
Appeal Decisions

Site visit made on 1 June 2015

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 24 August 2015

Appeal A: APP/Q3305/A/14/2226815 Court Farm, West Woodlands, Frome BA11 5EN

- 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 Sunsave 24 (West Woodlands) Ltd against the decision of Mendip District Council.
 - The application Ref.2014/0852/FUL, dated 8 May 2014, was refused by notice dated 6 August 2014.
 - The development proposed is a ground based photovoltaic solar farm, access, grid connection and grid connection cable, substations, and associated works.
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Appeal B: APP/Q3305/W/14/3006749 Court Farm, West Woodlands, Frome BA11 5EN

- 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 Sunsave 24 (West Woodlands) Ltd against the decision of Mendip District Council.
 - The application Ref.2014/2326/FUL, dated 6 November 2014, was refused by notice dated 24 February 2015.
 - The development proposed is a ground based photovoltaic solar farm, access, grid connection and grid connection cable, substations, and associated works.
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Preliminary Matters

1. As it had not been fully addressed in the lead up, I reverted to the parties after the site visit to seek representations on the statement on solar energy made by the Secretary of State on 25 March 2015¹. I have taken the WMS, and the representations, into account in my determination of the appeals.

Decisions

Appeal A

2. The appeal is dismissed.

Appeal B

3. The appeal is allowed and planning permission is granted for a ground based photovoltaic solar farm, access, grid connection and grid connection cable, substations, and associated works at Court Farm, West Woodlands, Frome BA11 5EN in accordance with the terms of the application, Ref.2014/2326/FUL, dated 6 November 2014, subject to the conditions set out in Annex A.

¹ Referred to hereafter as WMS

Main Issues

4. These are the effect of the proposals on (1) the landscape, including the nearby Cranborne Chase and West Wiltshire Downs AONB²; (2) the setting and thereby the significance of a series of heritage assets; and (3) the stock of best and most versatile agricultural land. That analysis needs to account for any benefits inherent in the proposals too.

Reasons

Landscape

5. The development plan for the area includes the Mendip District Local Plan 2006-2029³, adopted on 15 December 2014. LP Policy DP4 says that proposals for development that would significantly degrade the quality of the local landscape will not be supported. Any decision-making will take into account efforts made by applicants to avoid, minimise, and/or mitigate negative impacts and the need for the proposal to take place in that location. Proposals in areas adjacent to the AONB will, depending upon their prominence in the wider landscape, be expected to demonstrate that their location and form do not compromise the setting of the designated area.
6. In many ways, this reflects the approach of the National Planning Policy Framework⁴. One of its core principles is that the intrinsic character and beauty of the countryside should be recognised. Paragraph 109 says that the planning system should protect and enhance valued landscapes. Paragraph 115 confirms that great weight should be given to conserving landscape and scenic beauty in, amongst other designated areas, AONBs.
7. The Council has produced a Landscape Character Assessment that identified the area of the site as being within the *Frome Valley Character Area*. West Woodland is in a sub-division called *The Valley Slopes in the Upper Frome Valley*. The characteristic features of relevance identified were the gently undulating landform; minor valleys; pasture with occasional arable; streams and wetland vegetation; and remoteness. The AONB lies about 500 metres to the east of the appeal site on the higher ground of an escarpment, with woodland cover.
8. The topography of the fields where development is proposed is such that the solar arrays would not be particularly prominent and there is scope for strengthening the boundaries of the site with additional planting which would screen or filter views from passing footpaths, and the adjacent caravan site, in particular. However, as the Landscape and Visual Impact Assessments⁵ prepared on behalf of the appellant fairly accept, the imposition of solar arrays of the extents proposed, with the ancillary fences and machinery, on an otherwise pastoral landscape, would be bound to have an incongruous, industrialising impact upon it that would reduce the sense of remoteness. Given the elevated nature of the viewing point, this impact would be most apparent as one emerges from the woodland of the AONB, on the public footpath⁶, to the east of the appeal site.

