



Department for Communities and Local Government

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Our Ref: APP/D0840/A/14/2216381
Your Ref: 7272/Appeal

11 March 2015

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR CHRIS IVESS-MASH
LAND AT BUNKERS HILL, PILGRIMS WAY, ST ERTH, HAYLE, CORNWALL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA, who made a site visit on 14 October 2014 and produced a report on your client's appeal against a decision of Cornwall Council (the Council) to refuse outline planning permission for a 6.2MW solar PV development, associated landscaping and habitat creation, to include ground based racking systems, mounted solar panels, power inverter stations, transformer stations, security fencing, and CCTV security cameras in accordance with application ref: PA13/08286, dated 10 September 2013.
2. On 28 November 2014, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a renewable energy development.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation, dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. Your client's application for an award of costs is the subject of a separate decision letter which is also being issued today.

Matters arising after the close of the hearing

5. The Secretary of State has had regard to the representations listed at Annex A which were submitted too late to be considered by the Inspector. He has carefully

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considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties prior to reaching his decision on this appeal. Copies of the representations are not attached to this letter but will be provided on written request to either of the addresses shown at the foot of the first page of this letter.

Policy considerations

6. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the saved policies of the Penwith Local Plan 2004 (LP). The Secretary of State considers that the policies most relevant to this appeal are those identified by the Inspector at IR5-7 and IR10, namely CS-9, GD-1, GD-2, GD-3, E-5 and CC-1. Like the Inspector (IR11), the Secretary of State has also had regard to the emerging Cornwall Local Plan and he agrees that, as it is at an early stage of preparation, it carries little weight.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) and the associated planning practice guidance (the Guidance).
8. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess.

Main issues

9. The Secretary of State agrees that the main issues in this case are those set out by the Inspector at IR36.

The character and appearance of the landscape

10. The Secretary of State has carefully considered the Inspector's conclusions regarding the impact of the proposal upon the character and appearance of the landscape within the Cornwall and West Devon Mining Landscape World Heritage Site (WHS) at IR37-50. Considering the effect of the proposal on public views, the Secretary of State agrees with the Inspector that the site occupies a fairly contained position in the landscape and that planned hedge reinforcement and tree planting would provide effective screening in the immediate vicinity of the site when established (IR39). He also agrees with the Inspector that, a kilometre or so from the site, views would generally be obscured by field boundaries or landform (IR40) and that from further afield still, views of the development from Godolphin Hill would be absorbed into the sweep of the panorama without attracting undue attention (IR41).
11. The Secretary of State agrees with the Inspector's assessment of the scheme's possible cumulative effects (IR43-4) and he too concludes that materially harmful cumulative visual effects are unlikely overall (IR44). Turning to the effects on landscape character, the Secretary of State is in agreement with the Inspector at IR45 that the cumulative effect on landscape character of the proposal together

with the local arrays built or with permission would be consistent with the landscape strategy. For the reasons given at IR46, the Secretary of State shares the Inspector's view that overall, the Outstanding Universal Values of the WHS would not be harmed by the proposal.

12. The Secretary of State has considered the Inspector's assessment of the possible impact of the scheme on heritage assets (IR47-48). Like the Inspector (IR47), the Secretary of State attaches great weight and importance to his statutory duty in respect of listed buildings and their settings. However, he sees no reason to disagree with the Inspector's conclusion that the setting of assets in the area would not be affected (IR48).
13. The Secretary of State agrees with the Inspector that in line with the Guidance the solar farm proposal at Bunkers Hill has been sensitively planned and that its visual impact upon the rural environment has been properly addressed (IR49).
14. Overall, the Secretary of State concludes that the scheme's effect on the character and appearance of the landscape within the WHS would be acceptable and consequently its effect on tourism is unlikely to be significant. In common with the Inspector (IR50), he considers that LP Policies GD-1, GD-2 and GD-3 would be met.

The use of agricultural land

15. The Secretary of State has considered the Inspector's analysis and conclusions on the issue of agricultural land (IR51 – 54). He agrees with the Inspector at IR51 that although intensive cropping would cease for the period of the permission, irreversible loss of agricultural land would not occur and that no persuasive evidence has been presented to suggest that significant degradation of the soil would take place. He also shares the Inspector's view (IR55) that although continuing complementary agricultural use of the land is proposed in this case, the loss of opportunity for intensive cropping of the site for a considerable time must be balanced against the public gain through the generation of renewable energy and the reduction in carbon emissions.

