
Appeal Decision

Hearing held on 18 October 2016

Site visit made on 19 October 2016

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

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

Decision date: 07 February 2017

Appeal Ref: APP/P1615/W/16/3148113

Land near Cowle's Farm, Elton Road, Newnham, GL14 1JQ

- 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 Mr Johnny Wearmouth of Wessex Solar Energy against the decision of Forest of Dean District Council.
 - The application Ref P0856/15/FUL, dated 9 July 2015, was refused by notice dated 15 October 2015.
 - The development proposed is the installation of a solar energy facility utilising solar photovoltaic panels to export up to 5 megawatts of renewable electricity.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Certain matters were discussed and agreed by all parties at the hearing. I endorse these agreements, which are as follows:
 - 1) The proposal is a large-scale solar farm;
 - 2) Taking account of paragraphs 211 and 215 of the National Planning Policy Framework (NPPF), Policy CSP1 of the Forest of Dean Core Strategy (CS), adopted in February 2012, is not out of date and should be given full weight;
 - 3) The policies (as modified) of the emerging Forest of Dean Allocations Plan (AP) should be given substantial weight as the examination has reached its final stage with the Inspector's final report having been checked by the Council;
 - 4) The Plans upon which this appeal is based are the same as those set out in the Council's decision notice of 15 October 2015, save for the Master Plan, which is now revision D. This substitution raises no natural justice issues.
 - 5) There is no slurry pit on the site and, therefore, the Appellant's proposal to stabilise a site slurry pit is not a relevant benefit.
3. At the hearing I was presented with what was said to be the final version of the Statement of Common Ground (SoCG), which was signed only by the

Appellant. The Council explained that it agreed the contents of the SoCG save for the reference indicating the scheme was not large-scale. It is now conceded by the Appellant that the solar farm is large scale.

4. I have considered the proposed conditions in the SoCG. However, neither these conditions nor any other conditions could make the proposal acceptable.

Main Issues

5. I consider the main issues in this case to be:
 - 1) The potential impact of the proposal on:
 - a) The landscape character of the area
 - b) Visual enjoyment and auditory conditions
 - c) The setting of the Grade II listed building known as The Broughtons
 - d) Lesser and Greater Horseshoe bats
 - 2) Whether the benefits of the proposal are sufficient to outweigh any identified harm.

Reasons

Landscape character

6. The proposal is for the erection of approximately 23,900 photovoltaic panels on a south-facing, irregular shaped, sloping field of about 8.3 hectares. The eastern part of the site is particularly steep and rises to an east/west oriented ridge before dropping slightly to the north.
7. The tilted panels would be secured off the ground on steel frames and would rise to about 3 metres (m) above ground level along their highest edge. Up to five inverter/transformer cabins would be constructed measuring about 8.5m long, 2.5m wide and 3m high, along with a switchgear electrical control building about 5m long, 5m wide and 4.5m high.
8. The solar array would be enclosed by 2.5m high galvanised steel mesh fencing, and hedging which would be allowed to grow to about 3.5m. A number of CCTV cameras would be positioned around the periphery. This would be a temporary development proposed for a period of 25 years. It would be accessed off the A4151 along an existing farm track.
9. The site lies north of the River Severn and east of the Forest of Dean in open countryside. Surrounding landscape characteristics are typified by undulating, hedged fields, hillocks, coppices and a scattering of farms and dwellings. A network of Public Rights of Way (PRoW) cross the area, one of which skirts the southern edge of the site from east to west and another of which runs through it from north to south.
10. Fencing and hedgerows would separate the PRoWs from the panels and what is currently one large field would be divided into four creating a smaller-scale field pattern. The site would be sown with wild flowers, adjacent tree cover would be enhanced and a small orchard and PRoW in close proximity would be restored.

