



# The Planning Inspectorate

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

### **ISSUES REPORT** (January 2024)

**Application Reference Number:** S62A/22/0006 (Redetermination)

**Applicant:** Berden Solar Ltd

**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:** 26 March 2024

#### **Introduction and Background**

The application seeks planning permission for a solar farm with a generation capacity of up to 49.99MW together with associated infrastructure and landscaping. The application site, which covers 71.58 Ha, is currently in agricultural use and forms part of Berden Hall Farm. I have taken the site address, used by the applicants, to be correct.

The applicant has suggested that the solar array would be operational for up to 40 years after which period it would be decommissioned.

The application site lies in open countryside as designated in the Uttlesford Local Plan (2005) (LP). In short, the policies of the LP seek to protect the countryside for its own sake (LP Policy S7), to protect agricultural land (LP Policy ENV5), address farm diversification (LP Policy E4), protect listed buildings, and ancient monuments, and their settings LP Policies ENV2 and ENV4), promote highway safety (LP Policy GEN1) and nature conservation (LP Policy GEN7), address noise (LP Policy ENV11), as well as supporting small-scale renewable energy development (LP Policy ENV15).

National Policy and guidance can be found in the National Planning Policy Framework (20 December 2023) (the Framework), the associated National Planning Policy Guidance (NPPG), and the National Policy Statements (EN-1 and EN-3) which came into force in January 2024.

## **The Proposal**

The proposal features the installation of around 100,000 photovoltaic solar panels mounted on metal frames and made on non-reflective glass. The solar panels would have a maximum height of 2.5 metres (with a 20 degree tilt). The rows of solar panels would face south, with the spacing between rows varying between 7.9 metres and 9.8 metres.

The associated infrastructure includes 10 inverter units, 2.3 metres in height, distributed amongst the solar panels. Access would be along a combination of existing and proposed farm tracks.

A small sub-station is proposed in the south-west corner of the site, adjacent to the battery storage facility. Access to the sub-station would be from the internal track network which has its origin at the main access to the proposal on Ginns Road. This access would be the main vehicular entrance to and exit from the site.

Construction of the proposal would take six months with up to 50 workers on-site at peak times. A temporary parking area would be provided on-site within the contractor's compound.

A total of 350 HGV movements would be required to facilitate construction. There would be more movements in the initial periods of construction – enabling and ground working – with fewer during the commissioning period.

Deliveries to the site would be managed to avoid peak periods. Vehicles would use the M11 and be routed to the site using the A120. Normally, no construction work or deliveries would take place on Sundays, or Public Holidays, or after 1330 hours on Saturdays. After the construction phase, vehicular traffic movements associated with the proposal would be minimal and linked to maintenance.

## **Procedural Matters**

The application was made under Section 62A of the Town and Country Planning Act 1990 (as amended) which allows for applications to be made to the Planning Inspectorate (PINS) directly, where a local planning authority has been so designated by the Secretary of State (SoS). Uttlesford District Council (UDC) has been so designated.

The application was received by PINS on 15 July 2022. Following further submissions from the applicant, it was made valid on 29 July 2022. Following a Hearing held in March 2023, and site visits, a Decision Notice and Statement of Reasons was issued on 9 May 2023 granting planning permission for the proposal.

A challenge to the decision was then made to the High Court by Protect the Pelhams Ltd and the SoS subsequently submitted to judgment accepting that the approach taken to heritage assets was flawed. The proposal was remitted for reconsideration – hence the arrangements for a new Hearing. The redetermination involves considering the application anew.

A screening opinion request under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 was submitted to UDC and PINS with the application.

UDC's subsequent screening opinion advised that the proposal would not give rise to any significant adverse effects and therefore an Environmental Statement (ES) would not be necessary.

PINS took a different view on behalf of the SoS and confirmed on 19 August 2022 that an ES would be required under Regulation 12(3) of the appropriate Regulations.

The SoS confirmed that the application could not be considered without this information and the applicant subsequently agreed to prepare the ES. The ES was submitted in December 2022 for consultation and validation purposes. The submitted ES and associated notification were reviewed by PINS and it was accepted that the ES met the regulatory requirements. Consultation took place and this closed in April 2022.

PINS took the decision that as a major application, the proposal merited a Hearing. This was held on 9 March 2023 and was conducted in accordance with the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013. Obviously, the nature of the application has not changed so a Hearing has been arranged for the purposes of the redetermination. This will take place on 26 March 2024.

UDC submitted a comprehensive Officer report on the application which was considered at a Committee Meeting. UDC resolved to object to the proposed development on the basis that it would conflict with LP Policies E4, ENV5, S7, and GEN2 and involve the loss of best and most versatile agricultural land, unjustified by an assessment of whether or not the development could be located elsewhere. There would be adverse landscape and visual effects, harm to the significance of heritage assets, and noise. The impact of construction traffic needs to be addressed and decommissioning controlled in a satisfactory way.