Living conditions

16. The Secretary of State has had regard to the Inspector's assessment of the impact of the scheme on living conditions at the 3 dwellings associated with Goldstephen House at IR56-60. He sees no reason to disagree with the Inspector's conclusion that the windows affected by the appeal development would be those on the ground and first floors of the south facing gable, those on the eastern elevation at first floor level, the external staircase and its first floor landing rising to the first floor flat's entrance hall (IR58). For the reasons given by the Inspector (IR56-58), he agrees that, whilst there is no right to a view in planning practice, such very close proximity would be visually oppressive and overbearing, whether or not significant overshadowing occurred (IR58). The Secretary of State observes that, whilst this unsatisfactory situation would not be permanent, 40 years is a very considerable period of time for it to exist. He considers that the question of public interest may be at issue where a development proposal would have such a severe adverse impact on the outlook from private dwellings that it would render those dwellings unsatisfactory places in which to live, for future as well as current occupiers. Having taken account of the Inspector's assessment it is the view of the Secretary of State

that the impact of the proposed development upon dwellings associated with Goldstephen House would be so visually oppressive and overbearing that they would become unattractive places in which to live. The Secretary of State has gone on to balance this matter against the public gain from the proposal.

Conditions and Obligations

17. The Secretary of State has considered the Inspector's comments at IR68-70 on the proposed planning conditions and the schedule of conditions he recommends in his report (IR, page 12). The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, the Secretary of State does not consider that the conditions would overcome his reasons for dismissing the appeal.

The planning balance and conclusions

18. The Secretary of State has had regard to the Inspector's remarks at IR62 including the fact that paragraph 98 of the Framework tells us that even small-scale energy projects provide a valuable contribution to cutting greenhouse gas emissions and an application should be approved if its impacts are (or can be made) acceptable. In this case the Secretary of State assigns significant weight to the benefits of the provision of renewable energy.

19. The Secretary of State agrees with the Inspector (IR63) that LP Policy GD-3 would be met and that, technically, LP Policy E-5 would be also met. Having given very careful consideration to the Inspector's remarks at IR63-64 and bearing in mind his own conclusions at paragraph 15 above, the Secretary of State weighs the loss of fully productive BMV for a period of almost two generations against the scheme but, like the Inspector (IR64), he concludes that on balance the public gain of the provision of renewable energy would outweigh this loss.

20. The Secretary of State shares the Inspector's view that the scheme's overbearing effect on living conditions gives rise to conflict with LP policy CC-1 with respect to amenity, although it meets other aspects of this Policy (IR65). He gives very significant weight to this matter and, bearing in mind his further remarks at paragraph 16 above, like the Inspector (IR65) he considers the overbearing effect on living conditions to be sufficient to render the proposal unacceptable.

21. The Secretary of State agrees with the Inspector at IR66 that the proposal conflicts with the development plan overall. He does not consider that there are material considerations of sufficient weight in this case to indicate that the appeal should be determined other than in accordance with the development plan.

Formal Decision

22. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses the appeal and refuses planning permission for a 6.2MW solar PV development, associated landscaping and habitat creation, to include ground based racking systems, mounted solar panels, power inverter stations, transformer stations, security fencing, and CCTV security cameras in accordance with application ref: PA13/08286 at land at Bunkers Hill, Pilgrims Way, St. Erth, Hayle TR27 6ER.

Right to challenge the decision

23. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
24. A copy of this letter has been sent to Cornwall Council. Notification has been sent to all other parties who asked to be informed.

Yours faithfully

Christine Symes

Christine Symes

Authorised by Secretary of State to sign in that behalf

Annex A

Representations Submitted Too Late to Be Considered by the Inspector

Dated	From	Representation
9/12/14	Andrew George MP	Letter from AG and enclosure of a letter from MJ and DJ Mash dated 4/12/14.
17/12/14	Andrew George MP	Letter from AG and enclosure of a letter from MJ and DJ Mash dated 7/12/14.
11/01/15	Christopher Ivess-Mash	Email and letter from CI-V and enclosures of the letter from Adrian Lee dated 9/1/15 and the representation from Mari Webster dated 8/1/15.
8/01/15	Mari Webster, Johns Associates	Letter of representation.
9/01/15	Adrian Lee	Letter of representation.
07/03/15	Christopher Ivess-Mash	Email.

