



Appeal Decision

Site visit made on 30 October 2024

by S. Hartley BA (Hons) Dist.TP (Manc), DMS, MRTPI, MRICS

an Inspector appointed by the Secretary of State

Decision date: 6 November 2024

Appeal Ref: APP/N4205/W/24/3346865

Land at centre of pond 52 metres from Ditchers Farm, Slack Lane, Westhoughton, Bolton, BL5 3LB

- 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 FPC (Electric Land) Ltd against the decision of Bolton Metropolitan Borough Council.
 - The application Ref is APP/13356/22.
 - The development proposed is the installation and operation of a Battery Energy Storage System (BESS) and ancillary infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for the installation and operation of a Battery Energy Storage System (BESS) and ancillary infrastructure at land at the centre of pond 52 metres from Ditchers Farm, Slack Lane, Westhoughton, Bolton, BL5 3LB in accordance with the terms of the application ref: APP/13356/22 subject to the following conditions in the attached schedule.

Procedural Matters

2. On 30 July 2024 the Government began consultations upon reforms to the National Planning Policy Framework (the Framework) which closed on 24 September 2024. The reforms are draft and may be subject to change and therefore I afford the draft changes only limited weight in the decision-making process. As there are no proposed reforms which are pertinent to the main issues in this appeal, it has not been necessary for me to consult the main parties upon it.
3. For the purposes of this appeal, Policy CG1.1 of the Bolton Core Strategy 2011 (CS) has now been replaced by Policies JP-G1 Landscape Character, JP-G2 Green Infrastructure Network, JP-G7 Trees and Woodland, and JP-G8 A Net Enhancement of Biodiversity and Geodiversity, of the newly adopted Places for Everyone Joint Development Plan Document for Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan 2024 (PfE). Policy CG3.7 has now been replaced by PfE Policy JP-G1 Landscape Character.

Main Issues

4. The main issues are the effect of the proposed development upon (i) the character and appearance of the area including land designated as other protected land (OPL) in the development plan for the area and (ii) biodiversity including whether it would deliver biodiversity net gain.

Reasons

Character and appearance and OPL

5. It is proposed to install a BESS to store excess electricity and retain it on standby as emergency electricity for the national grid in times of high electricity demand or when renewable energy projects are unable to fulfil demand. It is part of the National Grid's Balancing Servicing Programme. The amended proposal is for 14 containerised battery units, 14 transformers, 1 sub-station, 1 switch room, 1 control room and 3 car parking spaces. The proposed amenity cabin, battery storage container and substation would be positioned on open land to the rear of industrial premises and with a new access in crushed stone taken from Slack Lane. The proposal includes CCTV, an acoustic barrier fence at 3.5 metres in height, and lighting would only be used when the site has operatives working within it at night for health and safety reasons.
6. Land within the blue edge of the submitted location plan would be used to provide biodiversity net gain and improved amenity land, given the loss of existing open land to facilitate the proposed development. The latter would include the removal of large areas of Japanese Knotweed, translocation of existing areas of marsh orchid, retention of an existing area of lowland raised bog and an extension of this area, the planting of native hedgerow along a section of Slack Lane, and the maintenance of the proposed ecological enhancement area.
7. The site is outside but nonetheless adjacent to the urban area of Westhoughton. The land falls within designated OPL in the development plan for the area. Policy CG6AP of Bolton's adopted Allocation Plan 2014 (AP) states that development will be permitted in the OPL as long as it represents '1. *limited infilling within an established housing or industrial area, is in scale with it and would not adversely affect its character or surroundings; or 2. it forms part of, and is required for, the maintenance of an existing source of employment; or 3 the development requires a location outside the urban area, but is inappropriate within the Green Belt, and providing it maintains the character and appearance of the countryside; or 4. the development would be appropriate within the Green Belt*'.
8. The above policy does not seek to prohibit all development in OPL. In this case, the relevant criterion in policy CG6AP of the AP is number 3. In terms of that policy, I find that the proposal would constitute inappropriate development in the Green Belt as it would not meet any of the development exceptions in paragraphs 154 and 155 of the Framework. However, I consider that, because of the nature of the activity and its extent, the proposal reasonably requires a location that is outside the urban area.
9. I have considered carefully all representations made in respect of the effect of the development upon the character and appearance of the area. The proposal would change this from one that is undeveloped, to one that includes a BESS. However, I do not consider that the extent of building operations/BESS would be substantial in the OPL.
10. In this regard, I acknowledge the conclusions in the appellant's Landscape and Visual Matters representation prepared by Pegasus Group. Given the scale, extent and relatively low height of the development, combined with the

existing planting around the site and the proposed mitigation in the form of new landscaping, I do not find that the development would be substantially conspicuous in the landscape from medium or long-distance views.

