



Appeal Decision

Site visit made on 22 October 2025

by **Paul Thompson DipTRP MAUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 December 2025

Appeal Ref: APP/F1040/W/25/3365001

Land north of Twyford Road, Twyford, Derbyshire DE73 7HJ

- 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 Enso Green Holdings SS Limited against South Derbyshire District Council.
 - The application Ref is DMPA/2024/0664.
 - The development proposed is Battery Energy Storage System with associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is against the Council's failure to determine the planning application. The Council's *Statement of Case* (CSoC) outlines the reasons that it considers the proposal would be unacceptable. These are not formal determinations of the Council as the jurisdiction to determine the application transferred from it upon valid receipt of the appeal. Nevertheless, it has set out that it would have refused the application had it been empowered to do so. The CSoC also identified concerns regarding the effect of the development on a Scheduled Monument. I have therefore taken these matters into account in determining the main issues.
3. Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) also requires a competent authority to have regard to the requirements of the associated Directive so far as it may be affected by the exercise of its functions. This includes any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of European Protected Species under Article 12(1)¹, such as Great Crested Newts (GCN) and the places that they inhabit. Due to the presence of ponds nearby, the appellant's *Preliminary Ecological Appraisal* (PEA) suggests the site could be potential habitat for GCN. Due to the nature of the appeal, I am the competent authority and must satisfy myself regarding this matter, so I have elevated this matter to a main issue.
4. The proposal is not determined under the Planning Act 2008, as a nationally significant infrastructure project, so it is not Critical National Priority infrastructure. Despite this, the Department for Energy Security & Net Zero *Overarching National Policy Statement for Energy* (EN-1) is clear that it may be a material consideration in decision making on applications falling under the Town and Country Planning Act 1990 (as amended). I have dealt with the *National Policy Statement for*

¹ Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Directive)

Renewable Energy Infrastructure (EN-3) in the same way. These were designated in January 2024, and both refer to an urgent need for energy generating infrastructure.

Main Issues

5. The main issues are the effect of the proposed development on:
- the landscape character and quality of the countryside;
 - breeding sites and resting places of Great Crested Newts;
 - the significance of ‘Cursus and mini henges, of Neolithic date, round barrows of Neolithic/Early Bronze Age date, and settlements, enclosures and fields of late Iron Age/Romano-British date, immediately East of Willington either side of the A5132’, the Scheduled Monument, to archaeological remains within the designated area and the site, and through development within its setting; and
 - the use of best and most versatile agricultural land (BMVAL).

Reasons

Landscape Character and Quality of the Countryside

6. The main part of the appeal site consists of a single parcel of open and undeveloped agricultural land within the predominantly flat countryside between Willington and Twyford, but access to it would be taken through neighbouring fields from Twyford Road. There are no footpaths to either side of the road, so the narrow verge and hedgerow planting are prominent enclosing features to the road. There are also mature hedgerows and trees present at the boundaries of the site and the fields between, and tree planting either side of Twyford Brook is within the backdrop of the site. Existing planting therefore provides a strong sense of enclosure to it.
7. The landscape around the site is also influenced, to a certain extent, by the existing energy infrastructure of past and present, including powerlines and pylons in neighbouring fields and the cooling towers of the former Willington Power Station. Despite this, the site and its surroundings embody the typical landscape characteristics of National Character Area 69, and it positively contributes to the landscape character of the countryside.
8. The proposal would be for a Battery Energy Storage System (BESS) of reasonably sized proportions, with two separate rectangular arrangements of storage containers positioned east-west in the site, with ancillary structures alongside. This would contrast significantly with the established characteristics of this part of the countryside, particularly the appearance of the open and undeveloped agricultural fields. However, as it would primarily be low in scale, the proposal would be most discernible to users of the Public Right of Way (PROW) which passes diagonally across the parcel of land to the east and links Twyford Road with Buckford Lane.
9. The appellant’s *Landscape and Visual Impact Assessment* (LVIA) addresses the sensitivity of the landscape and the overall magnitude of the impact of the proposal, including how it would be mitigated. Given the above, there is no compelling evidence before me that undermines its accuracy, and I concur that the

harm to landscape character would be moderate, reducing to minor when existing planting has been allowed to grow and been bolstered with further planting. To my mind, the presence of such planting would not appear unduly out of place or result in the land being visually or perceptually detached from its surroundings.

