



Appeal Decision

Hearing held on 30 July 2024

Site visit made on 30 July 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2024

Appeal Ref: APP/C4615/W/24/3341383

Lowlands Farm, Illey Lane, Halesowen B62 0HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Anglo ES Kitwell Limited against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P22/1733.
 - The development proposed is provision of battery energy storage, substation compound with associated infrastructure, fencing, access road, drainage and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for provision of battery energy storage, substation compound with associated infrastructure, fencing, access road, drainage and landscaping at Lowlands Farm, Illey Lane, Halesowen, B62 0HJ in accordance with the terms of the application, Ref P22/1733, subject to the conditions in the attached schedule.

Preliminary Matters

2. The Council's third reason for refusal related to the impacts of the development on ecology. Since their decision, the appellant has submitted additional ecological information which the Council considers addresses their concerns, and so they do not wish to defend this reason for refusal. I have no reason to disagree.
3. The access part of the appeal site is within the neighbouring District of Bromsgrove. That Council have delayed a decision on the planning application submitted to them relating to the parts of the development in their District, until after the decision on this appeal.
4. At the hearing an amended customer control room elevations drawing was provided. This supersedes the previous drawing which erroneously did not reflect the building as shown on the site layout plan. As this plan corrects an error and does not materially alter the scheme I have accepted it and no parties would be prejudiced by this.
5. Subsequent to the hearing, the government published a draft revised National Planning Policy Framework (the 'Framework') and issued a written ministerial statement. The main parties were given the opportunity to comment, and I have taken their responses into account.

Main Issues

6. The main parties agree the proposal would be inappropriate development in the Green Belt as it would not fall into any of the categories of development identified in paragraph 154 of the Framework that can be considered not inappropriate. There is also agreement that the proposal would cause harm to the openness of the Green Belt. The main issues therefore are:
- the degree of harm to the openness of the Green Belt;
 - the effect on the character and appearance of the area including the Area of High Historic Landscape Value (AHHLV); and
 - would the harms to the Green Belt, and any other harms, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Openness

7. The Framework states that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open; highlighting that its permanence and openness are its essential characteristics. Overarching National Policy Statement for Energy (EN-1) reflects the Framework in identifying that substantial weight should be given to any harm to the Green Belt, adding that account should be taken of the extent to which developments physical characteristics affect the fundamental purposes of the Green Belt, which are set out in paragraph 143 of the Framework.
8. The Black Country Green Belt Study (2019) assesses parts of the Green Belt for their contribution to these purposes. The site is within the southeastern tip of the Lapal sub-parcel. The east boundary of the sub-parcel is defined by the M5 motorway and the north boundary is defined by the A456 dual carriageway. The urban areas of Birmingham and Halesowen are on the other side of these major roads. The open and substantially undeveloped character of this sub-parcel, combined with the adjacent urban areas and their strong boundaries, leads the study to conclude that the sub-parcel makes a strong contribution to checking the sprawl of built-up areas and to safeguarding the countryside from encroachment. It says it also makes a contribution to preventing neighbouring towns from merging, but this is only moderate because to the northeast there is already little distinction between Halesowen and Birmingham. Overall, it concludes that very high harm would result from release of any land from the Green Belt.
9. Though the M5 and the existing electricity pylon on the appeal site do mean the site is less tranquil and open than other parts of the sub-parcel, I do not consider that these features interfere with its contribution to safeguarding the countryside from encroachment and I agree with the study insofar as the site makes a strong contribution this purpose. The site's contribution to checking urban sprawl, however, is limited as the conurbation of Birmingham on the east side of the M5 is not immediately apparent from the site, the M5 or indeed from other nearby viewpoints given the trees along the east side of the motorway. Similarly due to its distance from Halesowen the site makes little contribution to preventing the merging of that town with Birmingham. I recognise the development would not necessarily result in the release of the