² Area of Outstanding Natural Beauty

³ Referred to hereafter as LP

⁴ Referred to hereafter as the Framework

⁵ Referred to hereafter as LVIA's

⁶ Viewpoint E in the LVIA's

9. This potential impact has fed concerns about the impact of the proposals on the setting of the AONB. However, as I observed during my site visit, there would be sufficient separation between the AONB and the appeal site to ensure that the difference between the landscape of the AONB, and that of the adjacent Landscape Character Area, remained easy to distinguish. As a consequence, the setting of the AONB would not suffer any materially harmful impact.
10. Nevertheless, while it is, I accept, difficult to see how solar arrays of the scales proposed could be located anywhere other than agricultural land, and notwithstanding the mitigation proposed, the temporary period of 30 years the proposal is promulgated for, and the potential for reinstatement of the land afterwards, the proposals would have a significantly harmful impact on landscape character. On that basis, there would be a failure to accord with LP Policy DP4 and the Framework, in this regard.

Heritage Assets

11. The Council's second reason for refusal referred to a number of designated heritage assets and the desk-based assessments prepared on behalf of the appellant cover many more, some of which were referred to by English Heritage in consultation responses.
12. From my site visit, I was able to observe that the only heritage assets where there could conceivably be a harmful impact on setting and thereby significance, as a result of the solar arrays proposed, are Manor Farmhouse, a Grade II* listed building, Highcroft Farm, a Grade II listed building, and the much more-distant country house at Longleat, a Grade I listed building.
13. The starting point for consideration of the impact of the proposal on the settings of the listed buildings is the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990⁷. Section 66(1) requires the decision-maker, in considering whether to grant planning permission for development that 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.
14. LP Policy DP3 supports proposals which preserve, and where appropriate, enhance the significance and setting of heritage assets. Further, it requires any harm to a heritage asset to be justified and demonstrate overriding public benefits which would outweigh the damage to the asset, or its setting. The greater the harm to the significance of the heritage asset, the greater the benefit that would be required to gain support.
15. Broadly speaking, this policy mirrors the approach of the Framework. One of the core principles is to conserve heritage assets in a manner appropriate to their significance. Paragraph 132 says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's significance.
16. Manor Farmhouse and Highcroft Farm sit on the west side of the B3092. Obviously both have origins in agriculture and as a consequence, derive a degree of significance from their setting in the surrounding, pastoral landscape. It is suggested that the presence of the solar arrays proposed would detract from that setting.

⁷ Referred to hereafter as the Act

17. However, from what I saw, the distance between the solar arrays proposed and the listed buildings would be of sufficient magnitude to ensure that views of them from the vicinity of the solar arrays, or across them, or of the solar arrays from them, would not alter the sense of them as buildings sitting in a pastoral landscape, with origins in agriculture, to any degree. On that basis, neither their settings nor their significance would be harmed by the proposals.
18. The country house of Longleat would be visible in the middle to far distance, from the appeal site itself and public footpath that runs to the immediate south of it, connecting the B3092 to the west, to the woodland that marks the boundary of the AONB to the east. However, it is so far away that other than being able to identify it as a distant feature in the landscape, nothing of its significance can be appreciated. If the proposals went ahead, those views would remain intact, though the new and augmented landscaping might act as a filter or interruption in places. The presence of a solar array in the foreground of those views, part obscured by hedgerows, shrubs and trees, would not prevent that identification. As a consequence, while the setting of Longleat would undergo limited change as a result of the proposals, that change would not be harmful, and it would not lead to any degradation of its significance as a designated heritage asset of the highest order of importance.
19. Bringing those points together, I am content that the proposals at issue in Appeal A and Appeal B would not lead to any harmful change to the settings of the listed buildings affected, and neither, would the proposals degrade their significance in any way. On that basis, the proposals do not fall foul of the requirements of the Act, LP Policy DP3, or the Framework, in this regard.