11. The site is covered by Natural England's National Character Area (NCA)106: *Severn and Avon Vales* (2012), which generally describes the area as low lying open agricultural vales, and encourages certain types of environmental management, which the proposal seeks to reflect. It is also close to NCA 105: *Forest of Dean*, which has hill and forest characteristics.
12. On a more local basis *A Landscape Character Assessment for the Forest of Dean* (2002) shows the site as lying within Landscape Character Area (LCA) 6: *Unwooded Vale*, indicating a small scale, soft, rolling, open agricultural landscape, and LCA 6b: *The Severn Vale*, described as deeply rural. This runs into nearby LCA 10: *Ridges and Valleys*.
13. All the above NCA and LCA characteristics are apparent in the general area. It was agreed at the hearing by the Appellant's landscape architect that this is a locally valued landscape.
14. The proposal would introduce dense, regimented rows of hard surfaced panels and associated structures, representing discordant, utilitarian features in this gentle landscape. Despite mitigating planting, the development would be prominent and conspicuous on rising ground creating an incongruous urban influence, which would significantly detract from this deeply rural environment. From my site visit observations and taking account of the Appellant's submitted *Zone of Theoretical Visibility* the impact would extend for some distance.
15. Consequently, the proposal's adverse effect on landscape character would be substantial and would not accord with CS Policy CSP1, which seeks to protect landscape, amongst other things. This detrimental impact should also be taken into account when considering emerging Policy AP2 (Renewable Energy), which seeks to protect landscape, amongst other things. It must also be assessed against the core principles of NPPF paragraph 17, which include recognising the intrinsic character and beauty of the countryside, and paragraph 109, which seeks to protect and enhance valued landscapes, amongst other things.

Visual and auditory impact

Visual

16. The development would be situated almost adjacent to Cowles Farm, wrapping around the north and north-western boundaries of the Farm's curtilage. Although in the revised scheme the bulk of the panels have been removed from the south-west corner of the site to reduce the impact on Cowles Farm, the control building would remain in this highly visible location.
17. Despite uninhabitable farm buildings lying to the north of the dwelling and separating living accommodation from the array, there would still be direct views down onto the solar panels and associated structures from high level study windows, amongst others.
18. Given the proximity of these windows and their relative height above the development, the views could not be mitigated by landscaping. Direct close views would also be had from the eastern garden, which would look out onto perimeter fencing and the rising panels beyond. Although the proposed hedging would provide some screening, this would be limited, given the rising topography of the site.

19. Whilst there is no right to a view, the expanse and scale of the array would have such a substantial effect on the outlook from Cowles Farm as to be oppressive and overbearing.
20. Clear views of the proposal would also be had from kitchen and bedroom windows as well as the rear garden of number 2 The Lake, which lies about 210m to the south of the site. From this dwelling the eye would be readily drawn to what would be a visually harsh, engineered array, standing in stark contrast to its soft verdant surroundings, thereby resulting in an intrusive and dominant outlook.
21. The Grade II listed Broughtons, situated on higher ground about 300m to the north, is a local landmark with designed south facing views over the site. It would have significant south facing views of the backs of the panels from first floor bedroom windows. Despite hedge/tree planting, there would also be filtered partial views of the panel rears on the ridge of the site, from The Broughton's south facing patio area and ground floor living room windows.
22. The visual impact of the proposal on all the above dwellings would render them significantly less enjoyable places to live in.
23. From the PRoWs on the site, users would lose what are currently open views across fields and instead would be hemmed in by 2.5m fencing and 3.5m hedges. This would transform the walking experience along these PRoWs to the detriment of walkers' visual enjoyment of the area.
24. Lesser adverse visual impacts would be had from other PRoWs in the vicinity and from the approach track to Cowles Farm. Whilst the severity would reduce over time as hedging matured, in many views the topography would prevent complete screening.
25. There would also be more distant views looking down onto the site from public vantage points on the surrounding hills, thereby detracting from users' enjoyment. From the local beauty spot at Pleasant Stile (viewpoint 1 of the Appellant's Landscape and Visual Impact Assessment) the site would be seen at a distance in panoramic views over the River Severn, famous for its horse-shoe bend associated with the artist William Turner's painting "*Newham-on-Severn from Dean Hill*".
26. Consequently, overall there would be a substantial negative impact on the visual enjoyment of residential properties and PRoWs in the area. This detriment should be taken into account when considering emerging policy AP2 (Renewable Energy), which seeks to protect visual impacts and residential amenity, amongst other things. It must also be assessed against the core principles of NPPF paragraph 17, which include seeking a good standard of amenity for occupants of land and buildings.

Auditory

27. The development would produce a low level humming sound that, given the tranquillity of the area, would be audible nearby. Considering the close proximity of Cowles Farm it is likely this sound would be heard within the garden area and inside the dwelling when windows were open. Consequently, against the low background noise levels that prevail, the emitted noise, albeit low, would be likely to cause irritation to the occupiers of Cowles Farm and would negatively impact on the enjoyment of their home. This harm must be

considered in the balance, taking account of the above mentioned amenity provision of emerging policy AP2 (Renewable Energy) and NPPF paragraph 17.