Report to the Secretary of State for Communities and Local Government

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Date: 19 January 2015

Town and Country Planning Act 1990

Cornwall Council

Appeal by Mr Chris Ivess-Mash

Site visit made on 14 October 2014

Land at Bunkers Hill, Pilgrims Way, St. Erth, Hayle TR27 6ER

File Ref: APP/D0840/A/14/2216381

File Ref: APP/D0840/A/14/2216381

Land at Bunkers Hill, Pilgrims Way, St. Erth, Hayle TR27 6ER

- 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 Chris Ivess-Mash against the decision of Cornwall Council.
- The application Ref PA13/08286, dated 10 September 2013, was refused by notice dated 20 December 2013.
- The development proposed is a 6.2MW solar PV development, associated landscaping and habitat creation, to include ground based racking systems, mounted solar panels, power inverter stations, transformer stations, security fencing, and CCTV security cameras.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. An application for costs was made by Mr Chris Ivess-Mash against Cornwall Council. This application is the subject of a separate Report.
2. The appeal was recovered for decision by the Secretary of State in a direction dated 28 November 2014. The direction was made because the appeal involves a renewable energy development, because of the possible impact on the best and most versatile agricultural land, and so that any impact on the Cornwall and West Devon Mining World Heritage Site (WHS), within which the site lies, can be carefully considered.

The Site and Surroundings

3. The site consists of a single field of some 8.9ha, located approximately 1km south west of the village of Fraddam and 3km south east of the larger settlement of Hayle. It is bounded by the minor roads of Pilgrims Way to the north, Bunkers Hill to the west and by agricultural fields to the east and south. The existing field pattern and boundaries would remain intact. The site comprises Grade 3A agricultural land recently in use for growing potatoes.
4. The local area, generally in agricultural use for crops or pasture, has a scattering of dwellings and farmsteads. The nearest dwellings are those at Goldstephen House, immediately opposite the north-west corner of the site.

Planning Policy

5. The development plan comprises the saved policies of the Penwith Local Plan 2004 (LP). Policy CS-9 states that renewable energy schemes will be permitted where any adverse impacts on the character of the area, nature conservation interests, or neighbours' living conditions are outweighed by the need for the development. Since Paragraph 98 of the National Planning Policy Framework (NPPF) tells us that applicants should not be required to demonstrate the overall need for renewable or low carbon energy, I will take 'need' in the Policy to mean local need or public benefit, to be balanced against harm.
6. LP Policy GD-1 indicates that development should be integrated with its surroundings in terms of scale, siting and design and be in keeping with the character of the district. LP Policy GD-2 sets out criteria for the design and layout of development, including respect for traditional patterns of development, materials in keeping with the locality, and the retention and incorporation of existing trees. LP Policy GD-3 seeks the incorporation of landscaping and

planting which reduces the impact of the development on the environment, reflects the character of the surroundings and provides screening shelter and interest, where practicable supporting a variety of species and including provision for wildlife and other creative conservation measures. These policies accord with the aims of the NPPF.

7. LP Policy E-5 notes that development which would result in the irreversible loss of agricultural land graded 1, 2 and 3A will not be permitted unless there is no practicable alternative and the importance of the development outweighs the need to protect the best and most versatile land (BMV ie.: grades 1, 2 and 3A). The second paragraph of the Policy refers to a preference for lower grade land. This aspect also seems to apply in the context of the irreversible loss of agricultural land.
8. Likewise, both the NPPF and Planning Practice Guidance (PPG) seek to protect but do not prohibit the use of BMV. NPPF Paragraph 112 notes that the economic and other benefits of BMV should be taken into account and 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.
9. PPG identifies the planning considerations that apply to large scale solar farms. These include 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. Also, whether the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.
10. LP Policy CC-1 seeks to protect the landscape character, amenity, nature conservation, archaeological, historic or geological values of the coast and countryside. It accords with the aims of the NPPF.
11. The emerging Cornwall Local Plan contains policies which endorse those set out. However, it is at an early stage of preparation and therefore carries little weight.

Planning History

12. Revisions to the original application proposal, intended to meet local concerns, were put before the committee. They include a reduction in the number of panels, a slight reduction in panel height, removal of the access track through the middle of the site, increased planting, and the replacement of separate central inverters by string inverters attached to the panels.

The Proposal

13. The proposal now comprises some 23,800 panels, rated at 260watt each, arranged in 57 rows, positioned on racking at an angle of 20 degrees to the horizontal and reaching a maximum height of 2.21m above ground level. There would be free standing cabins comprising three low voltage substations, one 36kv client substation, and three transformers. Connection to the National Grid would be via a Western Power Distribution connection on the western edge of the array and the site, within the hedge boundaries, would be enclosed with a light wire mesh security fence some 2m high.
14. A 40 year time limit is proposed for the operation of the development.

The Case for the Appellant, Mr Chris Ivess-Mash

15. The proposal would bring forward benefits in terms of the production of renewable energy to help meet Cornwall's targets, significant biodiversity gain and substantial community funding. Assessments have concluded that the impacts of the proposal on the agricultural land, landscape character, WHS designation and residential amenity are limited and would be both temporary and reversible.

