

Appeal Decision

Site visit made on 10 November 2015

by Phillip J G Ware BSc DipTP MRTPI

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

Decision date: 04/01/2016

Appeal Ref: APP/L3245/W/15/3022913

Land north of Henley Common, Acton Scott SY6 6RS

- 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 Rupert Acton against the decision of Shropshire Council.
 - The application Ref 14/04930/FUL, dated 31 October 2014, was refused by notice dated 10 February 2015.
 - The development proposed is the continued use of land for agricultural purposes and the installation of up to 5MW of solar voltaic panels and ancillary works.
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Decision

1. The appeal is allowed and planning permission is granted for the continued use of land for agricultural purposes and the installation of up to 5MW of solar voltaic panels and ancillary works on land north of Henley Common, Acton Scott SY6 6RS in accordance with the terms of the application, Ref 14/04930/FUL, dated 31 October 2014, subject to the conditions set out in the Annex to this decision.

Application for costs

2. An application for costs was made by Mr Rupert Acton against Shropshire Council. This application is the subject of a separate Decision.

Main issues

3. There are two main issues in this case:
 - The effect of the proposal on the character and appearance of the area, in the light of the location of the site in the Shropshire Hills Area of Outstanding Natural Beauty (AONB)
 - Whether any identified negative impacts would be outweighed by the renewable energy and other benefits of the proposal

Reasons

The site, the surrounding area and the proposal

4. The appeal site is an 11 hectare field¹ used as poor quality pastureland (Grade 3b and 4) at Henley Common, around 1 km south of the village of Acton Scott.

¹ The Council has given a slightly different figure, but nothing turns on this slight difference

The nearest buildings are on Henley Common, around 0.2 kms to the south, and there is no nearby housing. A power line crosses the site.

5. The site is located in a wide valley within a gently undulating landscape which includes woodland areas and hedgerow trees. Access to the site is by way of a disused railway line which passes immediately to the south – partly in a deep cutting and partly on an embankment. The area is overlooked from the higher ground of Wenlock Edge which is to the southeast. Although there are no public footpaths or roads passing the site, there is a network of footpaths in the area, including a number which run off Wenlock Edge.
6. A previous proposal, which was also refused by the Council, included an additional field to the east. This is a more exposed area which was historically marshland.
7. The proposal is the construction of a solar farm, with an estimated lifespan of 30 years. The solar panels would be aligned in an east – west direction, and would be 2.4 metres at the highest point and mounted on steel frames. They would be set back from the boundary vegetation especially on the eastern boundary and in the southwest corner, and would avoid the central tree line. There would be a number of related structures including two inverter cabins and two ancillary electrical cabins. The site would be enclosed by 2 metre high deer fencing, and the electrical equipment housings would be additionally enclosed by a 2.4 metre high palisade fence. Access to the site would be by way of the disused railway (which is in the appellant's ownership).
8. The intention is that the land would also continue to be used for low intensity grazing between and beneath the solar arrays.
9. The site would be landscaped and planted. In addition, the land to the east, which was formerly part of the proposed solar farm, is intended for landscaping/biodiversity improvements as part of the current proposal.

The effect on the landscape and visual amenity of the area

10. The development plan context for considering proposals in this area is provided by the Core Strategy (2011) (CS). Policies CS6 and CS17 deal with sustainable design and set out development principles. Amongst other matters they seek to ensure that development protects, restores, conserves and enhances the natural environment – taking account of local character. In addition, policy CS16 supports tourism, in the light of the important role that the landscape plays in the local tourist economy.
11. The area is described as 'The Shropshire Hills' in the National Character Assessment. More locally, in the Shropshire Landscape Typology (2006) the Council states that it is within the 'Principal Settled Farmlands' and adjacent to the 'Estate Farmlands'². Wenlock Edge to the southeast is covered by various hillside designations.
12. The site therefore lies within/close to various lowland designations, in contrast to the notable feature of the ridge to the southeast. The lowland area is characterised by mixed farming in a varied pattern of hedged fields, with clustered settlements scattered across the area - such as Acton Scott. Groups of woodlands and hedgerow trees break up the landscape. This juxtaposition

