



Appeal Decision

Hearing held on 5 April 2022

Site visit made on 6 April 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2022

Appeal Ref: APP/K2610/W/21/3278065

Land north of The Street, Cawston, Norfolk NR11 7QR

- 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 Anthony Brindle (Docking Farm Solar Limited) against the decision of Broadland District Council.
 - The application Ref: 20201776, dated 18 September 2020, was refused by notice dated 21 April 2021.
 - The development proposed is a ground-mounted solar farm including associated infrastructure, namely inverters, transformer, a DNO substation, battery storage and grid connection.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development set out above refers to battery storage, but this aspect of the scheme was omitted during the course of the determination of the planning application and the layout plan amended to reflect this. I have therefore omitted that aspect from the description and rely on the remainder described above. At the Hearing, the main parties also agreed that the drawing for energy storage containers should also be discounted (Ref PL_011).
3. The National Planning Policy Framework was revised on 20 July 2021 (the Framework). The relevance of the revised content of the Framework was discussed at the Hearing and I am satisfied that the revisions do not significantly alter the policies upon which this appeal turns.
4. Since the determination of the appeal application the Council has granted planning permission for an alternative solar farm (the approved scheme). This is comprised of two separate planning permissions¹, as the triangular field northwest of the appeal site, did not fall within the land outlined in red for the appeal application. The approved scheme was granted recently and there have been no relevant intervening changes in planning policy. The site, its environs and the substance of the approved scheme are broadly the same to the appeal scheme before me. The approved scheme is therefore a material consideration of significant weight in my deliberations.

¹ Planning References: 20211249 and 20211288.

Applications for Costs

5. An application for costs was made by Mr Anthony Brindle (Docking Farm Solar Limited) against Broadland District Council, which is the subject of a separate Decision.

Main Issues

6. Having regard to the Council's reasons for refusal, the main issues are:
 - effect of the proposed development on the use of best and most versatile agricultural land, including consideration of the site selection process and evidence to justify any loss;
 - the effect of the scale and form of the proposed development on the surrounding rural landscape character, cumulative with other schemes approved on the site and nearby, including Oulton Airfield; and
 - the benefits of the appeal scheme.

Reasons

Best and Most Versatile Agricultural Land

Planning Policy

7. The Written Ministerial Statement (WMS) of 25 March 2015 relates to the unjustified use of agricultural land and expects any proposal for a solar farm involving the best and most versatile agricultural land (BMV) to be justified by the most compelling evidence. The WMS was linked to updated National Planning Practice Guidance² (NPPG), which explains that where a proposal involves greenfield land, consideration should be given to whether the proposed use of any agricultural land has been shown to be necessary, whether poorer quality land has been used in preference to higher quality land and to whether the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays. This approach is also reflected in the Framework, which suggests that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality³.
8. Policy GC5 of the Development Management DPD 2015 (DMDPD) refers to proposals for renewable energy technology and suggests that they will be encouraged where their impacts are (or can be made acceptable), which mirrors the approach in Paragraph 158 of the Framework. The supporting text for Policy GC5 refers to an open list of considerations, including site specific issues. It does not allocate any sites for renewable and low carbon energy sources, but the Framework suggests this is only a consideration and not a requirement, this matter is therefore not determinative in this appeal. Policy 17 of the Joint Core Strategy for Broadland, Norwich, and South Norfolk⁴ (JCS) refers to the countryside and is supportive of development where it furthers the objectives of the JCS, which includes the delivery of Infrastructure as set out in Policy 20, particularly 'local and renewable energy generation'. None of the above development plan policies specifically refer to the loss of BMV.

² Paragraph: 013, Reference ID: 5-013-20150327, Revision date: 27 March 2015.

³ Footnote 58, within paragraph 175.

⁴ Adopted March 2011, amendments adopted January 2014.

