



Appeal Decision

Site visit made on 30 January 2024

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Appeal Ref: APP/P1560/W/23/3322871

Land adjacent to Halstead Road, Kirby-le-Soken, Essex

- 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 Naturalis Energy Developments Limited against the decision of Tendring District Council.
 - The application Ref 21/02181/FUL, dated 23 December 2021, was refused by notice dated 28 November 2022.
 - The development proposed is construction of a solar project together with all associated works, equipment and necessary infrastructure to include batteries alongside an Electric Vehicle Charging Station, parking, means of access, landscaping and associated development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 21 December. I have sought the views of the main parties on the changes, and I will have regard to their responses in determining the appeal.
3. In addition, revised National Policy Statements for energy infrastructure came into force on 17 January 2024. It is widely acknowledged that these are material considerations in determining solar farm planning applications and appeals. Accordingly, I have sought the views of the main parties on these changes too and I will have regard to their comments in determining the appeal.

Main Issues

4. The main issues are the effect on:
 - i) the character and appearance of the surrounding area; and
 - ii) the Strategic Green Gap between the settlements of Kirby-le-Soken and Kirby Cross.

Reasons

The site, the surrounding area and the proposals

5. The appeal site consists of 2 separate parcels of land; one large one (around 23ha) to the east of Halstead Road and a much smaller one (around 1ha) west of Halstead Road. The larger parcel which comprises 3 arable fields would contain the solar farm and related infrastructure.

6. The larger appeal site is located between 2 settlements, Kirby-Le-Soken and Kirby Cross, in an area designated in the local plan as a strategic green gap (SGG). The northernmost area of solar panels would abut the southern boundary of Kirby-Le-Soken and the southmost area of solar panels would be adjacent to a small part of the northern edge of Kirby Cross. Where the solar panels are adjacent to residential properties, they would be set back 30m from the shared boundary.
7. There are 3 public rights of way (PROWs) within the larger area of the appeal site. One of them bisects one of the fields which would contain solar panels. There are also a number of paths used by people along the edges of the fields and these would become established permissive paths as part of the proposal.
8. The footpaths not only provide recreational opportunities and easy access for local residents to the countryside they also connect up the settlements of Kirby-Le-Soken and Kirby Cross. It is a short easy walk from one to the other, across the fields.
9. Turning now to the smaller parcel of land, this is located between the two settlements, adjacent to Halstead Road and surrounded by a number of individual dwellings set in good sized plots. To the west of this site is a large recreation ground and immediately to the west of the proposed eco hub runs a public footpath that would be retained.
10. This part of the appeal site is flat and currently an open field. It would be developed in conjunction with the solar farm to provide electric vehicle (EV) car charging points and a car park as well as a café with toilet, waiting facilities, a play area and a picnic area. It would be enclosed by a close boarded fence up to 1.8m high.
11. This part of the site would also include a Battery Energy Storage System (BESS) housed in shipping containers as well as other electrical equipment. It would be enclosed by security fencing up to 2.5m high. The electricity used to charge the vehicles would be generated at the proposed solar farm and the associated facilities would provide for the needs of those waiting for their car to charge as well as others wishing to use the café and play area. The car parking would also be available to the users of the adjacent recreational area since the existing car parking opportunities there are limited.

Local Plan policy context

12. The development plan comprises the Tendring District Council Local Plan Section 2 (LP). Policy PPL 3 seeks to protect the rural landscape from development that would harm its character and appearance and policy SPL 3 requires all new development to make a positive contribution to the quality of the local environment and protect or enhance local character.
13. Policy PPL 6 seeks to restrict development in SGGs to ensure that the separate identity of individual settlements is retained and to prevent the coalescence of settlements. The LP describes them as having the following characteristics:
 - i) The open and undeveloped character of the land;
 - ii) They form a visual break between settlements;
 - iii) Their boundaries follow physical features on the ground floor; and/or

- iv) Only land required to secure the objectives of the SGG has been included.