² The appellant's plan shows the site as overlapping the two areas, but nothing turns on this distinction

- of the gently rolling valley landscape and the adjacent ridge adds to the appreciation of the area, and parts of the lowland area are exposed to views from the surrounding hills. However that is not the case in this instance.
13. The appellant has calculated the Zone of Theoretical Visibility³ and assessed the Zone of Visual Influence⁴, taking no account of proposed mitigation planting. Based on that, the appellant assessed the effect of the proposal from 50 locations. None of this methodology was contested by the Council and I have no reason to doubt it. The parties agreed on site that the locations I had visited and was about to visit were representative of the area.
 14. It is not correct to assert that the area is devoid of man-made influences – in particular there are houses and farm buildings scattered around the landscape, power lines, and (although it is gradually returning to nature) the railway cutting and embankment running past the site. The horizontal extent of the scheme, allied to the panels and fencing, would make it appear as a single development stretching over a significant area of the landscape. The banks of solar arrays and other features of the development, to the extent that they would be perceived, would appear out of place in this rural landscape.
 15. But importantly the proposed layout would retain the layout of fields and hedgerows, and would retain all mature trees. This, along with additional planting (which I realise would take some time to mature), would maintain the robust structure of the landscape and diminish the effect of the uniform rows of solar panels. Planting and biodiversity improvements would also take place on the land to the east, which was originally proposed as part of the solar farm, and this is a further benefit. The extent of the visibility would vary from one season to another but, whatever the time of year, some views of the development could be gained from a number of nearby locations. However the enclosed nature of the landscape would help to diminish the perceived size of the solar farm, and the appellant's assessment of a Slight Adverse Landscape Impact, not contested in any detail by the Council, is agreed. There would be a noticeable but not significant effect on the landscape character of the area, bearing in mind its sensitivity and its capacity to absorb the type of change proposed, the degree of containment, and the proposed mitigation.
 16. In addition, the visual amenity of receptors using the public footpaths and bridleways could be affected in relation to a number of locations. However most of the locations where some view of the proposal could be gained are some considerable distance away, and the development would occupy a very small amount of the wider panorama – to the limited extent that it would be visible at all. I have particularly in mind those locations along and slightly below the ridge to the southeast. The closer views will be in the nature of glimpses between vegetation (existing and proposed) and the public enjoyment of the area would not be significantly affected.
 17. The statutory purpose of an AONB is to conserve and enhance the natural beauty of the area. Great weight should be given to conserving landscape and scenic beauty, which has the highest status of protection. Overall, the proposal would cause slight harm to the character and appearance of the AONB and limited conflict with the policies set out above. The visual amenity of the area,

³ The area from which the development would be visible ignoring human development and vegetation

⁴ Taking account of all surface features

as experienced by receptors on the footpaths, would not be significantly affected.

The benefit arising from the provision of renewable energy

18. The proposal would have an installed capacity of 5MW, estimated to produce sufficient electricity to power 1,450 homes.
19. The development plan context related to this issue is provided by CS Key Objective 9, which provides that Shropshire will be a leader in addressing climate change. Policies positively encourage appropriate infrastructure where this has no significant effect on recognised environmental assets. There is strong national policy support for renewable energy in the Framework and Planning Practice Guidance. The UK Solar PV Roadmap (October 2013) and subsequent policy publications are further material considerations. All these add weight to the case in favour of the scheme.
20. The importance of renewable energy is common ground and it is not necessary for the appellants to demonstrate the overall need for the proposal.
21. The appellant has undertaken an assessment of alternative locations, taking account of a range of key criteria. The appeal site was identified as having significant potential for a solar power development, as it slopes gently to the south, is unshaded, and is unaffected by any designations aside from the AONB. It benefits from an immediate connection to the grid by way of the existing power line, whereas elsewhere there is a significant lack of grid capacity.
22. Overall, although the policy support for renewable energy is caveated by the need for the siting of developments to be appropriate and for the impacts to be acceptable or capable of being made so, the renewable energy benefit carries substantial weight. Both national and local policies provide strong support for this type of proposal.