Effect of the Proposal

9. The Framework clarifies in its glossary at Annex 2 that BMV equates to land falling within grades 1, 2, and 3a of the Agricultural Land Classification. It is therefore this land which requires greatest consideration when determining appeals.
10. The appellant's Site Selection Assessment (SSA) fixed the study area for the appeal proposal to distance of 2.5km from a connection point to an existing electricity substation, which the Council had accepted for the approved scheme. On this basis, at the Hearing, it was agreed that the same overarching approach was also applicable to the appeal scheme. The SSA was also informed by constraints, including the location of sensitive environmental areas such as County Wildlife Sites and designated heritage assets. On this basis, the Council also confirmed its acceptance to the overall location of the site within the study area. I have not therefore considered the macro-scale site selection, beyond the study area, any further.
11. Prior to the Hearing I asked the main parties to set out the differences between the approved and current appeal schemes. The Officer Report for the approved scheme suggests that additional information was submitted regarding the impact of the solar farm on the viability of the farming enterprise, amongst other things, including reference to disease control. At the Hearing the Council confirmed that this information was identical to that provided with appeal. The principal difference between the approved and appeal schemes, relevant to this main issue, therefore, relates to the extent of BMV used for the proposal.
12. The appeal site comprises three large agricultural fields north of the B1149 and west of The Street, covering an area of 35.67ha within an overall farm holding of 700ha, which is farmed for a combination of crops including potatoes, sugar beet, wheat, and barley.
13. The appellants' Agricultural Land Classification Report⁵ provides a breakdown of the grading of land within the site. Some 23.1 hectares (71.1 percent) would be BMV, including a hectare of Grade 2 land. The remainder is classified as moderate quality agricultural land (Grade 3b). By comparison, the approved scheme would not use any Grade 2 land and BMV land required would be around half (12.7 hectares).
14. The proposed solar farm would occupy land within the site for a temporary period of forty years, after which the land would return wholly to agricultural use, with grazing possible between and under the arrays while in situ. It seems to me that these justifications could be made on most agricultural land and more than these simple measures are required to justify the use of BMV for the proposal, as there is likely to be an effect on food production over the 40-year period, which in more meaningful terms itself exceeds a generation of change.
15. I am mindful that 76 percent of the land required for the part implemented scheme for a solar farm⁶, at the former Oulton Airfield to the northwest of the site, would be BMV. This would amount to a greater uptake in percentage terms when compared to the appeal scheme. However, it is not appropriate to quantify the loss of BMV on the basis of the percentage of land within a farm

⁵ January 2020.

⁶ Planning Reference: 20150952.

holding that would be developed, as the same percentage of land could equate to a significantly greater proportion of a smaller farm holding.

16. The appeal site comprises land with varied gradings, including within individual fields. I accept that areas of Grade 2 and 3a land remaining in the parcels of land between the fields of arrays of the approved scheme would be unlikely to be farmed differently to the rest of the holding. Nevertheless, the smaller amount of land required through the approved scheme would ensure a greater extent of BMV land would be available for food production, throughout the lifetime of that development. Moreover, the approved scheme demonstrates that arrays can be configured within the appeal site and an adjoining area of land within the holding, with a significantly lesser extent of BMV taken out of arable production. I note that such an approach is endorsed in the appellant's Statement of Case.
17. The appeal scheme therefore fails to demonstrate that it would be necessary for all of the agricultural land within the site to be used for the siting of the proposed solar arrays, or that poorer quality land would be used in preference to higher quality land, as required by the WMS, NPPG and the Framework. I acknowledge that the proposal would allow for continued agricultural use and biodiversity improvements around arrays, in accordance with the NPPG, but these conditions need to be met alongside the use of BMV land. I address these matters further in the third main issue and the Planning Balance. For these reasons, I have therefore arrived at a different conclusion to the Inspectors for the appeal decisions for other solar farms and proposals on BMV land to which I have been referred.
18. In light of the above, I conclude that the loss of BMV throughout the lifetime of the proposed development has not been justified by the most compelling evidence, as required by the WMS, NPPG and the Framework. This amounts to a site-specific impact that would conflict with DMDPD Policy GC5, which brings the proposal into conflict with DMDPD Policy GC2, as this refers to the impacts of locating new development outside of settlement limits.

Rural Landscape Character

19. The appeal site is situated within Landscape Character Area E1: Blickling and Oulton, as identified in the Council's Landscape Character Assessment⁷. It is generally formed of gently rolling arable fields, enclosed by mature trees and hedges, and pockets of woodland surrounding the settlements therein. Field boundaries within the site are delineated by mature hedge and tree planting, including those adjoining the B1149 and The Street. Mature trees situated within a tree belt to the north and wooded area to the east provide a verdant backdrop to the site. The site and its surroundings therefore embody the typical landscape characteristics of the character area, which make a positive contribution to the rural landscape character of the locality.
20. The application was supported by a Landscape and Visual Appraisal (LVA). This is a robust assessment of the site and its surroundings and suggests it has medium landscape sensitivity. Based on its findings, it is clear that there would be some visibility of both the approved and proposed schemes from within close proximity of the site, from neighbouring properties, and through and over field boundaries to the B1149 and The Street, particularly in winter months.

⁷ Supplementary Planning Document, September 2013.

Nevertheless, the presence of the planting of field boundaries further afield and woodland within the landscape, would ensure that the visual impact of the proposal would be confined to close-proximity views.