Landscape Character

16. The revised Landscape and Visual Impact Assessment (LVIA) and Heritage Assessment, including the zone of theoretical visibility (ZTV) study requested by English Heritage (EH), indicate that the proposal would not have an unacceptably adverse effect on the character and appearance of the landscape within the WHS. The supporting assessments conclude that the development would appropriately integrate with its surroundings in terms of scale, siting and design in accordance with LP Policy GD-1. EH have withdrawn their objection to the scheme, reinforcing the conclusion that the proposed development accords with paragraphs 109 (natural and local environment), 128 (description of heritage assets) and 132 (impact in relation to the significance of heritage assets) of the NPPF; and with LP Policies CC-1 and GD-1.

Agricultural Land

17. There would be no irreversible loss of Grade 3A agricultural land, thus the policy does not conflict with LP Policy E-5 or the aims of NPPF Paragraph 112. Agricultural use would continue alongside the solar project until the expiry of the time period for the development. The 40 year time limit is proposed to reflect the expected economic life of the solar panels.

Living Conditions

18. The effects on the closest residential property, along with others in the locality, have been fully considered within the updated LVIA. The addendum to the LVIA and the revised design, address all relevant issues relating to the amenity of residents. The operation of the solar array would not give rise to noise or vibration. Glint and glare would not be an issue because the panels are oriented away from the closest residential properties.
19. Paragraph 98 of the NPPF directs LPAs to approve an application for renewable energy development if its impacts are (or can be made) acceptable. The proposal accords with planning policy, recent government guidance and the Council's own guidance on renewable schemes. The material planning considerations have been thoroughly considered and addressed.

The Case for the Council

20. Development plan policies, emerging policy and Government policy and guidance encourage development of alternative energy resources, whilst addressing their impact both individually and cumulatively. The development plan also recognises the need to protect and enhance the character of the landscape and to protect it from the detrimental impacts of development especially on sites within the WHS.

Landscape Character

21. The proposal, comprising the collection of panels, substations and perimeter fencing would be visually prominent in this rural location. The Council recognises the landscape as being of moderate sensitivity to solar PV development. The Council's strategy is for a landscape with occasional solar PV developments.
22. Tackling climate change through the deployment of alternative sources of energy production is a key Government policy. To date the Council has achieved some 305MW of installed energy from wind and photovoltaic developments, a further 300MW of capacity has been granted planning permission and 65MW is at application stage. The proposal would make a small but, nonetheless, important contribution to these totals in the generation of electricity from alternative sources and the reduction in greenhouse gases.
23. The benefits of the proposal must be weighed against the harm identified to the landscape character and appearance of the area appreciated by both residents and visitors alike, given its WHS status. The public benefits of the proposal would not, in the Council's view, outweigh the visual harm to this area of the countryside. The proposal would conflict with development plan and emerging policies, which align with the NPPF.

Agricultural Land

24. The site, comprising 8.9ha of Grade 3A agricultural land, would be lost to any significant agricultural production. The BMV is protected by policy and, given the large amounts of renewable energy production already in place in Cornwall, there is no overriding need to release this land and remove it from productive agricultural use for a lengthy period of 40 years.

Living Conditions

25. Properties are situated at the junction of Pilgrims Way and Bunkers Hill. The Council are particularly concerned that both the ground and first floor windows of 13 Goldstephen House look south over the site and are uncomfortably close to the site boundary. The landscaping proposed is not an adequate solution to counter the visual harm, especially from the first floor windows.

Written Representations

Sally Martel, Goldstephen House

Living Conditions

26. Three family residences are associated with Goldstephen House which is only 8m from the field containing the site. The first floor flat has four windows, three of which directly overlook the site and the garden of number 11 is raised to a level higher than the site. The land rises by 8m towards the centre of the site which would be covered with panels on racking over 2m high together with security fencing and CCTV cameras, altogether an overbearing intrusion and widespread invasion of privacy.
27. The tree species chosen to reinforce the boundary hedges are slow growing and at maturity would not provide effective screening at first floor level. Most are deciduous and would provide poor screening in winter. At the same time,

evergreen species are proposed for the north-west corner of the site, opposite Goldstephen House and would overshadow windows at ground floor level.

28. The development would generate a considerable amount of noise. Electrical transformer stations are audible continuously throughout daylight hours and for 2 hours after sunset. In addition, there would be noise generated by rain and hail falling on the panels and wind whistling through the racking.

