



Appeal Decision

Site visit made on 22 January 2024

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/Y3940/W/23/3319392

Land off Pond Lane, Minety

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by PD688IRO Ltd against Wiltshire Council.
 - The application Ref PL/2022/00664, is dated 23 December 2021.
 - The development proposed is for a battery storage facility. The use of the site would change from agricultural to energy infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for “a battery storage facility. The use of the site would change from agricultural to energy infrastructure” at Land off Pond Lane, Minety in accordance with the terms of the application, Ref PL/2022/00664, dated 23 December 2021, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made against Wiltshire Council by the appellant. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal follows the Council’s failure to determine the planning application within the statutory timescale. The Council have subsequently confirmed that they have no objection to the proposal nor provided any suggestion that there is a conflict with the development plan, however, they have provided me with copies of a number of policies. I have taken into account representations received from interested parties. I have drawn on these to inform the main issues in this appeal and have assessed these against policies provided by the Council.
4. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023, replacing the previous version dating from 05 September 2023. The amendments made did not have any bearing on the issues in this appeal, and it was therefore not necessary to seek comments from the main parties on the updated Framework.

Main Issues

5. The main issues are:
 - whether the appeal site is an appropriate location for the proposed development; and

-whether the proposal would have a harmful effect on noise and air quality.

Reasons

Location

6. The appeal site lies in the open countryside. The site is in agricultural use and is surrounded by other fields also in agricultural use. To the south of the site is the Minety Water Tower. The site is bordered by Pond Lane to the east. The site boundaries are made up of hedgerows and the site is relatively flat. The site is located approximately 1km to the south of the National Grid Minety Substation (MS).
7. The proposal is for a Battery Storage Facility (BSF). The BSF would accommodate containers housing Battery Energy Storage Systems and inverter/transformer stations, which would be located in the southern half of the site and would be enclosed by an acoustic fence and security fencing. Access to the site would be gained via a new entrance off Pond Lane to the southeast site boundary. The proposed BSF would connect to the electricity grid at the MS where it is stated there is significant capacity to accommodate new inputs. The connection would be installed below ground.
8. Core Policies 1 and 2 of the North Wiltshire Local Plan 2011 (2006) (LP) set out the area's settlement and delivery strategy. Collectively, these policies seek to deliver development in the most sustainable manner by ensuring that development is confined to settlements, with limited exceptions for specific forms of development. The supporting text to LP Core Policy 2 sets out that the delivery strategy seeks to strengthen communities by allowing appropriate growth which seeks to reduce the need to travel and help redress the imbalance between jobs and homes by delivering improved self-containment and potential to generate job growth.
9. The proposal would introduce built form into the open countryside and would not meet any of the specified exceptions set out in LP Core Policy 2. However, the proposal would not result in use which would generate high levels of travel. Furthermore, based on the evidence before me, the siting of the proposal appears to be dictated by the proximity to the MS. In light of this, the siting of the proposed BSF would not undermine the Council's objectives to deliver development in a sustainable pattern and to reduce the need to travel.
10. Whilst the proposal itself is not a renewable energy project, it would improve energy storage by storing power at times of excess supply and feeding this back into the grid at times of high demand. This would maximise the use of renewable energy generation. Therefore, the proposal would directly support the development of new energy generating facilities which will increasingly be delivered from renewable energy sources. Thus, the proposal can be regarded as low carbon energy associated infrastructure.
11. The Framework sets out that proposals for renewable and low carbon energy sources should be approved if any impacts are, or can be made, acceptable. Additionally, there is policy support for the development of battery storage, which aids in the storage of energy generated from renewable sources, at the

national level, as set down in the Government's Energy White Paper¹ (EW) and National Policy Statement EN-1² (NPS).

12. Based on the information before me the appeal proposal, in combination with other proposals for BSFs, forms part of a wider strategy for the expansion of the National Grid and the location of these sites is, in part, dictated by the proximity to the MS for which there is identified capacity. I have been provided with limited details regarding other proposals for BSFs in the vicinity of the MS. Nonetheless, there is no indication that there would be any cumulative intervisibility between these sites or that, in combination, they would result in any likely significant cumulative landscape and visual effects.
13. The submission states that the proposal would not involve the loss of best and most versatile agricultural land. Additionally, the land itself is relatively small, and large areas of agricultural land would remain in the area. Therefore, the loss of this agricultural land would not in itself be significant and consequently the proposal would not be in conflict with the Framework in this respect.
14. Reflecting on the above, I find that the appeal site is an appropriate location for the proposed development. Thus, the proposal would not undermine the wider development strategy set out in LP Core Policies 1 and 2. Furthermore, the support for the proposal set down in the Framework, EW and NPS all weigh strongly in favour of the proposal.

Noise and Air quality

15. The appellant's noise assessment shows that the proposal would generate noise, including from the battery unit cooling systems, inverters and transformers, switchgear equipment, control room and auxiliary transformer. An acoustic fence is proposed which would contain some of the emissions and the noise assessment shows that with appropriate mitigation the development would comply with relevant noise guidance and standards. Based on the noise assessment, from the nearest residential properties the noise would not be notable. Subject to the inclusion of a condition relating to noise levels, the proposed development would not have a harmful impact in relation to this matter.
16. An interested party has raised concerns regarding the potential emission of toxic fumes. There is no clear evidence that such a facility would contain volatile chemicals and I am satisfied that any risk associated with apparatus at the site combusting would be suitably addressed by the specific construction and safety parameters. Therefore, I have no compelling evidence that suggests that such facilities would be unsafe.
17. In light of the above I conclude that the proposal would have an acceptable effect on noise and air quality. I therefore find no conflict with those aims of LP Policy NE18 which seeks to ensure that development does not generate harm upon public health or cause pollution to the environment by, the emission of excessive noise, light intrusion, smoke, fumes, other forms of air pollution, heat, radiation, effluent or vibration.

