



Appeal Decision

Site visit made on 6 June 2024

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2024

Appeal Ref: APP/Z3635/W/23/3321476

Land North of Chertsey Road, Shepperton

- 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 Mr Jonathan Cooper of Conrad Energy (Developments) Limited against the decision of Spelthorne Borough Council.
 - The application Ref is 22/00569/FUL.
 - The development proposed is the erection of a small-scale flexible electricity generation facility with associated ancillary infrastructure, access and boundary treatment.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a small-scale flexible electricity generation facility with associated ancillary infrastructure, access and boundary treatment at Land North of Chertsey Road, Shepperton in accordance with the terms of the application, Ref 22/00569/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. Where comments were received from the parties on the latest National Planning Policy Framework (Framework), I have taken them into account in my reasoning.
3. The appellant submitted an Air Quality Position Statement and Ecological Position Statement at the outset of the appeal. The Council and other parties have had opportunity to comment on these and therefore would not be prejudiced by my taking them into account in my reasoning.
4. At the time of my site visit there was fencing in place around parts of the site and containers and vehicles on it. I have assessed the scheme on the basis of the plans before me as a proposed scheme.

Main Issues

5. The main parties have agreed that the proposal would represent inappropriate development in the Green Belt as defined in development plan policy and the Framework. I concur with that position. The Framework outlines that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
6. Therefore, the main issues of the appeal are:
 - The effect of the proposed development on the openness of the Green Belt,

- The effect of the proposed development on air quality with regard to the living conditions of nearby occupiers and biodiversity, including the Dumsey Meadow Site of Special Scientific Interest, Southwest London Waterbodies Special Protection Area and Ramsar site (the designated areas),
- Whether the proposed development appropriately supports renewable energy provision; and
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Openness

7. While the site may not have been individually assessed in the Spelthorne Borough Council Green Belt Assessment, the wider area was deemed to be strongly performing. The appeal scheme would lead to a considerable increase in built form at the site. This would be spread across the site and include structures of varying sizes. Therefore, the scheme would spatially reduce the openness of the Green Belt.
8. There would be some views of the development from the nearby roads and properties. However, there is mature landscaping and other boundary features to much of the roadside boundaries and the main area of development is set back considerably from the road. As such, views would largely be glimpsed with primarily undeveloped fields in the foreground and background. Consequently, visually there would only be limited visual impacts on the openness of the Green Belt.
9. In both spatial and visual terms, the appeal scheme would fail to preserve, and there would be a greater impact on, the openness of the Green Belt. Given the scale of the development and that there is some screening, the harm would be moderate. Nevertheless, it would be contrary to saved Policy GB1 of the Spelthorne Borough Local Plan 2001 where it states it development will not be permitted where it would conflict with the purposes of the Green Belt and maintaining its openness.
10. It would also be in conflict with the Framework where it states the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence and aims to safeguard the countryside from encroachment.
11. Policy GB1 is not entirely consistent with the Framework in not having provision for 'very special circumstances.' Notwithstanding this, the principle of inappropriate development and protection of openness align with the Framework. Therefore, in the context of this appeal I give the conflict with this policy substantial weight.

Air quality

12. The appeal site is located within the Borough wide Air Quality Management Area. Policy EN3 of the Core Strategy and Policies Development Plan Document (Core Strategy) states the Council will seek to improve air quality of the

Borough and minimise harm from poor air quality. This includes refusing development where the effects on air quality are of significant scale, either individually or cumulatively with other proposals, and which are not outweighed by other important considerations or effects and cannot be appropriately and effectively mitigated. No definition of 'significant' in this policy context has been put before me and the policy does not specify that development should be refused for any scale of additional harm.

13. Policy EN8 aims to protect and improve the biodiversity of the Borough, including through avoiding harm to features of significance and refusing development where there would be significant harmful impacts on the features of nature conservation value.
14. The Air Quality Assessments provided by the appellant as part of the application, and later revised, identified slight impacts at residential receptors. Modelling results in the Air Quality Position Statement indicated that annual and 1-hour mean NO₂¹, annual mean and 24-hour mean PM₁₀² and annual mean PM_{2.5}³ concentrations were below the relevant AQOs⁴, AQTV⁵ and Interim Target⁶ at all receptor locations looked at within the vicinity of the site.

