



Appeal Decision

Site visit made on 21 May 2025

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2025

Appeal Ref: APP/U1105/W/24/3351691

Land on the east side of Wareham Road, Axminster , EX13 5XN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by HB825AXM Limited against East Devon District Council.
 - The application Ref is 22/0508/MFUL.
 - The development proposed is battery energy storage scheme and associated development.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Applications for Costs

2. An application for costs made by HB825AXM Limited against East Devon District Council is the subject of a separate decision.

Procedural Matters

3. The appellant has suggested that the final design of the scheme would likely be smaller than that shown on the plans. However, the submission is for planning permission in full and I have assessed the proposal strictly based on the proposed plans and drawings which accompany this appeal.
4. In December 2024, during the course of this appeal, a revised National Planning Policy Framework (the Framework) was published. The changes to the Framework do not have any significant bearing on my assessment of this appeal, and so I took this change in national policy into account without prejudice to any party.

Main Issues

5. The Council failed to give notice of its decision within the requisite time period. A report containing three putative reasons for refusal has been submitted by the Council during the appeal. This document, in addition to the representations of interested parties, form the basis of the identified main issues.
6. The main issues are:
 - the effect of the proposal on the health of nearby residents, with reference to water consumption;
 - the effect of the proposal on protected species, with reference to the Dormouse;
 - the effect of the proposal on the character and appearance of the area, with reference to the setting of the Dorset National Landscape (the DNL); and,
 - the effect of the proposal on the setting of the Grade II listed building 'Pound'.

Reasons

The health of residents

7. The appeal site is a rectangular field of pasture, largely bound by trees and vegetation, within the open countryside to the east of the village of Hawkchurch. It sits above an aquifer which supplies water, including drinking water, to a number of residential properties in the local area. There is an established, although I understand currently vacant, badger sett at the southeast corner of the site.
8. Strategy 7 of the East Devon Local Plan 2013 to 2031 (adopted 2016) (the Local Plan) limits development in the countryside to where it accords with a specific policy that explicitly permits such development and where it would not harm the distinctive landscape, amenity and environmental qualities of the area in question.
9. Strategy 39 of the Local Plan states, amongst other things, that low-carbon energy projects (of which this is one) will be supported in principle and encouraged subject to adverse impacts on features of environmental sensitivity being satisfactorily addressed. Schemes must demonstrate that they have taken appropriate steps in considering the options in relation to location, scale and design for firstly avoiding harm, and then reducing and mitigating any unavoidable harm, to ensure an acceptable balance between harm and benefit. Policy EN18 of the Local Plan requires that development does not adversely affect the quality or quantity of groundwater. Schemes that threaten existing water quality will not be permitted.
10. The risk of a fire at the battery energy storage system (BESS) would be low. If a fire were to break out, modern firefighting practices seek to cool units adjacent to the fire, rather than attack the fire directly, which means there would likely be only limited contact between firewater and any pollutants discharging from a burning battery unit. Nonetheless, there is still a tangible risk that firewater would become contaminated, and subsequently that that firewater would go on to contaminate the water supply, if it were to reach the aquifer. Thus, even though the risk of fire would be low and the risk of firewater becoming contaminated could be very low, the consequences of such an event would be potentially significant to human health.
11. The plans show that surface water runoff from the development would be fed to a basin, from where it would infiltrate the ground. The appellant has suggested that the drainage scheme could provide an additional 1m x 72m, or smaller, pipe, which would store contaminated firewater if a fire were to occur. A 'Penstock Valve' would shut off the system, containing any firewater within the pipework and preventing it from reaching the infiltration basin. It would then be pumped out following the resolution of any fire event. This, it is put to me, would avoid any contaminated firewater leeching into people's drinking water source.
12. This additional pipework is not shown on the plans, and it is suggested that the details of such could be secured with conditions. However, it is not apparent where this additional and potentially significant drainage infrastructure would or could be located. It is not clear if it could be installed in a manner which would avoid disrupting the landscaping the scheme seeks to rely on, or what the possible implications would be for onsite habitat, particularly the outlier badger sett, badger being a protected species. The drainage work would also likely be in and of itself an engineering operation which is not reflected within the appeal submission.

