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## Appeal Decision

Site visits made on 8 & 29 December 2015

**by Michael Moffoot DipTP MRTPI Dip Mgt MCMI**

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

**Decision date: 24 March 2016**

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### **Appeal Ref: APP/H0724/W/15/3131584**

### **Worset Lane, Hart, Hartlepool TS27 3BL**

- 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 European Energy Photovoltaics Limited against the decision of Hartlepool Borough Council.
  - The application Ref: H/2014/0513, dated 30 October 2014, was refused by notice dated 21 April 2015.
  - The development proposed is construction, operation and decommissioning of a 13,992MWp Solar Photovoltaic (PV) Array comprising 55,968, 250W, 60 cell 1650 x 990 x 35mm Photovoltaic Panels, Mounting System, Holtab 400kVA stations, DNO Connection, Maintenance Track, Cabling and Cable Trenches, CCTV, Weather Station, Security Fencing, Temporary Construction and Storage Compound and Site Access.
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### **Decision**

1. The appeal is allowed and planning permission is granted for construction, operation and decommissioning of a 13,992MWp Solar Photovoltaic (PV) Array comprising 55,968, 250W, 60 cell 1650 x 990 x 35mm Photovoltaic Panels, Mounting System, Holtab 400kVA stations, DNO Connection, Maintenance Track, Cabling and Cable Trenches, CCTV, Weather Station, Security Fencing, Temporary Construction and Storage Compound and Site Access at Worset Lane, Hartlepool TS27 3BL in accordance with the terms of the application Ref: H/2014/0513, dated 30 October 2014, and subject to the conditions in the attached Schedule.

### **Application for Costs**

2. An application for costs was made by European Energy Photovoltaics Limited against Hartlepool Borough Council. This application is the subject of a separate Decision.

### **Procedural Matters**

3. Weather conditions and daylight deteriorated during the unaccompanied part of my site visit on 8 December and visibility became severely restricted. As a consequence I undertook a further (unaccompanied) visit on 29 December.
  4. The appeal papers include revised landscape proposals in a *Landscape and Visual Assessment: Addendum Report* (LVAAR). Although this additional information was not before the Council when it determined the planning application the Authority has had the opportunity to comment on these amended proposals at the appeal stage as have local residents. In these
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circumstances I am satisfied that no injustice would result from consideration of the revised landscaping measures, and I have taken them into account in determining the appeal.

### **Main Issue**

5. The main issue in this case is whether the benefits of the scheme, including the production of electricity from a renewable source, outweigh any harmful effects with particular reference to:
  - (i) the landscape character and visual amenity of the area, including any cumulative impact; and
  - (ii) the living conditions of the occupiers of Tilery Farm, with particular regard to outlook.

### **Reasons**

#### *Planning policy background*

6. The development plan for the area includes the *Hartlepool Local Plan (2006)*. Of the various policies referred to by the main parties I consider the following most relevant to the appeal proposal.
7. Amongst other things, saved Policy GEP1 generally requires new development to be located within development limits, outside designated green wedges and on previously developed land. The policy also sets out matters to be taken into account in determining planning applications, including external appearance, relationships with the surrounding area and the effect on the occupiers of nearby properties. A high standard of design and landscaping is also required.
8. Saved Policy GEP7 requires a particularly high standard of design, landscaping and woodland planting adjoining major corridors including the A179. Under the provisions of saved Policy Rur7, factors to be taken into account in determining proposals for planning permission in the countryside include the visual impact on the landscape, compatibility of the design within its setting and the local landscape generally and use of sympathetic materials. Where appropriate, additional tree and hedge planting and other environmental improvements will be required.
9. Saved Policy PU7 states that renewable energy developments will generally be supported in order to meet national targets for new electricity generating capacity, and significant weight will be given to the achievement of wider environmental and economic benefits. The potential effect of proposals on, amongst other things, the visual appearance and character of the area and the amenity of local residents will also be taken into account.
10. The above policies are generally consistent with the *National Planning Policy Framework* ('the Framework'), which sets out a clear presumption in favour of sustainable development. One of the core principles is support for the transition to a low carbon future in a changing climate, with planning playing a key role in supporting the delivery of renewable and low carbon energy.

