



Department for
Communities and
Local Government

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Wardell Armstrong
Baldhu House
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Baldhu, Truro
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TR3 6EH

Our ref: APP/D0840/W/15/3140774
Your ref:

06 July 2017

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL MADE BY
CHRIS IVESS-MASH
LAND IMMEDIATELY EAST OF JUNCTION BETWEEN PILGRIMS WAY AND
BUNKERS HILL, FRADDAM, CORNWALL
APPLICATION REF: PA15/05327**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Griffiths BSc(Hons) BArch IHBC, who considered your client's appeal, including making a site visit on 13 September 2016, against the decision of Cornwall Council to refuse planning permission for your client's application for planning permission for a solar PV development, associated landscaping and habitat creation; to include ground-based racking systems, mounted solar panels, associated infrastructure, fencing and security cameras, in accordance with application ref: PA15/05327, dated 9 June 2015.
2. On 11 April 2016, this 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.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

5. On 28 March 2017, the Secretary of State wrote to the main parties to afford them an opportunity to comment on any implications that a letter of representation from Mr Chris Trevan may have for the planning balance in this case. Representations in response, dated 3 April 2017, were received from Mr Chris Ivess-Mash and from your company on behalf of the appellant. These representations were circulated to the main parties on 12 April 2017. The Secretary of State has carefully considered all the representations received and has taken account of them as appropriate.
6. The Secretary of State also received correspondence and representations from a number of parties since receiving the Inspector's Report. A list of these can be found at Annex A. The Secretary of State is satisfied that the issues raised therein do not affect his decision, and that no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
7. Copies of all the correspondence referred to above may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

8. In reaching his decision, 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.
9. In this case the development plan consists of the Cornwall Local Plan (CLP), adopted in November 2016. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR12-18.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Written Ministerial Statement of 25 March 2015 ("the WMS") concerning the use of best and most versatile (BMV) land. 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 buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess. He has also taken account of the location of the site within the Cornwall and West Devon Mining World Heritage Site (WHS) (IR8).

Main issues

11. The Secretary of State considers that the main issues in this case are: the use of BMV land (the reason for recovery (IR3)) and those set out by the Inspector at IR44.

Character and appearance

12. For the reasons given at IR46-48, the Secretary of State agrees with the Inspector's conclusion at IR49 that there would be an impact on landscape character as a result of the proposal but that it would be contained within an enclosed field. However, the

Secretary of State also agrees with the Inspector (IR50) that the proposal would not be harmful to the WHS. The Secretary of State further agrees with the Inspector (IR52) that the proposal has been sensitively designed and its potential visual impacts and effects on landscape character have been properly addressed. However, as explained in paragraphs 14 and 15 below, the Secretary of State disagrees with the Inspector's view that any potential visual impacts and effects on landscape character would be temporary and reversible.

Living conditions

13. For the reasons given at IR54-58, the Secretary of State agrees with the Inspector at IR59 that the proposal would have no harmful effect on the living conditions of the occupiers of Goldstephen House, so that there would be no conflict with CLP Policy 14 in this regard, nor with the relevant core principle of the Framework.

Agricultural Land

14. The Secretary of State has carefully considered the Inspector's reasoning at IR60–66 in relation to the impact on BMV agricultural land and, for the reasons given at IR64-65, he agrees with the Inspector that the exploration of previously-developed land in the appellant's analysis is wanting and hardly seems to represent compelling evidence as to why it could not be used instead. The Secretary of State therefore agrees with the Inspector's conclusion at IR66 that the proposal fails to accord with the requirements of CLP Policy 21 and the WMS.

15. The Secretary of State also agrees with the Inspector's conclusion that this loss of some of the productive capacity of the site needs to be weighed in the overall balance. However, while noting the Inspector's view that this loss would be temporary and would not result in any irreversible loss of agricultural land (IR61), the Secretary of State considers that the 30 years that the site would be operating as a solar farm represents a considerable period of time for the loss of full productive capacity of BMV agricultural land; and the reversibility of the proposal is a matter to which he gives little weight. He considers that a period of 30 years would not be perceived by those who frequent the area as being temporary and that the loss of this potentially highly productive land goes against the spirit of paragraph 112 of the Framework.