13. I am also mindful of the lead flood authority's concern in relation to the quality and quantity of percolation testing that has been carried out to date. The final scale and design of the infiltration basin is something that in isolation can typically be secured through a condition. In this case, however, it means that I cannot rule out that the surface water drainage system may also have to be bigger than that shown, which further compounds my doubt as to the viability of the solution put forward with respect to the isolation of contaminated firewater.
14. I recognise that the local fire and rescue service and the Environment Agency do not object to the proposed drainage strategy. However, given my significant doubt that an adequate containment system can be achieved on land in the appellant's control, a condition requiring details of that system would fail the test of reasonableness and so cannot be imposed. The Planning Practice Guidance (the PPG) further states that it would not be appropriate to modify a development in a way that makes it substantially different from that set out in the application. Using the language of the Courts, given it would be an engineering operation, and given the potential knock-on ecological and landscape implications of the proposed containment solution, I am not satisfied that conditions requiring further details of the scheme would be strictly loyal to the terms of the parent permission if imposed¹.
15. I note that similar circumstances were present at a site in Kirkby, which is located above an aquifer, where planning permission was granted with the reliance on a condition suggested by the Environment Agency to secure a similar containment system. However, I do not have the detailed characteristics of that site or the proposed development to hand, and it is unclear if the site was as constrained as the appeal site is here. It has therefore had little influence on my assessment.
16. It follows that the scheme has failed to demonstrate that appropriate steps have been taken in relation to location, scale and design to firstly avoid harm arising from contaminated firewater and then reduce and mitigate any unavoidable harm. Consequently, I conclude on this issue that the proposal would have an unacceptable effect on the health of nearby residents, with reference to water consumption. The proposal would conflict with the relevant aims of Strategy 7, Strategy 39 and Policies EN14 and EN18 of the Local Plan and the PPG.

Protected species – Dormouse

17. Dormouse is a protected species. The hedgerows on site provide good foraging and dispersal routes for dormice linking the site to the wider landscape. Dormice have also been found in relation to a separate planning application within 750m of the site. Whilst a 'nut search' carried out at the site found no evidence of dormice, this alone does not rule out their presence, which remains a reasonable prospect.
18. Works to the hedges and trees, for example in relation to the new access and the tunnelling of the cable, have the potential to cause disturbance or direct harm to dormice if they are present. In the absence of substantive survey work to rule out the presence of dormice, I am unable to rule out that the development would cause harm to the favourable conservation status of this protected species.
19. The 06/2005 Government Circular: Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning System makes clear that it is essential that the presence or otherwise of protected species, and the extent

¹ R. (Cathie) v Cheshire West and Chester Borough Council [2022] EWHC 2148 at [64].

that they may be affected by a development, is established before permission is granted, otherwise all relevant considerations may not have been addressed. This is also, therefore, a matter which should not be left to a planning condition here.

20. For the above reasons, there is insufficient information before me to conclude that the proposal would not have an unacceptable effect on protected species, with reference to the Dormouse. This leads me to conclude that the proposal would conflict with the relevant aims of Policy EN5 and Strategy 47 of the Local Plan.

Character and appearance

21. The countryside in and around the appeal site is beyond the DNL which is some 1.3km to the north. It is not a 'valued landscape' in the Framework's terms but nonetheless has an attractive and quintessential character in its own right, featuring several components of the Wootton Hills character area it falls within.
22. These are principally its gently sloping fields enclosed by trees and vegetation, and its intimate and tranquil qualities. There is a notable absence of modern, detracting development in the area which leads the site to feel timeless. Whilst there is large-scale solar farm development to the south, it is experienced as very separate and beyond the visual envelope of the site and the north facing slope it occupies. The site is fairly well screened, although it is visible from Pound Road to the south and from the Public Right of Way (PROW) footpaths 27 and 28 to the northeast.
23. The proposed apparatus comprising the BESS would be tall, up above 7m in some instances, and would be surrounded by a 3m high acoustic fence. Given its bulk and highly utilitarian appearance, the storage facility would be an alien and intrusive feature within this unspoilt rural area. These are inherent issues with the design of the BESS and the way it would interact with the receiving landscape, and so would not be resolved by finishing the proposed structures in a dark green colour. The BESS would be particularly jarring viewed through the existing farmgate on Pound Lane, through the new access point on Wareham Road, and when viewed at more of a distance from the area where footpaths 27 and 28 meet.
24. Given the proposed terracing, the development would sit up, proud in the landscape, raising its visual prominence and causing considerable disruption to the sloping landform. As such, I depart from the conclusions of the appellant's landscape evidence insofar as I find that the proposed planting scheme would likely fail to offer sufficient mitigation of its negative, industrialising effects. I experienced Wareham Road to be a lightly trafficked, overtly quiet rural lane. The terracing also calls into question the effectiveness of the acoustic fencing, and draws the conclusion that there would be intermittent noise pollution experienced along Wareham Road, to the detriment of the peaceful tranquillity of this area.
25. Whilst the DNL is a good distance away to the north, I have a duty to seek to further the purposes of National Landscapes in my decision making; in this case the purpose of the DNL is to conserve and enhance natural beauty. This duty extends to the setting of the DNL. The Framework further states that development within the setting of National Landscapes should be sensitively located and designed to avoid or minimise adverse impacts on the designated area.