Designated Areas

15. Changes in nitrogen nutrients may affect plant communities in the nearby Dumsey Meadow Site of Special Scientific Interest (SSSI). The information before me indicates the SSSI is currently in a favourable status and designated based on the water meadow habitat features.
16. The site falls within 3 km of the South West London Waterbodies Special Protection Area (SPA) and Ramsar site. These are designated due to the presence of *Anas clypeata* and *Anas strepera*. The conservation objectives of the SPA are said to be to maintain the concentrations and deposition of air pollutants at or below the site-relevant Critical Load or Level values given for the supporting habitats of the feature on the Air Pollution Information System.
17. The evidence before me in the Air Quality Technical Note and Air Quality Assessments indicates that the species habitat in standing open water is not sensitive to nitrogen oxide (NO_x) concentrations for the SSSI and SPA. The conclusions of these are that NO_x from the generators would not result in significant effects. In addition, that with regard to nitrogen effects, given the maximum predicted deposition, again the effect would not be significant and due to the separation between the site and the designated sites construction phase effects would also be small.
18. Furthermore, there is no detailed technical evidence to dispute the findings of the Air Quality Position Statement assessment against IAQM guidance⁷ that found construction phase impacts from fugitive dust emissions and vehicle exhaust emissions to be not significant. A similar conclusion was reached for generator emissions during operation of the development on both human and ecological receptors and endorsed in the Ecological Position Statement.

¹ Nitrogen dioxide

² Particulate matter with an aerodynamic diameter of less than 10µm

³ Particulate matter with an aerodynamic diameter of less than 10µm

⁴ Air Quality Objective

⁵ Air Quality Target Value

⁶ Environmental Improvement Plan 2023, DEFRA, 2023

⁷ Land-Use Planning & Development Control: Planning for Air Quality, IAQM, 2017.

19. However, these appear to have been based on the facility being operated for a maximum of 3000 hours per annum. No comparable assessment is made of unrestricted use of the facility. While there is little detailed evidence on additional effects including from the growth of traffic flows at the M3 and the Council's modelling is not before me, there is the potential for some in combination effects.
20. Consequently, having taken a precautionary approach, the proposed development is likely to have a significant adverse effect on the integrity of the designated sites, when considered in combination.
21. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment (AA) is carried out. The Habitats Regulations also indicate that permission may only be granted after having ascertained that a scheme will not affect the integrity of the SPA and Ramsar site. I may give consideration to any conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the sites.
22. I have sought further evidence and comments on this matter from the Council and Natural England were consulted during the appeal, raising no objections. I have undertaken this AA on a proportionate basis.
23. A condition to limit the duration and number of occasions that the plant can operate per year could be imposed. There is no clear evidence as to why such a condition would fail the test of enforceability. The Air Quality Assessment Addendum indicates that it is only where the stipulated durations and frequency are exceeded could the development push emissions above the critical level for the designated sites. Therefore, a condition is imposed to limit the times and duration of operations. This would prevent unacceptable or significant effects from the scheme.
24. Consequently, from the evidence before me, with the imposition of a condition the effects on air quality from the proposal would not be of a significant scale, either individually or cumulatively. The scheme would not adversely affect the integrity of the designated sites.

Living conditions

25. As above, a condition would control the operation times and durations. Moreover, there is some distance between the site and the nearest receptors. The results of dispersion modelling undertaken at sensitive locations in the Air Quality Assessment Addendum indicates that impacts were not predicted to be significant at any human receptor location in the vicinity of the site. There is no clear evidence to the contrary.
26. As a result, combustion exhaust emissions from the generators during operation would not be at unacceptable levels with regard to the living conditions of nearby occupiers. A condition is also imposed requiring a Construction Management Plan. This would ensure that sufficient protection of living conditions would be in place during the construction phase.