¹ Energy White Paper Powering out Net Zero Future (2020)

² National Policy Statement for Energy (EN-1) (2024)

Other Matters

18. I note comments received regarding the financial incentives for the proposed development. However, the focus of planning decisions should be on whether the proposed development is an acceptable use of land and should not be informed by the motivations of the appellant.

Conditions

19. I have had regard to the conditions suggested by the Council in their statement of case, on which the appellant has had the opportunity to comment. Where necessary I have made revisions to some of the conditions put to me to avoid duplication and ensure that they meet the tests in the Framework and PPG, without altering their fundamental aims.
20. Planning permission is granted subject to the standard three year time limit condition for implementation. In addition, it is necessary to specify the approved plans in the interest of certainty. In the interests of character and appearance, conditions are necessary for landscaping. In order to take account of the need to ensure that the biodiversity in and around the site is maintained and improved, and to ensure the long-term management of landscape and ecological features, a Construction Environmental Management Plan and Landscape and Ecology Management Plan are required.
21. In view of the likelihood of below ground archaeology being present on the site a condition requiring archaeological mitigation is necessary. A condition is also necessary to ensure that the proposal is provided with adequate surface water drainage in order to mitigate any flood risk the development might pose. Conditions relating to a road condition survey and construction management plan are necessary in the interest of highway safety. A condition to control the external lighting is necessary in order to protect the character and appearance of the area and a condition is necessary in order to control the hours of working on the site in order to protect the living conditions of nearby residents.
22. A condition relating to the noise level from the development is necessary in order to ensure that the noise generated by the proposal is adequately mitigated in order to protect the character of the area and the living conditions of the occupants of nearby dwellings. A condition relating to the removal of infrastructure following the cessation of the proposed use is necessary to ensure the timely restoration of land in the interests of visual amenity.

Conclusion

23. For the above reasons, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be allowed and planning permission granted subject to the conditions below.

N Robinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

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

3076-01-01,
3076-01-02,
3076-01-003 Rev C,
3076-01-04,
3076-01-05,
3076-01-06,
3076-01-07 Rev A,
3076-01-08,
3076-01-09
3076-01-10

- 3) No development shall take place until a scheme of hard and soft landscaping including measures for the protection of existing trees and hedgerows has been submitted to and approved in writing by the local planning authority. The landscaping works shall be carried out in accordance with the approved details. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.
- 4) No development shall take place until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP will align with recommendations in Section 4 and 5 of the Ecological Assessment (Avian Ecology, 15/12/2021) and the General Arrangement Plan drawing number 3076-01-003 Rev A. It will include long term objectives and targets, management responsibilities, timescale for implementation and maintenance schedules for each ecological feature and landscape area within the development.

The LEMP shall detail a mechanism for monitoring success of the management prescriptions, incorporating review and necessary adaptive management in order to attain targets. The development shall be carried out in accordance with the approved LEMP for the lifetime of the development.

- 5) No development shall take place until:

- a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
- b) The approved programme of archaeological work has been carried out in accordance with the approved details.

- 6) No development shall take place (including ground works/excavation, site clearance, vegetation clearance and boundary treatment works) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP will align with recommendations in Section 4 Ecological Assessment (Avian Ecology,

15/12/2021) and General Arrangement Plan drawing number 3076-01-003 Rev A. It shall provide details of the avoidance, mitigation and protective measures to be implemented before and during the construction phase.

The development shall be carried out in accordance with the approved CEMP.

- 7) No development shall take place, including any works of demolition, until a Construction Management Plan (CMP) has been submitted to, and approved in writing by the local planning authority. The approved CMP shall be adhered to throughout the construction period for the development.
- 8) No development shall take place until a scheme for the discharge of surface water from the site/phase, including sustainable drainage systems and all third-party approvals, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 9) Demolition or construction works shall take place only between the hours of 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 10) The 'rating' noise level from the development shall not exceed the following:
 - i. Where representative background sound levels are below 30dB LA90, the 'rating' noise level from the operation of the Site should not exceed a rating level of representative background +9dB or a maximum of 34dB LAeq,T , whichever is the lowest.
 - ii. Where background sound levels are 30dB or above, the 'rating' noise level should not exceed background +4dB.
- 11) No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage details have been submitted to and approved in writing by the local planning authority. The lighting shall be installed and shall be maintained in accordance with the approved details.
- 12) Within three months of the completion of the development, copies of a pre and post condition photographic highway survey of Pond Lane between the site access and the B4040 shall be submitted to the local planning authority. The Highway Authority will pursue rectification of any defects identified by the highway condition survey which can be attributed to the site construction traffic under the provision of Section 59 of the Highways Act
- 13) The development hereby approved including all related on-site built infrastructure (such as any CCTV cameras and poles, switch gear, access tracks, security fences, lights, etc.) shall be removed and the land restored to a condition suitable for agricultural use within 6 months of the batteries ceasing to be used.

END OF CONDITIONS