
Appeal Decision

Site visit made on 3 March 2015

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29/06/2015

Appeal Ref: APP/Z1510/A/14/2219512

Big Deere Lodge Field, Belchamp St Paul, Sudbury, Essex CO10 7DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Sovereign Partners against the decision of Braintree District Council.
 - The application Ref 13/00832/FUL, dated 10 July 2013, was refused by notice dated 17 April 2014.
 - The development proposed is the installation and operation of a solar farm and associated infrastructure, including PV panels, mounting frames, inverters, switchgear, access tracks, security fencing, pole-mounted security cameras and ecological enhancement.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application form described the proposed development as "installation of arrays of photovoltaic solar panels on the site for the purpose of converting daylight into electricity. The PV panels will be placed at an angle of 25 degrees on mounted frames with their height not exceeding 2.5 metres. The panels are fixed in place on light aluminium frames, with vertical struts piled into the ground to a depth of 1.5 metres. The Solar Farm will require approximately 25,000 PV panels with a combined generation capacity of approximately 6MW. This will provide power requirements for approximately 1770 households per year." In the interests of concision, I have adopted the abbreviated description of the proposed development used by the Council in its Refusal Notice.
3. On 25 March 2015, after the site visit took place and before my decision was issued, the government issued a Written Ministerial Statement entitled "Planning Update 2015". Among other things, this contained clarification of the existing guidance concerning proposals for solar farms involving the best and most versatile agricultural land. In the interests of fairness, I provided the appellant and the Council with the opportunity to comment on the implications of this for their respective cases. I have taken their responses, and the contents of the Written Ministerial Statement, into account in my determination of the appeal.

Local and national planning policy context

4. The Development Plan for the area comprises the saved policies of the Braintree District Local Plan Review, adopted in 2005, and the Braintree District Core Strategy, adopted in 2011. Saved Policy RLP 76 of the Local Plan Review states that proposals for renewable energy schemes will be encouraged and permitted where no demonstrable harm is caused to landscape, nature conservation or historic features. Policy CS 9 of the Core Strategy provides that renewable energy proposals will be supported where impacts on amenity, wildlife, heritage assets and landscape are acceptable.
5. The National Planning Policy Framework (NPPF), published in March 2012, sets out the Government's view that the planning system plays a key role in supporting the delivery of renewable and low carbon energy, and that this is central to the economic, social and environmental dimensions of sustainable development.
6. In March 2014 the Government published Planning Practice Guidance (PPG), containing a chapter which identifies the planning considerations relevant to a range of specific renewable energy technologies. The considerations identified as relevant to large-scale, ground-mounted solar farms include encouraging the effective use of land by focusing on previously-developed and non-agricultural land. The PPG advises that where a proposal involves greenfield land, consideration should be given to whether the proposed use of any agricultural land has been shown to be necessary, and poorer quality land has been used in preference to higher quality land.
7. More recently, on 25 March 2015, the Government issued a Written Ministerial Statement. This says that, in the light of continuing concerns about the unjustified use of high quality agricultural land, "... we want it to be clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence."

The main issue

8. The development here proposed would take place on greenfield land, most of which constitutes best and most versatile (BMV) agricultural land,¹ and it is this consideration which formed the basis of the Council's reason for refusing planning permission. That is the main issue in this appeal, but it is also necessary to take into account the other "particular planning considerations that relate to large scale ground-mounted solar farms" identified at paragraph 13 of the PPG.

Reasons

The use of greenfield BMV agricultural land

9. The appeal site consists of two agricultural fields which are currently used for arable cropping. A professional survey of the Agricultural Land Classification for the appeal site was provided by the appellant. Its findings, which are not disputed by the Council, are that 14% (2.5 ha) of the land contained in these two fields is Grade 2; 80% (14 ha) is Grade 3a, and the remaining 6% (1 ha) is Grade 3b.

¹ The glossary to the NPPF defines "best and most versatile agricultural land" as land in Grades 1, 2 and 3a of the Agricultural Land Classification.