Agricultural Land

20. Following on from advice in Planning Practice Guidance⁸, the WMS made it 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 proposal that is the subject of Appeal B lies wholly on land that has been assessed as being within Sub-Grade 3b. It does not, therefore, qualify as best and most versatile agricultural land, and is not caught by the WMS.
21. However, 32%, or 3.9 hectares, of the land that would be covered by the Appeal A scheme, lies within Sub-Grade 3a. It comes under the umbrella of best and most versatile agricultural land, therefore. I have no good reason to doubt that the land has been used as pasture, historically. I acknowledge too that it could continue to act as pasture if the solar array was installed. Nevertheless, the effect of the WMS is that its use to house a solar array would need to be justified by the most compelling evidence.
22. I note the points made about the manner in which colleagues have dealt with this issue but it seems to me that the WMS does introduce a form of 'sequential test'. The WMS does not expand on the form that 'compelling evidence' should take or whether the sequential test should be undertaken locally, at a district level, regionally, or indeed, nationally. Nevertheless, put simply, the evidence before me has not demonstrated that the same benefit that would be delivered by the solar panels on the 3.9 hectares of best and most versatile agricultural land in Appeal A, could not be secured by the installation of solar panels somewhere else, on land that does not fall into that category.

⁸ Referred to hereafter as PPG

23. On that basis, it seems to me axiomatic that the scheme at issue in Appeal A fails to accord with the requirements of the WMS.

Benefits

24. Reflecting national policy, and the statutory requirements of the Climate Change Act 2008, another of the core principles of the Framework is that planning should support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources (for example, by the development of renewable energy). Paragraph 93 tells us that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability, and providing resilience to the impacts of climate change, and supporting the delivery of renewable energy and associated infrastructure. This, we are told, is central to the economic, social and environmental dimensions of sustainable development.
25. As an aid to decision-making, paragraph 98 says that we should not require applicants for energy development to demonstrate the overall need for renewable energy and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. In short, schemes of this type should be approved, if their impacts are (or can be made) acceptable.
26. Against that background, the development of a 6.8MWp-AC solar farm, sufficient to provide electricity from a renewable source to approximately 2,100 households⁹, or equivalent over the 30 year life span of the installation, as proposed in Appeal A, must carry significant weight in favour. As a result of the deletion of that element of the site designated as best and most versatile agricultural land, the scheme in Appeal B proposes a 4.08MWp-AC solar farm. The renewable energy that would deliver would also carry significant weight, though not as much, obviously, as the greater amount the Appeal A scheme would deliver.
27. Both schemes propose biodiversity enhancements and they must be weighed on the positive side of the balance too.

Balancing Exercises

28. As set out, the Appeal A proposal would cause significant harm to landscape character for the duration of its operational lifespan, and use some agricultural land classified as best and most versatile, contrary to LP Policy DP4 and the WMS. While the benefits in terms of the production of renewable energy by the solar array would be appreciable, and augmented by biodiversity enhancements, these are not sufficient, in my view, to outweigh the deleterious effects that would be caused. Put simply, the harmful impacts of the scheme are not, and cannot be made, acceptable.
29. The balancing exercise in respect of Appeal B is different. The harmful impact of the solar array proposed on landscape character, while still contrary to LP Policy DP4, would be reduced because it would cover less of the existing pasture land. The proposal would not involve the use of best and most versatile agricultural land. On the other hand, while the biodiversity enhancements would be much the same, the benefits of the Appeal B scheme, in terms of the production of energy from a renewable source, would be reduced.

⁹ Based on the OFGEM figure of 3,300kWh per annum UK average household consumption of electricity

30. Nevertheless, it is my conclusion that the benefits of the Appeal B scheme, in terms of the renewable energy produced, and the biodiversity enhancements, outweigh the temporary harm that would be caused to landscape character. On that basis, the impacts are acceptable.

