



Appeal Decision

Hearing held on 9 June 2015

Site visit made on 10 June 2015

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 24 July 2015

Appeal Ref: APP/U1105/W/15/3007994

Land at Walnut Cottages, Oil Mill Lane, Clyst St Mary, Nr Exeter, EX5 1AH

- 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 Solstice Renewables against the decision of East Devon District Council.
 - The application Ref 14/1379/MFUL, dated 05 June 2014, was refused by notice dated 19 September 2014.
 - The development proposed is installation of ground mounted solar arrays together with power inverter systems; transformer stations; internal access tracks; landscaping; CCTV; security fencing and associated access gate.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council have determined that an Environmental Impact Assessment is not required. **Local residents have argued that the Council's assessment is flawed as it dates from 2013 and fails to take account of the cumulative impact of the proposal and other recent developments in the locality, including the anaerobic digester at Enfield Farm.** As the appeal is being dismissed I have not considered further the matter of the Environmental Impact Assessment, and am satisfied that I have sufficient and relevant evidence before me to reach my decision.
3. **The Council's reason for refusal referred specifically to the loss of Grade 2 agricultural land.** The submitted agricultural statement refers to the land in question as being Grade 2 and Grade 3a. Both classifications are considered to be Best and Most Versatile (BMV) Agricultural Land in the *National Planning Policy Framework* (The Framework), which directs Local Planning Authorities (LPAs) to take account of the economic and other benefits of such land. I have therefore considered the effects of the proposal on both Grade 2 and Grade 3a land.

Main Issue

4. Accordingly I consider the main issue for the appeal is whether the effect of the proposal on the best and most versatile agricultural land would be outweighed by the benefits of the scheme.

Policies

5. The development plan comprises saved policies from the ***Adopted East Devon Local Plan*** (LP). Policy C6 offers strong support for renewable energy projects subject to no significant adverse impacts on residential amenity, local landscape or natural or historic features. Policy E5 seeks to support rural diversification, provided, amongst other things, the proposal would not use the BMV agricultural land. Although these policies predate the Framework they broadly accord with the provisions of the Framework and other national guidance as considered below.
6. The Council have relied on Draft Policy EN13 of the emerging ***East Devon Local Plan*** (EDLP). This states that best and most versatile agricultural land will be protected from development not associated with agriculture. It goes on to say that planning permission will only be granted if there is an overriding need for the development, and where the benefits of the development justify the loss of high quality agricultural land. Where BMV land needs to be developed, and there is a choice between sites in different grades, land in the lowest grade available must be used, except where other considerations outweigh land quality issues. Draft Policy E4 closely reflects Adopted Policy E5 in relation to agricultural diversification, seeking to avoid the use of BMV agricultural land. Strategy 39 seeks in general to support the provision of renewable and low carbon energy projects.
7. The EDLP is at present under examination and although it is at an advanced stage I cannot be sure that the policies within it will be adopted in their current form. Nevertheless, in relation to both the impetus to support renewable energy and the protection of best and most versatile agricultural land the emerging plan policies are broadly in accordance with guidance contained within the Framework and other national guidance.
8. Amongst other things, the Framework seeks to support the transition to a low carbon future in a changing climate and encourage the use of renewable resources. It seeks to increase the use and supply of renewable and low carbon energy, by encouraging LPAs to provide a positive strategy to promote energy from renewable and low carbon sources. It also states that when determining planning applications, applicants should not be required to demonstrate the need for renewable energy. In this regard the Framework reflects the ***National Policy Statement for Renewable Energy Infrastructure*** which sets out the **Government's** strategy for meeting the legally binding target of reducing UK emissions by at least 34% by 2020 and 80% by 2050, as well as **achieving the UK's obligation of 15% of energy consumption from renewable energy resources by 2020.**
9. The Framework also requires that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be used in preference to that of higher quality. This guidance is also reflected in ***Planning Policy Guidance*** (PPG). The guidance references a Ministerial speech of April 2013 **which includes the statements "Solar is a genuinely exciting energy of the future, it is coming of age and we want to see a lot, lot more. But not at any cost... not in any place...." And "Where solar farms are not on brownfield land, you must be looking at low grade agricultural land which works with farmers to allow grazing in parallel with generation...."**
10. Most recently, a Ministerial Statement of the 25 March this year reinforces this approach. It states that **"where a proposal involves agricultural land, (this will**

involve) being quite clear this is necessary and that poorer quality land is to be **used in preference to land of a higher quality.** He goes on to say "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". This represents the most recent guidance in relation to proposals for solar farms on BMV agricultural land and it is a significant material consideration to which I must have regard.