Air Quality Conclusion

27. Therefore, the proposed development would not have unacceptable effects on air quality with regard to the living conditions of nearby occupiers and biodiversity including the designated sites. It would accord with Policies EN8 and EN3 of the Core Strategy.

Renewable energy

28. Policy CC1 of the Core Strategy states the Council will support the provision of renewable energy, energy efficiency and promote sustainable development generally. Several ways in which this would be achieved are set out. Other than in relation to residential development these refer to encouraging certain types of development and standards. However, while the proposal would not be one of the types of development encouraged, the policy does not indicate that other types of development should be refused or prevented. The proposal would rely on fossil fuels but is to assist in the expansion of, and act as a back-up, to renewable energy generation.
29. Therefore, the proposed development would appropriately support renewable energy provision. It would not conflict with Policy CC1 of the Core Strategy.

Other considerations

30. The proposal would be visible in some views from public vantage points and nearby properties. It would be tall in places and of a functional appearance, at odds with the mostly open fields nearby. Nonetheless, the scheme would be largely screened by existing and proposed landscaping and boundary treatments. It would also be set back a considerable distance from the road. Moreover, a condition requiring agreement of the colour of the external elements of the scheme is imposed to further reduce its prominence. As such, the extent of harm to the character and appearance of the area and the weight it attracts would be limited.
31. The Preliminary Ecological Assessment found the site to have limited suitability for protected species or habitats. From my visit and the lack of detailed evidence to the contrary I have no reason to come to a different conclusion.
32. The site is in an area with a high groundwater vulnerability and is within Flood Zone 2 and Flood Zone 3. Given the locational requirements of the proposed development, there are no reasonably available sites appropriate for it in areas with a lower risk of flooding. The Flood Risk Assessment indicates the proposed development would not increase flood risk elsewhere and would remain safe. Subject to conditions regarding drainage and land levels I have reached the same finding.
33. A construction management plan would ensure that disruption, noise and traffic movements during the build period would not harm highway safety or the living conditions of nearby occupants. There would be limited traffic or noise during the operation phase and the existing access has sufficient visibility and width to accommodate the movements without harm to the safety of road users.
34. It has not been shown that the findings of the Noise Assessment are incorrect. Conditions are also imposed regarding lighting and contamination. Considering the distance between the site and nearby properties, and with the conditions imposed there would be no unacceptable effects on the living conditions of

- nearby occupiers or schools and the scheme would not interfere with their quality of life. As with effects on flooding and highway safety, this would be a neutral factor.
35. The increasing dependence on renewable energy and in particular wind and solar energy has led to fluctuations in supply dependant on the weather. As such, there is increased need for back up facilities at times when renewable sources do not provide sufficient supply or at times of increased demand. The proposed development would provide electricity at short notice when shortfalls exist to prevent blackouts. Due to this the plant would likely only run for short periods as a fallback source but able to provide energy quickly when required and is independent of the nearby Eco Park.
36. The proposal would be gas powered. However, it would assist in the transition to low carbon electricity generation by allowing greater use of renewable energy electricity without concerns of shortfalls in supply due to the flexibility the scheme would allow.
37. The Chertsey substation is identified as being in an area with limited capacity. From the evidence before me, upgrading the substation is not feasible given the existing development surrounding it. Furthermore, the need to locate the proposal close to the substation further limits potential for alternative sites, particularly ones outside of the Green Belt.
38. The scheme would align with the Framework in meeting the needs of the present without compromising the ability of future generations to meet their own needs, seeking to support the transition to a low carbon future in a changing climate and support renewable associated infrastructure. It should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience. It adds that new development should be planned for in ways that can help to reduce greenhouse gas emissions. Moreover, there appears limited scope for the proposal to be located elsewhere given the locational constraints. Thus, I give the benefits towards energy security substantial weight.
39. There would be economic benefits associated with the greater electricity certainty and capacity for growth in the area and associated with the construction of the scheme. While employment may not be local, there would be some wider benefits associated with the construction and operation of the development. Given the size of the proposal, I give this moderate weight.
40. As set out in the Framework, Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Furthermore, it states that substantial weight is given to any harm to the Green Belt.
41. In this case, the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal would be clearly outweighed by the other considerations. Therefore, very special circumstances exist which justify the development.

