

Appeal Decision

Hearing held on 22 October 2024

Site visit of appeal site made on 22 October 2024

Site visit of surrounding area made on 28 October 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2024

Appeal Ref: APP/C3430/W/24/3344658

Land on the southwest side of Levedale Road, Penkridge, Staffordshire ST18 9AH

- 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 Levedale Ltd, C/O Mr James Stone of Anglo Renewables Ltd against the decision of South Staffordshire District Council.
 - The application Ref is 23/00145/FUL.
 - The development proposed is the construction and operation of a battery energy storage facility and substation with associated fencing and landscaping.
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Decision

1. The appeal is allowed, and planning permission is granted for the construction and operation of a battery energy storage facility and substation with associated fencing and landscaping at land on the southwest side of Levedale Road, Penkridge, Staffordshire ST18 9AH in accordance with the terms of the application, Ref 23/00145/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The applicant on the planning application form was Mr James Stone of Anglo Renewables Limited. However, the appeal was submitted by Mr James Stone of Anglo ES Levedale Limited. Ordinarily, only the applicant can make an appeal, but they can instruct another person to represent them. Consequently, the appellant was amended to include both company names, and Anglo ES Levedale Limited has confirmed they are happy to represent the appellant. I have therefore included the amended name in the banner heading above.
3. The written evidence interchangeably refers to a 49.9MW and a 50MW battery energy storage system ("BESS"). The appellant clarified at the Hearing that the proposal is for a 49.9MW facility.
4. It is unclear from the written evidence whether the proposal seeks permission for a temporary period, or whether it is to be permanent. The appellant clarified at the Hearing that the proposal is for a temporary period of 35 years and 6 months after the date the development is first operational.
5. The Council is in the process of producing a revised local plan. It was clarified at the Hearing that the plan has not been submitted for examination and therefore, it is at an early stage in the plan making process. While the draft policies indicate a direction of travel and a broadening of their scope to include

different types of renewables, they could be subject to change. As such, the relevant policies in the revised local plan can only be afforded limited weight.

6. The Council's reason for refusal refers to Policies OC1 and EQ4 of the South Staffordshire Council Core Strategy, adopted 2012 ("CS"). However, the Statement of Common Ground ("SoCG") also lists CS Policy EQ12 as of relevance to the appeal. I have therefore determined the appeal on this basis.
7. The appellant submitted revised information with their Statement of Case including, a General Arrangement drawing (revision P17), a Noise Impact Assessment for Planning Application dated 11 April 2024, a Landscape and Visual Impact Assessment dated May 2024 ("LVIA") including a revised Landscaping Strategy, and a Biodiversity Net Gain (BNG) Report dated 30 May 2024 ("BNGR").
8. The appellant clarified at the Hearing that the proposal's layout was amended during the consideration of the planning application. The Council made its decision based upon the revised layout. However, the Noise Impact Assessment was not updated to reflect the revised layout, which subsequently required the acoustic fence to be extended along one side. Consequently, the LVIA needed to be updated to reflect this change. Furthermore, the Landscaping Strategy was amended to include the infilling of gaps within the existing hedgerows along the southern/southwestern boundary of the appeal site and accordingly, the BNGR needed to be updated.
9. In accordance with the principles that have been established by Case Law¹, I do not consider the proposed amendments involve a substantial difference or a fundamental change to the planning application. The Council and interested parties have had an opportunity to comment upon the proposed amendments. Accordingly, accepting the revised information would not cause any unlawful procedural unfairness to anyone involved in the appeal. For these reasons, I have accepted the revised information and determined the appeal on this basis.

Main Issues

10. The main issues are:
 - a) the effect of the proposal on the character and appearance of the surrounding area; and
 - b) whether any conflict with the development plan that may arise in respect of the proposal is outweighed by material considerations.

Reasons

Character and Appearance

11. The appeal site comprises an agricultural field to the south of Levedale Road. It is separated from the road by a field that was in arable production at the time of my site visit. The proposed BESS would occupy the western part of the field and would be accessed from Levedale Road by a proposed access road that would largely follow the western boundary of the adjacent field.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another, Queen's Bench Division 24 October 1980 and Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (admin)