Setting of The Broughtons

28. The Broughtons is an early 19th century villa commanding a highly visible landmark presence on elevated ground. It has a designed south facing prospect across the Severn Vale with the arc of that view encompassing the appeal site, which forms part of its setting and hence its significance. NPPF paragraph 132 requires great weight to be given to the significance of a designated heritage asset when considering the impact of a proposed development, and I give great weight to the significance of The Broughtons.
29. As noted above under *visual impact*, the panels would be visible from the southern side of the property. The array would also be seen competing with views of the villa from various vantage points and aspects over some distance. Consequently, the proposal would affect both views to and from The Broughtons to the detriment of its setting.
30. In terms of NPPF paragraph 134 I find this harm to be less than substantial and, therefore, it must be weighed against the public benefits of the proposal, which I deal with in my conclusion below. It must also be assessed against the core principles of NPPF paragraph 17, which include conserving heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.
31. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving or enhancing the setting of a listed building, amongst other things, when determining development applications which affect those buildings. In considering this duty and carrying out the balancing exercise I give considerable importance and substantial weight to the harm identified to the setting of The Broughtons.
32. Dealing with the development plan, the harm to the setting would not accord with CS Policy CSP1, which seeks to protect heritage assets, amongst other things. Furthermore, account must also be taken of emerging policies AP2 (Renewable Energy) and AP5 (Local Heritage), which seek to protect historic character and local distinctiveness, amongst other things.

Lesser and Greater Horseshoe bats

33. The Forest of Dean is of international significance for Lesser and Greater Horseshoe bats, as reflected by the designation of the Wye Valley and Forest of Dean Bat Sites Special Area of Conservation (SAC). Within a few kilometres of the appeal site there are several protected Horseshoe bat roost sites which are part of the SAC/SSSIs, including a maternity roost at Dean Hall, and the evidence suggests that the appeal site is within their foraging/commuting range. A radio tracking study commissioned by Natural England shows flight routes and feeding areas adjacent to and possibly overlapping the edges of the appeal site.
34. At the hearing I heard undisputed evidence of the potential for Horseshoe bats to use the site as commuting corridors and foraging ground including the tree-lined areas around the periphery. Indeed, the Appellant's own desktop ecological evidence recognises this. Nonetheless, the Appellant maintains that

there is only likely to be occasional use of the site by bats and the proposal would not result in any significant impact. Therefore, the Appellant contends that the site is of no more than local nature conservation value, and that this negates the need for any further bat surveys. However, the evidence to support this assertion is sparse and the Appellant's ecological report contains inadequate information in this regard.

35. The Appellant's position is challenged by the Council and interested parties including Mr Priddis who has engaged in Horseshoe bat conservation for some 40 years, is licensed by Natural England for bat roost visits and scientific research, and advises and assists Natural England, amongst others. Mr Priddis' evidence is that the solar panels have the potential to reduce flying and foraging opportunities, amongst other things, and that the ultra-sonic impact of noise emissions from the scheme is unknown. In his submission, to properly understand the potential impact on this protected bat population and the SAC it is necessary to undertake a summer bat survey to establish how the appeal site may be being used and by what numbers of bats.
36. I accept Mr Priddis' evidence. Without such a survey it will not be possible to properly assess the proposal's potential impact on Horseshoe bats. Consequently, it is currently not possible to say whether the project would be likely to have a significant effect on Horseshoe bats, which if it did, would engage the need for appropriate assessment under the Conservation of Habitats and Species Regulations 2010.
37. Whilst the Council screened the proposal and found that it was unlikely to have a significant effect on Horseshoe bats subject to conditions/obligation, I understand that this was done without the benefit of Mr Priddis' evidence. In any event I am not satisfied that this screening has a sufficiently robust basis.
38. There is too little information before me and, therefore, too much uncertainty for me, as the Competent Authority, to confidently ascertain that the proposed development would not adversely affect the integrity of the SAC. Consequently, as there is no suggestion that the scheme should be carried out for imperative reasons of overriding public interest, the appeal should be dismissed in accordance with Regulation 61(5).

Other Matters

39. A number of appeal decision letters on other solar panel farms have been submitted by the parties, some of which were allowed and others of which were dismissed. Whilst consistency in decision making is important, the circumstances of these other appeals are distinguishable for various reasons including the distinct landscape character of this area, particular heritage and nature conservation matters as well as inter-visibility between the development and sensitive receptors. Consequently, I give them little weight.