Other matters

23. I have considered a number of other matters raised by third parties, though not by the Council.
24. Concern has been raised over the loss of the existing agricultural land, in the light of national policy which provides that the economic and other benefits of the Best and Most Versatile (BMV) agricultural land should be taken into account. Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be used in preference to that of a higher quality. This approach has been reaffirmed by the 2015 Written Ministerial Statement entitled "Planning Update March 2015". The definition of BMV land is found in the Framework, and comprises land in Grades 1, 2 and 3a of the Agricultural Land Classification. There is no dispute that the appeal site is Grade 3b and 4, and this matter does not weigh significantly against the proposal. The scheme also includes the intention that grazing would take place between and beneath the solar arrays, although there is no mechanism to ensure that this takes place throughout the lifetime of the development, so this intention carries little weight.

25. Some residents have expressed concern related to the manner in which the application was handled by the Council. However this matter is outside my remit.
26. The appellant has apparently agreed to make a contribution to local community projects within 4 kms of the site. However no party has suggested that this is a material consideration in dealing with the merits of the proposal, and I have not taken it into account.
27. The appellant has submitted an appraisal which states that the proposal would not affect any Heritage Assets or their settings. From the evidence submitted I have no reason to disagree with that assessment. The potential for archaeological remains is low.
28. The appellant and third parties have submitted a significant number of appeals from locations elsewhere in Shropshire and across the country. Although I appreciate the need for consistency of approach, this appeal (and probably many of the other decisions which have been submitted) turns on the precise siting of the proposal and its effect on the surrounding area. Each appeal must be determined on its individual circumstances, and these other decisions are of little assistance in dealing with the current proposal.
29. The fact that the development could be decommissioned after 30 years, and the land returned to its former state, should not be ignored. However, the development would be in place for a very significant period, and I give this matter very little weight.

Conditions

30. I have considered the conditions put forward in the Council officers' report, which the appellant has accepted, in the light of the advice in Planning Practice Guidance.
31. In addition to a condition specifying the approved plans (as agreed at the site visit) in the interest of clarity, various other matters need to be submitted for approval. In the interests of visual amenity and ecology, details of planting and seeding need to be submitted for approval. For a similar reason, existing trees and hedges should be protected during construction works. The details of CCTV and fencing details need to be submitted in the interests of the appearance of the development.
32. In the interests of highway safety, a Construction Traffic Management Plan needs to be submitted for approval and a condition should specify the access point onto the highway.
33. A condition is necessary to ensure the land reverts to full agricultural productivity at the end of the 30 year period, or earlier if power generation ceases.
34. The Council officers' report put forward a number of conditions related to ecology, but I am not persuaded that these are necessary in the light of the appellant's evidence and the limited information provided by the Council. These include conditions which could relate to bats and great crested newts, but I note that the officers' report refers to the absence of notable species during survey and assessment.

35. The site is within Flood Zone 1, and no evidence has been put forward to justify the suggested condition regarding land levels.
36. An archaeological condition has been put forward by the Council, the reason for which was that it was stated that the site is known to hold archaeological interest. However the officers' report states that the potential for archaeological remains is low. There is nothing to demonstrate the need for the condition.
37. A noise condition has been put forward in the interests of residential amenity. However given that there is no nearby housing, this is unnecessary. For the same reason the condition regarding an amenity complaints procedure is not needed. In the event of noise or other amenity problems, the local authority has other powers which could be exercised.

