



Appeal Decision

Site visits made on 11 and 12 April 2017

by Neil Pope BA (Hons) MRTPI

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

Decision date: 16 August 2017

Appeal Ref: APP/D3125/W/16/3158494

Land at Shilton Downs Farm, Ladburn Lane, Shilton, Oxfordshire, OX18 4AL.

- 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 Daniel Shoemith of Ecotricity against the decision of West Oxfordshire District Council (the LPA).
 - The application Ref. 15/04003/FUL, dated 6 November 2015, was refused by notice dated 23 March 2016.
 - The development proposed is the construction of a solar PV park to include the installation of solar PV panels with a control room, transformer housings, inverters, security system (fencing and infrared cameras), underground cabling, landscaping, access tracks, and other associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application that is now the subject of this appeal¹ was submitted in November 2015, after the LPA had refused permission for a solar PV park with a proposed panel area of 18.5 ha (ref. 14/02156/FUL). An appeal against that refusal was dismissed² in February 2016 (ref. APP/D3125/W/15/3133492).
3. This revised application is for a smaller panel area (16.6 ha) that includes the relocation of the proposed control room and temporary construction compound, additional planting and the retention of a dry stone wall within the site. I understand that the potential capacity would be circa 10 MW.
4. Following the dismissal of the previous appeal the appellant sought to amend the revised application by retaining and reinforcing a hedgerow across the site and providing semi-mature mitigation planting. 'Clarification' was also provided on a final design layout³ which showed a sizeable reduction in the extent of the proposed panel area. Within the appellant's Statement of Case it has been calculated that the potential capacity would be circa 7.5 MW⁴.
5. The LPA considered that the alterations to the hedgerow and mitigation planting comprised minor amendments and took them into account in determining the application which is now the subject of this appeal. However,

¹ The 'red line' site area is specified as 22.24 ha on the application and appeal forms.

² The previous Inspector refers to that scheme as having an installed capacity of 10.8 MW.

³ Drawing Ref. 6472_T0281_01 dated August 2016 and comprising Appeal Figure 1c.

⁴ The appellant's letter to the LPA of 29 February 2016, states that the final generation capacity "can now be confirmed as 7MW...."

- it considered the final design layout to be a material change and did not take this drawing/amendment into account when it determined the application.
6. As part of the appeal, the appellant is proposing further amendments to the proposed scheme. These include the use of 'grass-crete' in lieu of crushed aggregate along part of the proposed access track, the removal of proposed mitigation hedgerow planting at the south western end of the site and additional off-site mitigation planting immediately to the east of the site. The LPA has informed me that these should not be treated as minor amendments.
 7. The appellant has requested that I determine the appeal on the basis of the final design layout and all of the above noted landscaping amendments. In considering this request I am mindful of the need for flexibility in the planning system, as well as the Wheatcroft Principles⁵ and the Planning Inspectorate's Procedural Guide⁶. Amongst other things, this Guide advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. I note the representations made to the LPA when it considered the application.
 8. Insofar as the proposed solar PVs are concerned, the final design layout could, in comparison to the extent of the panel area on the layout plans upon which the LPA notified interested parties, be described as a 'reduced development'. The impact of this final design layout would be likely to have less environmental impact than the worst case prediction set out within the Environment Report that accompanied the application. Nevertheless, in all likelihood, those consulted on the application would have made their assessments on the basis that the solar PVs would cover most, if not all, of the panel area and the appellant's claimed benefit of a potential capacity of circa 10 MW.
 9. Interested parties, especially neighbouring residents, are also likely to be concerned about landscape planting and could be unaware of the various proposed changes. Whilst each change could comprise a minor amendment, some interested parties could find the totality of these to be significant and/or be aggrieved upon discovering that a decision had been made in respect of plans/details which they were previously unaware of. I am mindful of the Government's reforms to the planning process that are aimed at affording communities the opportunity to influence decisions that affect their lives⁷.
 10. In the absence of any consultation by either the LPA or the appellant in respect of the final design layout and the further landscaping amendments put forward as part of the appeal, there is a risk of some interested parties perceiving the changes as a substantial difference to the scheme upon which their views were sought. If I was to determine the appeal on the basis of the final design layout and the further landscaping amendments described in paragraph 18 of the appellant's Statement of Case it would deprive those who should have been consulted on these matters the opportunity of commenting upon them. To avoid the risk of prejudice, I have therefore determined the appeal on the basis of the plans which were considered by the LPA in March 2016. I note the previous Inspector's remarks regarding the need for 'appropriate consultation'.

⁵ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

⁶ Procedural Guide – Planning Appeals - England

⁷ Written Ministerial Statements (WMS) 'Local Planning and Renewable Energy Developments'

Main Issue

11. The main issue is whether the benefits of the proposal, including the production of electricity from a renewable resource, outweigh any adverse impacts upon the character and appearance of the area, including any cumulative impact with the approved solar farms at Kencot Hill and Westerfield.