- site from the Green Belt. Nonetheless, the scale of development proposed, and over the timescales proposed, would have a similar effect.
10. In that context, the harm to openness can be assessed in terms of spatial and visual impacts. Spatially, the development would mostly involve the provision of plant and equipment including a series of battery units around 3 metres in height, associated infrastructure, some compound buildings, palisade fencing, CCTV cameras as well as an access road. These would all occupy space that is currently open, aside from the electricity pylon, and used for grazing. Due to the spread and scale of these works there would be a significant loss of spatial openness.
 11. In visual terms the plant would be visible from a number of public footpaths and from the M5 motorway. The Black Country Landscape Sensitivity Assessment considers an area, broadly similar to that in the Green Belt Study, as having a moderate to high sensitivity to development. This is partly because of the extensive network of public rights of way, and hence the visibility that any development would have from multiple viewpoints. Views from the M5 would be brief, transient and it is likely that drivers would be mainly focussed on the road, not the countryside alongside it. Nonetheless, the openness of the Green Belt is unmistakable from here with long distance views to the Clent Hills far in the distance possible.
 12. The view from the footbridge over the M5 is from where the development would be most prominent. From this elevated position the scale and spread of the works would be conspicuous with the proposed screening providing little mitigation.
 13. Although a new boundary hedge is proposed for the north east corner of the site to run alongside footpath HLS0087, some limited views through the hedge may be possible and it is likely that at the southernmost point of this path a clear view of the development would be likely. From positions on this footpath further north, views are unlikely to be achievable, partly because of the extensive tree planting that is proposed in the northern part of the appeal site, but also because the land falls away in this direction and so the development would most likely be largely hidden by the crest of the hill.
 14. Currently, due to the gappy hedge on its western boundary, the site is visible from positions along footpath HLS0088, albeit at a considerable distance. Supplementing the hedge with planting to fill the gaps would substantially screen the development and the provision of additional tree planting along this western side would strengthen this screening further. Views from footpath 501 to the south would be restricted by the existing trees along the south boundary of the site, and similarly views from footpath HLS0098 to the west of the site would be prevented by intervening trees and hedgerows.
 15. Overall, the development would be visible from a number of viewpoints, even accounting for the screening proposed. Given the scale of the development and its visibility, there would be a significant loss of visual openness.
 16. Though the site is small in the context of the wider parcels considered in the Green Belt Study and Landscape Sensitivity Assessment, I consider it does make a strong contribution to the Green Belt and the development would conflict with the Green Belt's purpose to safeguard the countryside from encroachment. This would considerably harm the openness of the Green Belt in

both spatial and visual senses. The harms to the purpose, and to the openness, of the Green Belt carry substantial weight.

17. The development would therefore conflict with policies S23 of the Dudley Borough Development Strategy (DBDS), which sets out the presumption against inappropriate development in the Green Belt; and S19 which requires parts of the Green Network, such as this, to provide a break between distinct areas. It would also conflict with policy CSP2 of the Black Country Core Strategy (BCCS) which similarly seeks to protect the Green Belt from inappropriate development.

Character and appearance

18. The National Policy Statement for Electricity Networks Infrastructure (EN-5) recognises that infrastructure like this can give rise to adverse landscape and visual impacts and that developments should protect, as far as reasonably practicable, areas of local amenity value.
19. The site is within the Illey and Lapal AHHLV. This is a non-designated heritage asset, and as such paragraph 209 of the Framework is relevant. This states that for developments that directly affect such an asset, a balanced judgement will be required having regard to the scale of any harm and the significance of the asset.
20. The significance of the AHHLV includes the remains of ridge and furrow agricultural practices and boundary hedgerows signifying old parish boundaries as set out in the Black Country Historic Landscape Characterisation Study (2019). The development would not affect the fields which display ridge and furrows and would not affect the hedgerows.
21. The ruins of the 13th Century St Marys Abbey are also of significant historic interest, but are over a kilometre from the site, and it was stated at the hearing that there is no view of the site from the Abbey. As such, I consider the development would not affect the setting of this heritage asset.
22. The study also states that the AHHLV is of considerable scenic value and part of the north Worcestershire countryside. As set out above, the site is visible from a number of locations, and from the M5 and the footbridge over it, it is seen against the background of the wide open vista to the west and south. However, from the evidence before me, I do not consider these views to be of particular heritage significance to the AHHLV.
23. Nonetheless, these views are an important part of the character and appearance of the area generally. The presence of the M5 and the pylon on site do not detract from that and, as set out above, the proposed landscaping would only partly mitigate the impact.
24. As such the development of this field would harm the character and appearance of the area but not the significance of the AHHLV which would be preserved. It would therefore conflict with BCCS policies CSP4 and ENV3 and DBDS policies S6 and S8, which all generally require development to respond positively to the character of its surroundings. However, because of the degree of landscaping proposed, I give only modest weight to that harm.
25. I find no conflict with DBDS policies S22 which seeks to protect trees and woodland as there would be no harm caused to such landscape features, or S7