Benefits

40. The site is in an advantageous location for generating solar energy, close to the regional electricity grid and on a south facing slope where solar radiation is good. It is estimated that the electricity generated from its 5 MW installed capacity could provide 1,186 dwellings with renewable energy, thereby lessening dependence on fossil fuels and making a considerable carbon saving.

This would help in tackling climate change and meeting greenhouse gas reduction targets as well as assisting with energy security.

41. The scheme would have financial benefits in that it would represent a substantial investment in the area and would be likely to create local employment opportunities. There would also be some ecological benefits including tree and hedge planting, sowing of wild flowers and the restoration of an orchard, as well as the clearing of an overgrown section of a PRow.
42. The NPPF at paragraphs 17, 93 and 97 supports the delivery of renewable and low carbon energy schemes and expects local authorities to contribute to these energy sources. It also recognises at paragraph 98 their valuable contribution to cutting greenhouse gas emissions, indicating that need does not have to be demonstrated and that applications should be approved if their impacts can be made acceptable. However, in this case, for the reasons given above, the impacts cannot be made acceptable.
43. In providing renewable energy the proposal would accord with the energy provisions of CS Policy CSP2 (Climate Change Adaption), although it would not accord with the develop plan taken as a whole.

Conclusion

44. The Conservation of Habitats and Species Regulations dictate that the appeal should be dismissed on the basis of insufficient evidence to ascertain that the development would not adversely affect the integrity of the Wye Valley and Forest of Dean Bat Sites SAC. However, this is not the only reason to dismiss this appeal as demonstrated by the planning balance.
45. The development plan is neither absent nor silent and CS Policy CS1 is not out of date so the presumption in favour of sustainable development contained in paragraph 14 of the NPPF is not engaged. Therefore, I will proceed in carrying out the usual balancing exercise in which I make the following judgements.
46. The public benefits of the scheme are considerable, particularly in terms of producing renewable energy and I give this significant weight. However, this does not outweigh the substantial weight I attribute to the harm of the setting of The Broughtons. The substantial harm to the landscape character and visual enjoyment of the area must also be weighed in the balance together with the auditory impact on residents of Cowles Farm. Overall, the harm that would be caused by the scheme clearly outweighs its benefits.
47. The proposal does not accord with the development plan taken as a whole and is in conflict with the emerging AP. Furthermore, having regard to the policies within the NPPF it would not be a sustainable development.
48. In conclusion, and taking account of all matters raised, I dismiss the appeal.

Elizabeth C Ord

Inspector

APPEARANCES

FOR THE APPELLANT:

Andrea Caplan BA (Hons) MSc MRTPI	Associate Director of Brooke Smith Planning Consultants
Elizabeth Hill Dip LA CMLI M.Arbor.A	Managing Partner of Land Lizard Ltd Of CgMs Ltd Consulting
William Bedford BA MCIfA	Environmental and Ecological Consultant
Charlotte Blundred BSc MSc AIEMA AIEEM CPD EIA	
Leanne Rutherford BSc (Hons) MSC MCIEEM	Ecological Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Robin Williams BA (Hons) BTP Dip Surv MRICS MRTPI	Managing Director of Asbri Planning Ltd
Gary Soltys BSc (Hons) Dip LA MIHort CMLI	Director of Soltys Brewster Consulting Landscape Architects
Edward Holland BA (Hons) Dip ES IHBC FSA	Director of Holland Heritage

INTERESTED PERSONS:

Matthew Dale-Harris of Counsel who called:	Instructed by Leigh Day solicitors
Simon Murray	Local resident on behalf of Say No to Elton Solar Park <i>and</i> committee member of CPRE
Jane Payne	Resident of Cowles Farm

Other speakers:

Mary Newton	Friends of Chestnut Wood
David Priddis	Local Bat Expert
Richard Boyles	Ward Councillor for Newham and Westbury
Simon Phelps	Ward Councillor for Newham
Colin Evers	Westbury Parish Council
Tim Humphries	Local resident
Susan Organ	Local resident
Philip Burford	Chairman of the District Planning Committee

DOCUMENTS

1. Third Party Issues
2. Statement of Common Ground
3. Council's Fig 5 photograph
4. Appellant's photographs
5. Bat roost zones from Third parties
6. Photographs from Third parties
7. Letter from 2 Lakeside Cottages
8. Council's main modifications to AP
9. Additional copies of Figs 5.3, 5.4 and 6.1
10. Council's photomontages
11. Letter from Mark Harper MP
12. Letter from Tim Humphries
13. Additional copy of Plan A Rev C
14. Council's screening opinion under The Conservation of Habitats and Species Regulations 2010