26. A special quality of the DNL is its uninterrupted panoramic views which allow appreciation of the complex pattern and textures of the surrounding landscape². The site falls within the DNL's visible setting from fields along the 'Monarch's Way' to the south of Holditch Lane³. From here the site forms part of a patchwork of picturesque pastoral and arable fields which form an important part of the DNL's setting in outward views and reinforce its natural beauty. Even at the long distances involved, the BESS would be an intrusive and alien feature which would harm the setting and purpose of the DNL. Given the sloping nature of the appeal site, I do not share the appellant's confidence that the augmented landscaping on the north site boundary would effectively screen the BESS from these viewpoints.
27. It is likely that battery storage facilities within the countryside will often carry a degree of harm to local character. I also recognise that choosing a site for a BESS is beholden to several practical considerations such as in this case the proximity to the Axminster Substation. However, given the quality of the receiving environment, and the level of intrusion the scheme would cause, an acceptable balance between harm and benefit has not been struck in my opinion.
28. I therefore conclude on this issue that the proposal would have an unacceptable effect on the character and appearance of the area, with reference to the setting of the DNL. In this respect it would conflict with the landscape and visual objectives of Strategy 39, Strategy 46, Policies D1 and TC4 of the Local Plan and the Framework.

Listed Building

29. The site is within the setting of the Grade II Listed building 'Pound'. Which is over 200m away to the east. As a vernacular historic farmhouse of likely 16th Century origin, the listed building derives significance from its historic agricultural setting. The site is part of that setting and was once part of the historic landholding. Its development in the manner proposed would erode its agrarian character to the detriment of the listed building. Given the peripheral nature of the effect, and the distances involved, the level of harm to the significance of Pound would be less than substantial, and at the lower end of a spectrum of less than substantial harm.
30. Paragraph 212 of the Framework explains that great weight should be given to the conservation of designated heritage assets. Paragraph 215 goes on to require decision makers to weigh any less than substantial harm to a designated heritage asset against the public benefits of the scheme. Here that balancing exercise must take place in the context of s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which sets a strong presumption against a grant of planning permission for development that would harm the setting of a listed building.
31. The National Planning Policy Statements for energy, the Framework, a series of government publications, and the 2020 Energy White Paper together illustrate the Government's clear commitment to the delivery of new energy infrastructure. Storage is an integral part of this, and a significant, sixfold increase in BESS development is needed to reach net zero targets. This development would make efficient use of an existing connection available at Axminster Substation, to quickly assist in the more efficient deployment and operation of renewables across the

² AONB Management Plan 2019-24

³ Illustrated by Viewpoint 5 within the appellant's landscape evidence

national grid. it would be able to store energy in order to ensure that there is a more balanced, reliable and constant supply of electricity across the network.

32. Additional benefits would be lower energy prices generally and a reduced reliance on imported energy and more costly and sometimes less secure means of generation, such as gas and nuclear energy. A reduction in imports is critical to enhance the UK's energy security in the ongoing unpredictable geopolitical climate. The scheme would also help to reduce our reliance on fossil fuels and so contribute to a lessening of climate change. There may also be subsidiary benefits to local agriculture through the diversification of the holding subject to this scheme. These are compelling benefits that together attract significant weight and outweigh the great weight that I ascribe to the heritage asset's conservation in this case.
33. Accordingly, I conclude on this issue that the proposal would have an acceptable effect on the setting of the Grade II listed building Pound. It would accord with the heritage objectives of Strategies 7 and 39, Policy EN9 of the Local Plan and the Framework.

Other Matters

34. I note the Council's and interested parties' concerns with reference to the bat activity at the site. However, I find the conducted survey work sufficient to conclude that bat activity is limited and restricted to occasional foraging and commuting. Given that the features within the site which support this occasional activity, the hedgerow and tree corridors, would be largely retained and augmented, I am satisfied that the effect of the proposal on bat would be acceptable.

Planning Balance

35. Pitted against the significant, aforementioned benefits of the proposal, the scheme poses potentially significant harmful effects on the health of nearby residents. This issue, together with the harm that would arise to the character and appearance of the area, and the potential harm to dormouse as a protected species, tip the balance of considerations towards dismissing this appeal. They lead me to the conclusion that the proposal would conflict with the development plan read as a whole and that the other considerations before me do not indicate that I should make a decision other than in accordance with the development plan.

Conclusion

36. For the reason given above, and taking all other matters raised into account, I conclude that the appeal should be dismissed.

Matthew Jones

INSPECTOR