Other matters

16. The Secretary of State agrees with the Inspector that the fact that the proposal would generate sufficient electricity for 1,200 homes for 30 years carries significant weight (IR67). He also agrees that there would be further benefits which weigh in favour of the scheme. These include the diversification of the existing rural enterprise, economic investment through the installation contract and ongoing maintenance, as well as benefits to biodiversity and some community benefits including a footpath route along the fringe of the site (IR68).

Planning conditions

17. The Secretary of State has given consideration to the Inspector's analysis at IR37-43, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test

set out in the Framework, but he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

18. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with CLP Policy 21 and that it is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan, including giving careful consideration to the Inspector's conclusions at IR69-72. He gives substantial weight against the proposal to the loss of full productive capacity of BMV agricultural land for 30 years and to the conflict with the WMS of 25 March 2015. Against this, and weighing in its favour, the proposal would contribute towards targets for renewable energy generation and reducing greenhouse gas emissions. The Secretary of State gives substantial weight to these benefits, along with limited weight to its other benefits.
19. Overall, the Secretary of State concludes that there are no material considerations in favour of the proposal of sufficient weight to justify determining the appeal other than in accordance with the development plan.

Formal decision

20. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a solar PV development, associated landscaping and habitat creation; to include ground-based racking systems, mounted solar panels, associated infrastructure, fencing and security cameras, in accordance with application ref: PA15/05327, dated 9 June 2015.

Right to challenge the decision

21. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
22. A copy of this letter has been sent to Cornwall Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

SCHEDULE OF REPRESENTATIONS**General representations**

Party	Date
D Thomas MP	3 February 2017
D Thomas MP	15 February 2017
C Ivess-Mash	11 March 2017
C Trevan	18 April 2017
Harrison Grant	6 June 2017
M Bonnefoy	19 June 2017
D Button	22 June 2017
Protect our Parishes	27 June 2017
S Martel	27 June 2017
P Rodda	27 June 2017
M Rodda	28 June 2017
R Rodda	28 June 2017
C Goldsworthy	28 June 2017
W Iliffe	28 June 2017
St Erth Parish Council	3 July 2017

Report to the Secretary of State for Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

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

Date: 30 January 2017

Town and Country Planning Act 1990

Cornwall Council

Appeal by Mr Chris Ivess-Mash of Mably Solar

Site visit made on 13 September 2016

Land Immediately East of Junction Between Pilgrims Way and Bunkers Hill, Fraddam, Cornwall

File Ref: APP/D0840/W/15/3140774

File Ref: APP/D0840/W/15/3140774

Land Immediately East of Junction Between Pilgrims Way and Bunkers Hill, Fraddam, Cornwall

- 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 of Mably Solar against the decision of Cornwall Council.
- The application Ref.PA15/05327, dated 9 June 2015, was refused by notice dated 28 September 2015.
- The development proposed is a solar PV development, associated landscaping and habitat creation; to include ground-based racking systems, mounted solar panels, associated infrastructure, fencing and security cameras.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to the conditions in Annex A.

Procedural Matters

1. The accompanied site visit, which took in the appeal site itself, Goldstephen House, and the nursery to the east of it, was carried out in heavy rain and a severe thunderstorm. All parties, including those local residents present, agreed that weather conditions did not unreasonably restrict what could be seen.
2. Having arrived for the site visit earlier in the day¹, I had been able to see the appeal site in its wider context, when visibility was much better, unaccompanied.
3. On 11 April 2016, in exercise of powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, the Secretary of State² recovered the appeal for his own determination. The reason was because: *Ministers note that the appeal site involves best and most versatile agricultural land and wish to determine the appeal themselves, for this reason. The appeal is therefore being recovered because of the particular circumstances.*
4. On 22 November 2016, the Council adopted the Cornwall Local Plan: Strategic Policies 2010-2030³. The Council provided details of the relevant policies and how they bore on the case presented and I gave the appellant the opportunity to comment on that⁴.

