



## Appeal Decision

Hearing held on 7 February 2023

Site visit made on 7 February 2023

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 May 2023**

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### **Appeal Ref: APP/X1355/W/22/3308881**

#### **Agricultural land to the south of Murton and north of South Hetton**

- 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 Aura Power against the decision of Durham County Council.
  - The application Ref DM/21/03420/FPA, dated 29 September 2021, was refused by notice dated 19 July 2022.
  - The development proposed is the installation and operation of a ground mounted photovoltaic solar farm, inclusive of solar arrays, transformers, substation, landscaping, fencing, internal access tracks, access, CCTV and other associated works, for the purpose of generating and exporting renewable energy to the electricity grid network.
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#### **Decision**

1. The appeal is allowed and planning permission is granted for the installation and operation of a ground mounted photovoltaic solar farm, inclusive of solar arrays, transformers, substation, landscaping, fencing, internal access tracks, access, CCTV and other associated works, for the purpose of generating and exporting renewable energy to the electricity grid network at Agricultural land to the south of Murton and north of South Hetton, SR7 9SF in accordance with the terms of the application, Ref DM/21/03420/FPA, dated 29 September 2021, and the plans submitted with it, subject to the conditions set out in the attached schedule.

#### **Preliminary Matters**

2. The parties have submitted an agreed Statement of Common Ground (SoCG) identifying areas of agreement and continued disagreement. A list of conditions, including pre-commencement conditions, is also included.
3. As agreed at the hearing, an agreement under section 39 of the Wildlife and Countryside Act 1981 to manage and maintain the land in accordance with the provisions of the Biodiversity Scheme and Management Plan for the 35-year life of the proposed development and restoration of the land afterwards, has been submitted.

#### **Main Issue**

4. The main issues are the landscape and visual effects of the scheme and whether there are other material considerations that would outweigh those effect.

## Reasons

5. The Decision Notice refers to the National Planning Policy Framework (the Framework) and three policies of the County Durham Plan adopted 2020 (CDP). Policy 10 of the CDP restricts development in the countryside unless allowed for by specific policies in the plan, renewable energy projects are specifically referred in the relevant footnote to the policy, the policy also details general design principles for all development in the Countryside. Policy 33 of the CDP details that 'Renewable and low carbon energy development in appropriate locations will be supported' and that 'significant weight will be given to the achievement of wider social, environmental and economic benefits'.
6. Policy 39 of the CDP supports new development where it does 'not cause unacceptable harm to the character, quality or distinctiveness of the landscape' and refers to incorporating appropriate mitigation measures and having regard to the County Durham Landscape Character Assessment and County Durham Landscape Strategy contributing to the conservation or enhancement of the local landscape.
7. Turning to the Framework, Paragraph 174 refers to the intrinsic character and beauty of the countryside should be recognised. Specific reference is made to the protection of valued landscapes. The Framework does not define what constitutes a valued landscape. However, given that all landscapes are valued by someone at some time, the term, valued landscape must, in this context, refer to a landscape that is of greater than just open countryside.
8. The SoCG notes that 'The Appeal Site is not covered by any specific national or local landscape designations and there are no ecological designations on the Appeal Site, or on land adjoining' and that, referencing the County Durham Landscape Value Assessment (2019), the appeal site is located within an area with no landscape attribute of elevated value. The SoCG goes on to state that it is agreed between the parties that the appeal site is not considered as forming part of a valued landscape. I find no substantive reason to conclude otherwise given these facts.
9. The appeal site is described by the Council as being 'located on broad undulating open farmland.<sup>1</sup>' Furthermore, I saw at the site visit that there are few trees except for those located in the hedgerows found within and to the edge of the site. The area is punctuated by development including overhead powerlines, electricity substations and the settlements of Murton and South Hetton, the appeal site forming a gap between the two settlements. These features enclose the otherwise open site.
10. The appeal scheme would, in the form of the solar panels and associated infrastructure, introduce a significant element of development that would occupy the previously open farmland.
11. Paragraph 8.4 the SoCG details that 'It is agreed that the proposals would result in a high level of change to the character and appearance of the Appeal Site which would result in significant adverse effects. These effects would be localised and limited to the Appeal Site itself and immediate surrounding area'.