11. Paragraph 131 of the Framework advises local authorities to take account of the desirability of sustaining and enhancing the significance of heritage assets.

Reasons

The Benefits

12. The appeal site covers an overall area of 19.36 hectares, including 16.6 hectares of agricultural land that the solar park would be sited on. This would also include a private cable connection to Crealy Great Adventure Theme Park 200m north east of the site. The appellant predicts that the Solar Farm could have a generation capacity of 7.55MW per annum. In the wider environment, this would offset approximately 3,225 tonnes of CO₂ annually. The scheme is proposed to generate electricity direct to the grid and to provide an energy source for the nearby Crealy Adventure Park. I was advised at the hearing that the latter would account for around a seventh of its output.
13. The Framework advises that small scale projects provide a valuable contribution to cutting greenhouse gas emissions. The proposal would assist in tackling climate change¹ and help meet national and local targets and ambitions for reducing greenhouse gas emissions. It would also add to the security of supply. In this regard it would comply with policy C6 of the LP and Draft Strategy 39 of the emerging LP. I attribute considerable weight to these renewable energy benefits in the overall planning balance.
14. Shepherds Farm is farmed with the Crealy Farms practice which includes arable farming and outdoor pig-rearing. The proposal would provide a stable income for the agricultural business, reduce its carbon footprint and contribute towards its viability, facilitating future expansion and diversification. These are benefits to which I also attribute some weight. The proposal would also provide up to 50 temporary construction jobs, to which I also attribute some limited weight.

The Effect on Agricultural Land

15. The submitted Agricultural Statement categorises the land as being made up of 9.5ha of Grade 2 land and 6.9ha of Grade 3a land. The proposal would not lead to the loss of the land from agricultural use, as it is for a temporary period of 25 years. Some agricultural activity could also continue on the site in the form of grazing or secondary planting, although the appellant has no firm indication at present of the form this agricultural activity would take.
16. The guidance is clear that in cases of significant development of solar farms on BMV agricultural land, brownfield land and lesser quality agricultural land should **first be considered. Ministerial statements refer to "large scale" solar** developments. Although the size of the site falls below the threshold for statutory consultation under the GDPO in relation to agricultural land, having regard to the

¹ Including 'in combination' effects with other renewable and low carbon energy schemes.

extent of land involved I concur with local residents and the Council that the proposal would be both significant and large scale.

17. I will deal firstly with the argument that the scheme is site specific due to its link with Crealy. At the hearing I was advised of how Crealy Adventure Park intend to **use energy from the scheme, via a direct connection, to become "carbon neutral"**. I am aware that this term relates to more than just the energy source from the enterprise, however, as a means of reducing the carbon footprint of the business, which is a high energy user in the summer months, I consider this to be a laudable aim.
18. However, although I note that the scheme would potentially reduce the running costs of the business by around £30K a year, I was provided with limited information of how this saving would translate into reinvestment in the business, or into local jobs. I can therefore attribute only limited weight to the benefits the scheme would have to wider tourism or the local economy. Furthermore, only a seventh of the power generated would be used by the theme park. The proposal is therefore predominantly a speculative scheme which could, subject to the limitations below, be located on another site.
19. Although the Framework **and the PPG does not use the term "sequential test"** in relation to development on BMV agricultural land, it is nonetheless evident that in order to assess whether land of lesser quality is available, some assessment of land availability and quality needs to be undertaken. The appellant has undertaken such a review. It takes as its area of search an area with a radius of around 30 miles from the appeal site. Although the Council consider that land outside the district should have been considered, it seems to me that the area of search nonetheless comprises a substantial geographical area, and is not an unreasonably constrained starting point. The Council have argued that there are no quotas at a district wide level, and therefore the development cannot be considered to be necessary. I do not agree, as that would equally apply to any speculative solar scheme, anywhere in the country.
20. The appellant has then excluded all land which fails to fit the constraints of the Western Power Distribution Network. This too seems to me to be reasonable, as without connectivity any scheme would be impractical. **I note the Council's scepticism in relation to grid connectivity, but in the absence of convincing evidence to the contrary I see no reason to discount the appellant's claims in this regard.**
21. The appellant has then considered a range of brownfield sites. I heard from a number of people about the difficulties of implementing solar on brownfield sites, including the practical difficulties in rooftop schemes, the difficulty in competing with hope values, and problems in achieving security of tenure with multiple land owners. I accept that these constraints would be likely to be prohibitive for a speculative scheme of this size, which by its nature would be most easily accommodated on a greenfield site. Although the Council accepts that limited brownfield land is available I nonetheless have no convincing evidence before me to indicate why the proposal needs to be the size proposed, and this reduces my confidence in excluding the potential of all brownfield land in the area. I also do not consider it reasonable to exclude further areas of greenfield land due to the existence of listed buildings without a more detailed assessment of their significance. Even if I set these concerns aside, there remains a substantial area

of land within the search area which would be unconstrained after sites within the AONB, those subject to flooding, and those on steeply sloping sites are excluded.