Planning History

5. The scheme at issue in the appeal follows on from a previous proposal for a solar farm on the appeal site refused planning permission by the Council in December 2013. The subsequent appeal⁵ was called-in by the SoS and dismissed, in accordance with the Inspector's recommendation, by decision letter dated 11 March 2015⁶. This decision and the reasons behind it are a very important material consideration.

¹ The ASV was timed for 1430 hours

² Referred to hereafter as SoS

³ Referred to hereafter as CLP

⁴ The submissions, and full details of the adopted CLP, can be found on the case file

⁵ APP/D0840/A/14/2216381

⁶ The Inspector's report and the Decision Letter can be found at A1.8 and A1.9 of the appendices to the appellant's Appeal Statement, and in the Council's material

6. Put very simply, the SoS agreed with the Inspector that the proposal at issue in that appeal was acceptable in terms of its landscape impact, and in the way it used agricultural land, but its visual impact on the residents of Goldstephen House was unacceptable. The scheme at issue here has been redesigned to respond to that conclusion.

The Site and Surroundings

7. The appeal site consists of a single field of some 8.9 hectares in arable use, located around 1km south-west of the village of Fraddam, and 3km south-east of Hayle. It is bounded by Pilgrims Way to the north, and Bunkers Hill to the west, and beyond Cornish banks, typical of the area, there are other fields to the east and south. The local area is generally in use for agricultural purposes. There are dwellings and farmsteads dotted around but the nearest dwellings are those at Goldstephen House, opposite the north-west corner of the site, on the other side of Pilgrims Way.
8. The appeal site falls within Area 3: Tregonning and Gwinear Mining Districts with Trewavas of the Cornwall and West Devon Mining World Heritage Site⁷.

The Proposal

9. The proposal involves the creation of a 5 MW solar photovoltaic energy farm on a site covering 5.9ha of an existing 8.9ha field. The individual 285W panels, of which there would be a total of 17,540, are 1.65m in length, 941mm wide and 35mm thick and would be fixed two modules high in portrait, in 65 rows, 6m apart, on a lightweight steel racking system. The panels would be orientated to face south, at an angle of 20 degrees. The array would be enclosed within a secure, fenced compound which would allow the free passage for small and larger mammals⁸.
10. In response to the decision of the SoS on the previous proposal, the north-west corner of the existing field, an area of 3ha nearest to Goldstephen House, would be left as a paddock, separated from the array by a new Cornish bank. Various other landscaping improvements are proposed to the existing boundaries, including new tree planting, and there would be a wild flower margin between the array and those boundaries⁹. It is intended that the scheme would operate from the site for 30 years.

Planning Policy

11. Notwithstanding references to the Penwith Local Plan 2004 in the Council's decision notice, and the appeal documentation, this has been replaced by the CLP, adopted in November 2016.
12. CLP Policy 1 echoes the National Planning Policy Framework¹⁰ in seeking to promote sustainable forms of development. CLP Policy 2 sets out the spatial strategy which is to maintain the dispersed development pattern of Cornwall with strategic growth in the main towns and cities.