11. More detailed guidance is to be found in the *Planning Practice Guidance* (the 'PPG')<sup>1</sup>, which advises that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. It also emphasises the important role that the planning system has to play in the delivery of renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.
12. In addition, I have taken into account relevant Written Ministerial Statements together with numerous local, national and international renewable energy protocols, directives, acts, policy and strategy publications and other documents cited by the main parties.

#### *Landscape character*

13. The appeal site lies in open countryside to the west of Hartlepool and close to the A19 Trunk Road corridor. It extends in total to some 22.4 hectares and forms part of a much larger field which is also in arable use. The northern boundary of the site is defined by post-and-rail fencing adjacent to a belt of trees and adjoins the busy A179. The western and southern boundaries are contained by an electricity sub-station and hedging on Worset Lane; a narrow route connecting the A179 to a network of rural roads. Part of the eastern boundary is enclosed by a hedge whilst the remainder is open with no clear demarcation on the ground. The highest part of the site is towards the centre, with the land gradually falling away to the north and south.
14. The surrounding countryside is characterised by an open, undulating landform containing an extensive patchwork of arable fields, pastures, small villages and scattered farmsteads. In contrast to this largely rural landscape are the coastal port of Hartlepool and the urban expanse of industrial Teesside some distance to the south with the Cleveland Hills beyond. Within this varied landscape other man-made features are evident. In the immediate vicinity of the appeal site are three 100m high (to blade tip) wind turbines at High Volts Farm, two electricity sub-stations and an anemometer mast. Two telecommunications towers and numerous telegraph poles, pylons and overhead lines are also evident, including a number on the appeal site. In the wider area larger wind farm developments are visible, including an off-shore installation at Teesmouth.
15. The site is within the 'Durham Magnesian Limestone Plateau' National Character Area (NCA)<sup>2</sup>, described as an open, large-scale landscape with big fields, low hedges and few trees on the plateau tops and land cover consisting of arable land and grazing pasture. It notes that the area has been strongly shaped by industry, with coal mining and quarrying in particular leaving a very clear mark on local landscapes and identity. The site is also close to the 'Tees Lowlands' NCA, described as a broad, low-lying and open plain of predominantly arable agricultural land with low woodland cover and large fields defined by wide views to distant hills. It also notes a large area of urban and industrial development around the Tees Estuary with major industrial installations around Teesmouth forming a dramatic skyline. Principal transport corridors, power lines and energy infrastructure are identified as conspicuous elements in the landscape.

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<sup>1</sup> The PPG superseded the *Planning practice guidance for renewable and low carbon energy* in March 2014

<sup>2</sup> Published by Natural England

16. The site is also within the 'Undulating Farmland' Landscape Character Area in the *Hartlepool Landscape Character Assessment* (2000), described as encompassing, amongst other things, predominantly arable farmland, areas of pasture, scattered farmsteads and other small-scale rural developments. It also identifies the land around High Volts Farm as an area of "lower value" where field boundaries have been removed on a considerable scale. During my site visits I recognised most of the characteristics described in these national and local landscape documents.
17. The countryside here is not protected by any national landscape designations, and whilst the Framework reflects the Government's commitment to renewable energy and the reduction of carbon emissions it makes it clear that planning should recognise the intrinsic character and beauty of the countryside when assessing development proposals. Similarly, the PPG advises that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities. It also recognises the potential impact of large-scale solar farms on the rural environment, particularly in undulating landscapes, whilst noting that the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively. Careful consideration of the impact of the appeal proposal on the area is therefore necessary.
18. The 55,968 solar PV panels would be erected in 103 south facing linear rows on an east-west axis covering an area of about 8.15 hectares. Each module would comprise four panels mounted on galvanised steel frames with a maximum height of 2.6m and would be set at an angle of 25 degrees to the horizontal. The site would be enclosed by a 2.2m high, green weldmesh security fence and a site compound would be provided in the north-western corner of the site with access off Worset Lane. Grassed hardcore maintenance tracks would be formed within the site and all cabling would be underground. The proposal also includes a weather station mast, some 30 transformer cabinets, a pole-mounted CCTV camera and a DNO<sup>3</sup> building to connect the system to the National Grid. The existing landscaping on the site boundaries would be supplemented and reinforced with native woodland trees and hedges and gaps in hedgerows would be filled.
19. The landscape in the vicinity of the appeal site retains a distinctly open rural character notwithstanding the urban areas and local infrastructure I have referred to. The proposal would result in uniform ranks of dark coloured solar panels over an extensive area and together with the associated cabinets, site compound and other infrastructure would have a marked presence in the landscape. The impact would be compounded by a variation in levels across the site, with the northern boundary about 16.5m lower than the highest (central) part of the field and the southern boundary some 11.5m lower.
20. The scale and nature of the proposal would therefore significantly alter the landscape character of the local area by introducing extensive arrays of solar panels which would be at odds with the open fields and rural qualities of the locality. That said, the proposed landscaping scheme, in conjunction with the additional measures now promoted by the appellant, would go a significant way towards mitigating the impact of the development. They include native woodland planting around the site compound and along the boundary with the