21. The arrays in the southern field of both schemes would be more prominent during the course of construction of nearby Nationally Significant Infrastructure Projects⁸ (NSIPs), as hedges are required to be kept lower for forward visibility along The Street to enable access to construction compounds. New planting would also take some time to establish.
22. Like the approved scheme, at the Hearing the appellant committed to infill gaps in hedge planting, including at the junction of The Street and the B1149, and to provide semi-mature planting to the rear of the proposed vehicular access and egress. In granting the earlier permission, the Council accepted that when the planting matured it would screen the arrays from view from The Street and the B1149. Planting in this form would therefore have a similar impact for the proposed scheme, which could be secured by a planning condition requiring approval of a Landscape and Ecological Management Plan (LEMP).
23. The approved scheme would not develop the northern half of the northeast field and the majority of the northwest field. While the impact of the former would be to reduce the extent of arrays that could be viewed from The Street, there would be little visual benefit to the latter, as the field is beyond other arrays so would be screened from public viewpoints.
24. The additional arrays within the northeast field, associated with the appeal scheme, would increase the extent of development adjacent to The Street and non-residential development on the approach to Oulton, but the field is not subject to the hedge reduction required for forward visibility for NSIPs. The break in arrays provided by the approved scheme would make a very limited contribution to the appearance of the solar farm within its surroundings and it is likely that the appearance of the arrays in this location could be satisfactorily addressed by the combination of existing and proposed planting to be set out by the LEMP.
25. Given the above and having regard to the planting situated around the triangular parcel of land included in the approved scheme, I am satisfied that, were the approved and appeal schemes to be implemented together, the cumulative impact of the combined area of solar arrays would not have a significantly greater visual impact on the rural landscape character of the area.
26. It is unclear whether the remaining two elements of the Oulton Airfield solar farm would be implemented, but the smaller of these would extend closer to the appeal site, with the larger portion situated on land enclosed between the former runways, some distance north of the site and beyond intervening agricultural buildings. Due to the distance from the appeal site, topography of the surrounding landscape and the extent of dense mature planting between, there would be limited visibility between them and they would not be experienced in the context of one another from surrounding public viewpoints. Therefore, it is unlikely that there would be a cumulative landscape impact associated with the Oulton Airfield and approved and appeal schemes, including sequentially when the approved and/or appeal schemes would be viewed from neighbouring roads.

⁸ Hornsea Three (EN010080), Norfolk Boreas (EN010087) and Norfolk Vanguard (EN10079).

27. In light of the above, I conclude that the scale and form of the proposed development would not have a harmful effect on the surrounding rural landscape character, even when considered cumulatively with other schemes approved at the site and nearby, including Oulton Airfield. Hence, the proposal would accord with the landscape character aims expressed in DMDPD Policy EN2. This means that this aspect of the proposal would not conflict with the aims of DMDPD Policies GC2 and GC5. The proposal would also accord with the guidance in the NPPG in this regard, which acknowledges that landscape and visual impacts can be mitigated through screening by native species.

Benefits of the Appeal Scheme

28. At the Hearing, the main parties agreed that the declaration of a Climate Emergency by the UK Government in May 2019, is a material consideration. Given the scale and urgency of the emergency, I attach significant weight to this material consideration, including the impact of climate change on food production. A balance therefore needs to be struck to reduce the former to protect the latter. There was also agreement that energy and food security are both key issues, which are affected by foreign markets, including through conflicts such as that taking place in Ukraine.
29. The UK is legally bound through the Climate Change Act (2008) to reduce UK greenhouse gas emissions by at least 80% by 2050, from a 1990 baseline. The proposal has potential to generate approximately 30,882MWh/annum of electricity to serve a significant number of homes (upwards of 8000), in a manner which would considerably reduce the potential implications of CO2 pollutants generated by equivalent electricity produced from fossil fuels (13,279 Tonnes). This would therefore amount to a significant environmental benefit, which would also be a form of development that would further the objectives of JCS Policies 17 and 20.
30. The potential reduction in energy costs for consumers could help to address fuel poverty, which disproportionately affects low-income households and contributes to economic inequality. As the number of homes that could be affected is considerable so too could the economic benefits.
31. There would be a Biodiversity Net Gain through the implementation of the proposal with onsite enhancement and mitigation measures encompassing several key measures, such as planting of wildflowers in field margins and other seed mixes between and underneath arrays to provide a greater diversity of species. The majority of existing trees would be retained and additional trees planted to provide a further foraging resource. Additional hedge planting, including infilling to gaps in existing hedgerows with native and woody species, would provide habitat for nesting birds and a foraging resource for a variety of species. Bat, bird and bug boxes and log piles would also be installed. The majority of these benefits would be at least throughout the lifetime of the development, as there is a commitment to monitor and report on biodiversity, with a contingency to use different seed mixes if they do not establish. Hedges would be managed and maintained thereafter, but lower-level planting could be ploughed back into the land. As such, the environmental benefits associated with the Biodiversity Net Gain would be of moderate weight.
32. The soil within the appeal site has Potato Cyst Nematode (PCN) present. This has implications for potato cropping and requires the use of strong pesticides, which impact on insect life, soil profile and the overall yield and farm holding

