public benefits of the scheme from the prolonged renewable energy generation and carbon offsetting effects substantially outweigh the lower level of less than substantial harms to the significance of numerous heritage assets.
22. I also reach the conclusion that the clear public benefits to the wider environment constitute the very special circumstances necessary to outweigh the harm to the Green Belt and other identified harms for the extended duration.

² Including: The Climate Change Act 2008 (2050 Target Amendment) Order 2019; Net Zero Strategy: Building Back Greener (October 2021); COP26 The Glasgow Climate Pact (2021); The Ten Point Plan for a Green Industrial Revolution (November 2020); National Infrastructure Strategy (November 2020); Energy White Paper (December 2020); South Oxfordshire Climate Action Plan 2022 – 2024 (CAP); Draft National Policy Statement for Renewable Energy Infrastructure (EN-3) (2021); National Planning Policy Framework; Planning Practice Guidance: Renewable and Low Carbon Energy

Other Matters

23. I have taken account of the letters of representation which indicate that it is premature to extend the lifetime of the permission at this stage as the advances in technology may nullify the need for the Solar Farm beyond its 35 year lifetime. Be that as it may, the panels will still be operational between years 35 – 40 years, so it would be logical for them to continue to serve their intended purpose until their expiration. A permission could be applied for to extend the permission closer to the end of its lifetime, but in the interim period, there is inconsistency between two conditions on the permission. The alternative conclusion that I have reached is that if the Solar Farm is redundant and ceases to export electricity for a period, then as required by Condition 18, it shall be removed sooner. This would avoid the scenario of the Solar Farm being left in situ if it were no longer serving a useful purpose.
24. I note the comments from interested parties in relation to the lawfulness of the extant permission which is not the subject of this appeal. The decision was not challenged and remains extant as a lawful baseline position in relation to this appeal.
25. I also note the relevance of the *Pathways to a Zero Carbon Oxfordshire* (2021) and draft *Oxfordshire Net Zero Route Map* (2022) raised by Oxfordshire CRPE as justification for greater selectivity in the choice of types and locations for renewable energy schemes. However, these documents do not indicate that ground mounted solutions will not be required at all, and nor do they demand that the national renewable legislative and policy context should be overlooked.

Conditions

26. Under S73 of the Act, it is not possible to extend the time limit for commencement of a development. Therefore, it is necessary to impose a condition requiring commencement by the 11 January 2025. Similarly, it is necessary for the majority of other conditions to be replicated as per the extant permission with the exception of Condition 3. The replacement Condition 3 limits the permission to a 40 year period to ensure consistency with Condition 19. Condition 19 is otherwise adapted to ensure a timelier removal of the Solar Farm in the event that it should cease to export electricity, as per Condition 18.

Conclusion

27. For the foregoing reasons, very special circumstances have been demonstrated that justify the scheme and outweigh the identified harms, such that a decision should be taken other than in strict accordance with the development plan. I therefore allow the appeal.

Hollie Nicholls

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 11 January 2025.
- 2) That the development hereby approved shall be carried out in accordance with the details shown on the following approved plans, except as controlled or modified by conditions of this permission:
 - Site Location Plan A SO1.A Rev v.i.
 - Site Location Plan B SO1.B Rev v.i.
 - Site Location Plan C SO1.C Rev v.i.
 - Site Plan Proposed SO2.0 Rev18
 - Topographical Plan Field 1&2 SO13.1 Rev v.b
 - Topographical Plan Field 3 SO13.2 Rev v.b
 - Topographical Plan Field 4 SO13.3 Rev v.b
 - Topographical Plan Field 5 2013-D007d Rev v.a.
 - Topographical Plan Field 6 SO13.5 Rev v.b
 - Auxiliary Transformer SO10.0 Rev01
 - Inverter Elevations & Roof Plan Proposed SO4.0 Rev01
 - Battery Container Elevations & Roof Plan Proposed SO12 Rev01
 - Elevations CCTV Proposed SO11.0 Rev 01
 - Elevations Control Room Proposed SO09.0 Rev01
 - Elevations PV Proposed SO3.0 Rev 01
 - Elevations Substation Proposed SO8.0 Rev01
 - Internal access road detail SO5.0 Rev01
 - Junction Arrangement A4074 Access SK01 RevC
 - Section & Details Weather Station Proposed SO7.0 Rev01
 - Fence and Gates elevations SO6.0 Rev02
 - Softworks Plans Overview 7427_SK_016C
 - Softworks Plans Planting Schedule_1 7427_SK_024
 - Softworks Plans Planting Schedule_2 7427_SK_025
 - Softworks Plans Planting Sheet_1 7427_SK_017
 - Softworks Plans Planting Sheet_2 7427_SK_018
 - Softworks Plans Planting Sheet_3 7427_SK_019
 - Softworks Plans Planting Sheet_4 7427_SK_020
 - Softworks Plans Planting Sheet_5 7427_SK_021
 - Softworks Plans Planting Sheet_6 7427_SK_022 Rev B
 - Softworks Plans Planting Sheet_7 7427_SK_023 Rev B
- 3) Planning permission is hereby granted for a temporary period of 40 years from the date of the first commercial export of energy. No later than one month after the first commercial export of energy the applicant shall supply written notice to the local planning authority. Following the expiry of the 40 years temporary period, or within six months of the cessation of electricity generation by the solar PV facility, whichever is sooner, all ancillary equipment and structures shall be decommissioned and removed from the site in accordance with the Decommissioning Method Statement agreed pursuant to Condition 19.