10. This needs to be viewed in context. Natural England's 2010 Agricultural Land Classification Map (East Region) shows that more than half of the agricultural land in the district of Braintree is classified as Grade 2, with the vast majority of the remainder classified as Grade 3 (the map makes no distinction between Grades 3a and 3b), and only two small pockets of Grade 4 land, north of Halstead and south of Sudbury. The evidence of the appellant is that both of these pockets of Grade 4 land would be inappropriate sites for solar arrays due to their distance from power cables, and the fact that they include land indicated by the Environment Agency to be at high risk of flooding. No Grade 5 land is identified within the district.
11. Noting the statement in the PPG that "there is no quota [for renewable and low carbon energy development] which the Local Plan has to deliver", the Council contends that even if there were no sequentially preferable sites within the Braintree district, there would be no obligation to accept the use of BMV agricultural land on that basis. It argues that there is no requirement for the district to accommodate any solar farms if suitable sites (such as roof space, previously developed land, or poorer quality farmland) do not exist.
12. The problem with this argument is that the Government has made it very clear, in paragraph 97 of the NPPF, that "local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources." Paragraph 97 goes on to advise that local planning authorities should, among other things, have a positive strategy to promote energy from renewable and low carbon sources; design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily; and consider identifying suitable areas for renewable and low carbon energy sources and supporting infrastructure.
13. The relevant Development Plan policies, set out above at paragraph 4, deal with renewable energy in short order. More detailed policies were proposed in Council's emerging Site Allocations and Development Management Policies Plan, but in June 2014 the Council determined not to proceed with that Plan, and instead to begin work on a new Local Plan, which is not now timetabled for adoption until early 2017. While I understand that some of the draft policies of the Site Allocations and Development Management Policies Plan may be taken forward in the new Local Plan, for the purposes of determining the current appeal they can carry very little weight indeed.
14. There is, then, an expression of support for renewable energy in the Development Plan, but little evidence before me of any strategy for the positive promotion of schemes in the district, and no indication that the Council has identified areas suitable for renewable and low carbon energy sources. The Council points out that the district contains a number of industrial estates, and large buildings such as supermarkets and modern agricultural storage facilities, but it does not appear to have undertaken any analysis of the potential for their roofs to accommodate solar energy projects; nor has it commented on the analysis undertaken by the appellant. It may be that the district has the potential to contribute to renewable energy generation through other types of development, such as wind turbines, hydro-electric turbines or biomass plants, but it seems that a Capacity Study has yet to be produced.

15. In summary, there is currently a lack of clarity as to the manner (and the locations) in which the district will meet its responsibility to contribute to renewable energy generation, and this severely hampers any assessment of the extent to which it may be “necessary”, in the terms of the PPG, to accommodate renewable energy development on agricultural land.

Continued agricultural use and biodiversity enhancements

16. The fields in which the proposed solar farm would be constructed are currently used for arable cropping. The evidence of the farmer is that these two fields, which constitute 3.2% of the overall holding, are the least productive on the farm and therefore the most suitable for a non-arable use. The proposed development provides for the continuing agricultural use of the fields, in that they would be seeded as grassland wildflower meadows and grazed by sheep.
17. Land which has previously been in arable use is generally of low value to wildlife, and I note that this was confirmed by the findings of the independent ecological consultant engaged by the Council. The proposed creation of wildflower-rich grasslands below and between the solar panels, and the proposed enhancement of existing hedgerows, would provide improved nesting, roosting and foraging opportunities for a wide range of species. In addition, a new hedgerow and fallow grass headlands are proposed, in order to create a “wildlife corridor” linking two adjacent blocks of woodland that are both designated Local Wildlife Sites and ancient semi-natural woodland.
18. Careful planning and management would clearly be needed, to ensure a harmonious relationship between the ongoing agricultural use of the fields and the proposed ecological enhancements, but there is no reason to suppose this could not be achieved. A condition requiring the Council’s approval of a detailed Management Plan prior to commencement would ensure that matters such as stock levels and grazing timetables, a seeding plan suited to the soil type, and arrangements for future management and maintenance were agreed before the development took place.
19. The proposal would therefore not only allow for the continued agricultural use of the land, but also provide considerable biodiversity improvements.

Temporary nature of the development

20. The PPG points out that solar farms are normally temporary structures, and that planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use. That is the case here. The struts supporting the framework would be piled into the ground to a depth of 1.5m, avoiding the long-term impacts of other forms of development that require the laying of concrete foundations. Permission is sought for a temporary period of 25 years.
21. I saw at my site visit that improvements to the existing access track would be required, to enable the delivery of the proposed solar panels and associated equipment. However, I share the Council’s concern that the creation of permanent, hard-surfaced tracks some 4.05m wide would appear unnecessarily intrusive, given that they would only be needed for the initial construction period, and then after 25 years, for the decommissioning of the installation. The appellant and the Council agree that the provision of temporary, rather than permanent, access tracks could be addressed by condition.

