



Appeal Decision

Site visit made on 28 April 2024

by SRG Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03 May 2024

Appeal Ref: APP/A0665/W/23/3325596

The Vraj, Forest Gate Lane, Kelsall, Cheshire CW6 0SZ

- 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 and Mrs Ardeshana against the decision of Cheshire West & Chester Council.
- The application Ref 22/01639/FUL, dated 1 May 2022, was refused by notice dated 2 May 2023.
- The development proposed is the installation of a 30-ground mounted PV panel array.

Preliminary Matters

1. The address of the appeal site as shown on the application form differs from that used on the decision notice and the appeal form. I have taken the address from the latter forms.
2. Although not stated on the application form, the submissions indicate that the intention of the application is for the temporary siting of the array, albeit no specific time period is referred to other than, "...the appellant proposes the removal of the solar panels after their lifespan to restore the area...."
Documentation submitted with the application shows that the panels have a 25-year product and linear performance warranty. In the absence of any other detail, the appeal is dealt with on the basis of a temporary permission for up to 25 years.

Decision

3. The appeal is allowed, and planning permission is granted for the installation of a 30-ground mounted PV panel array at The Vraj, Forest Gate Lane, Kelsall, Cheshire CW6 0SZ in accordance with the terms of the application, Ref 02/01639/FUL, dated 1 May 2022, subject to the conditions contained in the attached Schedule of Conditions.

Background

4. The development plan includes the Cheshire West and Chester Local Plan Part 1: Strategic Policies and Part 2: Land Allocations and Detailed Policies. Policy ENV 7 – Alternative Energy Supplies indicates support for renewable and low carbon energy proposals where there are no unacceptable impacts on amongst other things, landscape, visual or residential amenity; noise, air, water, highways or health; biodiversity and the natural or historic environment. Policy DM 52 – Solar Energy, says that proposals for ground mounted solar energy development will be supported where they meet the requirements of Policy ENV 7 and 7 policy criteria. The Council acknowledges that Policy DM 53 is largely directed at large scale solar farm developments and given the wording

of the various criteria, I have no reason to disagree. For this proposal, in terms of renewable energy, Policy ENV 7 is, the most relevant policy.

5. The Council has indicated that the proposal would not conflict with Policies DM 2 - Impact on Residential Amenity; DM 3 – Design, Character and Visual Amenity; SOC 5 – Health and Wellbeing and ENV 4 – Biodiversity and Geodiversity. I have no reason to disagree with these conclusions. The appeal site is located within the Green Belt and countryside. Policy STRAT 9 – Green Belt and Countryside seeks to protect the character of the countryside. This policy goes on to say that countryside within the Green Belt will be subject to policy set out in the National Planning Policy Framework (Framework).

Main Issues

6. There appears to be no dispute between the parties, and I have no reason to disagree that, having regard to Framework paragraphs 154 and 155, the proposal would represent inappropriate development in the Green Belt. Accordingly, the main issues are, (1) the effect on the openness of the Green Belt, and (2) whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by the other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Openness

7. Openness is an essential element of the Green Belt and has 2 elements, visual and spatial, generally accepted to be the absence of buildings and development. The Vraj and its associated curtilage are well screened from surrounding views. The only possible and very narrow and long view of the arrays would be obtained from rising ground directly to the south of Forest Gate Lane. That said, there is no indication that that limited location has any public access. Accordingly, I have no reason to disagree with the Council's conclusion that there would be no loss of visual openness. Relative to the overall curtilage of The Vraj, the area covered by the arrays would extend to some 70sq.m; a small area and with a height of some 1.5m. the impact on and harm to spatial openness would be negligible.

Other Considerations

8. Providing for renewable and low carbon energy is a key Government policy objective. National Planning Policy Statements (NPS), which are capable of forming a material consideration in decision making on applications under the Town and Country Planning Act 1990 (as amended) and the Framework are the most up-to-date expressions of national policy. In 2019, the Government legislated for a 2050 net zero greenhouse gas emissions (GHG) target through the Climate Change Act 2008 (2050 Target Amendment) Order 2019. In 2021 legislation was enacted for the 6th carbon Budget requiring the UK to reduce GHG emissions by 78% by 20235 compared to 1990 levels. These targets are acknowledged as requiring a step change in the decarbonisation of the energy system, necessitating a significant amount of new energy infrastructure, including small-scale developments determined at a local level. Solar is acknowledged as one of the lowest cost ways of generating electricity and is a key part of the strategy for low-cost decarbonisation of the energy sector¹.