⁷ Referred to hereafter as WHS

⁸ Information taken from the DAS and Drawing CE4665-OP4919-SP: Site Layout

⁹ As shown on Drawing 530/01 P3: Landscape Mitigation

¹⁰ Referred to hereafter as the Framework

13. Otherwise, proposals are required to protect and enhance, amongst other things, quality of place. A range of renewable and low carbon technologies are encouraged to provide solutions to current and future needs.
14. CLP Policy 14 deals specifically with renewable and low-carbon energy. It says that to increase the use and production of renewable and low carbon energy generation, development proposals will be supported that, of relevance, maximise the use of available resources by deploying installations with the greatest energy output practicable taking into account the provisions of the CLP; do not have an overbearing effect on nearby habitations; and in the case of solar development, noise, glint and glare is mitigated adequately. Moreover, support will be given to proposals that are led by, or meet the needs of, local communities.
15. The policy goes on to say that when considering such proposals, regard will be given to the wider benefits of providing energy from renewable sources, as well as the potential effects on the local environment, including any cumulative impacts.
16. CLP Policy 21 seeks to safeguard the best use of land. Account is to be taken of the economic and other benefits (including food production) of Grade 1, 2, and 3a agricultural land. Where significant development of agricultural land is shown to be necessary, poorer quality land should be used in preference to that of higher quality.
17. CLP Policy 23 relates to the natural environment. Development proposals need to sustain local distinctiveness and character. In the Cornish landscape generally, development should be of an appropriate scale, mass and design, recognising and respecting landscape character. Account is to be taken of the sensitivity and capacity of the landscape asset, considering cumulative impacts, and the wish to maintain tranquillity in areas that are relatively undisturbed, using guidance from the Cornwall Landscape Character Assessment.
18. CLP Policy 27 requires major forms of development to be located so that the need to travel is minimised.
19. Broadly, these policies accord with the approach of the Framework. I note in particular the core principles that talk of the need to recognise the intrinsic character and beauty of the countryside, always seek to secure high-quality design and a good standard of amenity for all existing and future occupiers of buildings, and the need to support the transition to a low carbon future in a changing climate.
20. On a more detailed level, paragraph 98 of the Framework explains that we should not require applicants for energy development to demonstrate the overall need for renewable or low-carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. Applications, we are told, should be approved if impacts are (or can be made) acceptable.
21. Paragraph 112 of the Framework says that the economic and other benefits of the best and most versatile agricultural land should be taken into account. Where significant development of agricultural land is demonstrated to be necessary, the

use of areas of poorer quality land should be preferred to the use of land of higher quality.

22. Another important material consideration is the Written Ministerial Statement of 25 March 2015¹¹ and the consequent additions to the Planning Practice Guidance¹². Importantly, responding to concerns about the use of high-quality agricultural land, the WMS set out that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence.

The Case for the Appellant

23. The appellant has produced an appeal statement, with appendices, and final comments and submissions relating to the adoption of the CLP¹³. These make reference to the previous scheme and underline that the scheme at issue has been prepared in response to that decision by the SoS, and in particular, to address the impact on residents of Goldstephen House.
24. It is noted that the scheme at issue was refused planning permission by the Council for the sole reason that the appeal site comprises Grade 3a agricultural land. The proposed development is intended to be temporary and there will be no irreversible loss of agricultural land. Agriculture can continue on the appeal site with the development in place.
25. In any event, compelling evidence has been adduced to justify the use of best and most versatile agricultural land for the purposes of the proposal. The scheme represents a form of diversification, which would provide ongoing and guaranteed farm income; generate renewable energy sufficient to power 1,200 homes, saving 2,000 tonnes of Carbon Dioxide a year; and secure valuable economic, biodiversity and community benefits.
26. The benefits of the proposal outweigh any temporary and reversible harmful impacts to the landscape and WHS, the living conditions of local residents, and any temporary loss of productivity on the site. The proposal draws support from CLP Policies 1 and 2, and because of the community benefits it would bring forward CLP Policy 14. It does not run counter to CLP Policy 21. Planning permission should be granted for the proposal on that basis.

The Case for the Council

27. The proposal was recommended for approval by Officers in a Strategic Planning Committee Report¹⁴.
28. Nevertheless, Members resolved to refuse planning permission¹⁵ on the basis that: *The proposed development is unacceptable due to its location on Grade 3A agricultural land which is considered to be best and most versatile. The proposal is therefore affecting the efficient use of agricultural land close to existing packing facilities. The proposal is therefore contrary to Penwith District Local Plan*

¹¹ Referred to hereafter as WMS

¹² Referred to hereafter as PPG

¹³ Which can all be found on the Case File

¹⁴ Which can be found attached to the Questionnaire

¹⁵ The Committee minutes are attached to the Questionnaire

2004 saved Policy E-5 and paragraph 112 of the National Planning Policy Framework and Government guidance contained within the Ministerial Statement of March 2015.

