

## Appeal Decision

Site visit made on 8 October 2024

**by Ben Plenty BSc (Hons) DipTP MRTPI**

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

**Decision date: 22 October 2024**

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**Appeal Ref: APP/L3245/W/24/3348210**

**Land at Brick House Farm, Greete, Ludlow SY8 3BZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Bluefield Renewable Developments Ltd against the decision of Shropshire Council.
- The application Ref is 24/00764/VAR.
- The application sought planning permission for the construction of a solar farm together with all associated works, equipment, necessary infrastructure and biodiversity enhancement areas without complying with conditions attached to planning permission Ref 22/02565/FUL, dated 21 October 2022.
- The conditions in dispute are Nos 2 and 17. Condition 2 states that: "Except as otherwise provided in the conditions attached to this permission or otherwise agreed in writing the operations hereby permitted shall be carried out strictly in accordance with the application form dated 30th May 2022 and the accompanying planning statement and supporting documents and plans, (as listed on the decision notice". Condition 17 states that "the four locations defined on the approved layout plan as 'food opportunity areas' shall be maintained free of solar arrays and shall be managed with the objective of producing food where practicable throughout the operational life of the solar farm hereby approved. Six months following site energisation/commissioning of the development a scheme detailing cultivation proposals for the food opportunity areas shall be submitted for the written approval of the Local Planning Authority, not to be unreasonably withheld, and the approved scheme shall be implemented in accordance with the approved details. The operator shall maintain an annual records of food production within the food opportunity areas, following the first year's harvest and this shall be made available for inspection by the Local Planning Authority within two months of any prior written request. In the event that any material changes are proposed to the previously agreed scheme within the food opportunity areas then such proposals shall be submitted for the prior written approval of the Local Planning Authority, not to be unreasonably withheld, and the amended proposals shall be implemented in accordance with the approved details".
- The reasons given for the conditions are: "To define the permission" [2] and "to preserve the use of Best and Most Versatile land within the Site for food production in accordance with Paragraph 174b of the NPPF or any

subsequent equivalent re-enactment of this national guidance (having regard also to draft policy DP26.k. of the emerging Shropshire Local Plan)" [17].

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### **Decision**

1. The appeal is allowed, and planning permission is granted for construction of a solar farm together with all associated works, equipment, necessary infrastructure and biodiversity enhancement areas at Land at Brick House Farm, Greete, Ludlow SY8 3BZ in accordance with the application Ref 24/00764/VAR, without compliance with condition number 17 previously imposed on planning permission Ref 22/02565/FUL, dated 21 October 2022 and subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. The approved solar farm is reported as providing 45MW of power. The Appellant states that the removal of condition 17 would provide the ability for the site to generate a further 5MW of power, but that the combined power output would not exceed 49.9MW. The Appellant has confirmed that the capacity of the site is governed by the grid offer that the Appellants received from the Distribution Network Operator (DNO) of 49.9MW. The Appellant informs that if electricity exported from the site exceeds this amount, the DNO will shut down the site. Furthermore, it is stated that the export capacity is controlled by the inverters, which ensure that the agreed capacity is not exceeded. On the basis of these details, I am satisfied that the proposal would comply with the threshold limits of the 1990 Town and Country Planning Act.
3. Since the original S73 application was refused by the Council, a subsequent application to vary the condition has been submitted and allowed. The Council explained that the S73 application the subject of this appeal was refused on the basis of a lack of information as to the extent of sheep grazing that could occur on site. The Council has asserted that the originally worded condition was limited and did not require arable use of the food opportunity areas, meaning that the developer could just have sheep grazing within these arable areas and comply with the condition. The Council states that a varied condition would instead apply to the whole site, would encourage greater agricultural use across the site as well as increased energy generation. It therefore allowed the S73 application with the condition replaced. The new condition required the submission of a scheme that would facilitate sheep grazing between the solar arrays across the entire site.