The effect on the landscape, and visual impacts

22. One of the core planning principles set out in the NPPF is that the planning system should recognise the intrinsic character and beauty of the countryside. The 2006 Braintree District Landscape Character Assessment (LCA) was commissioned by the Council to inform planning decisions about potential impacts on the landscape. The appellant has provided a professional Landscape and Visual Impact Assessment (LVIA) for the proposed development, and the Council similarly engaged a professional consultant to conduct an independent LVIA. I found all of this material, along with the observations I made in the course of the site visit, helpful in informing my own assessment.
23. The LCA identifies the area in which the appeal site is located as “Belchamp Farmland Plateau”, which is characterised as a flat to gently undulating plateau, generally covered in large, regular arable fields, occasionally punctuated by farmsteads, small villages and copses of deciduous woodland, and having a strong sense of tranquillity. I saw at my site visit that the appeal site and surroundings manifest many of these characteristics; the appeal site itself lies on a gentle north-east slope amid undulating agricultural land, rising to a high point to the south west of the site, with Langley Wood and Dollery Wood close by to the north and east respectively. Well-established boundary vegetation runs along the south, east and western sides of the appeal site, consisting of native hedgerow and tree species.
24. The proposed development would result in the loss of two currently open fields, changing their use from arable monoculture to biodiversity-rich pasture, and introducing a collection of modern, precision-engineered structures that would form an uncharacteristic element in the landscape for a period of 25 years.
25. However, the proposed solar panels would be set at a relatively low level, and would follow the contours of the land, so would not alter the existing undulating landform. They would be lower than the existing field boundaries that surround the field site, albeit those boundaries are predominantly deciduous, and gappy in places. The development would be contained within two existing fields, and would therefore be consistent with the historic pattern of fields and hedges.
26. In long distance views, over 1km from the appeal site, the proposed development would be effectively screened by the natural topography, roadside hedges, and intervening woods, trees and hedge lines. There are no settlements or individual properties that would have views at this range, and there would be no views from local roads. Public footpaths and bridleways which cross the area would provide occasional glimpses through gaps in hedges or over low sections of hedgerow, but the low height and contained nature of the development would result in a very limited visual impact.
27. In the medium distance, between 200m – 1km from the appeal site, there would be no public views from local roads and very few views from the public right of way network, restricted to occasional glimpses and limited parts of the appeal site. The area is sparsely populated, but there are a number of properties and settlements within this range. Those which would have some views of the site are identified as Shearing Place, which lies 285m to the north of the appeal site, and the properties at Pannell’s Ash and Simpson’s, some 850m to the north-east.

28. From Shearing Place, views toward the site at ground-floor level would be largely screened by vegetation, including the trees of Langley Wood. Part of the development would be visible at first-floor level, but would occupy only a narrow part of the field of view. The properties at Simpson's and Pannell's Ash are more elevated, and the proposed development would be visible from ground-floor and first-floor level. However, the existing intervening vegetation would filter these views, and the proposed supplementary planting would provide further screening. The development would be seen as occupying a thin sliver of land, sitting below the horizon, and would appear as a relatively minor component in the context of the wider landscape. I appreciate that the occupiers may well regard this as detrimental to the views available from their properties, but it is axiomatic in planning law that there is no individual right to a view.
29. There are no dwellings or roads within close range (less than 200m) of the appeal site. There is however a public footpath which runs along the eastern boundary of Langley Wood, then enters the appeal site and runs alongside the internal eastern boundary, before leaving the appeal site at the existing access to head towards Dollery Wood. On the approach to the appeal site along this footpath, in either direction, views of the development would be largely obscured by the presence of intervening vegetation, and the existing mature boundaries supplemented by the proposed additional planting. However, on rounding Dollery Wood, the proposed solar farm, while still partly screened, would become a noticeable feature of views toward the appeal site. On entering the appeal site at the corner of Langley Wood, and while walking the length that runs inside the eastern boundary, users of the footpath would have a clear view of a large proportion of the development and this would have a considerable visual impact.
30. As to the potential for glint and glare, the glass surface of the solar panels is specifically designed to absorb rather than reflect light, and so is not reflective in the same way as a mirror or window. The panels would be angled to face south, to maximise solar collection, and their backs would be painted black. The residential properties from which the appeal site would be visible would be highly unlikely to experience any adverse impact from glint and glare, since they lie to the north-east of the appeal site. The potential for public views to be adversely affected by glint or glare would be limited to the short section of the public right of way that runs inside the eastern boundary of the appeal site, its approach from the south east, and the occasional glimpses available from the wider network of footpaths and bridleways, and so would be unlikely to give rise to any significant adverse impact.
31. As to the potential to mitigate landscape and visual impacts, the proposal includes the planting of an additional native-species hedgerow along the site's eastern and southern boundaries, set within the existing hedgeline, to thicken up the hedge along these sides. Along the eastern boundary this would be supplemented by additional tree-planting, to further screen views of the development from the properties to the north-east. An interpretation board would be erected next to the array, to inform users of the public footpath about solar PV technology and its benefits, but this would not of course mitigate the significant adverse visual impact experienced by walkers. However, as part of the development scheme it is proposed that new (permissive) public rights of way would be created in Langley and Dollery Woods, which are privately owned. This would have the benefit of providing legitimate opportunities for

members of the public to view at close range the woodland bluebells which, the evidence of local residents indicates, are a considerable attraction.