which requires landscaping schemes to help blend the development into its surroundings. There would also be no conflict with BCCS policy ENV2 which seeks to ensure the historic character of the Black Country is protected, or DBDS policy S13 which seeks to protect the historic integrity of the AHHLV.

Other considerations

26. The development would facilitate greater use of renewable energy sources such as wind and solar by allowing such sources to continue to provide energy, even when it is not consumed, whereas at present operators of these sources are paid to turn off turbines when demand is low to avoid overloading the network. The proposal would therefore give more flexibility to the energy system which means energy can be cheaper.
27. The increased use of renewable energy sources would also play a key role in addressing climate change and aid the UK in meeting its commitment to be net zero by 2050 and to reach zero carbon electricity generation by 2030. The Council also have committed to become a net zero Borough by 2041 and although the development would not wholly serve the Borough it is likely that some parts would benefit.
28. Also by increasing the ability of the country's infrastructure to generate electricity to meet its own needs, the proposal would make the UK less reliant on energy from abroad and hence improve energy security.
29. EN-1 states that low carbon infrastructure is a critical national policy (CNP). It adds that electricity grid infrastructure, such as this, is identified as low carbon infrastructure and is not limited to that associated specifically with a particular generation technology. It also states that electricity storage has a key role to play in achieving net zero and providing flexibility to the energy system. As a result I give significant weight to these benefits of energy security, flexibility and the contribution to achieving net zero. This is consistent with the draft NPPF which states that for low carbon development, significant weight should be given to the contribution to renewable energy generation and a net zero future.
30. Aside from these broader benefits, the development would provide a substantial biodiversity net gain of 15% in habitat units and 60% in linear units, which would be a significant benefit. There would also be some economic benefits locally during construction. Economic benefits during the operation phase would be limited as there would be no employees based at the site.

Other Matters

31. There are some concerns locally around traffic movements. During construction there would be a number of HGV movements but this would be for a limited period. During the operational phase the traffic generated by the development would be around 2 two-way trips a week which is negligible.
32. There are also concerns regarding site safety. However I was assured that the site would be remotely monitored and plant turned off in the event of an electrical fire. There would also be fire suppression measures in place and a management plan would need to be agreed with the local Fire Safety Officer.

Green Belt Balance

33. The proposal would constitute inappropriate development in the Green Belt. It would also cause harm to openness and would fail to meet one of the purposes of the Green Belt. These factors all carry substantial weight. There would also be some harm to the character and appearance of the area, but the planting proposed would provide some mitigation. I give modest weight to this harm.
34. Balanced against that are the other considerations identified comprising the fact that low carbon development is a critical national policy which can help to achieve net zero, provide energy security and energy flexibility. I give these all significant weight. Added to this are the benefits to biodiversity, and a modest benefit to the local economy. I have also had regard to paragraph 4.1.7 of N-1 which states that it is likely that the need for CNP projects will outweigh the residual effects in all but the most exceptional cases.
35. Overall I consider the other considerations in this case clearly outweigh the harms to the Green Belt and the other harms that I have identified. Therefore very special circumstances exist which justify the development.

Conditions

36. I have considered the conditions put forward by the Council. Conditions relating to the commencement of development and the approved plans are necessary in the interests of certainty. Similarly, the condition requiring the cessation of the scheme after, at most, 40 years is to reflect the development as applied for.
37. Conditions relating to the design details of the plant and the landscaping of the site are necessary to protect the character and appearance of the area. The condition relating to the Construction Management Plan is needed to mitigate any adverse effects on the local area during the construction period.
38. Conditions requiring adherence to the ecological and arboricultural assessment, the provision of a Construction Environmental Management Plan and a Landscape and Ecological Management Plan, and details of external lighting are necessary in the interests of protecting and enhancing biodiversity.
39. Two conditions relating to noise mitigation are necessary in the interests of protecting the living conditions of nearby residents. Three conditions are imposed in the interests of addressing any archaeological finds, and one condition is attached to address surface water on the site.
40. A condition is imposed to ensure access is maintained along public footpath HLS0087 which runs through the northeast corner of the site, and lastly a condition is attached to ensure the development is not commenced until the access to the site is granted planning permission by the neighbouring authority.

