



The Planning Inspectorate

The Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013

ISSUES REPORT (February 2023)

Application Reference No: S62A/22/0006

Applicant: Berden Solar Limited

Description of proposal: Development of a ground mounted solar farm with a generation capacity of up to 49.99MW, together with associated infrastructure and landscaping

Site address: Land at Berden Hall Farm, Ginns Road, Berden

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Hearing to be held on: 9 March 2023, 10am

Introduction/background

1. The application seeks full planning permission for a 49.99MW solar farm, together with associated infrastructure and landscaping. The application site is located on agricultural land at Berden Hall Farm comprising of 71.58 Hectares(ha).
2. The address in the above header is that specified on the submitted application from refereeing to Ginns Road. It is noted that Dewes Green Road is referred to by Uttlesford Council in their correspondence received to date. However, bearing in mind all responses received I have taken the applicant's site address details to be correct.
3. The applicant has referred, in their supporting documents, to the solar farm being operational for up to 40 years. Following which the development would then be decommissioned should the application be successful. The scope and regulation of intended decommissioning is subject to further discussion at the Hearing.
4. The site lies within the open countryside as set out in the Uttlesford Local Plan (2005) (the Local Plan). The Local Plan's policies, amongst others, seek to protect the countryside for its own sake (Policy S7), to protect agricultural land (Policy ENV5), address farm diversification (Policy E4), promote highway safety (Policy GEN1) and nature conservation (GEN7), as well as supporting the development of renewable energy schemes (Policy ENV15).
5. National policy and guidance are contained within the National Planning Policy Framework (the Framework) and associated national Planning Practice Guidance (nPPG) as well as the National Policy Statements, EN-1 and EN-3.

Proposal

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6. The proposed solar farm features the installation of approximately 100,368 photovoltaic solar panels mounted metal frames and constructed from non-reflective glass. The solar panels would have a maximum height of 2.5m (with a 20-degree tilt). The rows of the panels proposed would face southwards, with spacing between each row varying between 7.9m and 9.8m.
 7. The associated infrastructure includes 10 inverter units measuring 2.3m in height distributed among the proposed panels and would be accessed via a combination of existing and proposed farm tracks (made of crushed stone).
 8. A small substation is proposed in the southwest corner of the site, adjacent to the battery storage facility. The substation would be accessed via the internal track network from the main access to the solar farm on the Ginns Road. The solar farm would be enclosed by new 2.5m high fencing. Deer fencing would be erected around each field to exclude large mammals and humans from the facility. Gates provided at intervals along the fence would allow the passage of small mammals. Details of the scheme are shown on plan Block Plan drawing number 375_MP_03.
 9. Vehicular access to the site is proposed from Ginns Road. A 6-month construction period is detailed. An average of up to 50 construction workers are forecasted to be on site during peak times during the construction period. A temporary car parking area (including spaces for minibuses) would be provided on the site within a contractor's compound.
 10. The total number of HGVs needed during construction is estimated to be 350, averaging 2.2 HGVs per day (over a 6-day week). However, the number is stated by the applicant as likely to be higher during the initial enabling and ground works phases and lower during the commissioning period.
 11. Deliveries to the site would be managed to avoid highway network weekday peak hours. Construction vehicles are proposed to use the M11 and be routed to site via the A120. Construction work and construction traffic movements are not proposed to take place on Sundays, bank holidays or after 13.00 on a Saturday unless such work is associated with an emergency or with the prior written consent of the local authority. Following the construction phase, vehicular traffic is then expected to be minimal and linked to occasional maintenance.