32. Taking all of this into account, I agree with the Council's conclusion that the quality of the District's landscape would not be adversely affected by the proposed development. The adverse visual impacts would be limited and localised, being largely confined to views from the footpath alongside the appeal site. The proposal would therefore accord with the aims of Local Plan Review Policy RL8 and Core Strategy Policy CS9, which seek to ensure that development proposals are not detrimental to the distinctive features and habitats of the area, and that their impacts on the landscape are acceptable.

Neighbouring uses

33. For the reasons set out above, I consider that none of the dwellings in the area would experience such an adverse visual impact as would be detrimental to living conditions, and nor would they be disturbed by glint or glare from the proposed solar panels. The proposed solar farm would emit no smells, and would be unlit. The only noise would be generated by the associated electrical plant, but this would be low-level, and at a sufficient distance from the nearest dwellings not to adversely affect their residential amenities. The development would accord in this respect with the requirements of Local Plan Review Policy RLP90, which provides that there shall be no undue or unacceptable impact on the amenity of any nearby residential properties.

Aircraft safety

34. The Council consulted the relevant aviation authorities and operators, and no objections to the proposed development were received. There is no reason to suppose that the proposal would have any adverse impact on aircraft safety.

Additional impacts of following the sun

35. The PPG draws attention to the possibility that additional impacts may arise if solar arrays are programmed to track the sun, but the solar panels here proposed would be fixed in place, and would not move.

Security measures

36. The proposed solar panels and associated plant are valuable, and so the site would be enclosed by a 2.2m high deer fence, and monitored by CCTV cameras fitted with motion sensors. No security lighting would be used. While the deer fencing would not be at odds with the agricultural character of the area, the cameras would. However, given the height of the existing boundary vegetation and the proposals for additional planting, their impact in views from outside the appeal site would be very limited indeed.

Heritage assets

37. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on decision makers, when considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72 of the same Act imposes a similar duty in respect of preserving or enhancing the character or appearance of Conservation Areas.

38. The NPPF explains that consideration needs to be given to the impact that proposed development would have on the significance of any heritage assets affected, pointing out that significance can be harmed or lost through alteration or destruction of the heritage asset, or development within its setting. There are a number of heritage assets in the landscape surrounding the appeal site, including the listed buildings at Pannells Ash, Shearing Place, Simpsons and Paul's Hall; Conservation Areas at Belchamp St Paul and Clare; local churches, and Clare Castle, which is both a listed building and a Scheduled Ancient Monument. Clearly, none of these heritage assets would be physically altered by the proposed development. Rather, it is the indirect effect of the proposal, in terms of its impact on their settings, that needs to be considered.
39. Clare Castle lies some 2km to the north west of the appeal site, in the Stour Valley. The topography of the intervening landscape is such that there is no intervisibility between the Castle and the appeal site, and no public viewpoints in which the appeal site would be experienced as part of this heritage asset's setting. Similarly, the topography precludes any intervisibility between the appeal site and, respectively, the Conservation Areas at Clare, at Belchamp St Paul, and the Grade I Listed barn at Paul's Hall; it also precludes any opportunities for public views of these heritage assets in which the proposed development would be experienced as part of their respective settings.
40. There is intervisibility between the appeal site and the listed buildings at Pannells Ash, Shearing Place and Simpsons, and a few locations from which the proposed solar farm would be experienced as an element within wider views toward these buildings. However, the limited visual impact of the proposed development, and the separation distances involved, would result in only a minor change to such views. Further, the significance of each of these properties now derives primarily from their historic fabric, with only a limited contribution to significance made by the surrounding fields. The same is true of the local churches. In each case, the presence of the proposed solar farm would not interfere with an appreciation of that contribution.
41. I conclude that the proposed development would not harm the setting or significance of any heritage assets.

Energy generation

42. Notwithstanding the figures originally contained in the development description provided on the application form, the evidence subsequently submitted by the appellant (and not disputed by the Council) is that the generation capacity of the proposed solar farm would be 7.6 MW. This equates to meeting the electrical energy needs of 2,275 dwellings. It would make a significant contribution toward meeting national targets concerning the derivation of energy from renewable sources, reducing carbon emissions and mitigating climate change. The proposed development would also help to increase the security and diversity of the national electricity supply. These are benefits which carry substantial weight in favour of the proposed development.