11. Moreover, the development would be seen in the context of a backdrop of existing commercial/industrial development to the south. I consider that there would be some limited change to the way that the site is appreciated by those immediately passing it, and from very localised viewpoints, but after a few years, and when the proposed landscaping has matured, I do not find that any material harm would be caused to the character and appearance of the OPL or to the landscape character of the area.
12. Therefore, I conclude that the proposal would accord with the design, landscape character and appearance requirements of policy JP-G1 of PfE, policy CG6AP of the AP, and paragraph 180(b) of the Framework. Even if one were to disagree with me that the proposal requires a location outside the urban area, the public benefits associated with enabling renewable energy development and ensuring that the public at large have access to a continuous electricity supply via the National Grid, are matters that would outweigh any such conflict. In other words, this proposal as national energy supply benefits.

Biodiversity including biodiversity net gain

13. The appellant considers that, subject to the imposition of conditions, the proposal would not cause harm to biodiversity on the site and moreover, the development as a whole, which includes mitigation proposals within the blue edged land, would deliver the minimum 10% biodiversity net gain as outlined in PfE. In this regard, the evidence does not support the Council's claim that the proposal would have a detrimental impact upon wildlife or biodiversity.
14. I acknowledge concerns raised by other interested parties about the loss of part of OPL for dog walking and other recreational activities. However, only a small part of OPL would be lost to facilitate the proposal and, furthermore, land falling inside the blue edged land would be generally improved. The appellant also states that this would include permissive access for members of the public. It is noted that the appeal site is used by members of the public, but the appellant has pointed out that it does not include any public footpaths, and it is private land without members of the public having rights to use it.
15. I accept that there would be the physical loss of OPL arising from the construction of the BESS. However, this would not be sufficient to justify a refusal of planning permission when weighed against the fact that there would be no evidence of harm being caused to biodiversity, that biodiversity net gain would be achieved, that the adjacent retained OPL would have public access, and the overriding public benefits associated from a backup electricity supply in the national interest.
16. I conclude that, subject to the imposition of conditions, the proposal would accord with the biodiversity requirements of policies JP-G1 and JP-G8 of the PfE, and paragraph 180(d) of the Framework. In reaching this conclusion, I have also considered the comments made by the Greater Manchester Ecology Unit who raise no objection to the proposal in biodiversity terms subject to the imposition of conditions.

Other Matters

17. I have considered the representations made by other interested parties. Some of the comments made have already been addressed in my reasoning above. I consider that the development would not cause unacceptable levels of noise or disturbance to the occupiers of neighbouring properties. Moreover, I do not find that the development would have a materially harmful effect upon the living conditions of the occupiers of neighbouring residential properties in terms of outlook or light (this includes the flat above James Booth Limited).
18. I note the concerns raised by other interested parties, including the occupier of 14 Church Lane, about the risk of fire from lithium batteries. There is no objective evidence before me to indicate that the site would not be made safe. Moreover, I shall include a condition requiring the approval of a fire safety plan and including an evacuation plan.
19. The occupier of No. 14 Church Lane states that a BESS has a high carbon footprint. I acknowledge that there would be some environmental impacts associated with the construction of the BESS. However, battery storage is an essential enabler of renewable-energy generation and provides essential backup power in the event of outages. BESS provides a solution by stabilising the national grid, delivering power during short-term volatility, and ensuring a steady electricity supply.
20. Car parking and access arrangements would be acceptable. I have no reason to doubt the Council's conclusion that the proposed development would be capable of meeting the guidance of the Fire Service. The submitted draft Fire Strategy is noted in this regard and a final strategy would be capable of being controlled by means of the imposition of a planning condition.
21. I acknowledge that a similar proposal has been dismissed at appeal in the area. However, that proposal was for a development which would have been more separated from existing built development, more free standing, and which consequently would have had a greater adverse impact upon the character and appearance of the area than the current proposal which clusters more closely with existing development and, therefore assimilates more satisfactorily into the landscape.
22. Therefore, I have reached my decision to allow the appeal, and grant planning permission, based upon the site-specific circumstances of the appeal site and a consideration of all relevant material matter. The dismissed appeal, and other refused planning applications in the area, are not directly analogous.
23. These matters do not outweigh or alter my overall conclusion in respect of this appeal.