Procedural matters

12. The application was made under Section 62A of the Town and Country Planning Act 1990, which allows for applications directly to the Planning Inspectorate where an LPA has been designated by the Secretary of State (SoS).
13. The application was first received by the Planning Inspectorate on the 15 July 2022. Following additional submissions from the applicant it became valid on the 29 July 2022. Notifications were then made on the 4 August 2022, and allowed for initial responses by 5 September 2022, and owing to additional application information received further responses by 15 February 2023. Responses were received from:
 - Uttlesford District Council
 - Berden Parish Council
 - Stocking Pelham Parish Council
 - Little Hadham Parish Council

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- Cadent Gas
 - CPRE Essex
 - Gigaclear
 - National Grid
 - Thames Water
 - UK Power Networks
 - Essex County Council (ECC) – Ecology
 - ECC – Planning
 - ECC – Highways
 - ECC – Historic Environment
 - ECC – Green Infrastructure
 - ECC – Lead Local Flood Authority
 - ECC – Energy & Low Carbon
 - ECC – Minerals and Waste
 - East Herts District Council (EHDC) – Environmental Health
 - Historic England
 - Hertfordshire County Council (HCC) – Minerals and Waste
 - HCC – Highways
 - Health and Safety Executive
 - Environment Agency
 - Natural England
 - National Highways
 - Stanstead Aerodrome Safeguarding Authority
 - Essex County Fire and Rescue Service
 - NATS Safeguarding

14. A screening opinion request under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 was submitted to Uttlesford District Council and separately to the Planning Inspectorate, with the application.
15. Uttlesford District Council’s screening opinion subsequently issued advised the proposal would not give rise to any significant adverse effects and therefore an Environmental Statement (ES) was not required.
16. Nonetheless, a Screening Direction issued by the Planning Inspectorate on behalf of the SoS on 19 August, confirming that an ES is required under Regulation 12(3) of the EIA regulations. The SoS confirmed that the application could not be considered without such information being available. The applicant subsequently agreed that an ES would be submitted.
17. The ES information was submitted by the applicant during December 2022 for consultation and application validation purposes. The submitted ES and associated notification were reviewed by the Planning Inspectorate as meeting regulatory requirements. Accordingly, the revised statutory 16 week determination period for the application begins from the date of the receipt of the applicant’s ES information and is now confirmed as falling on 27 April. Further updated consultee and interested party responses were invited taking into account the content of the submitted ES and associated updates to the application and are acknowledged.
18. The decision was taken by the Inspectorate that as a major application, a Hearing was appropriate in this case. This is scheduled to be held on Thursday 9 March 2023 and will be conducted in accordance with The Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013.
19. Uttlesford District Council have submitted a comprehensive officer recommendation report which was considered at their Planning Committee dated 31 August, as well as the minutes to the Planning Committee meeting. The resolution of the Council obtained was to:

Object to the proposed development.

The concerns listed in the submitted minutes relate to: *conflict with Local Plan Policies E4, ENV5, ENV15, S7 and GEN2; the loss of best and most versatile agricultural land including that the applicant has failed to assess whether the development could be accommodated elsewhere; adverse landscape and visual effects including regard to public footpath provision; that an independent review of the impact on heritage assets and archaeology including a Scheduled Ancient Monument is considered; noise impact issues; and that construction traffic management plans be further independently scrutinised; and ensuring decommissioning can be controlled satisfactorily.*

Overall, the identified concerns are considered to outweigh the benefits of the scheme.

In tandem with the above, as agreed at the meeting a separate letter from Uttlesford District Council Director of Planning has been submitted further articulating the Council's main planning concerns to the proposal applied for.

Interested Parties

20. A large number of objections from interested parties have also been received covering, but not limited to the following issues: that no sequential test has been applied considering other sites (as well as options for previously developed land or existing building use); using Best Value/ arable agricultural land is unjustified; loss of agricultural land puts food security at risk; better alternatives/locations are available; adverse impacts on the appearance of the countryside and the historic environment (which contains listed buildings and monuments); glint and glare effects; the scheme has an inappropriate industrial character and is too large; harmful cumulative impacts - considering other solar schemes/ development in the area; ineffective landscaping mitigation options owing to the open sloping nature of topography and growth periods needed; public views will be eroded; the scheme would spoil the enjoyment of walkers using footpaths/discouraging walkers; footpath diversion has been overlooked; white coloured battery storage units are more prominent than green; adverse ecological/wildlife impacts inclusive of regard to protected species; the materials used for photovoltaics are environmentally damaging, unethical and produces hazardous waste; the proposed 40 year term is not temporary (solar panels have a life span of around 10 years); pollution from chemicals used during maintenance; carbon storage and nutrients depletion in soils; fire hazard risks; noise (including from the transformer units); solar energy has low efficiency rates; highway danger from construction traffic using narrow roads including effects to a local school; drainage issues, surface run off and flood risk; no benefits to the local populous and commercial gain outside of the UK; inadequate consultation in scheme planning by the applicant; existing solar technology will be superseded in a few years; offshore wind and wind are better alternatives; non-compliance with local and national planning policy and ministerial advice; that the application determination process triggered bypasses local people's views/the democratic process; and that comparable schemes have been found to be unacceptable elsewhere.