12. The BESS would consist of battery units housed in containers and inverters/transformers regularly spaced and arranged in rows, a private substation, a distribution network operator room, a welfare and control room, an auxiliary transformer, a storage room, and a 132kV substation located within a secure compound. An acoustic barrier of 3.5m in height would partially surround the northern and eastern sides of the proposal. The BESS would be set behind existing and enhanced hedgerows, a newly planted hedgerow to the east, and existing and newly planted trees.
13. The appeal site is in the open countryside. CS Policy OC1 states that the open countryside will be protected for its own sake, particularly for its landscapes, areas of ecological, historic, archaeological, agricultural and recreational value. It then provides a closed list of developments that would be acceptable in the open countryside.
14. Part C(f) of CS Policy OC1 permits the carrying out of engineering operations, or the making of a material change of use of land, where the works or use proposed would have no material effect on the appearance and character of the open countryside. The parties agree the proposal would have a material effect on the appearance and character of the existing arable agricultural field and there is nothing before me to come to a different view. Consequently, the proposal would conflict with Part C(f) of CS Policy OC1.
15. CS Policy EQ4 seeks to protect and enhance the character and appearance of the landscape, while CS Policy EQ12 seeks to ensure that the landscaping of new development is an integral part of the overall design, which complements and enhances the development and the wider area. Inevitably, developing the appeal site would cause a change in its character from an open, arable field. However, change is not synonymous with harm.
16. I have had regard to the amended LVIA. The appeal site is within the Shropshire, Cheshire and Staffordshire Plain National Character Area, which is described as an extensive, gently rolling plain where woodland is virtually absent as agriculture dominates. Field sizes vary in scale as a result of historical farming practice. Field boundaries are generally well maintained and predominantly consist of hedgerows with large, usually over-mature, specimen trees. The hedgerows are generally dense with large, mature hedgerow trees giving the appearance of a well-wooded landscape even though woodland is relatively scarce.
17. The appeal site is also within the Ancient Clay Farmlands which is a landscape of mixed arable and pastoral farmland, the character of which is strongly influenced by existing land use and farming practices. Throughout this landscape type, the varying tree and hedgerow density and landform with occasional high points, allows long distant views through the landscape to show up the landcover elements. The landscape has a very rural feel with small winding country lanes, large red brick farms and numerous old villages.
18. Both parties agree that while the landscape is valued locally, it is not a "valued landscape" for the purposes of paragraph 180 of the Framework. I have nothing before me to come to a different view.
19. A sizeable component of the proposal would be rigidly laid utilitarian structures and fencing with associated changes to the ground cover, all of which would

be uncharacteristic of this relatively unspoilt agricultural landscape. As such, the proposal would harm the landscape character of the surrounding area.

20. Additional hedgerows and trees would be planted, and existing hedgerows would be enhanced, which would be reflective of the wider character area. While woodlands are relatively limited within the surrounding area, the proposed tree planting would be towards the site's boundaries and therefore, would have a similar appearance as other tree-lined field, pond and road/access boundaries in the surrounding area. Consequently, I do not find that the proposed planting would be out of character with the surrounding landscape.
21. Turning to the visual effect of the proposal, at the Hearing the Council clarified that their concerns were largely focused on the effect of the proposal from Levedale Road (Viewpoints 1-4 of the LVIA). However, the Council and interested parties also raised concern regarding the effect of the proposal from the south (Viewpoints 5, 7 and 8 of the LVIA, and from the car park to the rear of The Swan, Whiston).
22. The viewpoints to the south of the appeal site are at a medium to long distance, with potential receptors being those travelling along the roads (motorists, cyclists, walkers, horse riders) and those using Public Rights of Way. However, views of the proposal would be restricted by the undulating landform, and the intervening hedgerows and trees. Consequently, I agree with the LVIA that there would be a moderate/minor visual effect from these viewpoints in Year 1. The view of the proposal from the car park of The Swan would be similar to Viewpoints 5, 7 and 8 and therefore, would have a comparable moderate/minor visual effect.
23. Views of the proposal from Levedale Road would be localised with potential receptors being people travelling along the road (motorists, cyclists, walkers, horse riders) and the occupiers of dwellings on the opposite side of the road.
24. The field adjacent to Levedale Road is raised above the road and rises slightly to a ridge before falling gently towards the appeal site. There is a substantial hedge bounding the southern side of Levedale Road, however, there are some gaps where views towards the appeal site can be gained.
25. Views by road users would be oblique and restricted to glimpses of the proposal through the roadside hedgerow and above/through the hedgerow along the northern boundary of the site. Views would also be tempered somewhat by the speed at which receptors would travel along the road, with the proposal less likely to be noticeable to motorists and cyclists than walkers or horse riders who would have a greater time to take in their surroundings.
26. The occupiers of four dwellings fronting Levedale Road would have views towards the proposal from their first floor front elevation windows. However, the visual effect of the proposal on these receptors would be reduced by the distance, the intervening hedgerows and the proposal's siting at a lower ground level. Also, views from two of the dwellings' first floor windows would be oblique. Consequently, I agree with the LVIA that there would be a moderate/minor effect from these viewpoints in Year 1.
27. From the aforementioned viewpoints, the proposed landscaping would lessen the visual harm of the proposal over time. Securing the management of the

landscaping scheme by condition, my expectation would be that the proposed landscaping would establish and would limit the visual effect of the proposal to a minor/negligible degree on the receptors after 3-5 years, and to a negligible degree by Year 15. Consequently, I do not consider the proposal would have a visual effect on the landscape.