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<sup>3</sup> Distribution Network Operator

A179, additional tree planting along the eastern boundary and new tree and hedge planting along the Worset Lane frontage. Additional landscaping around Tilery Farm is also proposed. In response to concerns expressed by the Council's Landscape Architect at the application stage, the LVAAR includes an increase in the size of the planting stock (ie trees and hedges) to provide additional screening at an earlier stage in the 25 year life of the development. I consider this particularly important in the north-east corner of the site where the boundary is open to the A179, and along parts of the southern and western boundaries where the hedge line has gaps and some of the hedging is particularly low and thin.

21. Despite these measures it is clear that the landscaping proposals would take some years to reach the degree of maturity to provide effective mitigation to offset the visual impact of the proposal to any marked degree. In the interim period the stark appearance of the panels over this sizeable site would be very apparent in the local landscape and as such would be at odds with the prevailing rural character of the area. Even when the landscaping is established the panels would be visible from the immediately surrounding area and in particular the A179 and Worset Lane, albeit views would be filtered by vegetation. They would also be observed in the context of the surrounding energy generation and distribution infrastructure which includes wind turbines, electricity sub-stations and pylons. These elements significantly influence the local landscape character and the proposed development would compound their urbanising effect.
22. In terms of the wider landscape, the Council submits that the appellant's Zone of Theoretical Visibility is inaccurate and generally confined to a 2km radius of the site. It is contended that the proposal would potentially be visible from various directions over a far wider area, including distant views further to the north from the town and possibly the adjacent coastline. No specific viewpoints have been identified by the Council, however, and I have therefore generally assessed the proposal from within a 2km radius.
23. I also visited the wider area but found no viewpoints from where the development would be particularly prominent. Where likely to be visible, I consider it would be perceived as a relatively insignificant element, and given the open skies and panoramic, large-scale landscape that characterises the area the proposed development would not become a defining characteristic.
24. Whilst the appellant's *Landscape and Visual Assessment* (LVA) describes the overall magnitude (or scale) of landscape effect of the proposal as 'low adverse', I consider it would be more appropriately defined as 'medium adverse' based on the evidence before me and my observations during the site visits.

#### *Visual amenity*

25. In relation to the impact of the development on visual amenity, I assessed the proposal from various viewpoints (VPs) in the surrounding area, including those identified in the appellant's LVA which deals with the effect on both residential and public receptors.
26. There are not many public rights of way in the vicinity of the appeal site. There is a public footpath some 350-400m to the east of the site and the array of panels would be partly visible from the southern end of the route