29. The Council has set out its case in a Statement and made submissions about the CLP¹⁶. In simple terms, it is accepted that the CLP, the Framework, and the PPG, reflective of the WMS of 25 March 2015, encourage the development of renewable energy. However, it is made very clear throughout, that in the case of solar energy, the use of previously-developed land, and land of a lesser quality, is to be preferred to the use of best and most versatile agricultural land.
30. Additionally, the land is close to a produce packing facility and taking the land out of crop production would result in produce being brought from outside the locality to the facility, increasing food miles.
31. The proposal would use best and most versatile agricultural land in an area where there is previously-developed land, and land of a lesser quality, available. No compelling evidence has been produced to justify its use in that context so while the benefits of procuring renewable energy are acknowledged, the proposal falls contrary to CLP Policies 21 and 27. As such, the proposal runs counter to CLP Policy 14 as there would be harmful impacts that outweigh the benefits of the proposal. For the same reasons, the proposal would fall contrary to paragraph 112 of the Framework, the PPG, and the WMS of March 2015

Written Representations

32. The application generated a significant number of objections¹⁷, as did the appeal¹⁸. Many raise similar issues about the shortcomings of the proposal in terms of its impact on the landscape, living conditions, and the use of agricultural land, and on that basis, I summarise but a few of the main submissions:
33. **Sally Martel** of Goldstephen House raises a number of issues in what is a detailed submission. First, the point is made that despite revisions, the proposal will still have an unduly harmful effect on the living conditions of residents at Goldstephen House through visual impact and noise. Moreover, points are made about the use of best and most versatile agricultural land, and the effect on the landscape and WHS.
34. **Mr & Mrs Rodda** of Keskeys Farm make similar points in objection, about agricultural land, visual, and landscape impact.
35. **Protect Our Parishes** raise issues about the appellant's approach to the most compelling evidence needed to justify use of best and most versatile agricultural land. Objections were also received at appeal stage from **Crowan, Gwinear-Gwithian** and **St Erth Parish Councils**.
36. It is fair to record that the proposal attracted some support at application and appeal stages too.

¹⁶ Which can be found on the Case File

¹⁷ Which can be found as part of the Questionnaire

¹⁸ Collated separately in the Blue Folder marked Third Party Representations

Conditions

37. The Council has suggested that should the appeal be allowed, the conditions appended to the Strategic Planning Committee Report should be attached. I have considered these conditions in the light of advice in the Framework.
38. A commencement condition is needed but I fail to see why it is necessary for the Council to be notified of the date of commencement. That said, a trigger point is needed for the start of the temporary period so a requirement for notification of when electricity is first generated by the scheme is a reasonable imposition. A condition is required to set out the approved plans.
39. Notwithstanding details on the plans, it is necessary to apply a condition to secure further details of the inverter housings and the sub-station to ensure they are designed and located appropriately. A condition is required to ensure no artificial lighting is installed or operated on the site.
40. As the proposal is promulgated to be in place for thirty years, a condition is required to ensure that the installation is removed upon expiry of that period, or sooner, and the land restored.
41. Given the proximity of the site to existing dwellings, and the need to protect the living conditions of the residents, conditions are necessary to control working hours and noise emissions during the construction and decommissioning phases. A condition requiring a Construction Traffic Management Plan is required to ensure that disruption and damage to the highway network is limited.
42. Permitted development rights need to be restricted in order to give the Council control over any changes to the scheme in use. On top of that, a condition is required to secure the ecological enhancements proposed and to ensure the site is properly managed, in landscape and biodiversity terms.
43. The Council has not suggested such a condition this time but I note that the previous Inspector's report includes a suggested condition relating to the noise produced by the array in operation. For reasons I set out below, such a condition is necessary to safeguard the living conditions of nearby residents.

Conclusions

44. Notwithstanding the reason behind why the application was recovered there are several main issues that need to be examined. These are the impact of the proposal on (1) the character and appearance of the landscape within the WHS; (2) the living conditions of occupiers of Goldstephen House in terms of visual impact and noise; and (3) the use of agricultural land.
45. That analysis needs to take place in the context of any benefits the proposal would bring forward.