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<sup>1</sup> PROOF OF EVIDENCE ON LANDSCAPE CHARACTER AND VISUAL AMENITY Stephen Laws Durham County Council

Based on the evidence before me, the discussions at the hearing and my observations at the site visit I agree.

12. The Appellant details that 'it would be impossible to site a solar array of this scale in the UK without significantly affecting the character of at least the site and immediate surroundings'<sup>2</sup>, this statement is accepted by the Council as being 'generally correct'<sup>3</sup>.
13. The appeal scheme includes substantive planting in the form of trees and hedgerows to the boundaries of the site and adjacent to the PRowS. Such works are incorporated within a Biodiversity Management Plan. The proposed additional planting would increase screening of the appeal scheme and would substantially enclose and divide the site.
14. The submitted plans show and the SoCG details that "there are several Public Rights of Way (PRow) within and around the Appeal Site. Footpaths 8 and 9 (Murton Parish) pass through the Appeal Site from west to east. These join Footpath No. 11 (Murton Parish), which runs from north to south through the Appeal Site. Bridleway Number 7 (Murton Parish) runs along the western boundary of the Appeal Site." I note the strong feelings eloquently expressed both at the hearing and in writing by local residents and the Parish Council about their attachment, active use of and value that they place on the appeal site. Evidence at the Hearing detailed that these PRow are well used by local residents, and this was confirmed by my observations at the site visit.
15. The submitted plans show that the PRowS would be retained in the appeal scheme, often of an enhanced width, but bound by new and enhanced hedgerows. The experience of a user of a PRow through the site is therefore considerably changed from open to enclosed.
16. New hedgerows and tree planting would be normally considered as an enhancement to the local area as referred to by the County Durham Landscape Strategy. However, the Council asserts that the proposed planting has little regard to the existing or historic landscape pattern and as such simply screens the proposals from public footpaths and settlement.
17. It was discussed at the hearing that the appeal site and local area may at one time have been an open moor like area with views from the higher parts of the site to the surrounding area, including towards the sea and former pit sites that are important to the local community. The Council also acknowledged that pre-1946 there may have been more hedgerows on the site. On the basis of the evidence before me I am satisfied that the primary purpose of the proposed planting is to screen the proposed development and in doing so would reduce these views and divide the land into smaller compartments without reference to the historic landscape pattern, eroding the character of the area.
18. I am therefore satisfied that, with regards Policy 33 of the CDP the appeal site is an appropriate location for renewable energy development but, with regard Policies 10 and 39 of the CDP, there would nonetheless be significant adverse changes in the character of the landscape, reducing as the planting becomes established and ultimately limited to the 35-year life of the proposal with the exception of the planting that would remain. In this regard the appeal scheme is contrary to CDP Policies 10 and 39.

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<sup>2</sup> Hawthorn Pit Solar Farm Landscape and Visual Assessment September 2021

<sup>3</sup> PROOF OF EVIDENCE ON LANDSCAPE CHARACTER AND VISUAL AMENITY Stephen Laws Durham County Council