22. According to the Agricultural Land Classification maps, and the assessment carried **out by the appellant's agricultural consultant**, the remaining land within the unconstrained area is made up of predominantly Grade 3 land, with areas of Grade 2 land associated with sandstone outcrops. This land has not been subject to individual testing in the way the appeal site has. Nevertheless, based on the information that is available, although some land would be of equivalent quality, some would also be likely to be of lower quality than the predominantly Grade 2 land which makes up the appeal site.
23. The appellant has drawn my attention to the agricultural constraints of the site, including field boundaries, and the mixed quality of land within individual fields may to some extent impose practical limitations on how the land is farmed. I also note that if the proposal were not allowed it may not be used to its full potential in any case. However, I see no reason why these factors could not similarly be applied to other farmland in the area.
24. **I note the appellant's view** that there are no other available sites within the remaining area which could practically be implemented due to both a lack of willing land owners and available grid connections. However, I have been provided with no substantive evidence which enables me to discount all other potential sites on this basis.
25. I note that the proposal would be temporary, and I take account of the potential for tandem agricultural activity on site such as grazing or secondary crops. I also recognise that Devon has other Grade 1 and 2 agricultural land. Such land is a national asset of finite supply, the protection of which is not reduced by its availability locally. The cumulative impact of proposals such as this one, even for a temporary period of 25 years, would reduce its availability and have a consequent effect upon the agricultural industry.
26. This leads me to the view that taking account of the nature of the scheme, and the limitations of the alternative site assessment undertaken, it has not been established that in this case it is necessary to use higher quality agricultural land in preference to land of lesser quality. It follows that in the absence of compelling justification, to develop the appeal site for solar development would be contrary to national policy within the Framework, and with subsequent guidance contained within the PPG and the Written Ministerial Statement of the 25 March 2015. This is a clear and recent clarification of Government policy on precisely this issue, which directs land of lower quality to be used in preference. Furthermore, the proposal would conflict with Policy E5 of the LP and Draft Policy EN13 of the emerging LP. These are matters which must carry significant weight in the planning balance.

Other Matters

27. Residents have raised concerns in relation to the effect of the proposal on the setting of nearby listed buildings. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. A heritage desk based assessment has been submitted, relating to the impact of the proposal on all identified heritage assets within 5km of the appeal site. There are no listed

buildings or conservation areas within the proposal site itself. The assessment identifies 3 Grade II listed buildings which may have some degree of inter-visibility with the appeal site.

28. Old Kiddicott is a Grade II listed house located c.110m north-west of the site. It is an attractive example of 17th Century vernacular architecture and it sits within a cluster of buildings alongside **Kiddicott Farm, Shepherd's Farm and Old Mill House**. These provide an important part of its setting with the wider agricultural landscape around the building being of lesser and more limited importance. Very limited and glimpsed views may be available between the appeal site and Old Kiddicott in winter months. However, having regard to the lesser significance of the wider landscape to the buildings setting, and the limited extent to which the proposal would intrude upon it, I do not consider that the proposal would have a materially harmful impact on significance of this heritage asset.
29. Kenniford Farm is located around 350m to the south-west, on the other side of Oil Mill Lane. It is a farmhouse to a working farm, and another attractive example of C17th vernacular architecture. The building is closely associated with the existing farm and has no historical or functional relationship between the building and the appeal site. There is also very limited, if any intervisibility between the building and the appeal site due to topography and intervening vegetation and as a result the proposal would have no impact upon the buildings setting or its significance as a heritage asset.
30. Another Grade II listed building, Greendale, is a C19th private house around 250m east of the site. The property sits within attractive grounds, historically described as pleasure gardens, which are largely enclosed by established planting. This aspect of the buildings setting would be unaffected by the proposal. **Greendale's** wider setting is derived from the historic relationship it has with the surrounding agricultural land, which the appeal site lies within. Although some inter-visibility between the site and the planted boundary to the gardens of Greendale would be possible during winter months, the wider landscape is of lesser importance to the buildings setting, and the proposal would intrude upon it to only a very limited degree. Furthermore, although historical maps indicate that the land was historically associated with Greendale, this relationship is not evident in the physical relationship of the land to the site, which would not be altered by the proposal. I do not therefore consider that the proposal would have a materially harmful impact on the significance of this heritage asset.
31. I therefore conclude that the proposal would not give rise to harm to the significance of the heritage assets and find no conflict with guidance contained within the Framework in this respect.
32. I was advised at the hearing by Exeter Community Energy that the project could be subject to shared ownership by local people, bringing some financial benefits to the wider community, and that the scheme could make voluntary contributions to a Community Fund. However, as there is no legal mechanism with the application for achieving these benefits these are not matters to which I can attribute any weight. The development could be used for local education, and this matter also carries some limited weight.
33. Some interested parties have raised concerns relating to the impact of the proposal on local wildlife. **The appellant's ecological survey found that no** significant wildlife populations would be likely to be harmed by the proposal and the County Ecologist raised no objections to the proposal on that basis. I was also