Conclusion

41. I conclude that the proposal would fail to accord with the development plan as a whole. However there are material considerations that indicate that a decision should be taken other than in accordance with it. As such, the appeal is allowed.

A Owen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following plans: P1868-02D, P1868-11C, EPC-447-C-E-LA-PCS Rev 04, EPC-447-C-E-LA-FG Rev 02, EPC-447-C-E-LA-ELV-SHT1 Rev 05, EPC-447-C-E-LA-ELV-SHT2 Rev 05, EPC-447-C-E-LA-DNO Rev 04, EPC-447-C-E-LA-CCTV Rev 02, EPC-447-C-E-LA-CCR Rev 05, EPC-447-C-E-LA-BATT Rev 04 and EPC-447-C-E-LA-AR Rev 04.
- 3) Within 40 years following completion of construction of the development hereby permitted, or within 12 months of the cessation of operational use, or within six months following a permanent cessation of construction works prior to the battery facility coming into operational use, whichever is the sooner, the batteries, transformer units, inverters, all associated structures and fencing approved shall be dismantled and removed from the site. The developer shall notify the local planning authority in writing no later than twenty-eight working days following cessation of power production. The site shall subsequently be restored in accordance with a scheme and timescale, the details of which shall be first submitted to and approved in writing by the local planning authority no later than six months following the cessation of power production. For the purposes of this condition, a permanent cessation shall be taken as a period of at least 24 months where no development has been carried out to any substantial extent anywhere on the site.
- 4) No development shall take place until details including colour of external finishes of the battery containers, transformers, substation structures and type and height of fencing and CCTV installation equipment has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 5) No development shall take place, including any ground works or demolition, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall be adhered to throughout the construction period and shall provide for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) routing of construction vehicles;
 - c) loading and unloading of plant and materials;
 - d) storage of plant and materials used in constructing the development;
 - e) wheel and underbody washing facilities;
 - f) measures to mitigate the risk of flooding of the battery containers; and
 - g) measures to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and to prevent pollution.
- 6) No development shall take place until all mitigation and enhancement measures have been implemented in accordance with the Ecological Impact Assessment dated April 2023; the Arboricultural Survey, Impact Assessment and Protection Plan Ref 23232 KITWELL BESS APPEAL_TS AIA TPP_V6 dated 5 June 2024; and drawing no. 21113.102 Rev J Landscape Strategy dated

30 January 2024. These measures and mitigation shall thereafter be maintained for the life of the development.

- 7) No development shall take place until the applicant has installed acoustic mitigation, designed specifically to mitigate the frequencies emitted by the plant and equipment in accordance with details submitted to and approved in writing by the local planning authority prior to installation. Once installed, the mitigation shall thereafter be maintained for the life of the development.
- 8) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:
 - a) risk assessment of potentially damaging construction activities;
 - b) identification of "biodiversity protection zones";
 - c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements);
 - d) the location and timing of sensitive works to avoid harm to biodiversity features;
 - e) the times during construction when specialist ecologists need to be present on site to oversee works;
 - f) details of responsible persons and lines of communication;
 - g) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and
 - h) use of protective fences, exclusion barriers and warning signs.

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

- 9) No development shall take place until a landscape and ecological management plan (LEMP) has been submitted to and approved in writing by the local planning authority. The content of the LEMP shall include the following:
 - a) description and evaluation of features to be managed;
 - b) ecological trends and constraints on site that might influence management;
 - c) aims and objectives of management;
 - d) appropriate management options for achieving aims and objectives;
 - e) prescriptions for management actions;
 - f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) details of the body or organisation responsible for implementation of the plan; and
 - h) ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning

biodiversity objectives of the approved scheme. The LEMP will be implemented in accordance with the approved details.