Main issues

21. The following are the main issues to be considered in respect of the application:

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- the visual effect of the development on the character and appearance of the area in a countryside location, including regard to the setting of heritage assets;
 - whether the proposed use of agricultural or farming land is appropriate;
 - the effects to wildlife and if mitigation is adequate;
 - whether highway safety and noise impacts would be acceptable; and
 - the benefits of the proposal, compliance with the development plan, including the assessment of alternatives, and the overall planning balance.
22. The application site is currently in agricultural use. For decision making purposes it falls within the open countryside. The Council's Local Plan seeks to protect the countryside for its own sake and limit development that needs to take place there, or is appropriate to a rural area. National planning policy seeks that the intrinsic character and beauty of the countryside is recognised. Berden Parish Council and Stocking Pelham Parish Council have provided a joint statement setting out a number of environmental and local impact concerns. The concerns include: the harm to the visual appearance of the countryside and to designated heritage assets, the cumulative impacts; and using best value agricultural land; amongst other considerations.
23. The applicant has submitted a Landscape and Visual Impact Assessment. The applicant accepts the proposal will result in some adverse landscape and visual effects. However, they submit significant effects will be confined to a relatively small area of countryside which is already significantly influenced by electrical infrastructure. In their view, once mitigation is effective the effect to the majority of receptors will be either negligible or minor with only those using the footpaths which pass through the proposed solar farm experiencing moderate adverse effects, largely due to winter views and the loss of the open character along the routes.
24. In addition to open countryside visual impacts, I have a statutory duty under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider any effect on the significance of heritage assets.
25. Historic England have assessed impacts to the historic environment following more detailed assessments undertaken by the applicant. There are a number of Grade II listed buildings within a 1500m radius, within the settlements of Berden and Stocking Pelham, and in the open countryside. Their most up to date advice is that they do not object to the application but consider the requirements of paragraphs 199, 200 and 202 of the NPPF should be met. They have identified less than substantial harm arising from the impact of the scheme on the setting of a scheduled monument (The Crump: a ringwork 600m south of Berden). In addition, they advise the application will result in harm to a non-designated heritage asset of potentially equivalent significance as a scheduled monument (the archaeological remains of a ringwork within the proposed development area).
26. The Framework requires that 'great weight' is applied to the conservation of designated heritage assets, and states that the more important the asset the greater the weight should be, 'this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'.
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27. The applicant makes the case that the long term effects would last for the operational life of the solar farm, which would be reversible following decommissioning, with the benefit of a legacy of increased tree and hedge cover across the site.
 28. National guidance on solar installations indicates that proposals should be approved if impacts are, or can be made acceptable. In this case, the applicant argues that all adverse effects should be weighed against the benefits of providing renewable energy and achieving the target to minimise climate change.

Second main issue

29. The Framework defines the Best and Most Versatile (BMV) agricultural land as being in Grades 1, 2 and 3a. The site has been assessed by the applicant to involve: approximately 37% Grade 2 land; 35% Grade 3a; and 28% Grade 3b.
30. Uttlesford District Council, Berden Parish Council and Stocking Pedlham Parish Council all contend that the proposal would conflict with Policy ENV5, which sets out that development of BMV land will only be permitted where opportunities have been assessed for accommodating the development on previously developed sites or within existing development limits.
31. In the context of BMV land use issues, the applicant has not provided a list of possible alternative sites. They argue that the main driver for location the solar farm proposed is its proximity to the existing Pelham Substation and the high solar irradiance associated with the area. They submit that the site already has a high degree of visual enclosure, minimising its impact on the wider landscape with scope for additional new landscaping.
32. The applicant refers to the acute national need for the production of clean energy in line with net zero carbon emission commitments. In addition, all of the arable farming land involved would eventually be reinstated following decommissioning. Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