¹ Overarching National Policy Statement for Energy (EN1) & Renewable Energy Infrastructure (EN3).

Framework paragraph 156 indicates that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable resources.

9. The arrays could generate up to some 18,500 kWh per annum (pa) and potentially displace some 4,300 tonnes of CO₂ pa. These figures are not disputed by the Council, and I have no reason to dispute them.
10. Objecting to the proposal, the Council focuses on the fact that the energy generated by the development would serve a single private dwelling. However, that is not the only relevant benefit particularly given the wide variety in domestic consumption levels. In a case like this, what should be focussed on is the wider benefit of a reduction in CO₂ emissions, which are accepted to be a major contributor to GHG emissions. Framework paragraph 163(a) recognises that small-scale projects provide a valuable contribution to significantly cutting GHG emissions. Thus, given the imperative set out above, notwithstanding the modest scale of this proposal, very substantial weight is attached to the renewable energy benefits of this scheme. This conclusion is consistent with those reached in the appeal decisions referred to².
11. Unlike, the Inspector in the Cokeley Mead Appeal³, significant weight is attached to the temporary nature of the proposal and the reversibility of the negligible harm the openness. Whilst the grant of temporary permission does not sit squarely with the advice in Planning Practice Guidance (PPG) on temporary planning permissions, 2 matters need to be recognised. First, PPG is guidance and is not exhaustive, and second the use of a condition to time-limit solar permissions is universally used in ground mounted solar array proposals. This is because, the generating life of a solar panel is limited and the use of a temporary permission is necessary to ensure that redundant panels are removed, and land restored at the end of their generating life.
12. Given the small-scale nature of the proposal and the almost complete absence of visibility from public vantage points, there would be no harm to the character and appearance of the area.

Other Matters

13. Whilst the Council suggest there may be alternative locations, the appellants have submitted a robust assessment of the alternatives. Through a combination of excessive shading or a restriction on the number of panels that could be sited in each location, particularly on the dwelling roof, the appellants assessment shows that these installations would be materially less efficient in generating satisfactory.

Planning Balance and Overall Conclusion

14. The proposal would be inappropriate development in the Green Belt, which, by definition, is harmful to which must be added the negligible harm to openness. Framework paragraph 153 says that any harm to the Green Belt attracts substantial weight. The absence of harm the character of the area is a neutral factor. Given the conclusions above, the contribution the proposal would make to cutting GHG emissions, the negligible harm to openness, which would be

² APP/C1950/W/19/3225810 & APP/R0335/W/22/3294302.

³ APP/R0335/W/22/3294302.

reversible, clearly outweigh the harm to the Green Belt and amount to the very special circumstances necessary justify the proposal.

15. The proposal would not conflict with Policies ENV 7 and Strat 9 and the development plan when read as a whole or Framework Policy. Accordingly, for the above reasons and having taken all other matters into consideration, the appeal is allowed.

Conditions

16. In the interests of certainty, a condition specifying the approved plans is imposed. To mitigate the impact of the proposal on adjoining gardens, the appellants propose to include screen planting, although no details have been submitted. Accordingly, conditions relating to the provision of screen planting are reasonable and necessary. As indicated earlier conditions relating to limiting the period of the permission and decommissioning are reasonable and necessary. Where necessary in the interests of precision and enforceability, I have reworded the suggested conditions.

George Baird

Inspector

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby permitted shall be carried in accordance with the following submitted plans, Location Plan L0001, Proposed Site Plan L0010 and Plan & Elevation L0011.
3. This permission will expire within 25 years from the date when electricity from the solar array is first exported to The Vraj or the grid, whichever comes first (First Export Date). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after this event.
4. Within 3 months of the solar array hereby permitted ceasing to be used for the generation of electricity, or at the end of this permission, whichever is the sooner, the array and associated infrastructure, shall be permanently removed from the land and the site restored to its former condition in accordance with a scheme, the details of which shall be submitted to and approved in writing by the local planning authority.
5. No development shall commence until of the following soft landscaping works for the site shall be submitted to and approved in writing by the local planning authority. The landscaping details shall include details of boundary treatments. Soft landscape works shall include a detailed planting plan, written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and an implementation programme.

The approved details shall be implemented wholly in accordance with the approved details and shall be carried out in the first available planting season following the erection of the panels.

If within a period of 5 years from the date of initial planting, any trees, shrubs or hedges planted in accordance with the approved soft landscaping works are removed, die, become diseased or seriously damaged then replacement trees or shrubs shall be planted in the next planting season with others of similar sizes and species unless the local planning authority gives it written approval to any variation.