- (appellant's VP P2a). It would gradually reduce in prominence, however, as one walks northwards across lower lying land and turns east to reach the lane (VPs P2b and P2c), and its impact would be softened by new tree planting along the eastern boundary of the site.
27. The installation would be visible on the skyline from some sections of the minor road between Hart and Naisberry but at some distance, and the impact would be negligible. However, it would be highly prominent at close quarters from Worset Lane between the reservoir and the electricity sub-station, and its impact would be compounded by the rising landform. Although additional landscaping would reduce the impact over time it would not significantly screen the development, and much of the southern part of the appeal site would remain visible for the lifetime of the scheme. Limited views of the installation would be likely from the public footpath to the south of Claypit Farm but with agricultural buildings in the foreground, and the impact would be insignificant.
28. From localised viewpoints on the A179 (VPs P1a, P1b and P1c) the installation would be readily apparent due to the rising landform. However, views would be intermittent, filtered by trees (particularly when in leaf) and would generally be relatively brief given the speed of vehicles along the route. Nevertheless, it would be clearly seen over this short stretch of the road despite the supplementary landscaping to be provided, which would not screen the more elevated part of the site. Due to topography and vegetation the panels would not be easily visible from VPs R7 and R8 near Hart, although it may just be visible from the upper floors of some properties on Nine Acres. Landform and vegetation would also prevent clear views of the solar panel array from the A19 at VPs P5a and P5b, and whilst the southern part of the appeal site would be visible it would be at some distance and in the context of the electricity sub-stations and other infrastructure.
29. I was unable to assess the proposal from Whelly Hill Farm (VP R5) or Hart Moor Cottages (VP R6) as public access was not available at these locations. For the same reason it was not possible to properly assess the implications of the proposal from the dwelling at High Volts Farm, although it is partly screened by vegetation on the eastern side which would limit views of the appeal site from the property. The development would be highly prominent from Tilery Farm, and I deal with its effect later in the decision.
30. During my second visit I walked part of the public bridleway from Butts Lane towards Sheraton (VP P3) and a section of Butts Lane between Burn's Close and the bridleway. From these vantage points the northern part of the development would be intermittently visible though at some distance and with vegetation providing mitigation. Undulating topography and vegetation would prevent views of the installation from Thorpe Bulmer Dene bridleway (VP P4). The development would not be visible from houses at Naisberry (VP R9) or the village of Elwick (VP R10), and only partly visible from Sheraton to the east of the A19 (VP R11). I also viewed the appeal site from other locations in the area but found there to be no harm to visual amenity.
31. Whilst the full extent of the proposal would not be visible from any one particular viewpoint it would be partly seen from a number of the above viewpoints and to varying degrees depending on landform, vegetation, built development and seasonal leaf cover. Glint and glare from the installation would also occur from viewpoints to the south and east of the site, which would

increase the prominence of the scheme albeit to a limited degree given the localised nature of these viewpoints. Furthermore, its impact would diminish over time as the screening provided by the existing hedges and trees is reinforced by new planting as it gradually matures and becomes established.

32. Reference has also been made to the visual impact of the security fencing and CCTV pole. The green weldmesh fencing would inevitably have something of an industrial appearance but it would be permeable and would not significantly add to the visual impact of the solar array. As to the CCTV pole, this would be a slim structure some 3.4m high and would not be unduly intrusive from the A179 or Worset Lane.
33. With reference to the appellant's LVA, I agree that the magnitude of effect of the proposal on the visual amenity of the area without mitigation would vary between 'no change' and 'high adverse' commensurate with the sensitivity of the viewpoint. I also agree that the magnitude of effect in 15 years would diminish with the mitigation measures proposed. However, I disagree that the overall effect would be 'not significant', and find instead that it would be more appropriately described as 'low adverse' given my detailed assessment of the selected viewpoints and other locations I observed the site from.

#### *Cumulative impact*

34. I saw no other large-scale solar PV developments in the area and the Council confirms that none are either approved or the subject of current planning applications. Its concerns therefore relate to the impact of the proposal in conjunction with existing renewable energy, electricity and telecommunications infrastructure in the area.
35. Within the vicinity of the site there are three wind turbines, two electricity substations, two telecommunications masts, an anemometer mast and various pylons and overhead lines. Individually and collectively these structures have a significant impact on the local area. Having regard to the scale and extent of the appeal proposal, it is clear that it would contribute to an intensification of infrastructure developments in the locality. In the wider landscape the impact would be far less pronounced.
36. The appeal site is close to most of these established installations, and in this respect the development would be observed as additional infrastructure within a group rather than as an isolated scheme. Moreover, the visual impact of the development would gradually diminish over time as the new landscaping becomes established. As such, although the proposal would intensify infrastructure hereabouts the cumulative impact on the landscape character and visual amenity of the area would not be significant.