Character and Appearance

46. The site lies within Landscape Character Area CA06 – Mount's Bay East in the Cornwall and Isles of Scilly Landscape Character Study. Key landscape characteristics include high coastal cliffs backed by a gently undulating plateau intersected by distinctive flat-bottomed valleys. Also noteworthy are the well vegetated hedges with some boundary trees, and extensive areas of mining

remains. The LCA is categorised as having a moderate sensitivity to solar arrays with capacity for occasional developments up to and including large scale¹⁹.

47. Relevant key characteristics of the WHS 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 Clowance²⁰.
48. In terms of public views of the array, I concur with the conclusion of the previous Inspector that the site occupies a fairly contained position in the landscape in a field bounded by Cornish Banks. There would only be intermittent views of the array but in any case, augmented planting, as proposed, could provide effective screening in the vicinity of the site, once established. In longer distance views, from Godolphin Hill for example, the array would appear as a small feature that would be largely absorbed in the sweep of the overall panorama.
49. There would be something of an impact on landscape character as a result of the proposal but it would be contained within an enclosed field, reminiscent of the prevailing pattern, and the new paddock formed opposite Goldstephen House, would not appear incongruous in terms of its size or shape in the context of the existing patchwork of fields. Given the degrees of separation involved, there would be no harmful cumulative impact with other arrays.
50. The proposal, in extracting natural resources, would have some synergy with the cultural history of the WHS. There would be no conflict with the settings of historic mining buildings, workings, or settlements, any listed buildings, or other heritage assets. Overall, like the previous Inspector, it is my conclusion that the proposal would not be harmful to the WHS.
51. The 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.
52. It is my conclusion that in this case, the proposal has been sensitively designed and its potential visual impacts and effects on landscape character, which would be temporary and reversible, properly addressed. The effect on the WHS would be well within reasonable bounds. As such, the proposal complies with CLP Policy 23 and CLP Policy 2. It would accord with the LCA strategy for occasional developments up to and including large scale.
53. These findings mirror those of the Inspector who considered the previous scheme. The SoS concurred with those findings.

Living Conditions

54. Goldstephen House lies opposite the north-west corner of the appeal site. It is made up of No.13 (Conker Road), a two-storey house incorporating an upper floor flat No.13a, and adjoining it to the north is No.11.

¹⁹ In Technical Paper E4(a): An Assessment of the Landscape Sensitivity to Onshore Wind and Large Scale Photovoltaic Development in Cornwall

²⁰ Cornwall and West Devon Mining Landscape WHS Management Plan 2013-2018

55. In visual impact terms, the south and east facing windows to No.13a currently offer direct views over the appeal site. I took in those views in the course of my site visit, along with those from the external staircase that leads up to the flat, and the first floor landing to it.
56. The previous Inspector found that the previous iteration of the array, which extended to the northern boundary of the appeal site, would be visually oppressive and overbearing. In response to that finding, with which the SoS concurred, the array has been redesigned so that the north-west corner of the appeal site is left as a paddock, and a new Cornish Bank introduced as a boundary treatment between this paddock and the array beyond.
57. From what I saw, the array would barely be visible from No.13a over the top of the new Cornish Bank, and once the planting upon the Cornish Bank becomes established, it would barely be seen, if at all. That, coupled with the degree of separation involved, means that any visual impact on views from No.13a could not reasonably be described as overbearing or oppressive.
58. Concerns have also been raised about noise. The evidence of the appellant is that there would be no undue impact given the degree of separation between Goldstephen House and the noise-producing plant. I have no good reason to dispute that and in any event, a condition can be applied to set operational noise limits. Any potential for disturbance during the construction and decommissioning periods could also be dealt with by condition. There would be no significant issue, due to the orientation of the array, in terms of glint, or glare.
59. On that overall basis, it is my conclusion that the proposal would have no harmful effect on the living conditions of the occupiers of Goldstephen House. There would be no conflict with CLP Policy 14 in this regard, nor with the core principle of the Framework referred to.