10. I am also mindful that there is a certain inevitability of some landscape impact associated with such developments in the early stages of their operational life, when planting is establishing and during winter months when it may not be in leaf. The proposal would also occupy the site for a considerable amount of time. However, harm to the landscape character and quality of the countryside would be localised, and therefore limited in its extent.
11. For the above reasons, I conclude that the propped development would have a limited but, nevertheless, harmful effect on the landscape character and quality of the countryside. This would conflict with the aims of Policies BNE4 and SD6 of the South Derbyshire Local Plan – Part 1 (Adopted 13 June 2016) (P1LP) regarding the protection and enhancement of South Derbyshire's landscape character; and Policy BNE5 of the South Derbyshire Local Plan – Part 2 (Adopted 2 November 2017) (P2LP) in relation to landscape character and quality. The development would also be contrary to paragraph 187 of the National Planning Policy Framework (the Framework), which requires the intrinsic value and beauty of the countryside to be recognised.
12. Conversely, while the proposal would be visible from the PROW, it would not directly affect it. As such, there would not be conflict with Framework paragraph 105, which requires that planning decisions should protect and enhance public rights of way and access.

Great Crested Newts

13. The Courts² have established that planning permission should ordinarily be granted save only in cases where a proposed development would either be likely to offend Article 12(1) of the Regulations or unlikely to be licensed pursuant to the derogation powers.
14. The consultation response submitted by Derbyshire Wildlife Trust (DWT) for the planning application refers to the PEA. The full details of the options regarding GCN are not repeated here, but the PEA was clear that ponds near to the site had not been surveyed and required some action, whether that be further survey work and subsequent action, or participation in the District Level Licensing scheme (DLL). DWT was clear this needed to be taken before the determination of the application. The main parties agree this has not occurred and the appellant confirmed that surveys of the ponds cannot be undertaken for access reasons.
15. While the appellant therefore proposes to join the DLL, there has been no correspondence received as part of the application or appeal from Natural England regarding an application from the appellant for an Impact Assessment and Conservation Payment Certificate, under the DLL. To enable this to occur as part of the appeal would lead to an unreasonable delay in its determination and there is no substantive evidence before me that would provide assurance that this would be agreed upon. Furthermore, this could also lead to procedural unfairness, as this

² Supreme court ruling in R (Morge) v Hampshire CC [2011] Env. L.R. 19 (see <https://www.supremecourt.uk/cases/docs/uksc-2010-0120-judgment.pdf>).

should have been addressed during the determination of the application, before jurisdiction passed from the Council. It should therefore be undertaken with a new application to the Council.

16. In addition, while a BESS nearby was granted on appeal³ with a planning condition used to secure this, that decision alone does not explain what specific evidence was before the inspector to understand why a condition was used. Accordingly, I attach limited weight to that decision, as I cannot be certain that the circumstances are the same. This would therefore not be sufficient justification for not having such details satisfied before the appeal is determined.
17. Consequently, I cannot be certain that the proposed development would not have a significantly harmful effect on the long-term conservation status of GCN through impacts to breeding sites or resting places, or that this would be mitigated. The proposal would therefore conflict with the requirements of the Framework regarding avoiding, adequately mitigating or, as a last resort, compensating for such harm through development, and so planning permission should be refused on this basis.

Scheduled Monument and Archaeology

18. Immediately south and west of the site is the Scheduled Monument (List Entry Number 1007028). The remains of this designated heritage asset survive beneath the agricultural land, buildings and highways within the designated area, and include various ditches, pits, gullies and slots with associated deposits. The remains were scheduled for four principal reasons, which inform its significance. Firstly, to the period of origin and the nature of the monument type, due to its insights into the beliefs and rituals associated with the site over the Neolithic period. Secondly, for the rarity of cursus monuments in England. Thirdly, for survival of significant archaeological remains, including pottery, burials and paleo-environmental remains. Finally, for its potential contributions to understanding, amongst other things, the nature, extent and longevity of Neolithic and Early Bronze Age ritual, ceremonial and funerary activity in England.
19. The significance of the Scheduled Monument is also derived from how it is experienced from its surroundings. The extent of its setting may well have changed, particularly as the surrounding countryside has been developed, most notably with the introduction of the power station and substation to the west. While the former has been decommissioned, its cooling towers remain in situ and are a domineering aspect of the wider setting of the Monument. However, the land to the east of the Monument has not undergone such alteration, with development being more limited amongst the agricultural fields enclosed by hedgerows. Nonetheless, as the asset is buried and primarily experienced through crop markings, its setting makes a minor contribution to how its significance is understood and appreciated.
20. The appellant's *Archaeological Evaluation Report* follows geophysical survey work previously undertaken. It indicates that an east-west boundary ditch continued from the Monument across to the immediate west of the site, and further ditches and their terminuses were also found, one of which may align with the Monument's known banjo enclosure to the west. Most finds were undated and difficult to interpret, and the targeted trial trenching of geophysical anomalies either indicated

³ Appeal Ref: APP/F1040/W/25/3366962 - Land east of Stenson Lane, Stenson.

an absence of features or that they were geological in nature. This therefore reduces the potential for unknown remains beyond the trial trenches.