#### *Conclusions on landscape character and visual amenity*

37. It is clear the proposal would involve development in the countryside contrary to Policy GEP1 of the Local Plan which generally directs new development to settlement development limits and previously developed land. Given its scale, however, it is unlikely that it could be accommodated on brownfield sites or within urban areas. Similarly, Policy Rur7 restricts development in the countryside although it also sets out criteria to be taken into account for proposals.

38. Despite the relatively low height of the proposed panels this would be a large development over an extensive site and as such would have a marked effect on the character of the local landscape. The impact on the wider landscape would be far less pronounced, however, due to undulating landform and vegetation and the cumulative impact would not be significant. Furthermore, the scheme involves retention of existing boundary hedges and trees and extensive new planting which would, over time, help to assimilate the development into its setting. Because the impact of the proposal would be relatively localised, the open views and expansive character of the wider, large-scale landscape which are defining characteristics of the area would not be materially harmed, and as such the overall impact on the landscape character of the area would be 'medium adverse'.
39. As to visual amenity, the impact would also be localised and confined to a relatively limited number of viewpoints in the immediate area. The additional planting measures would in time assist in absorbing the development into its surroundings, so that the change to the landscape would gradually diminish for those observing the site and its surroundings. Accordingly, the effect of the development on the visual amenity of the area would be 'low adverse'.
40. I therefore conclude on the first issue that the effect of the proposal on the landscape character and visual amenity of the area would not be substantial, cumulative impact would be negligible and there would be no fundamental conflict with the relevant Local Plan policies I have referred to.

#### *Living conditions*

41. Tilery Farm comprises a single-storey dwelling together with various agricultural outbuildings and is some distance from the southern boundary of the appeal site. The property has three windows and a doorway on the front (north) elevation facing the site. The outlook from the property is presently compromised to some degree by agricultural buildings, an anemometer mast, the electricity sub-stations, a number of pylons and a wind turbine.
42. Views of the appeal site from the property are filtered slightly by gappy vegetation along the southern boundary and low hedging adjacent to Worset Lane. However, the bungalow occupies slightly elevated land and the appeal site rises gradually northwards from the lane. Given the expansive scale of the development, much of the southern part of the site would be visible from the farmhouse, its curtilage and access track. Although there is no right to a view in planning practice, the occupiers would look over a large area of dark pv panels rising from Worset Lane to the skyline. At almost 500m in width with few gaps and in relatively close proximity to the dwelling, the installation would have a significant presence and dominate the outlook from the property.
43. To mitigate the impact of the scheme on the property the LVAAR proposes additional tree planting around the boundaries of the field to the immediate north of the farm to supplement that proposed along the Worset Lane boundary of the appeal site. It is submitted that after six years the planting would be sufficiently dense to provide total year round screening and the array would not be visible from the farm. The LVAAR suggests that the proposal would have a 'medium adverse' magnitude of effect in the first year without mitigation and a 'negligible adverse' effect after six years with mitigation.



44. With a mix of species and heights the tree planting would progressively filter views of the development from Tilery Farm as the landscaping becomes established. However, I am not convinced that it would provide the significant degree of screening that the appellant suggests. Once mature, the planting would break up views of the array on the lower part of the site near Worset Lane, but the rising form of the land means that the upper part would remain visible up to the horizon. Furthermore, the deciduous planting would thin out during the autumn and winter months rendering the development more prominent. Although this situation would not be permanent, 25 years is a significant period for it to affect the occupiers' outlook.
45. I have found that the proposed development would have an overbearing effect on the occupiers of Tilery Farm in conflict with Policies GEP1 and PU7 of the Local Plan, and this impact must be balanced against the benefits arising from the scheme. In reaching these findings I acknowledge that the occupiers of the property have not objected to the planning application or appeal. However, consideration also needs to be given to the amenity of future occupiers of Tilery Farm.