Agricultural Land

60. It is agreed that the land that makes up the appeal site is Grade 3a. In other words, it qualifies as best and most versatile agricultural land. Dealing with the previous appeal, the Inspector found that the public benefits of the scheme then at issue would outweigh the loss of fully productive, best and most versatile agricultural land for the 40 years that proposal was promulgated for. The SoS concurred with that finding. The WMS of 25 March 2015 has changed the nature of that balancing exercise however.
61. Nevertheless, because the proposal would be temporary, and would not degrade the quality of the land over the time it would be in place, it would not result in any irreversible loss of agricultural land. Moreover, the Council's concern about an increase in food miles only has traction if produce currently grown on the appeal site is taken to the nearby produce packing facility, and if it is, that it would be replaced by produce from further away. First of all, there is no evidence that produce from the appeal site currently ends up at the packing facility concerned, and second, no evidence that produce from further away would be packed there instead of it, in the event the proposal went ahead. This concern, raised by the Council, is therefore groundless and I see no departure from the requirements of CLP Policy 27.

62. In response to the requirements of the WMS of 25 March 2015, the appellant produced an Agricultural Assessment and Sequential Test for Use of Agricultural Land²¹ dated June 2015.
63. This concludes, following a sequential test covering Cornwall, that land which is not best and most versatile is largely covered by landscape designations and that the maximum impact of all solar farms in West Cornwall (as of 1 May 2015) is 0.8% of best and most versatile land. On that basis, it is suggested that the proposal would have no significant adverse effect on the availability of best and most versatile agricultural land.
64. There are some differences between the appellant and the Council and interested parties concerning the interpretation of the WMS of 25 March 2015 and in particular, what is to be understood by 'compelling evidence'. Many appeal decisions have been referred to which reach different conclusions based on the evidence presented in each case.
65. It seems to me that if any proposal for a solar farm involving the best and most versatile agricultural land needs to be justified by the most compelling evidence, then there is an onus on the developer to show that alternative options, on previously-developed land, or land of lesser quality, for example, are not available. I recognise that would be a difficult task but as the Council points out, this has not been achieved in this case. In particular, the exploration of previously-developed land in the appellant's analysis is wanting, with its use discounted, it appears, because of the WHS designation. That hardly seems to me to represent compelling evidence why it could not be used instead.
66. On that basis, it is clear that the proposal fails to accord with the requirements of CLP Policy 21, and the WMS of 25 March 2015. However, that is not necessarily the end of the matter. This (temporary and reversible) loss of some of the productive capacity of the site needs to be weighed in the overall balance.

Benefits

67. The appellant has helpfully summarised the benefits of the proposal in making final comments²². The development would generate sufficient electricity for 1,200 homes for 30 years equating to a reduction of about 2,000 tonnes of Carbon Dioxide annually when compared to production of the same amount through fossil fuels. Given the strong support for renewable energy in the Framework and elsewhere in Government policy, this carries considerable weight.
68. Moreover, the proposal would contribute to the diversification of the existing rural enterprise and bring economic investment through the installation contract, and ongoing maintenance. Given the stress placed in the Framework on the economy, these are very weighty considerations. The proposal through the new and improved planting would bring benefits to biodiversity. The Framework sets great store by ecological enhancements and again, therefore, these matters carry considerable weight. The appellant has also pointed to some community benefits through a part-ownership scheme, and educational facilities. There would also be

²¹ Which can be found on the Case File

²² These can be found on the Case File

a footpath route included along the fringe of the site which would improve the local network. These factors also weigh in favour of the scheme.