Conditions

31. In the light of my conclusions on Appeal B, I have considered the suggested conditions on the basis of advice in paragraph 206 of the Framework and the PPG. The standard commencement condition is required, as is another setting out the approved plans. I have adapted the Council's suggested list to better accord with the submitted drawings.
32. As set out, the proposal is put forward on the basis that it would operate for 30 years. A condition is required to deal with that, and decommissioning. I have shortened those suggested in the interests of precision. A condition requiring a scheme of restoration to be submitted for approval, in the event that an individual solar panel ceases to operate, seems to me disproportionate, and therefore unnecessary.
33. Given that new tree, shrub and hedgerow planting is proposed to augment existing planting, a landscaping condition is required. The multiple conditions suggested can be combined however. It is reasonable to apply conditions to secure details of the external finishes of buildings, structures, and equipment proposed as part of the scheme. It is reasonable too for details of any external lighting and CCTV cameras to be first approved by the Council.
34. A condition is necessary to ensure that the development is carried out in a way that accords with the Biodiversity Management Plan (BMP) and the enhancements set out in the Phase 1 Habitats Survey (extended). I have adjusted the dates from that suggested to properly reflect those submitted with the application.
35. Given the potential for disruption on the access roads, a condition to secure a Construction Traffic Management Plan (CTMP) is required. I recognise that a CTMP formed part of the application documentation but it is not clear whether what it proposes meets the Council's requirements. To protect residents, permanent and temporary, in the vicinity, a condition to control noise outputs is a reasonable imposition.

Final Conclusion

36. For the reasons given above I conclude that the Appeal A should be dismissed, but that Appeal B should be allowed, subject to conditions.

Paul Griffiths

INSPECTOR

Annex 1: Schedule of Conditions

Appeal B: APP/Q3305/W/15/3006749

- 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 the following approved plans: Unnumbered: 1:25,000 Location Plan; 2141.AP.001.0.H: Module Array Layout (with and without Google Earth base); 2141.AP.003.1.C: Exemplary Section through Layout; 2141.AP.004.2.B: Inverter & Transformer Station; 2141.AP.006.3.0: Fence Approval Design; 2141.AP.007.4.0: General Cross-Section through the Module Array; 2141.AP.008.4.0: Generic Module Data Sheet; 2141.AP.009.1.0: DNO & Client Substation; 2141.AP.025.3.B: HV Cable Route; and Unnumbered: Steel Structure 15°.
- 3) The permission hereby granted shall endure for a period of 30 years from the date when electricity is first exported from the solar array to the electricity grid (the 'First Export Date'). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event.
- 4) No later than 18 months before the permanent cessation of electricity generation at the site, a decommissioning and site restoration scheme, which shall include a timetable, a traffic management plan, and an environmental management plan, shall be submitted for the written approval of the local planning authority. The decommissioning and site restoration scheme shall be implemented and completed, in accordance with the approved details.
- 5) No development shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include details of all new tree, shrub and hedgerow planting, existing trees, shrubs and hedgerows to be retained and measures for their protection in the course of the works, and a timetable. Development shall be carried out in accordance with the approved details. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) The development approved herein shall be carried out in accordance with the recommendations of the Biodiversity Management Plan dated 22 October 2014, and the enhancements set out in the Phase 1 Habitats Survey (extended), dated 22 October 2014 shall be implemented in the manner set out therein.
- 7) No transformer, inverter, substation, or other building shall be erected or installed until details of external materials and finishes have first been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 8) The rating level (LAr, Tr) peak level of noise emitted from the installation shall not exceed 5dB(A) above LA90, measured at the boundary of the site, at any time.

- 9) No external lighting or CCTV cameras shall be installed or operated on the site until details have first been submitted to and approved in writing by the local planning authority. Any external lighting or CCTV cameras shall be installed and operated in accordance with the approved details.
- 10) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include details of the size, number and type of delivery vehicles; vehicular routes to and from the site; parking and turning areas; wheel-washing facilities; and surface treatments of any hard-standings and tracks. Development shall be carried out in accordance with the approved details.