Character and appearance

14. Given their nature and scale, it is inevitable that solar farms may result in landscape harm. In this context, national planning policy adopts a positive approach indicating that when determining planning applications for renewable and low carbon development, local planning authorities should approve the application if its impacts are (or can be made) acceptable.
15. The Framework at paragraph 180, indicates that the intrinsic character and beauty of the countryside should be recognised. That said, the Framework does not seek to protect, for its own sake, all countryside from development; rather it concentrates on the protection of valued landscapes.
16. The appeal site comprises agricultural fields and is entirely rural in appearance, but it is close to two settlements and the housing in them. The has an urbanising effect on the countryside here.
17. A useful starting point in dealing with the effect of the proposal on the character and appearance of the area is to consider the way in which it is described in character appraisals.
18. The Tendring District Landscape Character Assessment (TDLCA) divides the district into 8 landscape character types (LCT). The appeal site falls within 2 Landscape Character Areas each of which belongs to a different LCT, namely LCA 3A Hamford Coastal Slopes (LCT Coastal Slopes) and LCA 8B Clacton and the Sokens Clay Plateau (LCT 8 Clay Plateaux).
19. The majority of the site falls within the southern edge of LCA 3A which is described as having the following characteristics:
 - Gently sloping land encircling, and forming the setting of, the open marshes of Hamford Water.
 - Low, scrubby and intermittent hedgerows divide regimented fields typical of late enclosure.
 - Scattered farmsteads and manorial halls form a dispersed settlement pattern.
 - Kirby-le-Soken is an historic settlement, located along the southern edge of Hamford Water.
 - Outskirts of Harwich and Frinton continue to expand onto the coastal slopes over-looking Hamford Water.
 - Panoramic views over Hamford Water towards Harwich.
20. A great deal of emphasis here is on Hamford Water, a National Nature Reserve to the north of Kirby-le-Soken and unaffected by the scheme before me.
21. The southern half of the eastern parcel of land within the appeal site falls into LCA 8B which is described as having the following characteristics:
 - Underlain by solid geology of London Clay which gives rise to slowly permeable, seasonally waterlogged clayey soils and standing water.

- Low gappy hedgerows with occasional hedgerow trees divide arable fields.
 - Good access provided by the A133, B1033 and B1441 which form a backbone for the ribbon development that dominates the areas around Clacton and Frinton.
22. I saw when I visited the site where the solar farm would be located the land slopes gently from south to north and that the low gappy hedgerows dividing the fields are interspersed with trees. Whilst an electricity cable is carried across the site on timber poles there are no large man-made structures in the landscape, such as electricity pylons. Indeed, the site has a rural character and appearance despite being close to two settlements. Moreover, the site provides a welcome break to development and an opportunity for people to walk, away from buildings and traffic.
23. Whilst the PROWs would be retained and the permissive footpaths formalised the footpaths would be enclosed by development in the form of solar panels, 2m high deer fencing and new landscaping or solar panels and existing housing. At best, some footpaths would have solar panels on just one side. The solar panels would be offset from the rear gardens of the properties on Dugmore Avenue and Hillcrest by 30m and have a new landscape buffer planted between the development and the public right of way (PROW)/permissive footpath. The PROW which crosses through a field of solar panels would be around 10m wide with planting on both sides. In other places the footpath would be 5m wide where there are solar panels on just one side.
24. Whichever route is taken across this land by foot the experience would alter significantly from one of open views with housing in the distance to a far more enclosed one dominated by built, industrial type development. Moreover, despite the landscaping, even when it is fully mature the solar panels are likely to be visible along some footpaths because of the rising landform. Overall I find that the solar farm would have a significant adverse effect on the character and appearance of the surrounding area.
25. In terms of the smaller part of the site, whilst this part of the proposal would introduce built development into the open countryside it would be well screened by existing and proposed landscaping. It would also provide some facilities that would be beneficial to the local community and the users of the recreational facilities. As such this element of the scheme would be acceptable. However this part of the proposal is intrinsically linked to the solar farm which I have found would harm the character and appearance of the area and conflict with LP policy PPL 3 and SPL 3.

Strategic Green Gap

26. The larger appeal site which would contain the solar arrays and associated infrastructure would be located within a Strategic Green Gap (SGG), as identified on the LP policies map.
27. The proposed solar farm would introduce significant development into this SGG. Although it would be different both visually and functionally to housing which is what such policies are generally aimed at preventing it would nonetheless join up the two settlements and as a result the open and undeveloped character of the land would change for the 40 years that the solar

farm would be permitted to be operational. As such it would significantly erode the visual break between the two settlements.