### **Main Issue**

4. The main issue is whether the disputed condition is necessary and reasonable.

### **Reasons**

5. The approved solar farm included, within its application site, both Grade 3a and 2 agricultural land. The Grade 2 land was largely within the site's Biodiversity Enhancement Areas and most of the 3a land was set aside in four food opportunity areas (FOAs). This resulted in 95% of the development excluding the Best and Most Versatile (BMV) agricultural land.

6. Condition 17 essentially requires the FOAs to be kept free of solar panels and used to produce food 'where practicable'. It required cultivation proposals to be submitted to the Council that would 'not be unreasonably withheld'. It also requires the applicant to provide a record of the harvest and submit this to the local planning authority upon request. The purpose of this condition is to ensure that the site's BMV land is maintained for arable farming. This objective was deemed to meet the requirements of the National Planning Policy Framework (the Framework), which seeks decisions to recognise the intrinsic character and beauty of the countryside and the benefits of BMV land. Furthermore footnote 62, seeks areas of poorer quality land to be preferred to those of higher quality.
7. However, the condition is rather vague and provides the applicant the opportunity of compliance by simply demonstrating that arable farming would not be practical and could simply be used for sheep grazing as has been more recently concluded by the Council.
8. Further, the retention of the FOAs and the requirement for proof that the land would be actively farmed oversteps the requirements of the local planning authority. The specific way agricultural land is used is not a matter that is subject to planning controls. As such, there would be nothing in planning terms to prevent the farmer using the fields that form the appeal site for the grazing of sheep at present or even leaving them fallow. Given this, the fact that the proposal would limit the ability to carry out any arable farming does not, in my view, mean that it results in the loss of agricultural land when it can still be used for other agricultural uses.
9. The affected land would not be lost but instead used for both the purpose of pastoral and solar farming for the duration of the life of the proposal. I do not find that the proposal would result in the loss of BMV land, and this would not therefore be justification for the refusal of permission.
10. During the operational period the land around the panels would be capable of being used for the grazing of sheep. As a result, most of the land would be able to be used for some agricultural purposes and it could be returned to arable farming at the expiry of the temporary period. Moreover, while the use of higher quality agricultural land is discouraged by the Framework, the proposal is for a temporary period of forty years.
11. The Council's revised version of the condition, forming part of a more recent decision, seeks the submission of a scheme to specify a programme of sustainable sheep-grazing. However, to require this to take place would be unreasonable as it would be dependant on a number of factors beyond the site operator's control. Thus, such a condition would be neither reasonable nor necessary. The agricultural land would not be permanently or irreversibly lost, particularly as pasture grazing would be capable of occurring between the solar panels.
12. Accordingly, I conclude for the above reasons the condition is neither necessary or reasonable and would not pass the tests of paragraph 56 of the Framework.
13. The proposed removal of condition 17 would also require some plans within the approved plans list (condition 2) to be adjusted. These relate to a revised

layout plan, landscape strategy and master site layout. These plans show the solar array extending onto the four areas previously shown as FOAs. These changes are relatively minor and would be a natural result of removing the condition, enabling the site to increase its benefits through the production of renewable energy.

14. The advice in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have only limited information before me about the status of the other conditions imposed on the original planning permission (21/03663/FUL), I shall impose them without condition 17 and an adjusted condition 2.
15. The more recent Council's decision to approve a variation to condition 17, rather than its deletion, has resulted in several other changes to the original decision notice. This includes the deletion of conditions 6) requiring details of a Tree Protection Plan and 15) requiring details of a programme of archaeological work. Also, the original condition 8) has been adjusted with respect to the replacement planting time frame, moving from 5 years to instead cover the lifetime of the development. The Council has not provided reasoning for any variations beyond those sought for and, as such, these may still have an effect for the purposes of this decision. As a result, I have imposed the original conditions in their unaltered form.
16. For the above reasons, the appeal is allowed subject to conditions.