Third main issue

33. Natural England have not objected to the scheme. Biodiversity objections have been submitted by ECC Ecology who recommend that further information should be provided. They are satisfied with the proposed compensation measures for Skylark outlined in the submitted Skylark Mitigation Strategy (RPS, November 2022) and that the impacts to the nearby Priority habitats and Local Wildlife Sites have now been considered with appropriate mitigation measures in place. However, ECC Ecology have issued a holding objection until information related to protected species licensing has been confirmed. Those issues, the content of Landscape and Ecological Management Plan (LEMP), scope for Biodiversity Net Gain or enhancement, and condition use will be addressed at the Hearing.

Fourth main issue

34. National Highways have no objections, subject to the approved Construction Traffic Management Plan (CTMP). However, ECC Highways are not satisfied with

the CTMP (Revision A) as presently submitted to conclude there would be no detriment to highway safety and efficiency.

35. ECC Highways are seeking amongst other matters, how the applicant proposes to manage the intended route for successful mitigation inclusive of due consideration of impacts to public rights of way, safe access and construction traffic. That issue coincides with interested party objections to the use of narrow roads by large vehicles and construction traffic.

Fifth main issue

36. Both East Herts District Council Environmental Health Department and UDC Environmental Health have issued objections on the basis that noise levels at noise sensitive receptors will increase because of the proposed development. They reference this may result in a significant adverse amenity impact when considered individually and cumulatively with the existing facilities.

Sixth main issue

37. An assessment of the overall planning merits and compliance with policy informing the planning balance is a necessary part of this case. In the main, the applicant highlights that the introduction of such a large land use change would inevitably have some effects such as on the visual appearance of the wider landscape, for example, but is a type of development which receives positive support in national policy and guidance. This position is reflected to some extent in UDC's officer recommendation analyses of the proposal albeit not in their resolution received.

Other issues

38. In setting out the above main issues the range of other public concerns submitted will inform any decision made.
39. Matters relating to the potential flooding and from run-off from the site, green infrastructure and archaeology, all identified by ECC, have been assessed and accepted that they could be addressed by the use of suitable conditions or an informative.
40. Matters related to aerodrome safeguarding, notably from glint and glare effects, have been assessed by Manchester Airport Group safeguarding officer and by the National Air Traffic Service (NATS). No objections have been advanced by them.
41. Additionally, Essex County Fire and Rescue Service seek an appropriate fire risk strategy be agreed to ensure adequate public safety is maintained.

Conditions

42. The Council and some consultees have recommended conditions to be applied if the application is to be permitted. Without prejudice, a draft Schedule of Conditions accompanies this report, which will be discussed at the Hearing along with broader environmental based conditions.

43. The inclusion of draft conditions and reference at this stage is standard procedure. Any discussion on their merits, does not indicate that a decision has been made on the application, but only that the conditions suggested are to be assessed as to whether they are necessary, relevant, enforceable, precise and reasonable. Moreover, the draft does not preclude any additional or amended conditions from being considered by the Appointed Person.

Planning obligation(s)

44. The Council indicate that they expect the submission of a s106 undertaking to address a decommissioning plan and to secure a bond or deposit to cover decommissioning works if required. Separate to that, Historic England have suggested scope for an undertaking to secure a commuted sum and/or management of offsite heritage assets to facilitate enhancement. The necessity of the requests can be addressed at the Hearing.
45. But at this stage I note the applicant contends that the Council's requirement does not conform with the nPPG. Because of the expected operational time horizon of the proposed installation, a condition or conditions may be able to address the removal and restoration of the site, either at the completion of its operational lifespan or (for example) at an earlier date if the installation fails to produce energy for a continuous period of 6 months. Such conditions have therefore been included in the draft schedule of conditions.

M Shrigley

INSPECTOR