advised at the hearing of the benefits of the scheme in relation to local ecology, through the creation of habitats within the scheme, and the impact a fallow period could potentially have on soil quality. I also heard about the benefits a less intensive use of the site may have on wider water quality and quantity in relation to reduced use of fertilisers. Although I am satisfied that such benefits would occur to some degree, the appellant was unable to quantify the extent to which these may apply to the site. Therefore, although I share the view that the effect on local wildlife is unlikely to be harmful, and may be beneficial, I can give the matter only limited weight.

34. A number of residents have raised concerns in relation to the visual impact of the proposal. The submitted layout shows extensive supplementary landscaping, including bunding, which I consider would effectively supplement existing field boundaries to mitigate the visual impact of the proposal. Whilst it is possible that the scheme would be visible in some long ranging views, and potentially in glimpses from adjoining land, I do not concur with residents that these visual impacts would be materially harmful. In this regard, I have no cogent evidence to support concerns that the development would harm tourism interests or give rise to instances of crime in the locality.
35. Some residents in relation to highway safety. **The Council's highways officer is** satisfied with the revised access arrangements, and I concur that satisfactory access and circulation could be achieved at the site, in particular during the construction phase. In relation to residential amenity, in particular noise from the site, I am satisfied that any noise from the site could be effectively mitigated by way of planning conditions, should the appeal be allowed.
36. Finally, I take into account the large number of other appeal cases which the parties drew my attention to. These all took into account the particular material factors in each case. Having regard to the various views of my fellow Inspectors, I do not consider that any prejudice a similar consideration of the individual merits of this proposal.

Conclusion

37. In coming to a decision I take into account the contribution the development would make to renewable energy provision, and that the Framework identifies the reduction in greenhouse emissions and the delivery of renewable energy infrastructure as being central to sustainable development (Paragraph 93). Together with the other identified benefits of the scheme I attribute significant weight to these considerations. However, I attribute greater weight to the harm that would arise in this case in relation to the loss of agricultural land. In this regard, I do not consider that the benefits that would be derived from the proposal would represent a sufficiently compelling case to justify a departure from local and national policy in this case.
38. Therefore, on balance, and having regard to all other matters raised, I dismiss the appeal.

Anne Jordan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Chris Cox	Pegasus Planning
Tony Kernon BSc(Hons) MRICS FBIAC	Kernon Countryside Consultants Ltd
Paul Silcock MA MRICS FAAV CEnv AEMA	Cumulus Consultants
Chris Down	Crealy Adventure Park
Giovanni Maruca	Solstice Renewables
Colin Virtue	Pegasus Planning
Harry Lopes	

FOR THE LOCAL AUTHORITY:

Paul Golding	East Devon District Council
Cllr Mike Howe	East Devon District Council

INTERESTED PARTIES

Chris Booker	Local Resident
Sophy Whittingstall	Solstice Renewables
Geoff Cox	Local Resident
Malcolm Slade	Local Resident
Gaeron Kayley	Local Resident
Elisabeth Olstrom	Local Resident
M Farmer	Local Resident
Mary Banks	Local Resident
Polly Moore	Local Resident
Sue Booker	Local Resident
Samantha Wilson	Local Resident
Simon Steele-Perkins	Local Resident and Oil Mill Lane Residents Association
John Barbara	Local Resident and Oil Mill Lane Residents Association
Grenville Moore	Local Resident
Shirley Moore	Local Resident
Gill Wyatt	Exeter Community Energy

Philip Grove Sid Energy
Harry Mottram Exeter Express and Echo
M Evans
Jack Corsellis

DOCUMENTS SUBMITTED AT THE HEARING:

A3 Photograph of the appeal site when viewed from the curtilage of Greendale

Appeal Decision ref APP/Z3825/A/14/2219843 at Priors Byne Farm, Bines Road, Partridge Green, West Sussex, RH13 8NX of the 18th March 2015