### **Other Matters**

46. It is submitted that the proposal would result in the loss of prime agricultural land. The Framework seeks to protect the best and most versatile (BMV) agricultural land and the PPG states that where a large-scale solar farm involves greenfield land, poorer quality land should be used in preference to higher quality land. Proposals should also allow for continued agricultural use where applicable and/or encourage biodiversity improvements around arrays. In this case the land is Grade 3a and therefore within the BMV category where the economic and other benefits of the land should be taken into account in planning proposals and any proposal for solar farms involving such land should be justified by the most compelling evidence.
47. The development would clearly prevent continued use for arable activities. Furthermore, it is unclear whether lower grade land could have been employed for the scheme. However, the appellant anticipates grazing sheep on the grassland around the panels thus facilitating some continuation of agricultural use and biodiversity improvements would result from the new woodland planting and hedgerows. Moreover, the development would not adversely affect the fertility and productivity of the land, and when the permission expires and the site is decommissioned it can revert to arable production. Accordingly, there would be no long term loss of BMV land. Nevertheless, the appeal scheme would not meet the relevant criteria set out in the Framework and PPG, which weighs against the proposal and must be balanced against the environmental and economic benefits arising from the scheme.
48. Concerns have also been raised about the implications of the proposal for wildlife habitat and ecology. The appellant's Ecology Report concludes that the habitats on the site are of low quality with no evidence of scarce plants or trees and the additional tree and hedge planting and post-development management of the site would enhance its ecological value. The Council's ecologist agrees with these findings and offers no objections to the proposal subject to relevant conditions. In the absence of compelling evidence to refute these professional opinions I see no reason to take a contrary view. Furthermore, I see no compelling justification for periodic professional inspection of grazing on the

land as an interested party suggests or an Environmental Assessment for the 'before and after' impact of the proposal on biodiversity on the site.

49. The proposal would not appreciably add to vehicle numbers on the local road network, and any traffic disruption during the construction phase would be relatively short term and would not materially compromise highway safety in the vicinity of the site.

#### *Benefits*

50. Policy PU7 of the Local Plan supports renewable energy developments in principle, recognising the environmental and economic benefits of such schemes and the contribution they can make to meeting targets for new electricity generating capacity. The appellant advises that the proposal would generate about 13.992MWh and over the lifetime of the installation would save some 139,500 tonnes of CO<sub>2</sub>.
51. The scheme would therefore make a valuable contribution to cutting greenhouse gas emissions and a significant contribution towards meeting national targets for renewable energy. It would also contribute to bolstering energy security. The proposal therefore gains support from national and local policies which promote the generation of renewable energy. As such, I find that these considerations should be accorded significant weight in favour of the proposal.

#### *The planning balance*

52. The proposal would make a significant contribution to renewable energy targets and reduction of greenhouse gas emissions, and would also have energy security benefits. These benefits attract substantial weight in favour of the proposal. Against these benefits must be weighed the less than substantial harm to the landscape character and visual amenity of the area, the effect of the development on the living conditions of the occupiers of Tilery Farm and the temporary loss of BMV land.
53. Weighing these factors in the balance, I conclude overall that the conflict with Local Plan Policies GEP1 GEP7, Rur7 and PU7 is outweighed by the significant environmental benefits of the scheme, which comprises sustainable development as described in the Framework.

#### **Conditions**

54. The conditions proposed by the main parties are imposed with some modification and added precision to assist with clarity and having regard to the terms of the PPG.
55. In the interests of visual amenity the solar installation should be removed within 25 years of this decision and the land restored to agricultural use. For the same reason the external finish to the transformer cabinets and DNO building should be subject to the Council's approval. To protect local residents' living conditions I shall restrict the hours of construction work undertaken on the site. As well as the landscape measures identified in the LVA, the additional planting proposed in the LVAAR (including proposals for the land to the north of Tilery Farm) are necessary in the interests of the occupiers' living conditions and the visual amenity of the area.