28. The proposal would be in place for 35 years and 6 months before being removed and the land returned to its current condition. While this is a considerable period of time, the proposal would not be permanent. Consequently, the proposal's effect on the landscape would be reversible and there is nothing before me to suggest that the landscape could not be capable of returning to its current agricultural use, albeit with additional landscaping.
29. I have been directed to a planning approval² for a solar farm to the southeast of the appeal proposal. The solar farm would cover an extensive area of undulating fields and therefore, it would inevitably alter the agricultural character of the surrounding landscape. However, it was confirmed at the Hearing that the development had not commenced, and I have nothing before me to suggest that it would be implemented. Consequently, it is unclear whether the appeal proposal would cumulatively add to the provision of energy infrastructure within the surrounding area.
30. Notwithstanding this, if the solar farm was implemented and I allowed the appeal proposal, cumulatively they would erode the agricultural landscape character of the surrounding area. There would be some intervisibility between the consented solar farm and the appeal proposal from Preston Vale Lane. However, the view would be dominated by the solar farm in the foreground and the undulating landform, intervening distance and vegetation would significantly limit views of the proposal. Furthermore, the proposed landscaping would effectively screen the development once it became established. Consequently, a cumulative visual effect would not arise.
31. In reference to the first main issue, I do not accept that the proposal would have a harmful visual effect. However, it would have a harmful effect on landscape character. It would therefore conflict with CS Policies OC1, EQ4 and EQ12, the content of which I have described above.

Whether Conflict with Development Plan Outweighed by Material Considerations?

32. Paragraph 47 of the Framework requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise.
33. The appellant has directed me to various international, national and local publications and Acts in respect of climate change and net zero, which I have considered.
34. BESS do not produce renewable energy and can store electricity generated from non-renewable sources. However, BESS are essential for a net zero energy system³. They allow the local grid network to operate more efficiently by storing electricity when it is abundant and releasing it into the network when it is scarce. With an increasing volume of renewable energy, BESS have a role to play in making full and effective use of the energy produced,

² Planning Ref 23/00009/FUL

³ National Policy Statement for Renewable Energy Infrastructure (EN-3), paragraph 2.9.9

balancing supply and demand, and modulating the frequency of the system. BESS also allow for the increased efficiency of intermittent renewable energy technologies such as solar and wind and can help to offset the country's reliance on fossil fuel energy.

35. The need for electricity storage is rising as the country increases the volume of variable renewables and peak demand intensifies through the electrification of heat and transport. BESS will be critical to maintaining the country's energy security as we shift away from gas over the 2020s-30s⁴. The main parties agree within the SoCG that a strong presumption should be afforded to the benefits of BESS as part of the wider national strategy for decarbonising the country's energy system.
36. It was confirmed at the Hearing that a connection application was made prior to reaching capacity and therefore, the proposal could connect to the grid within 18-24 months following consent. Consequently, the proposed BESS could help towards meeting the Government's net zero target relatively quickly. This is not a universal picture, as future connections to the National Grid could be delayed due to existing capacity being exhausted.
37. For these reasons, I afford the proposal's benefits in supporting climate change and net zero significant weight.
38. Paragraph 164 of the draft Framework seeks to support planning applications for all forms of renewable and low carbon development and to give significant weight to a proposal's contribution to renewable energy generation and a net zero future. The draft Framework's consultation has closed, and the Government is currently reviewing the responses received. Therefore, draft paragraph 164 could be subject to change. Consequently, while the draft Framework provides a possible direction of travel, I afford it limited weight.
39. The Written Ministerial Statement "Building the homes we need" ("WMS") does not expressly mention BESS. However, it recognises that boosting the delivery of renewables will be critical to meeting the Government's commitment to zero carbon electricity generation by 2030. As identified previously, BESS are essential for a net zero energy system and therefore are explicable linked. Consequently, I afford the WMS moderate weight.
40. There would be some economic benefits during the construction of the proposal. However, these would be for a temporary period. The proposal would be operated and managed remotely and therefore, attendance by employees once the BESS is operational such as to periodically change the batteries and for maintenance would be limited. Consequently, I afford this benefit moderate weight.
41. In terms of Biodiversity Net Gain, the proposal would contribute a 35.1% increase in habitat units and a 39.13% increase in hedgerow units. The proposal would therefore make a meaningful contribution to improving biodiversity. A Landscape and Ecological Management Plan secured by condition could ensure that the proposed measures become well established by the time the BESS finishes operating. The main parties attribute this moderate weight, and I have nothing before me to take a different view.