28. The proposal would conflict with policy PPL 6 since it would introduce development into this open and undeveloped land, thereby altering its character to a material degree and eliminating the visual break between the settlements.

Other Matters

Renewable Energy

29. The Government recognises that climate change is happening through increased greenhouse gas emissions. One of the ways in which they are seeking to reduce reliance on energy production from fossil fuels is to significantly boost the amount of energy that is generated through renewable energy, including solar energy. The Climate Change Act 2008, as amended sets a legally binding target to reduce net greenhouse gas emissions from their 1990 level by 100%, to Net Zero by 2050.
30. A material consideration in the determination of planning proposals is, National Policy Statements (NPS) for the delivery of major energy infrastructure. NPSs EN-1 and EN-3 identify, as part of the strategy for the low-cost decarbonisation of the energy sector, solar farms which they see as providing a clean, low cost and secure source of electricity. The importance of storage is also recognised. In terms of EVs, EN-1 recognises the need to reduce our dependence on oil by improving vehicle efficiency and using alternative fuelled vehicles.
31. Tendring District Council declared a climate emergency in 2019 and committed to the preparation of an action plan with the aim of making its own activities carbon neutral by 2030 and acting as a community leader to encourage communities and developers to reduce carbon emissions and tackle climate change.
32. The December 2020 Energy White Paper: Powering our Net Zero Future (WP) reiterates that setting a net zero target is not enough, it must be achieved through, amongst other things, a change in how energy is produced. The WP sets out that solar is one of the key building blocks of the future generation mix. In October 2021, the Government published the Net Zero Strategy: Build Back Greener where under key policies it explains that subject to security of supply, the UK will be powered entirely by clean electricity through, amongst other things, the accelerated deployment of low-cost renewable energy generation such as solar.
33. The solar farm would have a generation capacity of approximately 26 MW and would generate enough electricity to power the equivalent of 6,400 houses. This would result in approximately 11,000 fewer tonnes of carbon dioxide emissions from energy generation in the UK each year during its operational period. There would be further benefit from the incorporation of battery storage with a capacity of up to 3MW alongside the solar farm.
34. In terms of the EV charging, the Government has set out a clear strategy on how it will support the transition to zero emission road transport and reduce emissions from conventional vehicles during the transition. The 2018 Road to Zero Strategy includes an "ambition" for at least 50% — and as many as 70% — of new car sales to be ultra-low emission by 2030, alongside up to 40% of

new vans. By 2030, the UK Government expects there to be around 300,000 public charge points as a minimum in the UK with rollout rates that provide sufficient charge points ahead of demand.

35. The appeal proposals include an EV charging station that would comprise up to 12 rapid and ultra-rapid charging points (43-350kW capacity) and 13 fast EV charging points (c. 22kW). All charging points would be configured for use by any type of modern, light-duty EV and they would not be restricted to one EV manufacturer.
36. The EV charging station would also be powered entirely by electricity generated from the proposed solar farm and supported by the proposed battery storage at times of lower generation. The EV charging station would therefore not require power to be drawn off the national grid thereby avoiding the use of fossil fuels in its operation.
37. The substantial benefits of the scheme attract significant weight in favour of the proposals.

Planning Balance

38. A material consideration is the time limited nature of the proposals. Forty years is a long time and the proposed 40-year life of the solar farm is significantly more than a generation. Thus, in coming to my conclusion I have these factors/concerns uppermost in my mind.
39. Both national and development plan policy recognise that solar farms may result in some landscape and visual impact harm. However, both adopt a positive approach indicating that development can be approved where the harm is outweighed by the benefits.
40. However, this is a planning judgement based on the merits of each case. Here, due to the topography of the site where the solar farm would be located, along with the presence of a number of footpaths, despite existing screening and landscape mitigation, the adverse effect on landscape character and visual impact would be localised, but unacceptable and in conflict with some of the relevant development plan policies. The proposal would also infill the SGG between the Kirby-Le-Soken and Kirby Cross which I have found would be harmful.
41. The imperative to tackle climate change, as recognised in legislation and energy policy, and the significant benefits of the scheme do not clearly and decisively outweigh the harm that I have identified.

Conclusion

42. For the reasons given above I conclude that the appeal should be dismissed.

Louise Crosby

INSPECTOR