## **Other considerations**

### *Renewable energy generation*

19. The Government recognises that climate change is happening through increased greenhouse gas emissions, and that action is required to mitigate its effects. One action being promoted is a significant boost to the deployment of renewable energy generation. The Climate Change Act 2008, as amended sets a legally binding target to reduce net greenhouse gas emissions from their 1990 level by 100%, Net Zero, by 2050. The British Energy Security Strategy 2002 recognises the contribution that ground mounted solar will make to future energy needs.
20. A material consideration in the determination of planning proposals are National Policy Statements (NPS) for the delivery of major energy infrastructure. The NPSs recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. Whilst NPSs EN-1 and EN-3 do not specifically refer to solar generated power they reiterate the urgent need for renewable energy electricity projects to be brought forward. Draft updates to NPSs EN-1 and 3 identify that, as part of the strategy for the low-cost decarbonisation of the energy sector, solar farming provides a clean, low cost and secure source of electricity.
21. The December 2020 Energy White Paper (WP) reiterates that setting a Net Zero target is not enough, it must be achieved through, amongst other things, a change how energy is produced. The WP sets out that solar is one of the key building blocks of the future generation mix. In October 2021, the Government published the Net Zero Strategy: Build Back Greener where under Key Policies it explains that subject to security of supply, the UK will be powered entirely by clean electricity through, amongst other things, the accelerated deployment of low-cost renewable generation such as solar.
22. The proposed development would have a capacity of some 49.9Mw, generating a significant amount of electricity from what is considered to be a clean, renewable source. This would provide for an increase in local 'renewable energy generation in the County by approximately 9%' and meet the energy needs of approximately 17,305 homes<sup>4</sup>. I understand that the site benefits from a beneficial grid connection, the absence of which can delay or prevent development. As such, the scheme could make an early and significant contribution to the objective of achieving the statutory Net Zero target, this is a material consideration and in accordance with Policy 33 of the CDP I afford it significant weight.

### *Ecology and Biodiversity*

23. It is not at dispute between the parties that the proposed mitigation planting would increase the extent of green infrastructure and biodiversity across the site over the long term.
24. The SoCG states that in accordance with the details and assessment submitted with the planning application, the proposed development would deliver

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<sup>4</sup> Figures as detailed in the appellant's Statement of Case – September 2022

biodiversity net gains in the form of habitat (124.23% increase) and hedgerow (136.83%), and these gains can be secured by conditions and other Agreements between the developer/owner and LPA. While I have been presented with various figures in this regard (119% and 235%), it is clear that the appeal scheme would provide significant ecology and biodiversity net gains.

25. Furthermore, a Biodiversity Management Plan has been developed for the proposals and can be secured by a Section 39 agreement. On this basis I am satisfied that the appeal scheme would provide considerable Ecology and Biodiversity gains for the site, and in accordance with Policy 33 of the CDP I afford this matter significant weight.

### **Planning Balance and Conclusion**

26. A material consideration is the time limited nature of the proposal. I acknowledge that 35 years is a long time and materially longer than the 25 years that many earlier renewable energy schemes were limited to. However, I am aware that technical advances have improved the longevity of solar panels. Accordingly, given the contribution the Government expects solar generated electricity energy to make to the national energy supply, it would be unreasonable to limit the life of a solar farm to an arbitrary figure based on older and less efficient equipment.
27. That said, I recognise that the proposed 35-year life of the solar farm is significantly more than a generation and I accept many older residents of the area will not live long enough to see the site decommissioned. Thus, in coming to my conclusion I have had due regard to these factors and concerns.
28. Both national and policies of the CDP recognise that renewable energy developments may result in some landscape and visual impact harm. However, both adopt a positive approach indicating that development can be approved where the harm is outweighed by the benefits. This is a planning judgement. Here, through a combination of topography, existing features and landscape mitigation, the adverse effect on landscape character and visual impact would be significant but localised.
29. Moreover, as proposed planting matures adverse effects would be progressively mitigated and once decommissioned, residual adverse landscape effects would be limited to the retained and by this point established planting, these effects are substantively off set by the clear biodiversity and ecology gains that will result from the planting.
30. On balance the scheme would leave a landscape with enhanced biodiversity and ecology consistent with the objectives of development plan policy, in particular Policy 33 of the CDP. In these circumstances, whilst there would be some localised harm to landscape character in conflict with the relevant development plan policies, the imperative to tackle climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh the harm I have identified.