⁴ National Policy Statement for Renewable Energy Infrastructure (EN-3), paragraph 2.9.10

42. Concern has been raised regarding the effect of the proposal on the setting of three Grade II listed buildings, namely Field House Farmhouse, Levedale Farmhouse and Longridge House. Accordingly, I have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special regard to the desirability of preserving the setting of these listed buildings.
43. Field House Farmhouse is circa 365m from the appeal site and comprises a late 18th century farmhouse with later alterations. Levedale Farmhouse is circa 510m to the north of the appeal site and comprises a farmhouse dating from around 1800 with later additions. Longridge House is circa 470m east of the appeal site and comprises an early 19th century model farm which was formerly part of the Littleton Estate. The significance of these listed buildings is their historic and aesthetic values.
44. These listed buildings form part of the dispersed pattern of development along Levedale Road and are experienced within a rural/agricultural landscape. While I have found that the proposal would erode the surrounding landscape character, these listed buildings are sited a considerable distance from the appeal site with limited intervisibility. Consequently, the proposal would not harm the setting of these listed buildings.
45. Concern has been raised regarding fires and/or explosions occurring at the proposal and the safety of BESS facilities. While it is said that BESS facilities have a history of fires, the appellant detailed that there is evidence of only one fire occurring at a BESS in Liverpool. Consequently, I limited evidence that fires or explosions are a common occurrence at BESS facilities or that they pose a danger to life or property. Furthermore, the evidence before me suggests there would be controls in place to detect issues with the batteries and to prevent a fire/explosion from occurring. In the unlikely event a fire or explosion did occur, the proposal would be operated in compliance with an Outline Battery Safety Management Plan that would include tactical information and an emergency response plan to limit such an effect.
46. Contrary to interested parties' assertions Staffordshire Fire and Rescue Service was consulted as part of the planning application process and did not raise an objection subject to the proposal including the installation of Automatic Water Suppression Systems as part of a total fire protection package. Furthermore, fires and explosions involving domestic, bicycle and vehicle EV chargers are not directly comparable to the proposal.
47. The proposal would operate 24 hours a day, 7 days a week and therefore, it would generate noise that could affect people living and working in the surrounding area, and pupils at a nearby school. The Council's Environmental Health Protection Team/Officer ("EHP") raised no objection to the original Noise Impact Assessment subject to a condition requiring the implementation of suggested mitigation measures. No further comments were submitted from the EHP regarding the revised Noise Impact Assessment. I have no substantive evidence before me to suggest that the proposed mitigation measures would be ineffective. Consequently, I do not consider that people in proximity of the proposal would be unduly affected by noise.
48. The proposal's potential to harm the environment through the leaching/run-off of chemicals used to discharge a fire and by battery chemicals leaking into the ground can be controlled by a drainage condition that includes the provision of

pollution capture membranes. I have been directed to issues regarding flooding within the vicinity of the appeal site. However, the appeal site is within Flood Zone 1 and is therefore at a low risk of flooding. Any drainage issues associated with the proposal could be controlled by condition.