Other Matters

42. Any future development at the site or in the area would be subject to the relevant considerations at that time. This decision is based on the individual

circumstances of the case, and I see no reason why it would lead to unacceptable future development.

43. Notification has been carried out as part of the appeal and any concerns relating to the process during the application stage are not a matter that affect my findings.

Conditions

44. In addition to the standard time limit condition, I have imposed one requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty. A condition limiting the duration of the permission and restoration of the site is necessary to return the land to its previous condition should the development no longer be required or at the end of the period sought.
45. Land contamination conditions are needed to prevent pollution and details are required prior to commencement as the effects may come from the initial works at the site with the validation report to follow.
46. To prevent highway safety issues a condition requiring the provision of the internal routes including turning facilities is necessary. For the same reason and to protect living conditions of nearby occupiers, as well as biodiversity, construction and biodiversity management plans are necessary. These details are needed prior to the commencement of the development as it will relate to the earliest parts of the development.
47. To prevent risks from flooding a condition requiring a surface water drainage scheme to be agreed is needed prior to commencement as it may affect early parts of the development. For the same reason, and that some alterations appear to have already taken place, a condition requiring existing and proposed land levels is imposed.
48. Conditions relating to the erection of the acoustic fence, noise levels and lighting are also reasonable to protect living conditions of those nearby. Agreement of colour details of the proposed features are necessary to protect the character and appearance of the area as is a landscape scheme. The landscape scheme is required prior to commencement as existing features may be affected by early parts of the development. Limits on the hours of operation at the site are necessary to prevent harm to air quality, living conditions and the designated sites.
49. I have not imposed a condition regarding importation of gas and exportation of electricity as it is indicated that such works would be carried out by statutory undertakers. These are also not referred to in the application and appear to largely relate to works outside the application site. If the works do require planning permission, an assessment of any effects from them would be made at that time.

Conclusion

50. Section 38(6) of the Town and Country Planning Act 1990 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal does not conform with the development plan, being contrary to Policy GB1 of the Local Plan. However, other material considerations, including the Framework,

outweigh the harm it causes to the development plan policies. This indicates a decision other than in accordance with the development plan should be made.

51. Therefore, I conclude that the appeal is allowed.

Stuart Willis

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 plans: 19020-LP-002 Location Plan Rev A; 19020-LP-002 Layout Plan; CEL-STD-AF-731 Timber Acoustic Fence; CEL-STD-AMENL-540 40ft Large Amenity Cabin; CEL-STD-CCTV-800 CCTV Column; CEL-STD-GEN-318 Generator Ground Mounted Radiator; CEL-STD-GEN-319 Generator Ground Mounted Radiator; CEL-STD-GEN-320 Generator Ground Mounted Radiator; CEL-STD-GK-400 Gas Kiosk; CEL-STD-OT-600 Oil Tank; CEL-STD-PF-G-700 Metal Palasade Security Fence; CEL-STD-SUB-UKPN-236 Substation; CEL-STD-SW-100 Switch Room; CEL-STD-TX-150 Transformer, CEL-STD-TX-160-A Auxiliary Transformer, and P22049-001B Swept Path Analysis.
- 3) The development hereby permitted shall be for a limited period of 30 years from the date of implementation of this permission. The development hereby permitted shall be removed and the land restored to its former condition on or before:
 - i) the end of the period for which planning permission is granted, or
 - ii) within 12 months of the cessation of operational use, or
 - iii) within six months following a period of at least 24 months where no construction works have been carried out prior to the flexible electricity generation facility coming into operational use,whichever is the sooner, in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority. These details shall include an implementation programme. The restoration works shall be carried out in accordance with the approved details.
- 4) No development shall commence until:
 - (i) A comprehensive desk-top study, carried out to identify and evaluate all potential sources and impacts of land and/or groundwater contamination relevant to the site, has been submitted to and approved in writing by the local planning authority.
 - (ii) Where any such potential sources and impacts have been identified, a site investigation has been carried out to fully characterise the nature and extent of any land and/or groundwater contamination and its implications. The site investigation shall not be commenced until the extent and methodology of the site investigation have been agreed in writing with the local planning authority.
 - (iii) A written method statement for the remediation of land and/or groundwater contamination affecting the site shall be agreed in writing with the local planning authority prior to the commencement of remediation. The method statement shall include an implementation timetable and monitoring proposals, and a remediation verification methodology.The site shall be remediated in accordance with the approved method statement.