Landscape Character

29. Within the three parishes of St Erth, Hayle and Gwinnear a total of 74 ha of land are built out with solar PV arrays, represent applications in planning, projects likely to appeal after refusal, or projects screened for environmental impact. The cumulative effect on landscape, should even a proportion of these proposed proceed, would be immense. Moreover, the cumulative effect of solar arrays and wind turbines in Cornwall as a whole is considerable and little appreciated.
30. Cornwall's target for renewable energy as a whole, taking account of installed and allowed capacity, has already been met and exceeded by 50%. Also, current national solar PV strategy shows a clear line of travel away from large scale ground mounted arrays towards installation on the roofs of commercial buildings.
31. The effect on tourism is already profound. The existing Wheal Alfred Road array, together with a number of turbines, is clearly visible from Godolphin Hill, a visitor focus. Moreover, the effect on the WHS, which borders an Area of Great Landscape Value (AGLV) is critical, and the WHS faces the risk of being placed on the 'in danger' list.

Agricultural Land

32. Less than 12% of Cornwall's agricultural land is classified as Grade 1 or 2, which puts extra pressure on that classified as Grade 3A. The use of such land conflicts with local and national policy and the suggestion that the use would be temporary, stretching over 40 years, is not credible. The land is not suitable for wild flowers, which require soil of low fertility. In any event, wild flowers would not grow in the shadow of the solar panels. After 40 years, the site's soil quality would be depleted and irrecoverable.
33. In addition, the process of consultation was poorly conducted and the results misrepresented by the appellant. Moreover the community fund offered is not a material planning consideration and is simply a way of garnering support.

Other Written Representations

34. Other objections endorse Sally Martel's representations. Additional points include loss of agricultural employment; flood risk; the effect on traffic conditions and road safety; detailed analysis of the extent of renewable energy operational or permitted in relation to various targets; and the irrelevance of the community trust fund proposals as a material planning consideration. The Parish Councils of St Erth, Gwinnear-Gwithean, and Crowan all object to the proposal.
35. Points made in support include the financial benefit of the community fund; the need for secure, sustainable energy supplies; improved biodiversity; the benign, reversible effect of the proposal on the appearance of the countryside; and employment gains. A petition was submitted in support of the proposal.

Inspector's conclusions

36. The main issues are the effect of the proposal on:

- The character and appearance of the landscape within the Cornwall and West Devon Mining Landscape World Heritage Site (WHS).
- The use of agricultural land.
- Living conditions.

Character and Appearance

37. The site lies within Landscape Character Area (LCA) CA06 – Mount's Bay East in the Cornwall and Isles of Scilly Landscape Character Study. Key landscape characteristics are noted as a very strong topography of high cliffs on the coast, backed by a gently undulating plateau intersected by distinctive flat-bottomed valleys. It also notes the distinctive natural hills of Godolphin and Tregonning (to the south of the site) and well vegetated hedges with some trees on boundaries, and extensive areas of mining remains. Mounts Bay East is categorised as having a moderate landscape sensitivity to solar photo-voltaic developments and a strategy for occasional developments up to and including large scale is indicated.¹
38. The site falls within Area 3: Tregonning and Gwinear Mining Districts with Trewavas of the WHS. Key characteristics relevant to the site are described as a mixture of gently rising downland on which a patchwork of smallholdings and new farms has been created, interspersed with long established farms and parkland associated with the great mining estates of Godolphin and Clowance.²
39. Considering, firstly, the effect of the proposal on public views, the site occupies a fairly contained position in the landscape, in a field surrounded by hedges. At present, the generally tall, mature, species rich Cornish hedge along Bunkers Hill, to the west of the site, is an effective screen, but lower hedge heights and gaps elsewhere would allow intermittent views of the proposed array. However, planned hedge reinforcement and semi-mature tree planting would provide effective screening in the immediate vicinity of the site when established. Being located towards the western perimeter of the site, next to dense foliage, the cabins containing plant would not attract significant attention.
40. A little further afield, a kilometre or so from the site, views of the array would generally be obscured by field boundaries or landform, except perhaps for occasional glimpses. Harmful views from footpaths, including those to the north west, would be unlikely for the same reason. A footpath approaches a corner of the site from the east, but then terminates, and is little used. In any event, hedge reinforcement, when mature, would shield walkers from views of the array.
41. Further afield still, Godolphin Hill represents one of the most critical viewpoints. Lying within the Godolphin and Tregonning Hills Area of Great Landscape Value (AGLV), it offers panoramic views taking in the coast both to the north and south

¹ Technical Paper E4(a), An assessment of the Landscape Sensitivity to Onshore Wind and Large Scale Photovoltaic Development in Cornwall.