Planning balance and conclusion

38. In line with national policy, I have given the conservation of the landscape and scenic beauty of the AONB great weight. Major development should be refused save in exceptional circumstances and where it can be demonstrated that the proposed development is in the public interest.
39. The need for renewable energy development is not in any doubt in terms of local and national policy. The scope for developing outside the AONB or meeting the need in some other way has been persuasively explored by the appellant, and it is not the intention of policy that solar energy proposals can never be permitted in an AONB. The central issue in this case is the effect of this specific proposal, and although there would be some slight harm to the local environment, this can be moderated to a significant extent.
40. In terms of the economic dimension of sustainability, there would be a short term employment benefit during the construction phase but this carries limited weight in view of its duration. In environmental terms, there would be slight harm caused to the natural environment in terms of the landscape of the area, albeit there would be some planting and ecological enhancements. However the proposal would be sustainable in terms of the need to mitigate and adapt to climate change, including moving to a low carbon economy.
41. National policy advises that renewable energy proposals should be located where impacts are, or can be made, acceptable. That is the case here and hence the proposal can be said to be sustainable when assessed against the Framework as a whole. The level of harm does not significantly and demonstrably outweighs the benefits of the proposal in terms of paragraph 14 of the Framework.
42. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware

Inspector

Land north of Henley Common, Acton Scott SY6 6RS
Annex – conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan (Redesign 5MW, Rev B); Location Plan 10-002; 1-3A; 2-3A; 3-3A; CCTV – 1-1A; Fencing – 1-1A.
- 3) No development shall take place other than in accordance with the Construction Traffic Management Plan (Peter Brett June 2014) and in accordance with the following provisions:
 - i. All drivers of HGVs visiting the site shall be notified of the approved access route. Clear signage shall be provided at appropriate junctions in the local highway network.
 - ii. The hours of working during the construction phase shall be 0730 hours and 1800 hours Monday to Friday and between 0730 hours and 1300 hours on Saturdays. There shall be no deliveries on Sundays or Bank Holidays.
 - iii. All vehicles and other plant within the site shall be throttled down or switched off when not in use.
 - iv. Directional or attenuated reversing alarms on mobile plant operating within the site and operations shall be designed so as to minimise the need for reversing manoeuvres wherever possible and other appropriate measures shall be adopted as necessary to minimise noise during the construction phase.
 - v. Measures shall be put in place to minimise ground compaction from construction plant and machinery and prevent damage to the soil resource within the site, including the use of low ground pressure plant and protection of commonly trafficked surfaces.

The approved Construction Traffic Management Plan shall be adhered to throughout the construction period.

- 4) The sole access to the site during the construction period and throughout the subsequent operational phase shall be by means of the existing access onto the public highway which is shown on the approved site layout plan.
- 5) Planting and seeding shall be undertaken within the first available planting season following the completion of the construction works in accordance with the Habitat Management Plan (Avian Ecology June 2014). The developer shall notify the local planning authority in writing of the date when planting and seeding has been completed. All new planting within the site shall be subject to aftercare/maintenance for a period of 5 years following planting, including weeding and replacement of failures.

- 6) If construction work is to take place within the Root Protection Area of any retained trees, large shrubs or hedges, prior to the commencement of any development works, an Arboricultural Method Statement (AMS), detailing how any such construction works will be carried out, shall be submitted to and agreed in writing by the local planning authority. The AMS shall include details on when and how the works will take place and be managed and how the trees, shrubs and hedges will be protected during such a process.
- 7) Notwithstanding the general CCTV information shown on the approved plans a scheme providing the exact details of CCTV camera design, height and colour shall be submitted to and approved in writing by the local planning authority prior to the commencement of development.
- 8) Fencing shall be in accordance with the details shown on the approved fencing plan and to a colour which shall be subject to the prior approval in writing of the local planning authority.
- 9) Use of the site for generating solar energy shall cease within 30 years of the date of this permission unless the site ceases to produce renewable energy on a permanent basis before that time. The local planning authority shall be notified within two weeks of the date when energy production ceases. Within 12 months of the cessation of electricity generation at the site all photovoltaic panels and other structures constructed in connection with the approved development shall be physically removed from the site. The site shall then be reinstated as an agricultural field.