49. An Ecological Impact Assessment concludes that the proposal would have no significant ecological effects on notable habitats or species. This is supported by the Council's Senior Ecologist. I have no substantive evidence before me to come to a different view. The Natural England-led district level licensing ("DLL") scheme is an alternative approach to mitigation licensing for planning applications to develop sites which could affect Great Crested Newts ("GCN"). It aims to increase the number of GCN by providing new or better habitats in targeted areas to benefit their wider population. DLLs operate to protect GCN. The appellant entering a DLL does not suggest that the proposal would adversely affect GCN or their habitat.
50. The construction phase of the development would be for a limited period and therefore any effect on the living conditions of the occupiers of nearby properties and from vehicles using the surrounding roads would be temporary. Additionally, conditions to limit construction times and the imposition of a Construction Method Statement would minimise any effects.
51. Staffordshire County Council Highways raised no objection to the proposal subject to conditions. Residents dispute the Officer's findings regarding an absence of vehicular accidents on Levedale Road. However, I have limited information regarding these accidents for me to determine whether the proposal would have an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
52. Concern has been raised regarding why other sites such as those closer to the landowner's house, within decommissioned power stations, or on land outside the countryside could not be used to site BESS facilities. However, the location of BESS is determined by the proximity of a grid connection.
53. It has been suggested that the proposal would affect the best and most versatile agricultural land ("BMV land"). The part of the appeal site in which the BESS would be located would be on Grade 3b land. The proposed access road would be located on Grade 3a land. However, the access would involve a small part of the overall field and would not prevent the remainder of the field from being farmed for arable purposes. Furthermore, the proposal is for a temporary period and therefore the small section of Grade 3a land would be returned to agricultural use at the end of the development's lifetime. Consequently, the proposal's effect on BMV land would be minimal and as such, it does not have any bearing on my decision.
54. Concern has been raised regarding the proposal's effect on people's views. However, the right to a view over private land is not a material planning consideration. Similarly, the potential effect of a proposal on house prices is also not a material consideration.
55. It was suggested at the Hearing that people were not consulted regarding the proposal. However, there is nothing before me to suggest that the consultations undertaken by the Council did not follow the correct procedure, especially as representations were received both during the consideration of

the planning application and the appeal process, and interested parties attended the Hearing.

56. Representations were made to the effect that the rights of neighbouring occupiers under Article 1 and Article 8 as set out in the Human Rights Act 1998 would be violated if the appeal was allowed. The Council did not raise concern regarding the proposal's effect on the living conditions of the occupiers of neighbouring properties and I have nothing before me to come to a different view. Furthermore, I have found that the proposal would have a negligible visual effect on the surrounding area and any concerns regarding fires/explosions and noise can be mitigated by conditions. Consequently, I am satisfied that a grant of planning permission would not unacceptably interfere with the occupiers' right to the peaceful enjoyment of their possessions, and to a private and family life and home. It would be proportionate in the circumstances to allow the appeal.

Conditions

57. I have had regard to the conditions suggested by the Council, the amendments suggested by the appellant at the Hearing, and the tests for conditions set out within the Framework. As a result, I have made amendments to some of the conditions in the interests of clarity, precision and enforceability. The appellant, both at the Hearing and subsequently in writing, stated they were agreeable to the suggested pre-commencement conditions.
58. In addition to the standard condition, which relates to the commencement of development, I have specified the approved plans for the avoidance of doubt. A condition requiring the cessation of the development and to ensure that the land is returned to its current condition is required to ensure the development is not permanent.
59. A condition in respect of the materials/colours of the proposed structures and buildings is necessary to ensure the appearance of the proposal is acceptable. Conditions regarding visibility splays at the proposed access; the construction of the access in accordance with the approved plans; the first 5m of the access to be constructed of a bound and porous material; and the provision and retention of parking, servicing and turning areas are necessary in respect of highway safety.
60. Conditions controlling the hours of construction, dust emissions from the construction works, and to ensure the development is undertaken in accordance with the noise assessment are reasonable and necessary to ensure the proposal does not harm the living conditions of the occupiers of neighbouring properties. A condition requiring the proposal to be operated in accordance with an Outline Battery Safety Management Plan is also necessary to ensure the safe operation of the development and to prevent harm to the living conditions of the occupiers of neighbouring properties.
61. Conditions are sought for the proposal to be undertaken in accordance with a district level licensing scheme for Great Crested Newts; the proposal to be undertaken in accordance with an Ecological Impact Assessment; lighting details to be submitted and agreed; and the proposal to be undertaken in accordance with a Construction and Environmental Management Plan, a Landscape and Ecological Management Plan, and an Arboricultural Method Statement. These conditions are all reasonable and necessary to ensure the

proposal does not harm any existing landscape features, habitats or species, and to ensure that the proposed landscaping is managed to reduce the visual effect of the proposal on the surrounding landscape.

62. Conditions in respect of Sustainable Drainage Systems ("SuDS") are necessary to prevent potential flood risks and environmental harm from the proposal. To protect any archaeological features of interest that may exist within the appeal site, a condition regarding a written programme of archaeological works is necessary.

Planning Balance and Conclusion

63. I have found that the proposal would harm the landscape character of the surrounding area. However, I have found that significant weight should be afforded to the benefits of the proposal in respect of climate change and achieving net zero. I have also found that moderate weight should be afforded to the WMS, Biodiversity Net Gain, and the associated economic benefits of the proposal.
64. Accordingly, in reference to the second main issue, the conflict with the development plan is outweighed by material considerations.
65. Concern has been raised regarding whether CS Policy OC1 is consistent with the Framework and whether paragraph 11(d) of the Framework is engaged. However, as I have found that the material considerations indicate that a decision should be made other than in accordance with the development plan, it is not necessary for me to form a view on this matter.
66. For the reasons set out above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be allowed.