² Cornwall and West Devon Mining Landscape World Heritage site Management Plan 2013-2018

- across the narrowest part of the Cornish peninsula. From here, some 2.5km away, the site would appear as quite a small feature in the landscape with the recessive tonal appearance of a small body of water. It would be absorbed into the sweep of the panorama without attracting undue attention and, as the mitigation planting matures, the array's presence would further diminish.
42. Glare, the general reflection of the sky, is unlikely to be a problem, because of the high level of absorbency of the solar panels. Glint, the direct reflection of the sun, is also unlikely to be experienced because of the probable direction of reflection back to the sky, and the shielding effect of foliage.
 43. Cumulative effects are possible associated with the operational Wheal Alfred Road array, some 2km to the north, and the Lanyon Farm array which was recently allowed on appeal, some 3.5km to the north east. The simultaneous visual effect of solar arrays from Godolphin Hill would not be significantly harmful, because of the distances and the scale of development involved, nor would the cumulative effect of the combination of solar arrays and wind turbines.
 44. A sequential effect could be experienced driving northwards from the site, after glimpsing the proposed development. The Wheal Alfred Road array, which is more visible in the landscape than the proposed array would be, can be seen for a short time on rising ground approaching from the south. It is then possible that the Lanyon Farm array could be added to the visual sequence, but it would not lie on a particularly close or direct route from either the site or the Wheal Alfred Road array. Materially harmful cumulative visual effects are, therefore, unlikely overall.
 45. Turning to the effects on landscape character, the proposal would be contained within the existing field pattern and the land, whilst put to complementary agricultural use with the array in place, would be restored to full agricultural use on expiry of the permission. The array would not necessarily be seen as completely out of character with the general farming landscape. In many ways it would fall into character as an alternative although distinctive single field crop, and would have much in common with areas of polytunnel, although it would be less visually assertive. Importantly, the cumulative effect on landscape character of the proposal together with the local arrays built or with permission would be consistent with the landscape strategy of occasional developments up to and including large scale arrays.
 46. It is arguable that the proposal would represent part of the continuing development of the WHS, appropriate to its cultural history. There would be no conflict with the settings of historic mining buildings, mine workings or settlements in this case. Whilst an infilled mineshaft exists within the site, and others lie outside the cultivated area on its perimeter, the Council notes that these features are not uncommon and the proposal would not have an adverse effect on them. The appellant's archaeological site survey did not suggest the presence of substantial remains below ground and the proposal would not require excavation or the placing of disruptive underground foundations. Overall, the Outstanding Universal Values of the WHS would not be harmed by the proposal.
 47. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or the Secretary of State shall 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. Great weight and importance attaches to the exercise of this statutory duty, over and above the requirements of the development plan and the NPPF.

48. However, there appears to be no visual or other distinctive association between the site and the listed buildings at nearby Gear Farm and Kerthen Farm. Their settings are quite tightly drawn and would be preserved. Likewise the settings of Godolphin House, which is Grade I listed, and its Grade II* registered garden, although more extensive, would be preserved. The nearest scheduled monument is an earthwork east of Gurlyn, some 1.6km to the south west of the site, but the intervening landform and woodland means that its setting would not be affected.
49. PPG advises that the deployment of large-scale solar farms can have a negative effect on the rural environment, particularly in undulating landscapes, however the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively. In this case, I find the proposal has been sensitively planned and the impact properly addressed.
50. Overall, the effect of the proposal on the character and appearance of the landscape within the WHS would be acceptable. The effect on tourism is unlikely to be significant. LP Policies GD-1 (Scale and Siting), GD-2 (Design and layout), and GD-3 (Landscape and Planting), would be met.

Agricultural Land

51. An independent survey describes the land as Grade 3A, but notes that the stoniness of the ground is a limiting factor. Although intensive cropping would cease for the period of the permission, irreversible loss of agricultural land would not occur and no persuasive evidence has been presented to suggest that significant degradation of the soil would take place. Grass cropping or sheep grazing would take place as a complementary agricultural activity. Moreover, meadow grassland is proposed with wild flower cultivation to enlarged field margins of increased biodiversity, an orchard area, and the possibility of beehives through co-operation with local hive keepers. Although objectors have questioned their practicability, I see no reason why these measures should not succeed, as an extension of the existing rich Cornish hedgerow habitats.
52. The site has not been compared with lower grade agricultural alternatives or brownfield sites. However, the applicant has provided figures which suggest no shortage of higher grade agricultural land locally, the site representing approximately 4% of that available within a 5km radius of the site. On this basis, the impact on local supply would not be large, and I note that Natural England (NE) have not objected - although they decline to comment on loss of BMV land below 20ha - and the County Land Agent has not objected.
53. On the other hand, the Solar Trade Association advises³ that its members will focus development on non-agricultural land or land which is of lower agricultural quality. This would appear to exclude BMV land. It notes possible exceptions in areas where all the land is of higher quality commenting that it would be considered unreasonable to exclude development on these grounds alone (for

³ Solar Farms 10 Commitments

example, in Lincolnshire and Cambridgeshire where it is hard to avoid land which has a designated high grade, whereas Cornwall has lots of low grade land compared with the rest of the country).