Conditions

24. The conditions in the attached schedule have been suggested by the Council and most have been agreed by the appellant. The reasons for imposing the conditions are contained within the schedule of conditions attached at the end of this decision.
25. The appellant does not agree to the sentence in suggested condition 7 (noise) which states '*The methodology for the verification report shall be submitted and approved in writing to the Local Planning Authority before the assessment*

is undertaken'. The appellant considers that this is vague and, in any event, that it is necessary to undertake noise assessments in accordance with the relevant British Standard, legislation and guidance. I agree that this part of the condition is not necessary. However, in the interests of precision, it is necessary that I substitute this suggested wording with *'The methodology for the verification report shall follow the most up to date relevant British Standard, legislation and guidance'*.

26. Apart from condition 16, the appellant has agreed in writing to the imposition of the other suggested pre-commencement conditions. I consider these to be clearly justified.
27. However, the appellant states that condition 16 (Battery Safety Management Plan including a Fire Safety and Emergency Response Plan) does not need to be a pre-commencement condition as a draft plan was submitted with the planning application and there is no suggestion that such a condition would not be capable of being satisfied, including agreement from the Fire Service. The appellant suggests that the condition should be one that is *'prior to first commercial operation of the development'*. I am satisfied that there would be no risk to members of the public if the condition were changed from a pre-commencement condition to a prior to first use condition. It would of course be sensible for the appellant to liaise closely with the LPA and Fire Service about this matter at an early stage to ensure that the approved/constructed BESS functions in such a way as to satisfy all safety requirements in respect of condition 16.
28. The appellant considers that condition 11 (BNG) is not necessary as the planning application was submitted prior to the adoption of PfE which requires developments to achieve 10% BNG. PfE now forms part of the development plan for the area. It is therefore necessary that the proposed development accords with the policies in the development plan for the area. Therefore, condition 11 is necessary to satisfy the BNG requirements of the development plan for the area. In any event, the appellant's proposal demonstrates compliance with BNG requirements. I consider that the condition is necessary to ensure that this happens.
29. The appellant states that the sentence reading *'Before these details are submitted an assessment shall be carried out to investigate the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework, and the results of the assessment provided to the Local Planning Authority'* in condition 14 (surface water drainage) should be deleted as an assessment has already been carried out, and the matter was considered in the Drainage Assessment submitted with the planning application.
30. In respect of the Drainage Assessment submitted with the planning application, it states *'initial desk-based investigations suggest the presence of impermeable underlying geology and overlaying soils which precludes the use of infiltration as the primary means of surface water disposal'*. I find that the wording in this suggested condition is necessary. The appellant's initial findings in respect of the potential for a sustainable drainage system was based upon a desk-based investigation only, and did not include any on-site intrusive investigations to check the actual soil or geological conditions.

31. Therefore, given the above, it remains possible that a sustainable drainage solution may be capable of being achieved on this site, and this should be examined and assessed as part of a detailed drainage assessment which is more than just desk-based. I find that the whole of the Council's suggested surface water drainage condition is needed in order to determine whether there is justification for overriding the requirement of policy JP-S4 of PfE which states that surface water run-off through sustainable drainage systems is as close to source as possible.

Overall Conclusion

32. For the above reasons, I find that the appeal should be allowed. Material harm would not be caused to the landscape character or appearance of the area, or to biodiversity matters, subject to the imposition of conditions. I conclude that the proposal accords with the development plan for the area. Even if one were to disagree with me about the development requiring a location outside of an urban area, I would have concluded that the benefits associated with the proposal, providing a backup electricity supply in the national interest, would have outweighed any technical conflict with policy CG6AP of the AP. Consequently, the appeal should be allowed, subject to the conditions listed below.

S. Hartley

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in complete accordance with the following approved plans: Drawing No. ELCAN128-001 Rev B - Proposed Site Plan, dated 20.10.23; Drawing No. CEL-STD-AMENL-550 - 40ft Large Amenity Cabin, dated August 2021; Drawing No. CEL-STD-BATT-373 - Containerised Battery Storage, dated January 2022; Drawing No. CEL-STD-SUB-ENW-215 - Substation and Metering Kiosk, dated August 2021; Drawing No. CEL-STD-TX-165 - Transformer, dated November 2021; Drawing No. ELCAN-128-011 Rev A - Acoustic Fencing, dated 09.08.23; Drawing No. SL-0001 Rev. 01 - 2.4 h Wire Mesh Fence & Gate, dated 10.01.23.

Reason: For the avoidance of doubt and in the interests of certainty.