A Berry

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 drawings:
 - Location Plan PLO1 A
 - Proposed Layout SK01
 - Fence and Gate Detail D01
 - Private Substation Plans and Elevations D02
 - Battery Container Plans and Elevations D03
 - DNO Room Plans and Elevations D04
 - Welfare and Control Room Plans and Elevations D05
 - Inverter and Transformer Module Plans and Elevations D06
 - AUX Transformer Plans and Elevations D07
 - Proposed Layout SK01 (Substation)
 - General Arrangement 05-1095-301 S3 P17
- 3) Before works above slab level, full details of facing materials and colours to be used in all buildings and structures (including the acoustic barrier) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.
- 4) Prior to the commencement of development, an Arboricultural Method Statement, providing comprehensive details of all underground service/utility runs, ground protection measures, 'No-Dig' construction types, construction methods within the Root Protection Areas of retained trees and a finalised Tree Protection Plan shall be submitted to and approved in writing by the local planning authority. The approved tree protection measures shall be in place prior to the commencement of development and all measures within the approved method statement shall be adhered to until all construction related activity has been completed.
- 5) Prior to the commencement of any other part of the development, the visibility plays shown on drawing no. ST5050-2PD-002A shall be provided. The visibility plays shall thereafter be kept free of all obstructions over a height of 600mm above the adjacent carriageway level.
- 6) Prior to the commencement of development, including groundworks or any necessary vegetation clearance, a Construction and Environmental Management Plan ("CEMP") shall be submitted to and approved in writing by the local planning authority. The CEMP shall include the following:
 - a) A risk assessment of potentially damaging activities and the phases associated with them.
 - b) Identification of biodiversity protection zones.
 - c) Practical measures (both physical measures and sensitive working practices such as timing) to avoid or reduce impacts to ecological features during site clearance and construction.
 - d) The location and timing of sensitive works to avoid harm to ecological features.
 - e) The times during construction when an Ecological Clerk of Works ("ECoW") needs to be present (as appropriate).

- f) The role and responsibilities of the ECoW, if appropriate.
- g) Responsible persons and lines of communication.

The approved CEMP shall thereafter be fully implemented throughout all construction work and any physical protective measures kept in place until all parts of the development have been completed, and all equipment, machinery and surplus materials have been removed from the site.

- 7) Prior to the commencement of development, a fully detailed surface water drainage scheme for the site shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is completed. The scheme shall demonstrate:
- a) Details of temporary measures to prevent flood risk occurring during the construction phase of the development.
 - b) Surface water drainage system(s) designed in full accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems ("SuDS"), (DEFRA, March 2015).
 - c) SuDS designed and implemented in full concordance with the Staffordshire County Council SuDS Handbook.
 - d) Provision of evidence of compliance with the principles of the drainage hierarchy, as described in Part H of Building Regulations. Satisfactory evidence of fully compliant infiltration testing in full accordance with BRE 365 best practice guidance, in order to confirm or not as to the viability of infiltration as a means of surface water discharge.
 - e) SuDs designed to provide satisfactory water quality treatment, in accordance with the CIRA C753 SuDS Manual Simple Index Approach and SuDs treatment design criteria. Mitigation indices are to exceed pollution indices for all sources of runoff.
 - f) Limiting any off-site conveyance of surface water discharge from the site to the rate generated by all equivalent rainfall events up to 100 year plus (40%) climate change in accordance with the guidance in the SCC SuDs Handbook - i.e. to Greenfield equivalent rates.
 - g) Provision of appropriate surface water runoff attenuation storage to manage all surface water discharge on site.
 - h) Detailed design (plans, network details and full hydraulic modelling calculations) in support of any surface water drainage scheme, including details on any attenuation system, SuDS features and the outfall arrangements. Calculations should demonstrate the performance of the designed system and attenuation storage for a range of return periods and storm durations, to include, as a minimum, the 1:1 year, 1:2 year, 1:30 year, 1:100 year and the 1:100-year plus (40%) climate change return periods.
 - i) Plans illustrating flooded areas and flow paths in the event of exceedance of the drainage system. Finished slab levels to be set higher than ground levels to mitigate the risk from exceedance flows.
 - j) Provision of an acceptable management and maintenance plan for surface water drainage to ensure that surface water drainage systems shall be

maintained for the lifetime of the responsible. The development shall thereafter proceed in accordance with the approved details.