54. Moreover, in his speech to the solar PV industry on 25 April 2013, the Rt Hon Gregory Barker MP, Minister for Energy and Climate Change, confirmed the Government's commitment to placing solar PV at the heart of the UK's energy mix. However, he noted that the Government's revised subsidy structure focussed deployment on buildings and brownfield land – not greenfield. He stated that where solar farms are not on brownfield land [the industry] must be looking at low grade agricultural land and work with farmers to allow grazing in parallel with generation.
55. Despite the continuing complementary agricultural use proposed in this case, the loss of opportunity for intensive cropping of the site for a considerable time must be balanced against public gain through the generation of renewable energy and the reduction in carbon emissions. This exercise will be carried out in the conclusions to the appraisal.

Living Conditions

56. Goldstephen House is located at the north-west corner of the site, at the junction of Conker Road, which continues along the western side of the site as Bunkers Hill, and Pilgrims Way. Number 13 is a two storey house incorporating an upper floor flat, number 13a, and adjoining it to the north is 11 Conker Road. The curtilage of Number 13 is some 8m from the boundary of the site, and would be only just over 20m from the nearest solar panel. The gable of the house sits tight to the road and the setback to the nearest window of a habitable room would add very little to these separation distances.
57. Substantial planting is proposed along the northern boundary of the site, with mixed native species of mostly deciduous trees planted at a height of 2m. This would provide screening from ground floor windows during summer months, but not from first floor windows and, when fully mature and more effective in screening at first floor level, would itself exercise a considerable presence.
58. The windows affected would be not only those on the south facing gable at both levels, but also those on the east elevation at first floor level, which look out diagonally over the site and, in conjunction with those to the south, provide a continuous outlook from the first floor flat. Also affected would be the external staircase and its first floor landing, rising to the first floor flat's entrance hall. There is no right to a view in planning practice. However, such very close proximity would be visually oppressive and overbearing, whether or not significant overshadowing occurred. The land rises towards the south of the site, meaning that some of the panels within the site, as well as those on the northern perimeter, would have an overbearing effect. Nevertheless, there may be a line beyond which this effect would diminish to an acceptable level.
59. The cabins containing plant would be set well away from the property and string inverters, being mounted on the panels, would not be prominent. The noise assessment indicates that, even ignoring the damping effect of hedgerows, operating conditions would be acceptable. Moreover, noise levels would be controlled by condition during operation. They would also be controlled by condition during construction and decommissioning, as would working hours.

The effect of rain, hail and wind on the panels would be similar to that associated with domestic and agricultural roofs and is unlikely to be disturbing except, perhaps, in relation to panels very close to the properties.

60. Overall, the noise environment arising from the proposal would be acceptable. Evidence to justify health concerns with regard to solar arrays is scant and the locations of CCTV cameras could be controlled by condition. The overbearing effect on the occupants of the three dwellings associated with Goldstephen House will be balanced against the public gain arising from the proposal in the conclusions to this appraisal.

Other Matters

61. Having considered the evidence, I agree with the Council that there would be no significant effects in relation to ecology, traffic conditions, or flood risk. The community fund proposed is not a material planning consideration.

Overall Conclusions

62. The Council sets out the figures for renewable energy capacity operating or permitted. Whilst much has been achieved locally towards the reduction in carbon emissions, policy objectives for enhanced production of renewable energy remain high. Paragraph 98 of the NPPF tells us that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions and an application should be approved if its impacts are (or can be made) acceptable.
63. Technically, LP Policy E-5 would be met, since the proposal would not result in the irreversible loss of BMV agricultural land, complementary agricultural activity would take place and the biodiversity aims of LP Policy GD-3 would be met. However, the most productive agricultural use of the site would not be available for a period of almost two generations, compared to the single generation usual with renewable energy projects.
64. Moreover, NPPF Paragraph 112 notes 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 approach is endorsed by PPG and, in this case, there may be other sites available, less valuable for agricultural use. On balance, however, I find the public gain would outweigh the loss of fully productive BMV agricultural land.
65. Nevertheless, the overbearing effect on living conditions is sufficient to render the proposal unacceptable. It conflicts with LP saved Policy CC-1 (Protecting Environmental Character) with respect to amenity, although it meets other aspects of this Policy. Moreover, the harm identified to neighbours' living conditions is not outweighed by the need for renewable energy under LP Policy CS-9 (Renewable Energy Schemes).
66. The proposal conflicts with the development plan overall.