- 4) Prior to the commencement of the development hereby approved a scheme for the landscaping of the site, including the planting of live trees and shrubs, the treatment of the access road and hard standings, and the provision of boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. These details shall include schedules of new trees and shrubs to be planted (noting species, plant sizes and numbers/densities), the identification of the existing trees and shrubs on the site to be retained (noting species, location and spread), any earth moving operations and finished levels/contours, and an implementation programme. The scheme shall be implemented by no later than the first planting season following the First Export Date and thereafter be maintained in accordance with the approved scheme. In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within 5 years of the completion of the development, a new tree or shrub or equivalent number of trees or shrubs, as the case may be, of a species first approved by the Local Planning Authority, shall be planted and properly maintained in a position or positions first approved in writing by the Local Planning Authority.
- 5) Concurrent with the submission of comprehensive details of the proposed landscape works, a maintenance schedule and a long term management plan (for the life of the development), for the soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority. The Landscape Management Plan shall include:
 - a) Details of long term design principles and objectives.
 - b) Management responsibilities, maintenance schedules and replacement provisions for existing retained landscape features and any landscape to be implemented as part of the approved landscape scheme
 - c) A plan detailing which areas of the site the Landscape Management Plan covers and also who is responsible of the maintenance of the other areas of the site.
 - d) Summary plan detailing different management procedures for the types of landscape on site e.g. Wildflower meadows, native or ornamental hedgerows.The schedule and plan shall be implemented in accordance with the agreed programme.
- 6) Prior to commencement of the development hereby approved, the existing means of access onto the A4074 shall be improved and laid out and constructed strictly in accordance with the local highway authority's specifications and all ancillary works specified shall be undertaken.
- 7) A Construction Traffic Management Plan (CTMP), which shall include wheel washing facilities, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The approved CTMP shall be implemented prior to any works being carried out on site and shall be maintained throughout the course of the development. The CTMP shall state the times at which plant or material will be delivered to the site.
- 8) Prior to the commencement of any development, the applicant, or their agents or successors in title, shall be responsible for organising and implementing an archaeological watching brief, to be maintained during

the period of construction/during any groundworks taking place on the site. The watching brief shall be carried out by a professional archaeological organisation in accordance with a Written Scheme of Investigation that has first been submitted to and approved in writing by the Local Planning Authority.

- 9) Following the approval of the Written Scheme of Investigation referred to in condition 8, no development shall commence within the area identified as being archaeologically sensitive, as defined in the WSI, without the appointed archaeologist being present. Once the watching brief has been completed its findings shall be reported to the Local Planning Authority, as agreed in the Written Scheme of Investigation, including all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority within two years of the completion of the archaeological fieldwork.
- 10) Prior to the commencement the development, including vegetation clearance or any ground works, a construction environmental management plan for Biodiversity (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
- a) Update ecological surveys for relevant habitats and species, including an update badger surveys which is no older than 6 months. Update surveys shall follow national good practice guidelines.
 - b) Risk assessment of potentially damaging construction activities.
 - c) Identification of relevant biodiversity protection zones .
 - d) Practical measures (both physical measures and sensitive working practices) to avoid, reduce or mitigate the impacts on important habitats and protected species during construction.
 - e) The location and timing of sensitive works to avoid harm to biodiversity features.
 - f) The times during construction when specialist ecologists need to be present on site to oversee works.
 - g) Responsible persons and lines of communication.
 - h) Use of protective fences, exclusion barriers and warning signs.
 - i) Protected species licencing requirements (if any).

The approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 11) Prior to the commencement of any site works or operations, including demolition and site clearance relating to the development hereby permitted, an Arboricultural Method Statement and accompanying Tree Protection Plan shall be submitted to and approved in writing by the Local Planning Authority. The Arboricultural Method Statement must include the following:
- (1) A specification of any pruning or tree surgery works to any trees to be retained, to prevent accidental damage by construction or demolition activities;

(2) The specification and location of temporary tree protective fencing and any ground protection required to protect all retained trees in accordance with the current edition of BS 5837 "Trees in relation to design, demolition and construction", and details of the timing and duration of its erection;

(3) The definition of areas for the storage or stockpiling of materials, temporary on-site parking, site offices and huts, mixing of cement or concrete, and fuel storage;

(4) The route and method of installation of drainage or any underground services in the vicinity of retained trees; Consideration will be made to avoid siting of utilities and service runs within the Root Protection Area (RPA) of all trees to be retained. Only where it can be demonstrated that there is no alternative location for the laying of utilities, will encroachment into the RPA be considered. Methodology for any installation works within the RPA will be provided and must be in compliance with the current edition of NJUG 'Guidelines for the planning and installation and maintenance of utility apparatus in proximity to trees'.

(5) The details and method of construction of any other structures such as boundary walls in the RPA of retained trees and how these relate to existing ground levels;

(6) The details of materials and method of construction of any roadway, driveway, parking, pathway or other surfacing within the RPA, which is to be of a 'No Dig' construction method, in accordance with the principles with in Arboricultural Association Guidance Note 12 The use of cellular confinement systems near trees , and in accordance with current industry best practice; and is appropriate for the type of roadway required in relation to its usage.

(7) Provision for the supervision of ANY works within the RPA of trees to be retained, and for the monitoring of continuing compliance with the protective measures specified, by an appropriately qualified arboricultural consultant, to be appointed at the developer's expense and notified to the Local Planning Authority, prior to the commencement of development; and provision for the regular reporting of continued compliance or any departure there from to the Local Planning Authority.

Thereafter the development shall be carried out in accordance with the approved details with the agreed measures being kept in place during the entire course of development.

12) The proposed vision splay shall be formed, laid out and constructed in accordance with detailed plans, which shall be submitted to the LPA and approved in writing by the Local Planning Authority prior to the commencement of the hereby permitted and the land within the splay shall not be raised or allowed to grow above a maximum height of 600 millimetres (due to slope) above the carriageway.

13) Prior to the First Export Date surface water drainage works shall be carried out in accordance with a detailed scheme which shall first have been submitted to and approved in writing by the Local Planning Authority. Before the drainage scheme is submitted, an assessment shall be carried out of the potential for disposing of surface water by means of

a sustainable drainage system in accordance with the principles set out in Annex F of PPS25 (or any subsequent version), and the results of the assessment shall be submitted to the Local Planning Authority. Where a sustainable drainage system is to be provided, the submitted scheme shall include the following:

- 1) information about the design storm period and intensity, the method - employed to delay and control the surface water discharged from the site, and measures taken to prevent pollution of the receiving groundwater - and/or surface watercourses;
- 2) a timetable for its implementation;
- 3) a management and maintenance plan for the lifetime of the development - i.e. arrangements for adoption by any public authority or statutory - undertaker and any other arrangements to secure the operation of system - throughout its lifetime.

The scheme shall thereafter be undertaken and maintained in accordance with the approved details.

- 14) No development shall be undertaken within the area of archaeological preservation identified within the site, as referred to as HA2 and illustrated on Figure 7.13 of the Environmental Statement - Chapter 7: Cultural Heritage Addendum (Headland Archaeology 2021).
- 15) The development shall be carried out in accordance with the submitted flood risk assessment and the following mitigation measures it details:
 - There will be no raising of ground levels in Flood Zone 2 or 3;
 - During the construction phase any excavated material will be stored outside of Flood Zone 2 and 3.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/ phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

- 16) The development hereby permitted shall be implemented in accordance with the recommendations of the updated Landscape Ecological Management Plan dated September 2021 and Landscape and Ecological Enhancement Plan dated August 2020 submitted with the application in all respects. All ecological mitigation and enhancement features shall be delivered on site prior to first use and retained as such thereafter. Any variation shall be agreed in writing by the Local Planning Authority before such change is made.
- 17) No external artificial lighting or other security measures other than those agreed as part of this permission shall be installed during the operation of the site as a solar PV and battery storage.
- 18) Should the solar panels not be used continuously for the production of energy for a period of six months, the panels, support structures and associated buildings shall be removed in their entirety and the land shall be restored to its former condition in accordance with a scheme of work and timetable submitted to and approved in writing by the Local Planning Authority.

- 19) Not less than 12 months before the cessation of the development hereby permitted, a Decommissioning Method Statement (DMS) shall be submitted to and approved in writing by the Local Planning Authority. The DMS shall include details of the removal of the panels, supports, inverters, cables, buildings and all associated structures and fencing from the site, and a timetable for their removal. The DMS shall also include a traffic management plan to address likely traffic impacts during the decommissioning period and details of the proposed restoration of the site. The site shall be decommissioned in accordance with the approved DMS within 6 months of the expiry of the 40 year period of planning permission, if not before.

--- END OF SCHEDULE ---