profitability. The fallow period associated with the proposal would enable PCN to naturally be removed from this part of the site and improve the health of the soil. However, this is not a determining factor for the quality or grading of the land, as other crops can be grown in place of potatoes, and it is a prevalent issue in the UK that is not specific to the site.

33. The selection of the proposed site ensures a viable scheme through reduced connection costs emanating from construction work and landowner agreements. Moreover, the proposal would be connected to the electricity grid via the existing 33kV overhead powerlines crossing the site and existing substation at Oulton Airfield. As this would be the starting point for any scheme of this nature and it would only serve to benefit the appellant it would have a limited economic benefit. However, keeping the proposal close to existing infrastructure would reduce its environmental impact, in landscape terms. This would amount to a benefit of moderate weight.
34. In light of uncertainty regarding farming subsidies, the proposal would enable the farm holding to diversify its income and invest in infrastructure, buildings, and ongoing maintenance of the holding to ensure it remains competitive and viable in the long term. Due to economies of scale associated with the size of the farm holding, the land taken out of arable production is unlikely to affect the workforce or overall viability of the holding. The construction phase would be over a relatively short period of around five months due to the lightweight nature of the array materials, but there would be direct employment opportunities from the local labour market (including archaeological advisors) and the procurement of materials and equipment. There would also be indirect short-term benefits, from spend by contractors on accommodation and services during the construction phase, and some long-term employment through management, maintenance, monitoring and security of the site. The development would also be subject to business rates, which could equate to a considerable regular income for the Council over the course of the development. Given the scale of the development proposed these would be social and economic benefits of moderate significance.

Other Matters

35. Third parties have raised concern regarding the visual impact of the proposal when viewed from The Old Railway Gatehouse. The proposal would cover a large area in close proximity of that property, but the appearance and scale of the arrays would be likely to be mitigated by the combined screening effect of existing and proposed planting. The proposal would not therefore result in harm to the outlook and, thereby, the living conditions of occupants of that property, I note that the Council arrived at a similar conclusion.
36. Natural England (NE) has recently updated its advice in relation to nutrient level pollution in a number of existing and new river basin catchments. The advice finds that an increasing number of waterbodies, in or linked with European Sites, are now deemed to be in 'unfavourable' conservation status for the purposes of the Habitats Regulations. More plans and projects, in relevant river basin catchment areas and proximate to a European Site, will therefore need to be screened in accordance with the Habitats Regulations. Broadland is included in the list of authorities affected by the latest changes, principally due to effects on the River Wensum Special Areas of Conservation and parts of the Broads Special Area of Conservation and Ramsar site. However, given that the

proposal does not include any overnight accommodation, NE's Nutrient Neutrality Methodology does not apply and this would not be a constraint to the development.

Planning Balance and Conclusion

37. I have set out the benefits of the appeal scheme above, the provision of clean renewable energy would accord with JCS Policies 17 and 20 and in the second main issue I found that there would not be harm to the rural character of the area. In terms of harms, the impact of the loss of BMV throughout the lifetime of the proposed development would be a site-specific impact which would bring conflict against development plan policy.
38. While collectively there would be benefits associated with the proposal of considerable and significant weight, the harm that would be caused by allowing development, through the loss of BMV over the lifetime of the development, would be of greater significance.
39. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, when considered as a whole, and I find that the adverse impacts of the proposal are matters of significant weight against the grant of planning permission that outweigh the benefits identified.
40. The proposed development would be contrary to the development plan and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nick Beddoe	BA (Hons) MSc MRTPI	Lighthouse Development Consulting
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FOR THE LOCAL PLANNING AUTHORITY:

Helen Bowman	BA (Hons) MSc MRTPI	Principal Planning Officer
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Andrew Parnell	BSc (Hons)	Planning Officer
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INTERESTED PARTIES

Susan Mather	Oulton Parish Council (Chair)
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Paul Killingback	Oulton Parish Council
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Alison Shaw	Oulton Parish Council
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Clive Searson	Occupier, The Old Railway Gatehouse
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