21. The groundworks associated with the development would, nevertheless, directly impact on any below ground archaeological features. Whilst this may ultimately primarily be of low significance, the field boundary extending to the west of the site may be of greater significance. The slab and access track for the development would be built up above existing ground levels, but drainage, planting and the cable route would lead to some below ground works. Despite this, the evidence before me does not suggest that permission should be withheld on this basis or because of any potential harm through works within the Monument. However, the programme of archaeological mitigation would need to incorporate the ability to modify the design or reduce the impact of the development. The appellant would also need to obtain Scheduled Monument Consent before any work could commence, necessitating direct contact with Historic England.
22. In terms of the setting of the Monument, the introduction of the containers for energy storage and other infrastructure associated with the proposal would result in a fundamentally different environment to its east. This would result in some harm to its significance, through development within its setting. The appellant's LVIA demonstrates that, in time, the visual effect of the presence of the lower structures within the site would be mitigated by a combination of the existing and proposed scheme of planting. Within views from the PROW to the Monument there would remain visibility of taller elements of the scheme above planting, including the switch rooms. However, given the nature of the remains and how they are experienced, while there would be some harm caused to the significance of the asset from the development being within its setting, this harm would be limited.
23. Policy BNE2 of the P1LP and Policy BNE10 of the P2LP require developments to be considered in relation to national guidance and policy. Considering Framework paragraph 215, I adjudge the harm I have identified to be a low level of less than substantial harm, which should be weighed against public benefits of the proposal.

Public Benefits and the Heritage Balance

24. In assessing and ascribing weight to the stated benefits of the appeal scheme, I have had regard to the appeal decisions referred to in the appellant's *Statement of Case* (ASoC), including the weight attributed to each.

Climate Change and Energy

25. The UK Government declared a Climate Emergency in May 2019, and the Council followed suit in June 2019. It subsequently adopted its *Climate and Environment Strategy 2021*, a key theme of which was to strive to make the Council carbon neutral by 2030 with all its decisions considering and responding to the potential impact that they will have on the climate and wider environment. The proposal would therefore assist the Council in meeting its own Strategy.
26. The *Climate Change Act 2008*⁴ committed the Government to achieve net zero greenhouse gas emissions by 2050, from a 1990 baseline. The ASoC refers to numerous documents that support these aims, not least the *UK Net Zero Strategy: Build Back Greener*⁵, which sets a 78% reduction by 2035, and the Government's

⁴ The (2050 Target Amendment) Order 2019.

⁵ October 2021, updated April 2022)

latest approach to energy contained in the *Powering Up Britain Strategy*⁶ and EN-3. The latest published version of EN-1 refers to the flexibility provided by energy storage, including to accommodate energy from excess production or to meet demand when it is higher than generation, thereby supporting security of supply. Furthermore, the *Clean Power 2030 Action Plan*⁷ refers to the shift to renewable and low carbon energy by 2030, which it states forms the backbone of the transition to net zero. The *Second National Infrastructure Assessment*⁸ suggests the Government should target a total of 60GW of short duration flexibility by 2035, while the Action Plan seeks between 23-27GW of battery capacity by 2030. The proposal would provide capacity to store energy, and a connection is available nearby to the national grid. While the development is not significant and amounts to a small step toward that provision, it is of national importance to mitigating climate change and transitioning to a low carbon economy. The provision of and availability of the storage capacity anticipated from the development, including from renewable sources, would be an environmental benefit, alongside the benefit of security that would be brought to energy supply. These would each warrant being afforded significant weight in favour of the development.

27. However, I afford limited weight to the use of best technology to maximise productivity of the BESS, as this would be a commercial expectation of any such development.

Environment

28. The Biodiversity Net Gain associated with the development is expected to result in a 96% net gain in habitat units and a 26% gain in hedgerow units. This would be above the mandatory requirement expected by legislation and could provide improvements to habitat for some of the Priority and Protected Species identified in the PEA. Together with the long-term storage of carbon in tree planting on site, this would be a further environmental benefit of moderate weight, as planting could be a legacy of the development and enhance landscape character beyond the lifetime of the development.