- 8)
 - (a) Prior to the commencement of the development, a written scheme of archaeological investigation ("the Scheme") shall be submitted to and approved in writing by the local planning authority. The Scheme shall provide details of the programme of archaeological works to be carried out within the site, including post-fieldwork reporting and appropriate publication.
 - (b) The archaeological site work shall thereafter be implemented in full in accordance with the written scheme of archaeological investigation approved under part (a).
 - (c) Prior to the operation of the development hereby approved, a site investigation and post fieldwork assessment shall be completed in accordance with the Scheme approved under part (a) and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.
- 9) No development hereby permitted shall take place except in accordance with the terms and conditions of the Council's Organisational Licence (WML-OR112, or a "Further Licence") and with the proposals detailed on plan "Land On South West Side Of Levedale Road: Impact Plan for Great Crested Newt District Licensing (Version 2)", dated 27th June 2023.
- 10) No development hereby permitted shall take place unless and until a certificate from the Delivery Partner (as set out in the District Licence WML-OR112, or a "Further Licence"), confirming that all necessary measures regarding Great Crested Newt compensation have been appropriately dealt with, has been submitted to and approved by the local planning authority and the authority has provided authorisation for the development to proceed under the district newt licence.

The delivery partner certificate must be submitted to the local planning authority for approval prior to the commencement of the development hereby approved.
- 11) No development hereby permitted shall take place except in accordance with Part 1 of the Great Crested Newt Mitigation Principles, as set out in the District Licence WML-OR112 (or a "Further Licence") and in addition in compliance with the following:
 - Works which will affect likely newt hibernacula may only be undertaken during the active period for amphibians.
 - Capture methods must be used at suitable habitat features prior to the commencement of development (i.e. hand/destructive/night searches), which may include the use of temporary amphibian fencing, to prevent newts moving onto a development site from adjacent suitable habitat, installed for the period of the development (and removed upon completion of the development).
- 12) All ecological measures including pre-commencement checks for badger and Schedule 1 birds shall be carried out in accordance with the details contained in the Ecological Impact Assessment Report by The Environment Partnership (reference 9562.007) dated March 2023.

- 13) Prior to the operation of the development hereby permitted, a lighting design strategy for biodiversity shall be submitted to and approved in writing by the local planning authority. The strategy shall:
- a) identify those areas/features on site that are particularly sensitive for bat species and that are likely to cause disturbance along routes used to access key areas of their territory, for example, for foraging; and
 - b) 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. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

- 14) Prior to the operation of the development hereby permitted, a SuDS Operations and Maintenance Plan shall be submitted to and approved in writing by the local planning authority. This shall include the installation of pollution capture membranes beneath the infiltration swales, filter drains and battery storage/transformer compounds.

Following a fire/contamination event, the impacted areas of the site shall be removed and replaced (i.e. dig out contaminated swales, gravel and membranes). The development shall thereafter be implemented and operated in full accordance with the approved SuDSs Operation and Maintenance Plan throughout the life of the development.

- 15) The site shall be operated in accordance with the technical and safety information within the submitted Outline Battery Safety Management Plan. The Plan shall include a Tactical Information Record and Emergency Response Plan for the site, and the avoidance of firefighting products (e.g. Aqueous Film Forming Foam) containing perfluoroalkyl and polyfluoroalkyl substances where possible. This shall be submitted to and approved in writing by the local planning authority prior to the first operation of the site. The development shall be implemented and operated in full accordance with the approved Outline Battery Safety Management Plan throughout the life of the development.
- 16) Prior to the first use of the development, a combined Landscape and Ecological Management Plan ("LEMP") shall be submitted to and approved in writing by the local planning authority. The content of the LEMP shall include the following:
- a) Details of the landscaping and ecological measures to be secured in line with the General Arrangement Plan and the Biodiversity Net Gain report version 2.0 dated 30 May 2024.
 - b) Aims and objectives of management.
 - c) Appropriate management options to achieve aims and objectives for no less than a 30-year period.

- d) Detailed management prescriptions and a work schedule with annual plan.
- e) Responsibilities of bodies/organisations for implementation against actions.
- f) Monitoring and remedial measures.

The plan shall also set out (where monitoring shows that aims and objectives are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved plan shall be implemented in accordance with the approved details.