Reasons

Planning Policy

12. The development plan includes the saved policies of the West Oxfordshire Local Plan 2011 (LP). The most relevant LP policies to the determination of this appeal are: BE2 (general development standards), NE3 (local landscape character) and NE12 (renewable energy). Whilst the LPA has also drawn attention to policy BE4, there is no cogent evidence to demonstrate that the appeal site is of importance to the distinctiveness of Shilton or of importance to the visual amenity or character of the locality than any other part of the open countryside. This policy is not determinative to the outcome of this appeal.
13. My attention has also been drawn to policies EH1 (landscape character) and EH4 (renewable energy⁸) of the emerging West Oxfordshire Local Plan 2011-2031 (eLP). As the eLP has some way to go before it can be adopted these emerging policies can only be given limited weight in determining this appeal.
14. In determining this appeal I have had regard to the National Planning Policy Framework (the Framework) and various WMS in respect of renewable energy. Whilst not planning policy, the Government's Planning Practice Guidance includes advice in respect of renewable energy schemes.
15. The LPA has drawn my attention to the County Council's Position Statement 'Major Development Proposals for Ground-mounted Solar PV Arrays' (2014). However, in the context of this appeal, this document is aimed at providing pre-application guidance and does not add anything to the above noted national and local planning policies. It is not referred to within the LPA's reasons for refusal and is not determinative to the outcome of this appeal.

Other Documents

16. I have taken into account the provisions of various Acts⁹, Directives¹⁰, and Strategies¹¹ relating to renewable energy, including the 2007 energy white paper¹². Amongst other things, these set out and identify progress towards achieving the legally binding target of reducing UK emissions by at least 34% by 2020 and 80% by 2050, as well as achieving the UK's obligation of 15% of energy consumption from renewable energy resources by 2020. They reflect the Government's commitment to renewable energy. However, amongst other things, the PPG advises that the need for renewable energy does not automatically override environmental protection.

⁸ The appellant has informed me that the Shilton Downs area is identified as a "more suitable area" for solar development on the "suitability maps" which are referred to within this emerging policy.

⁹ The Climate Change Act 2008.

¹⁰ Renewable Energy Directive 2009/28/EC.

¹¹ Including the UK Renewable Energy Strategy (2009) and the UK Renewable Energy Roadmap and its updates.

¹² 'Meeting the Energy Challenge' DTI (May 2007).

Benefits

17. The appellant has calculated that the maximum output from the development would be 9,510 MWh per annum, which would be the equivalent annual electricity needs of 2,304 typical UK households. It has also been calculated that the proposal would result in carbon savings of up to 6,105 tonnes of CO₂ per annum if the maximum output was achieved¹³.
18. The proposal, in combination with other renewable and low carbon energy schemes, would assist in tackling climate change and provide a valuable contribution to cutting greenhouse gas emissions. There is general support within the Framework for renewable energy schemes. The proposal would also assist in increasing the security of electricity supply and would further diversify and strengthen the local rural economy.
19. In addition to the above, the proposals would include new/strengthened hedgerow planting within the site and some semi-mature mitigation planting. Grassland would also be provided underneath the solar PVs for foraging birds. This would make a positive contribution to the character and appearance of the area and, to a limited extent, would be likely to enhance nature conservation interests. As grade 3b agricultural land the site does not comprise best and most versatile agricultural land. The proposal would not harm the agricultural industry and would provide some limited support for the construction industry.
20. The totality of these environmental and economic benefits can be given considerable weight in the overall planning balance.

Character and Appearance

21. The appeal site lies within the Cotswolds National Landscape Character Area (LCA) and is about 1.8km south of the Cotswolds Area of Outstanding Natural Beauty. One of the key characteristics of the LCA is the dry stone walls that define the pattern of fields. At the local scale, the site lies within the Shilton Downs LCA¹⁴ and the Open Limestone Wolds Landscape Character Type (LCT). The description of this LCA includes reference to its attractive and largely unspoilt rural character. The LCT is described, amongst other things, as large-scale, smoothly rolling farmland occupying the limestone plateau and dip slope, with large or very large fields and a very open and exposed character.
22. As I saw during my extensive visits¹⁵, the unspoilt open attributes of the farmland that makes up the appeal site and the dry stone walls and boundary vegetation that define the field edges are attractive rural qualities that reflect some of the key characteristics of the above noted LCAs and LCT. This is not a designated landscape and already includes some solar farms. I agree with much of the appellant's landscape evaluation of the site and surroundings and the ensuing assessment of landscape sensitivity.
23. However, the area is popular with residents and visitors, many of whom are likely to derive considerable enjoyment from the pleasing views across this rolling farmland and limestone plateau. In my opinion, the appellant has

¹³ 3,747 tonnes of CO₂ if displacing electricity generated using the standard fuel mix.

¹⁴ As defined in the West Oxfordshire Landscape Assessment (approved by the LPA for development management purposes in 1998).