Economy

29. The proposal would enable the farm holding to diversify its income and help to secure the viability of the farming business in the long term, which would amount to an economic benefit of moderate weight.
30. The construction and decommissioning phases of the development would generate jobs, albeit over a relatively short period, but there are likely to be some benefits to the economy from the labour market and the procurement of materials and equipment, and some long-term employment through, amongst other things, management, and maintenance of the site. Given the scale of the development proposed these would be social and economic benefits of limited significance.

Conclusions on the Third Main Issue

31. There would be significant public benefits associated with climate change and energy production and security; and other moderate and limited economic and environmental benefits associated with the appeal scheme. Taking these together,

⁶ March 2023.

⁷ December 2024.

⁸ October 2023.

I am satisfied that there would be wider public benefits of sufficient magnitude to outweigh the greatest of weight to the asset's conservation and the lower level of less than substantial harm identified to its significance.

32. For the above reasons, while there would be some harm caused to the setting of the Scheduled Monument, given the outcome of the above balance, there would not be conflict with the requirements of P1LP Policy BNE2 and P2LP Policy BNE10. Accordingly, there would therefore not be conflict with the design and heritage aims of P1LP Policies BNE1 and S1, P2LP Policy BNE5 and the Framework.

Best and Most Versatile Agricultural Land

33. Paragraph 168 of the Framework indicates applicants should not be required to demonstrate need for renewable energy developments. However, the Framework also requires where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality⁹. EN-3 repeats the aims of the Framework regarding the approach to the quality of land, and refers to land type not being a predominating factor in determining the suitability of a site location.
34. The overall appeal site area is 7.47 hectares, but a sizeable part of this constitutes the cable route along Twyford Road and the subsequent area identified for connection to the National Grid Willington Substation. Nevertheless, the BESS and part of the cable route would be on Grade 2 agricultural land, which comprises BMVAL as defined by the glossary in the Framework.
35. There is no locally or nationally derived figure for what amounts to 'significant' loss of BMVAL, but the Council's Committee Report refers to the decision for an appeal at Great Barr, Walsall¹⁰. I concur with the inspector in that appeal, that 20 hectares may be a sensible threshold of what constitutes 'significant', given that Natural England, the government's statutory advisor, does not need to be consulted for proposals on lesser areas of agricultural land. This aligns with my finding in the appeal at Cawston in Norfolk¹¹, that the loss of over 23 hectares of BMVAL would be significant. The use of BMVAL within the current site would therefore not be 'significant', so the proposal would not unduly impact on BMVAL, a key aim of P2LP Policy BNE5(v).
36. The Council has referred to several other proposed developments on BMVAL in the district¹², and across the East Midlands. I have not been referred to details of most of these developments, including their exact locations in relation to the site, and the overall take of BMVAL in relation to what exists in the district. However, of those developments, a BESS scheme at Caldwell Road, Drakelow¹³ was recently dismissed at appeal. This and the site at Swadlincote are some distance south of the site, and not in the same context. Overall, the evidence on these schemes does not enable me to determine whether the sites would either be comparable with the appeal scheme in terms of their land coverage or cumulatively equate to a

⁹ Footnote 65, within paragraph 188.

¹⁰ Appeal Reference: APP/V4630/W/24/3347424 - Land off Chapel Lane, Great Barr, Walsall.

¹¹ Appeal Reference: APP/K2610/W/21/3278065 - Land north of The Street, Cawston, Norfolk NR11 7QR.

¹² Appeal Reference: APP/U1050/W/24/3354670 - Land adjacent to Willshee's Depot 3, Keith Willshee's Way, Swadlincote, DE11 9EN (Swadlincote Resource Recovery Park); Planning References: DMPA/2024/0789 and DMPA/2024/1643; and the Oaklands Nationally Significant Infrastructure Project.

¹³ Appeal Reference: APP/F1040/W/25/3364999 - Land west of Caldwell Road, Drakelow, Burton on Trent, DE15 9TX (DMPA/2024/0925).

significant loss. Even so, the appellant's data is not disputed by the Council, and this suggests the site would constitute only a fraction of one percent of the total farmland in the East Midlands.