- 17) The mitigation measures recommended in the Noise Impact Assessment for Planning Application produced by Inacoustic and dated 11 April 2024 shall be implemented in full prior to the operation of the site. For the avoidance of doubt, these measures are:
- a) the inverters should be fitted with a noise reduction kit comprising external acoustic baffles to the air inlets and outlets capable of reducing the total sound power level to those in Table 6 of the report; and
 - b) a 3.5m high noise barrier at the site boundary facing the closest residential properties as shown in Figure 4 of the report. The noise barrier should be solid, continuous, sealed at all interfaces and have a surface density of 15 kg/m², or provide a minimum sound reduction performance of 15-20dB.
- 18) Operational hours of any construction activity, including vehicle movements to and from the site shall be restricted to 8am to 6pm Monday to Friday and 8am to 1pm Saturday, and at no time on Sundays or Bank and Public Holidays.
- 19) Mitigation for dust arising from construction activities shall be provided on site to prevent dust being emitted across the site boundary during dry periods.
- 20) The development hereby permitted shall not be brought into use until the access to the site within the limits of the public highway has been constructed and completed in accordance with approved plan 05-1095-301 S3 P17.
- 21) The development hereby permitted shall not be brought into use until the access road to the rear of the public highway has been constructed to a minimum width of 5m, surfaced and thereafter maintained in a bound and porous material in accordance with the approved plans.
- 22) The development hereby permitted shall not be brought into use until the parking, servicing and turning areas have been provided in accordance with the approved plans and retained thereafter.
- 23) (a) The development hereby permitted is for a period of 35 years and 6 months after the date the development is first operational as an energy storage site. Within 14 days of the development's first date of operation, notice of the date shall be supplied in writing to the local planning authority.
- A Decommissioning Method Statement shall be submitted to and approved in writing by the local planning authority at least 12 months prior to the expiry of the planning permission. The scheme shall include a programme of works to remove the batteries, transformer units, inverters, all associated structures

and fencing and the restoration of the site to its former agricultural use. The developer shall notify the local planning authority in writing no later than 20 working days following cessation of the import/export of electricity to the grid for energy storage use. The site shall subsequently be restored in accordance with the submitted scheme within 12 months of the cessation of the use.

(b) Once operational, if the development hereby permitted ceases to import/export electricity to the grid and operate as an energy storage facility for a continuous period of 24 months, then a scheme shall be submitted to and approved in writing by the local planning authority within 20 working days following cessation of the import/export of electricity to the grid for the removal of the batteries, transformer units, inverters, all associated structures and fencing and the restoration of the site to agricultural use. The approved scheme of restoration shall then be fully implemented within 12 months of the local planning authority's written approval of the scheme.

(c) If within 12 months of the completion of the development no operational use commences, the batteries, transformer units, inverters, all associated structures and fencing shall be dismantled and removed from the site and the site restored to agricultural use in accordance with a Decommissioning Method Statement. The Decommissioning Method Statement shall be submitted to and approved in writing by the local planning authority no later than 20 working days following the 12 month period of completion. The approved scheme of restoration shall be fully implemented within 12 months of the local planning authority's written approval of the scheme.

(d) If a permanent cessation of construction works occurs prior to the completion of the development hereby permitted, the batteries, transformer units, inverters, all associated structures and fencing shall be dismantled and removed from the site and the site restored to agricultural use in accordance with a Decommissioning Method Statement. The Decommissioning Method Statement shall be submitted to and approved in writing by the local planning authority no later than 20 working days following the permanent cessation of the construction works. The approved scheme of restoration shall then be fully implemented within 12 months of the local planning authority's written approval of the scheme.

*****End of Conditions*****

APPEARANCES

FOR THE APPELLANT:

Thea Osmund-Smith – Barrister, No5 Chambers

Neil Osborn – Senior Director, DLP Planning Ltd

Richard Hodgetts BA(Hons) DipLA CMLI – Director, Enplan

Jake Farmer BA AssocRTPI AEMA – Associate Planner, DLP Planning Ltd

James Stone - Managing Director, Anglo Renewables Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Stuart Crossen BA(Hons) PgCert PgDip MA MRTPI – Principal Planner

Tom Nutt, Assistant Team Manager Development Management

Cllr Andrew Adams, Penkridge North and Acton Trussell Member

INTERESTED PARTIES:

Cllr Kelly, Penkridge Parish Council and District Council Member

Susan McCreath, Local resident

Lisa Emmerson, Local resident

Julian Salmon, Local resident

Mike Dewsbury, Local resident

DOCUMENTS

- 1) A set of A3 sized colour copies of the maps and documents contained in the appellant's Landscape and Visual Impact Assessment, as requested by the Inspector in their pre-Hearing note.
- 2) A list of the Council's suggested conditions with amendments proposed by the appellant.