56. Conditions requiring a written scheme of investigation are imposed to safeguard the archaeological integrity of the site. To minimise flood risk the mitigation measures identified in the approved Flood Risk Assessment should also be implemented. In the event that any contamination is found on the site I shall impose a condition requiring cessation of work and remediation measures to be undertaken following their approval by the Council. For highway safety reasons the development should be undertaken in accordance with the submitted Construction Traffic Management Plan and development warning signs shall be erected on the A179.
57. To safeguard the biodiversity of the site the development should be carried out in accordance with the appellant's Ecology Report and no removal of any trees or hedges as part of the approved scheme should be undertaken between the months of March and August. Finally, to facilitate minor material amendments, a condition listing the approved plans should also be imposed.

### **Conclusion**

58. For the reasons set out above, and having regard to all other matters raised, I conclude that the proposal is acceptable and the appeal should succeed.

*Michael Moffoot*

Inspector

### **Schedule of Conditions**

1. The development to which this permission relates shall be begun not later than three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: (i) EEPL01; (ii) EEPL02; (iii) EEPL03; (iv) EEPL04; (v) EEPL05; (vi) EEPL06; (vii) EEPL07; (viii) EEPL08; (ix) EEPL09; (x) EEPL10; (xi) EEPL11; (xii) EEPL12; (xiii) EEPL13; (xiv) EEPL14; (xv) APP 01; (xvi) APP 02; and (xvii) APP 03.
3. When the solar farm ceases its operational use, which shall be no later than 25 years from the date of this decision, all solar panels, support structures and associated buildings and infrastructure shall be removed in their entirety and the land shall be restored to its current use as agricultural land.
4. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) 1010358/CL001 and the following mitigation measures detailed in the FRA:
  - (i) Ensuring the solar panels are mounted 800mm above ground level as stated in Section 6.1 of the FRA; and

- (ii) Ensuring grass cover beneath the solar panels is well maintained.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements within the FRA or within any other period as may subsequently be agreed in writing by the Local Planning Authority.

5. No development shall commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions and:
  - (i) A programme and methodology of site investigation and recording;
  - (ii) A programme for post-investigation assessment;
  - (iii) Provision for analysis of the site investigation and recording;
  - (iv) Provision for publication and dissemination of the analysis and records of the site investigation;
  - (v) Provision for archive deposition of the analysis and records of the site investigation;
  - (vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
6. No development shall take place within the site other than in accordance with the Written Scheme of Investigation approved under Condition 5.
7. The development shall not be occupied until the site investigation and post-investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation under Condition 5 of the permission and provision made for analysis, publication and dissemination of results and archive deposition has been secured.
8. No construction work required for the development hereby approved shall be carried out outside the hours of 0700 to 1900 hours Mondays to Fridays (excluding Bank and Public Holidays) and between the hours of 0700 and 1300 hours on Saturdays, and at no time on Sundays or Bank Holidays.
9. The development hereby approved shall be carried out in complete accordance with the measures detailed in the submitted Ecology Report prepared by Whittingham Ecology. For the avoidance of doubt and in addition, no works shall commence until precise details, illustrated by appropriate plans, drawings and an associated schedule of the specification, locations and management of all landscape; ecological mitigation and enhancement measures to be provided together with a long-term management plan and details of a methodology to be provided to all workers have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and maintained as such thereafter.
10. In the event that, when carrying out the development hereby approved, land contamination that was not previously identified or known of is encountered, the contamination shall be immediately reported in writing to the Local Planning Authority. An investigation and risk assessment shall then be

undertaken and, where remediation is considered to be necessary, a remediation scheme shall be prepared which is subject to the approval of the Local Planning Authority. If unexpected contamination is found after development has begun, development shall be halted on that part of the site affected to the extent specified by the Local Planning Authority in writing, until this condition has been complied with in relation to that contamination.