¹⁵ This included viewing the appeal site from numerous parts of the public realm e.g. the selected viewpoints in the appellant's 'Volume 1 – Appeal Figures' and walking between the site and the larger solar farms at Westerfield and Kencot Hill.

- underestimated the value of the views, scenic quality and amenity of the area. I concur with my colleague who determined the previous appeal. The site and surroundings are of medium sensitivity to the type of development proposed.
24. The proposed development would entail erecting a considerable number of ground mounted photovoltaic panels in very many arrays (maximum height of about 2.2m) across much of the appeal site. There would also be transformer and control buildings, infrared lighting poles, access tracks and a security fence around the proposed panel area. This would not be a small-scale development.
 25. In comparison to the previous proposal the panel area would be reduced in size by about 2 ha. Unlike the previous appeal, the stone wall towards the centre of the site would be retained, the proposed temporary construction compound would be screened from public view and there would be semi-mature mitigation planting. These are material differences to the previous scheme. As before, hedgerows would be retained and strengthened to maintain the field pattern.
 26. However, there would be a dramatic change to the rural character of the site with the proposal introducing an extensive, manufactured form of development into this block of farmland. The rather utilitarian nature of the proposal and the large number of arrays that would extend across the length and breadth of these fields would considerably detract from the unspoilt open qualities of the site. It would result in a high magnitude of change to the character of the site and a major adverse effect. This weighs against granting planning permission.
 27. In the context of the character of the area, I reach a similar finding to the previous Inspector. The scale, colour, form and texture of this man-made development would comprise a discordant element within this Cotswold landscape. The low profile of the proposed development, the semi-enclosed character of elements of the wider landscape and the dry stone walls and vegetation that define the field boundaries would, to some extent, limit the landscape impact. There would be a moderate adverse change to the character of the local area.
 28. The proposed development would increase the number of solar farms within the landscape around Shilton. Whilst this would further erode the rural qualities of the landscape, these developments would be adequately separated by the smoothly rolling farmland and established intervening vegetation. The proposal would not result in the creation of a 'solar farm landscape'. The cumulative impact upon the character of the local area would be limited and there would be no material harm to the setting of the village.
 29. The adverse effects upon the character of the site and the area would be reversible and would last for a limited period of time. I have also noted above that there would be some benefits. Overall, I find that the harm to landscape character should be given moderate weight in the planning balance. This is different to the findings of the Inspector who determined the appeal at Westerfield (ref. APP/D3125/A/14/2214281).
 30. The limited height of the development and intervening landform, vegetation, walls and buildings would largely screen the proposals from views beyond a distance of about 1.5km from the site. Until the landscape mitigation became effective and during the winter months, parts of the development would be seen from the public realm to the east and north. Some of the arrays and the dark coloured solar PV panels set in their metal frames would be very different

to the appearance of the surrounding fields and landscape. This would be likely to catch the eye of the viewer and stand out as a conspicuous addition to the landscape. Notwithstanding the temporary nature of the development and the proposed planting, the proposal would have a medium magnitude of impact on views and be likely to result in a medium adverse effect upon the quality and enjoyment of these views. This also weighs against granting permission.

31. The extent of separation between the proposal and other solar farms, together with the landform and intervening topography would avoid these developments having a defining influence on the overall experience of the landscape. In the main, the proposal would be difficult to perceive in conjunction with existing solar farms. However, from limited parts of the public realm there could be glimpses of some of the proposed solar PVs and some of the arrays at Westerfield when moving through the local landscape. The proposal, in combination with the solar farm at Westerfield would result in limited adverse cumulative visual impacts. This also weighs against granting permission.
32. The proposal would harm the character and appearance of the area and, in so doing, conflict with the provisions of LP policies BE2 and NE3 and eLP policy EH1. The proposed mitigation would not satisfactorily address the adverse landscape and visual impacts that I have identified above. The harm I have identified and the conflict with the development plan and eLP carries considerable weight in the overall planning balance.

Other Matters

33. I note the other concerns raised by some interested parties. However, there is no cogent evidence to demonstrate that the proposals would harm the significance of any heritage asset. I also note that neither the LPA nor the Highway Authority raised any highway objections. Having travelled the proposed route for the construction traffic and seen much of the likely cable route (both of which would avoid the centre of the village) I am satisfied that these matters could be addressed by planning conditions. There is also nothing of substance to support fears that the proposal would harm tourism interests.

Planning Balance / Overall Conclusion

34. When all of the above are weighed together, including the general policy support for renewable energy schemes, I find, on balance, that the benefits of the proposal would not outweigh the adverse impacts upon the character and appearance of the area that I have identified. There would be an unacceptable impact upon the local environment and the quality of the landscape would not be conserved. As a consequence, the development would also conflict with LP policy NE12 and eLP policy EH4 and would fail to satisfy the environmental to sustainable development as set out within the Framework. I therefore conclude that the appeal should not succeed.

Neil Pope

Inspector