Conclusions

69. The proposal would have no undue impact on the character and appearance of the landscape within the WHS or the living conditions of occupiers of Goldstephen House in terms of visual impact or noise. It would bring forward considerable benefits through the production of renewable energy, and in terms of economics, biodiversity and the community.
70. Against that, while some form of agriculture could continue on the site with the array in place, there would be some loss of the productive capacity of the site for the 30 year duration of the scheme. Moreover, the compelling evidence rendered necessary to justify the use of best and most versatile agricultural land for solar farms by the WMS of 25 March 2015 is absent.
71. Nevertheless, in my judgement, the benefits the scheme would bring forward are of such an order that they clearly outweigh the harmful impact of that temporary loss of productive capacity of the site.
72. While the proposal might not accord with CLP Policy 21, and the WMS of 25 March 2015, it complies with CLP Policies 1, 2, and 23. As a result of all that, there would be compliance with CLP Policy 14, the CLP policy that relates specifically to renewable energy, and as a result, in my view, the development plan read as a whole. Moreover, there would be no departure from paragraph 112 of the Framework and because the impacts are (or can be made) acceptable, the scheme accords with the overall approach of the Framework to proposals such as that at issue here.

Recommendation

73. I recommend that the appeal be allowed and planning permission be granted subject to the conditions in Annex A.

Paul Griffiths

INSPECTOR

Annex A: Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision. The Council shall be notified in writing within 5 days of the commencement of electricity generation from the site.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Planning Drawing 001: Map; Planning Drawing 002: Location Plan; Planning Drawing 003: Site and Surrounds; CE4665-OP4919-SP: Site Layout; OP4919-GRP-01A: Switchgear Housing Elevations; OP4919-GRP-01: Switchgear Layout; Planning Drawing 005 Revision 2: Transport Plan; Figure 008: Landscape Site Sections; CE4665-OP4919-ED: PV Panel Cross-Section; 530/01 P3: Landscape Mitigation; and Figure 009: Proposed Biodiversity Enhancement Plan.
- 3) No development shall take place until details of the location, design, external finishes of the inverter housings and sub-station and noise attenuation measures have been submitted to and approved in writing by the local planning authority. Development shall be carried out, operated and retained in accordance with the approved details.
- 4) No external artificial lighting shall be installed or operated during the operation of the development.
- 5) Within 30 years and 6 months following the first date of electricity generation or within 6 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 herein shall be dismantled and removed from the site. The developer shall notify the local planning authority in writing no later than 5 working days following the cessation of electricity generation. The site shall subsequently be restored in accordance with a scheme, first submitted to and approved in writing by the local planning authority, no later than 3 months following the cessation of electricity generation.
- 6) No construction or decommissioning works shall take place except between the hours of 0800 and 1800 Monday to Friday and 0800 and 1300 on Saturdays. No material delivery, construction or decommissioning works shall be undertaken outside these hours, or on Sundays, Bank or Public Holidays.
- 7) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include details of (a) construction vehicle routing; (b) the management of the junctions with and crossings of the public highway and other rights of way; (c) temporary warning signage along the construction traffic route and the site access; (d) an access improvement scheme including any construction and drainage details; (e) a pre- and post-construction inspection of the highway network between the site and the A30 so that any damage to the carriageway or verges can be identified and appropriate remedial measures undertaken; (f) any proposed

- accommodation works, provision of construction compound and on-site parking facilities, and a programme for their subsequent removal, and the reinstatement of street furniture where necessary along the route; and (g) a scheme for liaison with local residents and businesses during the construction period.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (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, or altered at the site.
 - 9) The noise emissions during construction or decommissioning of the development approved herein shall not exceed an LAeq,T noise level of 65 dB 1-metre from the façade of any occupied dwelling during the construction or decommissioning periods.
 - 10) No development shall take place 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 local planning authority. The LEMP shall include (a) a timetable for provision of the dedicated public footpath; (b) retention of existing hedges and trees; (c) location and widths of undeveloped hedgerow buffers; (d) details of cable runs and access tracks which are to be located outside buffer areas; (e) the line and design of security fencing to allow free movement of mammals across the site; (f) location and type of new planting; (g) other biodiversity enhancements; (g) management proposals for hedges, including proposals to allow hedgerow trees to develop; (h) proposals for management of the buffer strips and the grass swards and pre-construction management proposals to deter ground-nesting birds; (i) details of how the site will be managed in the event that sheep grazing is not carried out on site; and (j) details of how the management of the site would protect watercourses from pesticide and soil pollution. Development shall be carried out in accordance with the LEMP.
 - 11) 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 this permission. 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.



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 for permission 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

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: 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 Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.