- 5) No development shall commence until full details of the finished levels, above ordnance datum, of the proposed buildings, plant and other above ground works, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 6) No development shall commence until a detailed landscape and planting scheme, including an implementation programme have been submitted to and approved in writing by the local planning authority. The approved landscaping scheme shall thereafter be implemented as agreed.
- 7) No development shall commence until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters,
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 8) No development shall commence until a Biodiversity Management Plan (BMP) has been submitted to and approved in writing by the local planning authority. The BMP shall include:
- details of the habitats/conservation features to be retained/created/enhanced,
 - the methodology to be used to create the habitat/features,
 - details of the long term management proposed for the establishment and maintenance of the habitat/nature conservation feature,
 - future ecological monitoring of the habitat; and
 - an implementation programme.

The development shall be carried out and thereafter maintained in accordance with the approved BMP.

- 9) No development shall commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include:
- descriptions and mapping of all exclusion zones (both vehicular and for storage of materials) to be enforced during construction to avoid any unnecessary soil compaction on area to be utilised for habitat creation,
 - parking of site operatives and visitor vehicles; loading and unloading of materials,

- storage of plant and materials used in the construction of the development; and
- wheel washing facilities.

The development shall be carried out in accordance with the approved CMP throughout the construction period.

- 10) Prior to the first use or occupation of the development, and on completion of any agreed contamination remediation works, a validation report that demonstrates the effectiveness of the remediation carried out shall be submitted to and agreed in writing by the local planning authority.
- 11) Prior to the first use or occupation of the development, the internal road and turning facilities shall be laid out in accordance with Drawing No P22049-001B Swept Path Analysis and retained thereafter for these purposes for the lifetime of the development.
- 12) Prior to the first use or occupation of the development, the acoustic fencing shall be erected in accordance with 5.1.2 of the Noise Impact Assessment and Drawing No CEL-STD-AF-731 Timber Acoustic Fence and retained thereafter for the lifetime of the development.
- 13) The level of noise emitted from the site between the hours 07:00 and 23:00 shall not exceed 10dB L(A)eq 1- hour over Daytime Background Sound Level as measured 1m from the boundary of nearest residential receptors, and between the hours 23:00 and 07:00 shall not exceed 5dB L(A)eq 15- minute over Daytime Background Sound Level as measured 1m from the boundary of nearest residential receptors.
- 14) Prior to their installation, details of the external finishing colour of all above ground elements including generators, transformers, storage and utility containers, fencing and other development, shall be submitted to and agreed in writing by the local planning authority. The scheme shall be implemented and maintained in accordance with the agreed finish for the lifetime of the development.
- 15) Prior to the installation of any lighting at the site, a detailed lighting scheme including lighting levels at the boundary of the site shall be submitted to and approved in writing by the local planning authority. Any lighting shall be erected in accordance with the approved details.
- 16) Prior to the installation of any CCTV infrastructure at the site, other than that shown on the approved plans, details of height, colour and location of any mounted equipment shall be submitted to and agreed in writing by the local planning authority. Any CCTV infrastructure shall be erected in accordance with the approved details.
- 17) Once operational the development shall not operate for more than 3000 hours in any 12 month period or for more than 24-hours continuously on more than 82 occasions in any 12 month period.