Other matters

43. The PPG makes it clear that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities. I understand that many local residents feel that the extent of the appellant's engagement with, and consultation of, the local community in

connection with the proposed development was inadequate. I note that while there may well have been room for improvement, the appellant appears to have complied with the consultation requirements in place at the time. Be that as it may, there is clearly a strong degree of local opposition to the proposal, as is evidenced by the large number of letters of objection.

44. I am aware that some have interpreted the Government's published guidance to mean that renewable energy proposals should be refused if the local community is against them. In my opinion, the PPG does not bear such interpretation. Rather, it seems to me that the PPG emphasises the need for decision makers to pay very careful attention to the concerns of local communities, since they, after all, are the people who will have to live with the consequences of the proposed development. In so far as the concerns raised are material and relevant, they must be given due weight in the overall planning balance, but the extent of the weight due remains a matter for the appointed decision maker. The Council's delegated report on the proposed development, which is an admirably detailed and well-argued exemplar of the form, gave very careful consideration to all of the relevant concerns raised at application stage and these, together with the further representations submitted in response to the appeal, have also informed my own assessment of the proposal. I am confident that the concerns of the local community have been properly heard in this case.

The planning balance

45. The Council's assessment of the proposed development concluded that it would be in overall accordance with the Development Plan for the area, and I share that view. However, compliance with the Development Plan is not the end of the matter: planning law² requires that proposals be determined in accordance with the Development Plan *unless material considerations indicate otherwise* [my emphasis].
46. National planning policy is a significant material consideration. As the Council fairly acknowledges, the renewable energy policies in the Development Plan pre-date the NPPF, and do not reflect its approach of focusing solar energy installations on previously-developed and non-agricultural land. While the use of greenfield sites and BMV agricultural land are not ruled out, the Written Ministerial Statement of 25 March 2015 makes it clear that any proposals involving the latter now need to be supported by "the most compelling evidence".
47. I am not convinced that the evidence in the current case reaches that very high bar. There are two main reasons for this.
48. Firstly, the appellant's analysis concluded that apart from Gosfield Airport, which already has permission for a solar farm, the District contains no available area of previously-developed land suitable to accommodate a solar array. However, details of the assessment which informed this conclusion are not clear. Prerequisites for suitability appear to have included that potential sites be "large" and "near to suitable power lines", but how large is not specified. As to grid connection, the assertion that capacity for export is limited to a small fraction of the District in the south assumes that areas identified as "highly

² Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990

utilised” on the UKPN Export Capacity Map have no further capacity at all, which is not necessarily the case.

49. Secondly, even if I were to proceed on the basis that there is a strong likelihood, in this largely rural District, that the use of agricultural land for large-scale solar development will be necessary, it is important to bear in mind that 14% of the appeal site is Grade 2 and 80% is Grade 3a. I have no information as to how much of the district’s large expanse of Grade 3 land is classified 3a (that is, BMV land) and how much is 3b (that is, not BMV land). That being the case, I cannot discount the possibility that there may well be suitable alternative sites which are not BMV land, or at least involve a smaller amount than the 94% contained in the appeal site.
50. I should make it clear that my finding that the evidence in this case does not amount to “the most compelling” does not imply any criticism of the appellant or his agents: it is apparent that a lot of work went into the various assessments provided to support the application. But as discussed above at paragraphs 11-15, in the absence of any district-wide Capacity Study that identifies and analyses the full range of constraints and opportunities in order to inform choices about the siting of renewable energy projects, it is very difficult to assess the extent to which it may be “necessary”, in the terms of the PPG, to accommodate such development on agricultural land. It is also difficult to envisage how individual applicants might bring forward evidence capable of addressing this deficiency on a case-by-case basis.
51. In this particular case, there are a number of factors that weigh in favour of the proposed solar farm. It would provide considerable benefits in terms of energy and ecology and, unusually in my experience, would not conflict with local Development Plan policies aimed at protecting the character and appearance of the countryside, residential amenity and heritage assets. However, the proposal would clearly conflict with current national planning policy, which has consistently set out the Government’s aim of focusing such development on previously-developed and non-agricultural land, recently re-emphasised in the Written Ministerial Statement of 25 March 2015. For the reasons set out above, I find that the information provided to justify the use of a site that is 94% BMV land does not meet the high standard of being “the most compelling evidence”, in the terms used by that Written Ministerial Statement, and I consider this to be a material consideration of overriding weight.
52. I therefore conclude that the appeal should be dismissed.

Jessica Graham

INSPECTOR

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