37. There is no mandate in national planning policies or guidance for alternatives sites to be considered or a sequential approach to their selection, but P1LP Policy BNE4 aims to protect soils on BMVAL and, wherever possible, direct development to areas with lower quality soils.
38. The site selection contained in the appellant's *Planning, Design & Access Statement* refers to the availability of alternative sites within 2km of the identified Point of Connection (PoC) at Willington Substation. It does not include details of the sites discounted, but explains the methodology used in doing so, including the existence of any heritage assets, potential for flooding and proximity to residential dwellings. The Scheduled Monument is next to the site and extends west to the former Willington Power Station and opposite it, south to the River Trent and adjacent to housing in Willington. I also have no reason to doubt the appellant's assertion that the Grade 3 and 4 land located closer to Willington, Barrow upon Trent and Twyford would be closer to sensitive receptors and at higher risk of flooding from the river. I therefore find that a logical and proportionate approach has been adopted to the consideration of sites that could be served by the PoC.
39. I have been referred to the Council's Emerging Local Plan (ELP), including to greater protections for BMVAL and the draft allocation of the Drakelow area as the principal location for energy-related development in the district. While this may provide an indication of future support for such development, I do not have details of the policies or any unresolved objections to them. I also cannot be certain that it would not be appropriate for development to occur outside such sites or guarantee that it would be approved on them. The Council accepts that only limited weight can be afforded to the ELP at this time and there is no substantive evidence before me that would enable me to disagree.
40. The Framework is clear that planning decisions should contribute to and enhance the natural and local environment by recognising the wider benefits from natural capital and ecosystem services – including the economic and other benefits of BMVAL. The proposal would take land out of farming use, including for food production, for a period of forty years. However, it is not compulsory for the land to be farmed in a particular way and there is no compelling evidence before me to demonstrate that the proposal would have a significant effect on food productivity or security stemming from farming over this timeframe. Equally, there are many competing demands for agricultural land, and some represent total loss but, in the case of BESS, the loss is for a temporary period. This can be secured by planning condition, with the proposal removed when it is no longer in use, and the land wholly restored to agricultural use afterwards.
41. For the above reasons, I conclude that the proposal would not have a harmful effect on the use of BMVAL. Hence, it would not conflict with the key aims of P1LP Policy BNE4, P2LP Policy BNE5, or the Framework repeated above.

Other Matters

42. The evidence has referred to several Grade II listed buildings within the local area, known as 'Grange Farmhouse' (List Entry Number 1096515), 'Old Hall Farmhouse' (1028935), 'Range of Outbuildings to the north of Twyford Hall' (1096516), 'The

Old School House' (1096518), 'Twyford Hall' (1039096) and 'Wall and attached outbuildings to the south of Twyford Church' (1334563). Reference has also been made to the Grade II* listed building 'Old Hall Cottage' (1096517), and the Grade I listed 'Church of Saint Andrew' (1039117).

43. The listed buildings draw significance from their settings and are experienced from rights of way in the locality. To my mind, the site does not contribute to the setting of any of the assets, given their distance, and they would remain visible and prominent from many other locations. Accordingly, the proposal would not affect how they are understood or experienced in their respective contexts. I am mindful of the contribution made by agricultural landscapes to the setting of churches, but the proposal would not compete with the Church of Saint Andrew or interrupt any designed view of it. With cognisance of the statutory duty referred to in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the settings of the listed buildings would be preserved and there would not be harm caused to their understanding or significance as designated heritage assets. In this respect, the proposal would therefore accord with P1LP Policies BNE1, BNE2, and S1; and P2LP Policies BNE5 and BNE10.

Planning Balance

44. I have already identified the stated benefits of the appeal scheme in the third main issue, which include significant climate change and energy benefits associated with the proposal and other moderate and limited economic and environmental benefits. These would be of sufficient magnitude to present as material considerations to indicate that the proposal should be determined otherwise than in accordance with the limited conflict with the development plan regarding harm to landscape character and quality of the countryside. I note that the inspector for a BESS scheme in Chesterfield¹⁴ dismissed that appeal, citing harm to the character and beauty of the countryside. However, given the above, the circumstances are not comparable. The proposal would also not conflict with the development plan regarding the use of BMVAL, or its effect on the significance of the Scheduled Monument or other designated heritage assets referred to above, through development within their settings.
45. Notwithstanding this, taking the benefits together, the harm that could be caused by allowing the proposal to the breeding sites and resting places of Great Crested Newts and the associated conflict with the Framework would be of greater significance. Hence, despite the above, this indicates that the proposal should be determined otherwise than in accordance with the development plan.

Conclusion

46. The proposed development would accord with aspects of the development plan, but the material considerations, namely the Framework taken as a whole, indicate that a decision should be made otherwise than in accordance with the development plan. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR

¹⁴ Appeal Reference: APP/R1038/W/17/3173683 - Calow Lane, Calow, Chesterfield, S44 5XH.