### **Conditions**

31. I have considered the suggested conditions in light of the national Planning Practice Guidance and the use of planning conditions and Paragraph 56 of the Framework. The SoCG details a list of planning conditions, including pre-

- commencement conditions, to be attached to any planning permission resulting from the appeal.
32. The solar farm is sought for a period of 35 years. A condition is therefore necessary to manage the life of the permission and the extent of the operation period and to provide for removal of the solar farm when the permission expires (1 and 2). In the interests of certainty, a condition listing the approved plans is imposed (3).
33. In the interests of highway safety and the environment a condition requiring the submission and adherence to a construction management plan (4) is necessary and reasonable. Similarly in the interests of the environment and highway safety conditions relating to the access track (5 and 6) are necessary.
34. In the interests of protecting living conditions a condition specifying construction hours (7) and noise (8) are reasonable and necessary. In the interests of water management and the flood mitigation, a condition relating to surface water management (9) is reasonable and necessary.
35. In the interests of the appearance of the area, conditions relating to, the finish of the solar panels, details of a landscaping scheme footpath infrastructure (10 11 and 12) are reasonable and necessary.
36. The site potentially contains archaeological remains and conditions to provide for appropriate site works and recording (13 and 14) are reasonable and necessary.
37. A condition requiring the submission the decommissioning and restoration of the site, in the event that the site is inoperative for a period of 6 months (15) is reasonable and necessary.
38. I have not included a condition requiring the developer to notify the council of the commencement of development because this is not necessary. I have incorporated the condition requiring the submission of details regarding vehicle washing facilities into the construction management plan.

### **Final conclusion**

39. For the reasons set out above, the appeal is allowed.

*Mr M Brooker*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Thea Osmund-Smith	No5 Chambers
George Wilyman BA (Hons) MA MRTPI	Aura Power Developments Ltd
Andrew Ross BSc (Hons), MA, MRTPI	Turley
Joanna Ede BA (Hons), MA, DipLD, CMLI	Turley
George Wilyman BA (Hons), MA, MTRPI	Aura Power Developments Ltd
Chloe Hood BA (Hons)	Aura Power Developments Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Stephen Laws	for Durham County Council
Chris Shields	Durham County Council

### INTERESTED PARTIES:

Brian Brown	Murton Residents Action Group
Hazel Napier	Murton Parish Council
Nikola Honnor	Murton Parish Council
Robert Adcock-Forster	Murton Parish Council
Mrs Beatrice Hollins	Local Resident
Cllr Julie Griffiths	Durham County Council
Mr Gerard Mann	Local Resident

### **Schedule of Conditions**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. This consent is granted for a period of 35 years from the date of energisation of the Solar Farm to when the buildings, structures and infrastructure works hereby approved shall be removed and the land restored to its former condition in accordance with details to be submitted to and approved by the Local Planning Authority. The approved details shall then be implemented in full within 6 months of approval of those details.
3. The development hereby approved shall be carried out in strict accordance with the following approved plans:
  - Site Location Plan (Drawing No. Figure 1);
  - Site Layout Plan (Drawing No. 0016.M4.001.0.S);
  - Indicative Transformer (Drawing No. 0016.M4.014.1.A);
  - Customer Substation-Compound Layout Plan (Drawing No. Figure 5A);
  - Customer Substation-Compound Layout Elevation (Drawing No. Figure 5B);
  - Indicative Spare Parts Container (Drawing No. 0016.M4.021.3.A);
  - Typical Cable Trench Cross Section (Drawing No. 0016.E4.017.3.A);
  - Indicative CCTV (Drawing No. 0016.M4.018.4.B);
  - Indicative Track Cross Section (Drawing No. 0016.M4.018.4.B);
  - Site Entrance and Visibility Splays Overview (Drawing No. 2296.M4.038.0);
  - Indicative Hedge Gate (Drawing No. 9400.M2.037.1.0);
  - Gate and Deer Fence (Drawing No. 2259.M4.016.3.0); and
  - Indicative Footpath Measures (Drawing No. AP.13).
4. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following: – A Dust Action Plan including measures to control the emission of dust and dirt during construction taking into account relevant guidance such as the Institute of Air Quality Management "Guidance on the assessment of dust from demolition and construction" February 2014;
  - Details of methods and means of noise reduction, or controlling noise impacts during construction;
  - Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration;
  - Details of whether there will be any crushing/screening of materials on site using a mobile crusher/screen and the measures that will be taken to minimise any environmental impact.
  - Details of measures to prevent mud and other such material migrating onto the highway from construction vehicles;
  - Designation, layout and design of construction access and egress points;
  - Details for the provision of directional signage (on and off site);
  - Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure;



- Details of provision for all site operations for the loading and unloading of plant, machinery and materials;
- Details of provision for all site operations, including visitors and construction vehicles for parking and turning within the site during the construction period;
- Routing agreements for construction traffic;
- Details of wheel and vehicle washing facilities.
- Details of the erection and maintenance of security hoarding;
- Details of construction and decommissioning working hours;
- Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works; and
- Detail of measures for liaison with the local community and procedures to deal with any complaints received.