3. Before the approved development is commenced, details of the existing and proposed ground levels within the site including spot heights, cross sections and finished floor levels of all buildings and structures shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full and retained thereafter.

Reason: To safeguard the visual appearance and character of the area. Reason for Pre-Commencement Condition: Any changes in land levels on site could affect the character and amenity of the area and the living conditions of nearby residents, thereby details of existing and proposed land levels must be agreed with the LPA prior to commencement.

4. i) The development hereby approved shall be carried out in full accordance with the following approved Preliminary Risk Assessment for Slack Lane, dated June 2022 (ref: P22459_R1) by Yellow Sub Geo. ii) Prior to any intrusive ground works a detailed UXO (unexploded ordnance) desk study is undertaken as the preliminary risk assessment notes that the site is in a moderate risk zone. iii) Where necessary, any further works identified by the UXO desk study shall be implemented. iv) Any additional or unforeseen land contamination encountered during development shall be notified to the Local Planning Authority as soon as practicably possible and a remedial scheme to deal with this approved by the Local Planning Authority. v) Upon completion of any approved remediation schemes, and prior to occupation/first use of the approved development, a completion report demonstrating that the scheme has been appropriately implemented and the site is suitable for its intended end use shall be approved in writing by the Local Planning Authority.

The discharge of this planning condition will be given in writing by the Local Planning Authority on completion of the development and once all information

specified within this condition and other requested information have been provided to the satisfaction of the Local Planning Authority and occupation/use of the development shall not commence until this time, unless otherwise agreed by the Local Planning Authority.

Reason: To safeguard the amenity of the future occupants of the development. Reason for Pre-Commencement Condition: Any works on site could affect contamination which may be present and hinder the effective remediation of any contamination causing a risk to the health of future occupiers and harm to the environment, hence the initial investigation must be carried out prior to the commencement of any works on site.

5. Prior to the occupation/first use of the development hereby permitted, a "lighting design strategy for biodiversity" for the dark corridors along key habitat features shall be submitted to and approved in writing by the local planning authority. The strategy shall: 1. Identify those areas/features on site that are particularly sensitive for bats, badgers and other crepuscular animals and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and 2. Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. The lighting shall be designed to an illumination value of no greater than 5 lux at the nearest residential property. The beam angle of any lights directed towards any potential observer should be kept below 70 degrees. Spill shields should also be fitted. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

Reason: To safeguard the character and appearance of the locality, to protect existing/future wildlife which use the site and wider area and to prevent light pollution.

6. Noise arising from the Development shall not exceed the noise levels set out in Tables 1 and 2 of the Technical Note for the Battery Storage Scheme at Slack Lane dated 26/10/2023 Ref: J003648-7359-ECE-02 during the day or night at the closest residential receptors to the site, existing at the time of the approval of this planning permission, when assessed in accordance with the methodology and principles set out in BS4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound. Note: Daytime noise levels shall not exceed the levels set out in Table 1 of the report.

Reason: To minimise the impact of noise on residential amenity.

7. At the time of commissioning the site, the noise emanating from the application site when all battery and associated equipment are operating shall be assessed to confirm noise arising from the Development shall not exceed the approved noise levels at the closest residential receptors to the site in accordance with Condition Number 6. The methodology for the verification report shall follow the most up to date relevant British Standard, legislation and guidance. The verification report shall be submitted to the Planning Authority for approval within 30 days of the commissioning of the site. If the Verification Report determines that background

noise levels at the closest residential receptors are exceeded, then further mitigation shall be implemented to satisfy that requirement, within a timescale to be agreed by the Local Planning Authority.

A further Verification Report/Addendum shall then be submitted to the Local Planning Authority for approval within a timescale agreed with the Local Planning Authority in writing. The Development shall thereafter continue to operate in accordance with the approved Verification Report.

Reason: To minimise the impact of noise on residential amenity.

8. Prior to the development hereby approved/permitted being first occupied or brought into use the means of vehicular access to the site from Slack Lane shall be constructed to a minimum width of 6.1 metres in width at the junction of the site access road with Slack Lane in accordance with the drawing ref ELCAN128-001 Rev. B.

Reason: In the interests of highway safety.

9. Before the approved/permitted development is first brought into use no less than 3 car parking spaces with minimum dimensions of 2.4 metres by 4.8 metres shall be marked out and provided within the curtilage of the site, in accordance approved plan Drawing No. ELCAN128-001 Rev B dated 20.10.23. Such spaces shall be made available for the parking of cars at all times (the premises are in use).

Reason: To ensure that adequate provision is made for vehicles to be left clear of the highway.