UDC has adopted a similar position in relation to the redetermination.

There were many objections to the proposal from interested parties as a result of the original consultation process, which covered a broad range of issues including those raised by UDC but raising other too. These have been confirmed once again by a large number of responses to the consultation associated with the redetermination.

### **Main Issues**

Having regard to the material submitted with the application, the views of UDC, and third parties, the main issues are as follows:

1. The effect of the proposal on the character and appearance of the surrounding area;
2. The effect of the proposal on the setting and thereby the significance of heritage assets;
3. Whether the proposed use of agricultural land is acceptable and linked to that, the approach to alternative sites;
4. The effect of the proposal in biodiversity terms;

5. The effect of the proposal on highway safety;
6. Whether any noise impacts that would result from the proposal would be, or could be made, acceptable?
7. The nature and scale of any benefits of the proposal;
8. The balance of any harm against any benefit;
9. The conclusion against the development plan and other material considerations; and
10. Consistency and the decision on S62A/2022/0011 (Maggots End) in particular.

The application site is in open countryside and is currently in agricultural use. The Local Plan seeks to protect the countryside for its own sake and limit development within it to forms suitable for a rural area. The Framework recognises the intrinsic character and beauty of the countryside.

In landscape terms, the Council and third parties (including Parish Councils) have raised concerns about the impact of the proposal on the character and appearance of the area, and cumulative impacts with other proposals, amongst other things.

The applicant has submitted a Landscape and Visual Impact Assessment (LVIA). This accepts that there would be some adverse landscape and visual effects but sets out that significant effects would be confined to a relatively small area, already influenced by electricity infrastructure. Once additional planting mitigation matures, the effect on most receptors would be negligible or minor with only those using the footpaths that pass through the site experiencing moderate adverse effects. It is also pointed out that the proposal is time-limited (40 years) and reversible.

In relation to the heritage issue, reference has been made to several designated and non-designated heritage assets and concerns raised about the impact of the proposal on their setting, and their significance. All need to be assessed and conclusions reached as to whether changes to settings would result in harm to significance. If any such harm is found, then this will need to be dealt with through the mechanism set out in the Framework, and the Planning (Listed Buildings and Conservation Areas) Act 1990.

The site has been assessed as being made up of 72% best and most versatile (BMV) agricultural land. It is contended that this brings the proposal into conflict with LP Policy ENV5. The Framework and the Written Ministerial Statement of 25 March 2015 bear on this matter too.

In relation to alternative sites, the applicant argues that the main driver for the location of the proposal has been the proximity of the site to the existing Pelham Sub-Station and the availability of a ready connection, so the consideration of alternatives needs to account for that.

Natural England has not objected to the scheme in terms of its potential impact on biodiversity, though others have raised some. The central point on this issue is whether conditions can reasonably be framed that secure any mitigation

necessary, Biodiversity Net Gain (BNG), and the Landscape and Ecology Management Plan (LEMP).

The impact of the proposal in highway terms appears to depend on the question of whether conditions can be composed that address any potential harm in these terms notably through the Construction Traffic Management Plan (CTMP).

As far as noise is concerned, the issue appears to turn on whether noise generated by the proposal would have an unacceptable impact on the amenity of receptors.

There may be other matters to consider too such as flood risk, archaeology, green infrastructure, aviation and fire risk.

In terms of the benefits of the proposal, reference has been made to the critical national need to produce renewable energy, and the national commitment to attaining 'net zero', amongst other things. The benefits of a scheme with a generation capacity of 49.99 MW of renewable energy, that can come on stream quickly, needs to be seen in that context. There may be scope for attendant biodiversity benefits too.

Like most schemes of this type, there may be harmful impacts to consider that need to be balanced against these benefits. It is the outcome of that balance, and the context within which that balance needs to take place, that dictates whether the proposal is acceptable, or not.

Having carried out the balancing exercise, a conclusion can then be drawn in relation to the development plan, and other material considerations, including the Framework.

There is the need too to recognise the importance of consistency in decision-making and in this context the importance, or otherwise, of the decision to refuse the solar array at Maggots End refused planning permission under S62A/2022/0011.

### **Condition and Obligations**

As usual, a draft list of conditions is available for discussion. No Planning Obligation is proffered at this stage though I note concerns that one might be required to address decommissioning and restoration of the site after the operational period has expired.

### **Conclusion**

This Report sets out what, in my opinion, are the issues to be considered in relation to the application.

**Paul Griffiths**

**INSPECTOR**

**31/01/2024**