The Construction Management Plan shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.

The approved Construction Management Plan shall also be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.

5. Prior to the commencement of development a scheme shall be submitted to the Local Planning Authority for the improvement of the access track between South Hetton and the site, as shown on Drawing TMP Figure 1 'Indicative Route to Site' for approval in writing, unless an alternative access route is secured. The improvements to the access track shall be carried out prior to the first delivery of photovoltaic panels to the site.
6. Prior to the commencement of development a scheme for surveying the pre-commencement and post-completion condition of the route to the site shown on Drawing TMP Figure 1 'Indicative Route to Site' shall be submitted to the Local Planning Authority for approval in writing. Any remediation works required to repair damage caused by vehicles associated with the approved development shall be carried out within 12 months of the development being brought into use.
7. Construction operations shall only take place within the following hours:
  - 07.30 to 19.00 Monday to Friday
  - 07.30 to 12.00 Saturday

No construction operations including the maintenance of vehicles and plant shall take place outside of these hours or at any time on Bank, or other Public Holidays, save in cases of emergency when life, limb, or property are in danger. The Local Planning Authority shall be notified as soon as is practicable after the occurrence of any such operations or working.

8. The rating level of noise emitted from the solar farm on the site shall not exceed the modelled noise levels confirmed within the Ion Acoustics Noise Assessment for Planning, dated 27 September 2021. On written request by the Local Planning Authority the operator shall, within 28 days, produce a report to demonstrate adherence with the above rating level.

9. The development shall be carried out in accordance with the submitted flood risk assessment ` Hawthorn Pit Solar Farm FRA and Outline Drainage Strategy' September 2021 . The mitigation measures detailed with the flood risk assessment (for example implementation of swales) shall be fully implemented prior to commencement of operations of the development being brought into use. These measures shall be retained and maintained thereafter throughout the lifetime of the development.
10. Prior to the commencement of development precise details of the colours and finishes for all buildings, fixed plant and machinery shall be agreed in writing with the Local Planning Authority and the development carried out in accordance with agreed details.
11. Prior to the commencement of development, a landscaping scheme shall be submitted for approval in writing. This scheme shall include provision for long term management for trees within the site boundary. The approved landscaping scheme shall be implemented on site in the first planting season following the development being brought into use. Any tree or shrub which may die, be removed or become seriously damaged within a period of 5 years from the first implementation of the approved landscaping scheme shall be replaced in the first available planting season thereafter.
12. Prior to the operation of the development, designs of footpath infrastructure measures in accordance with the Indicative Footpath Measures (Drawing No. AP.13) drawing shall be submitted to and agreed in writing with the Local Planning Authority. Within six months of the first operation of the solar farm, the agreed footpath measures will be implemented and retained for the lifetime of the development.
13. Prior to the commencement of development, a Written Scheme of Investigation setting out a phased programme of archaeological work in accordance with 'Standards For All Archaeological Work In County Durham And Darlington' shall be submitted to the Local Planning Authority for approval in writing. The programme of archaeological work will then be carried out in accordance with the approved Written Scheme of Investigation.
14. No part of an individual phase of the development as set out in the agreed programme of archaeological works shall be occupied until the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation. The provision made for analysis, publication and dissemination of results, and archive deposition, should be confirmed in writing to, and approved by, the Local Planning Authority.
15. In the event that the solar farm is inoperative for a period of 6 months or longer, a scheme for the restoration of the site, including the buildings, structures and infrastructure works, dismantling and removal of all elements, shall be submitted to and be approved in writing by the Local Planning Authority not later than 12 months following the last export of electricity from the site. The approved scheme shall be carried out and completed within 6 months of approval of the scheme.

**End of Schedule**