10. Notwithstanding any description of materials in the application, no above ground construction works shall take place until samples or full details of materials to be used externally on the buildings have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the type, colour and texture of the materials. The approved materials shall be implemented in full thereafter.

Reason: To ensure the development reflects local distinctiveness and good design.

11. Prior to the commencement of development above ground a biodiversity net gain scheme including a proposed long term habitat and management plan for the application site and land edged blue identified on drawing no. SE0970-03_D08_GS shall be submitted to and approved in writing by the Local Planning Authority. The requirements should include the following matters: • Removal of areas of Japanese Knotweed; • Translocation of the existing Southern Marsh Orchid; • Creation of habitat to enable translocation of the Southern Marsh Orchid; • Retention and management of the existing lowland raised bog together with how the extended area of lowland raised bog would be created and integrated into the existing area of bog; • Creation of native hedgerow within the site edged blue and on the north, west and east boundaries of the development land as shown on Drawing No. ELCAN128-001 Rev B; • Replacement of trees removed to facilitate the development; • Timetable for the implementation of the approved works; • Provision of a full landscaping scheme including a management and maintenance strategy to include maintenance for a 30 year period; • Biodiversity Net Gain of 10%.

The approved landscaping and biodiversity net gain scheme shall be implemented in full by no later than the end of the first planting season following completion of the development or within two years from the commencement of development. Any trees and shrubs that die or are removed within ten years of planting shall be replaced in the next available planting season with others of similar size and species.

Reason: To reflect and soften the setting of the development within the landscape.

12. No vegetation clearance or demolition of buildings should take place between the months of February and August inclusive unless, prior to any clearance, unless the site is surveyed by a qualified ecologist and that they have confirmed that no nesting birds are present within the site. The ecologist's report shall be submitted and approved by the Local Planning Authority prior to any site clearance occurring.

Reason: The site has the potential to support breeding birds. It is an offence under the Wildlife and Countryside Act 1981 (as amended) to disturb birds whilst they are breeding.

13. Prior to the commencement of development, including demolition, ground works or vegetation clearance a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. The CMP shall include the following details: a) Hours of construction and deliveries; b) Details of the precautions to guard against the deposit of mud and substances on the public highway, to include washing facilities by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances prior to entering the highway; c) Dust suppression measures; d) Noise emission suppression measures; e) Construction routes in and around the site; f) Compound locations together with details of the storage facilities for any plant and materials including off-site consolidation if appropriate, the siting of any site huts and other temporary structures, including site hoardings and details of the proposed security arrangements for the site; g) Parking of vehicles associated with construction, deliveries, site personnel, operatives and visitors; h) Sheeting over of construction vehicles. Development of each phase or plot shall be carried out in accordance with the approved CMP.

Reason: To ensure that adequate consideration is given to the need to minimise the impact on the road network and reduce pollution.

14. Prior to the commencement of any groundworks, full details of the proposed surface water drainage works shall be submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out to investigate the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework, and the results of the assessment provided to the Local Planning Authority. Where a sustainable drainage system is to be provided, the submitted details shall: 1) 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. 2) Include a timetable for its implementation, and 3) 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 approved works shall be

implemented in full prior to the occupation of the buildings hereby approved and those works as approved shall be retained thereafter.

Reason: To ensure the site provides satisfactory means of surface water drainage. Reason for pre-commencement condition: The solution for surface water disposal must be understood prior to works commencing on site as it could affect how underground works are planned and carried out.

15. No development shall take place until a plan detailing the Reasonable Avoidance Measures to populations of badgers, amphibians and reptiles and their associated habitat during construction works has been submitted to and approved in writing by the Local Planning Authority. The approved RAMS shall be carried out in accordance with the approved detail including an implementation timetable.

Reason: To ensure protection of badgers, amphibians and reptiles and their habitat within and adjacent to the development site. Reason for pre commencement condition: To ensure that the details are approved and implemented prior to the construction of the development hereby approved and to ensure the protection of wildlife to accord with the requirements of the development plan.

16. Prior to the first use of the Battery Energy Storage System (BESS), a Battery Safety Management Plan (BSMP), including a Fire Safety and Emergency Response Plan, must be submitted to, and following consultation with Greater Manchester Fire and Rescue Service, approved in writing by the local planning authority. The BESS shall be constructed and operated in accordance with the approved BSMP thereafter.

Reason: To ensure that development is protects the safety of local residents. Reason for pre commencement condition: To ensure that the details approved ensure the protection of local residents from a potential breakout of fire at the approved development site.