Recommendation

67. I recommend that the appeal be dismissed.
68. Should the Secretary of State disagree with this recommendation, attached is a schedule of conditions, based on those suggested by the Council, which may be considered were permission to be granted.
69. The first condition is necessary to prevent the permission being implemented when planning circumstances may have materially changed. The second condition, concerning adherence to the approved plans, is necessary for the avoidance of doubt and in the interests of proper planning.
70. The third condition is necessary to protect living conditions and the character and appearance of the area. The fourth condition is necessary to protect biodiversity as well as the character and appearance of the area, and living conditions. The fifth condition is necessary to protect the character and appearance of the area and to re-establish the site for full agricultural use after decommissioning. The sixth, seventh, eighth and ninth conditions are necessary to protect living conditions, and the tenth condition is necessary for the same reason and to protect the character and appearance of the area.

Alan Novitzky

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision. The developer shall give written notification to the Local Planning Authority (LPA) of the date of commencement of the development hereby approved within 5 working days of that commencement.
- 2) The development shall take place in strict accordance with the following drawings and documents: -
 - Planning Drawing 001 Map (Location Plan)
 - Planning Drawing 002 Location Plan (Location Plan)
 - Planning Drawing 003 Site and surrounds (Site Plan)
 - Planning Drawing 005 Road Access to Site (Access route)
 - Planning Drawing 008 Rev P3 (Site sections)
 - Drawing 472/01 Rev P5 (Landscape mitigation and planting plan)
 - Tables 5.1 (Ecological Mitigation Measures) and 5.2 (Ecological Enhancement Measures) of the Ecological Impacts Assessment dated August 2013
- 3) No development shall be commenced until a scheme detailing the final location, design, external finishes and noise attenuation of the inverter housings, substations and transformers has been submitted to and approved in writing by the LPA. The development shall be constructed, operated and maintained in accordance with the approved scheme.
- 4) No development shall be commenced until a Landscape and Ecological Management Plan (LEMP) addressing landscape and biodiversity protection and enhancement during the pre-construction, construction, operational and restoration periods has been submitted to and approved in writing by the LPA. The issues which shall be addressed in the LEMP include: - retention of existing hedges and trees; location and widths of undeveloped hedgerow buffers, all inverters/substations cable runs and access tracks to be located outside the agreed buffer areas, the line and design of security fencing to allow free movement of mammals across the site; the location and type of CCTV cameras; the location and type of new planting, and other biodiversity enhancements (such as bird/bat boxes); management proposals for hedges, including proposals to allow hedgerow trees to develop, proposals for management of the buffer strips, the grass sward between the panels and pre-construction management proposals to deter ground nesting birds. The LEMP shall set out land management measures including the control of weeds in the event that sheep grazing is not carried out on site; and land management measures to protect watercourses from pesticide and soil pollution. The development shall be carried out in accordance with the approved LEMP.
- 5) Within 40 years and six months following the first date of electricity generation, or within six months of the cessation of electricity generation

by the solar PV facility, whichever is the sooner, the solar PV panels, frames, foundations, inverter housings and all associated structures and fencing approved shall be dismantled and removed from the site. The developer shall notify the LPA in writing no later than five working days following the cessation of electricity generation. The site shall subsequently be restored in accordance with a scheme, the details of which shall be submitted to and approved in writing by the LPA no later than three months following the cessation of electricity generation.

- 6) No external artificial lighting shall be installed or operated during the operation of the site.
- 7) The Rating Level LArTr (to include the 5 dB characteristic penalty) of the noise emanating from the approved scheme, shall be at least 5 dB below the measured background noise level at any time at the curtilage of any noise sensitive premises lawfully existing at the time of consent. The Rating Level (LArTr) and the background noise level (LA90) shall be determined in accordance with the guidance and methodology set out in BS4142: 1997.
- 8) The noise emissions during the construction and decommissioning periods of the development shall not exceed an LAeq,T noise level of 65 dB, 1 metre from the façade of any occupied residential dwelling.
- 9) No construction or decommissioning works shall take place except between the following hours: -
 - 0800 - 1800 Monday to Friday
 - 0800 - 1300 SaturdayNo material delivery, construction or decommissioning works shall be undertaken outside these hours or on Sundays, Bank or Public Holidays.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order amending, replacing or re-enacting that Order), no fixed plant or machinery, buildings, structures, erections, or private ways shall be erected, extended, installed rearranged, replaced, repaired or altered at the site without prior planning permission from the LPA except for those works authorised by this permission.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.