- 10) Prior to the erection of any external lighting on site, a lighting plan, shall be submitted to and approved in writing by the local planning authority. The submitted plan should include details of the specification and design of the fixtures to be erected and should be accompanied by contour diagrams that demonstrate minimal levels of lighting on receptor habitats, including trees and hedges. The lighting should be designed in accordance with Bat Conservation Trust/ Institution of Lighting Professionals Guidance Note 08/23 'Bats and Artificial Lighting in the UK'. Development shall be carried out in accordance with the approved details and retained for the lifetime of the development.
- 11) No development shall take place until a detailed hard and soft landscaping scheme has been submitted to and approved in writing by the local planning authority that shows the existing trees, shrubs, and hedgerows on the site to be retained and:
 - a) a specification of soft landscape works (in accordance with British Standards), including a schedule of species, size, density and spacing of all trees, shrubs and hedgerows to be planted (British native species only);
 - b) areas to be grass seeded or turfed, including cultivation and other operations associated with plant and grass establishment;
 - c) paved or otherwise hard surfaced areas including the extent and specification for footways and kerbing, together with the type and specification of all permeable paving and asphalt surfaces;
 - d) existing and finished levels shown as contours with cross-sections as necessary;
 - e) means of enclosure and boundary treatments; and
 - f) protection and enhancement measures for retained vegetation in or adjacent to the site which may be reasonably affected by the proposed development and ongoing management of such features.

Such details as approved, shall be implemented in their entirety during the first planting season (October to March inclusive) following approval, or in any other such phased arrangement as may be agreed in writing by the local planning authority. Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site, which dies or is lost through any cause during a period of five years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.

- 12) No development hereby permitted shall be used until surface water drainage works have been implemented in accordance with details that have been submitted within KIT-BWB-ZZ-XX-RP-CD-0001 Drainage Summary Note S2-P02 dated 22 March 2024, and these shall thereafter be maintained for the life of the development.
- 13) No development shall take place until an archaeological Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the

local planning authority. The WSI shall include an assessment of significance and research questions and:

- a) the programme and methodology of site investigation and recording;
- b) the programme for post investigation assessment;
- c) the provision to be made for analysis of the site investigation and recording;
- d) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
- e) the provision to be made for archive deposition of the analysis and records of the site investigation; and
- f) the nomination of a competent person or persons/organization to undertake the works set out in the WSI.

No development shall take place other than in accordance with the approved WSI.

- 14) Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the local planning authority in writing within five working days of their being revealed. Works shall be immediately halted in the area affected until provision shall have been made for their retention and recording in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 15) Within six months of the date of completion of the archaeological fieldwork a final archaeological report shall be submitted for approval in writing by the local planning authority to include completion of post excavation analysis, preparation of a full site archive and a report ready for deposition at a local museum and submission of a publication report.
- 16) Public rights and ease of passage over public footpath HLS0087 shall be maintained free and unobstructed at all times. The definitive width of the public right of way must be maintained at all times.
- 17) The rating level of sound emitted from any fixed plant and/or machinery associated with the development shall not exceed background sound levels by more than 5dB(A) between the hours of 0700-2300 at any sound sensitive premises and shall not exceed the background sound level between 2300-0700 at any sound sensitive premises. All measurements shall be made in accordance with the methodology of BS4142 (2014) (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the sound sensitive property. Any deviations from the LA90 time interval stipulated above shall be agreed in writing with the local planning authority.
- 18) No development, including site clearance and site preparation, shall take place until the access shown on drawings P1868-11C and EPC-447-C-E-LA-AR Rev 04 has been granted planning permission and implemented in accordance with this permission.

APPEARANCES

FOR THE APPELLANT:

Mr Ian Ponter	for Counsel
Mr James Stone	Appellant
Mr Paul Barton	Harris Lamb
Mr Paul White	Ecus
Mr Paul Harris	MHP

FOR THE LOCAL PLANNING AUTHORITY

Mrs Catherine Golightly	Senior Planning Officer
Ms Jane Pilkington	Principal Historic Environment Officer
Mr Ian Lowe	Principal Planning Officer

INTERESTED PARTIES

Mr Michael Freer	Halesowen Abbey Trust
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DOCUMENTS SUBMITTED AT THE HEARING

- Drawing no. EPC-447-C-E-LA-CCR Rev 05
- Written statement by Halesowen Abbey Trust