11. Landscape mitigation works shall be undertaken in accordance with the approved details contained in the Landscape and Visual Assessment dated October 2014, as amended and updated by the Landscape and Visual Assessment Addendum Report dated 10 July 2015, including all on-site planting on land to the north of Tilery Farm as shown on drawings APP 01, APP 02 and APP 03 listed in Condition 2 of this planning permission.
12. All planting and seeding comprised in the approved details of landscaping shall be carried out in the first planting season following operational use of the site. Any trees or plants that die, become seriously damaged or diseased within a period of five years of the completion of the development shall be replaced in the next planting season with others of a similar size and species.
13. No removal of hedgerows, trees or shrubs shall take place within the site between the 1 March and 31st August inclusive unless the Local Planning Authority has confirmed in writing that such works can proceed based on the submission of recent and up-to-date survey data of no older than one month that has been undertaken by a suitably qualified ecologist. The survey shall include an assessment of current bird nesting activity on the site together with measures to protect the nesting bird interest on the site.
14. The traffic management measures associated with the development shall be undertaken in accordance with the Construction Traffic Management Plan 1009468-RPT-00008 dated 27 October 2014.
15. Details of development warning signs to be erected on the A179 and Worset Lane during the period of construction works taking place on the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The approved warning signs shall be displayed in accordance with the approved details during the period of construction of the approved development.
16. Details of the external finishes to the transformer cabinets and DNO building shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The development shall accord with the approved details.

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## Costs Decision

Site visit made on 8 & 29 December 2015

**by Michael Moffoot DipTP MRTPI Dip Mgt MCMI**

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

**Decision date: 24 March 2016**

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### **Costs application in relation to Appeal Ref: APP/H0724/W/15/3131584 Worset Lane, Hart, Hartlepool TS27 3BL**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by European Energy Photovoltaics Limited for an award of costs against Hartlepool Borough Council.
  - The appeal was against the refusal of planning permission for construction, operation and decommissioning of a 13,992MWp Solar Photovoltaic (PV) Array comprising 55,968, 250W, 60 cell 1650 x 990 x 35mm Photovoltaic Panels, Mounting System, Holtab 400kVA stations, DNO Connection, Maintenance Track, Cabling and Cable Trenches, CCTV, Weather Station, Security Fencing, Temporary Construction and Storage Compound and Site Access.
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### **Decision**

1. The application is refused.

### **Reasons**

2. The *Planning Practice Guidance* ('the PPG') advises that where a party in a planning appeal has behaved unreasonably and this has caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
  3. The comments of the Council's Arboricultural Officer at the planning application stage were confined to the submitted landscaping scheme and no objections were offered to the proposal. The Landscape Architect expressed reservations regarding the impact of the proposal on the landscape and visual amenity of the area and the merits and effectiveness of the proposed landscape mitigation measures. Specific reference was made to the impact of the development from the A179, the small stock size of the planting and the need for larger trees and greater tree cover, particularly along the A179 frontage. When clarification was sought by the Case Officer, the Landscape Architect confirmed that the proposed landscape mitigation measures were inadequate and an objection to the impact of the proposal on landscape and visual amenity grounds could be sustained. I do not regard this request as manipulation of the Landscape Architect's comments as the applicant suggests.
  4. It may be that the concerns expressed by the Landscape Architect could have been overcome. However, the replacement Case Officer, apparently sharing the views of the original Case Officer, concluded that the scheme was unacceptable in terms of visual impact on the local and wider landscape, (especially during winter), cumulative impact and harm to the living conditions
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- of the occupiers of Tilery Farm. It was also considered that the proposed mitigation and supplementary landscaping would not overcome these concerns; concerns which the applicant was aware of. That is a conclusion the Case Officer was entitled to reach against a background of detailed submissions by the applicant, numerous consultation responses and representations and the application of relevant national and local planning policy to the proposal. This does not amount to unreasonable behaviour by the Council.
5. In these circumstances and given the force of the Council's objections, I am not persuaded that its concerns regarding the proposal could have been dealt with by a condition requiring additional landscaping mitigation measures. Whilst I have reached a different conclusion to the Council on the merits of the case, I see no reason to conclude that it acted unreasonably by choosing not to discuss amended landscaping proposals prior to reaching a decision notwithstanding that a letter of complaint about the conduct of the original Case Officer had been withdrawn by the applicant.
  6. Whilst the Council may not have responded to post-decision requests to discuss a smaller scheme, there is no indication that such discussions would have overcome its opposition to the proposal such that an appeal could have been avoided.
  7. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated.

*Michael Moffoot*

Inspector