*Ben Plenty*

INSPECTOR

## Schedule of conditions

- 1) The development hereby approved shall be commenced within 3 years of the date of this permission. Such date shall be referred to hereinafter as 'the Commencement Date'.
- 2) Except as otherwise provided in the conditions attached to this permission or otherwise agreed in writing the operations hereby permitted shall be carried out strictly in accordance with the application form dated 30<sup>th</sup> May 2022 and the accompanying planning statement and supporting documents and plans, namely:  
  
Documents / Reports: • Agricultural land classification report • Arboricultural Impact Assessment • Badger survey • Biodiversity metric • Biodiversity management plan • Construction traffic management plan (Updated 14/10/22) • Flood risk assessment • Glint and glare study • Heritage desk based assessment • Landscape and Visual Impact Assessment (amended) • Mineral reserves assessment • Noise assessment • Public attitudes survey • Applicant response to CPRE letter 18/9/22 and 17/10/22 • Applicant briefing note 5/09/22 • Agricultural consultant clarifications 7/10/22 • Applicant revised design cover email 7/10/22 • Access Strategy 17/10/22  
  
Drawings: • P21-0442\_01D Site location plan • P21-0442\_07 Topography plan • BKH-DWG002 Engineering Layout Plan • P21-0442\_05E Landscape Strategy • P21-0442\_10D Master Site Layout • BKH-DWG004 Mounting system details • BKH-DWG005 Fencing details • BKH-DWG006.1 CCTV Layout • BKH-DWG006.2 CCTV details • BKH-DWG007.3 Inverter substation • 10069-E-SP-01 Electric design overall layout • 10069-E-ELV-01 2.4m high palisade fencing • 10069-E-SP-02 WPD 132kV Metering substation underground • 10069-E-ELV-02 WPD 25m Communications tower • 10069-E-GA-02 Customer switchroom • 10069-E-GA-06 Customer switchroom elevation • 10069-E-GA-05 DNO Switchroom elevation, and • 10069-E-GA-01 DNO switchroom.
- 3) This permission shall relate only to the land edged red on the site location plan (Reference P21-0442\_01), hereinafter referred to as 'the Site'.
- 4) For the duration of the construction period all traffic associated with (the construction of) the development will comply with the Construction Traffic Management Plan and use only the 'Construction Traffic Access Route' and no other local roads unless approved in writing with the Local Planning Authority.
- 5) Prior to any construction works taking place and post construction a full condition survey shall be carried out on the route between the site access and the A49.
- 6) Where the approved plans and particulars indicate that construction work excavations or level changes are to take place close to or

within the Root Protection Area (RPA) of any retained tree(s), large shrubs or hedges, prior to the commencement of any development works, a Tree Protection Plan (TPP) supported by an arboricultural method statement (AMS) where any breach of the tree(s) or hedgerows RPAs is proposed detailing how the retained trees / hedgerows will be protected during the development, shall be submitted and agreed in writing by the Local Planning Authority before the commencement of any ground clearance, demolition, or construction work.

- 7) No demolition ground clearance or construction works will commence until the Local Planning Authority has approved in writing that the approved Tree Protection Measures have been established in compliance with the final approved tree protection plan.
- 8) No development shall take place (including ground works and vegetation clearance) until a landscaping plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include: i. Planting plans, creation of wildlife habitats and features and ecological enhancements in accordance with the Biodiversity Management Plan by Avian Ecology. ii. Written specifications for establishment of planting and habitat creation; iii. Schedules of plants/seed mixes, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate; iv. Implementation timetables. Native species used are to be of local provenance (Shropshire or surrounding counties). The plan shall be carried out as approved.

Planting and seeding shall be undertaken within the first available planting season following the completion of construction works and in accordance with a scheme which shall be submitted for the approval in writing of the Local Planning Authority. The scheme shall be implemented in accordance with the approved details. The developer shall notify the Local Planning Authority in writing of the date when planting and seeding under the terms of condition 6a above has been completed.

- 9) 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.
- 10) All site clearance, development, landscaping and biodiversity enhancements shall occur strictly in accordance the Biodiversity Management Plan by Avian Ecology.
- 11) No development shall take place (including ground works and vegetation clearance) until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include: i. An appropriately scaled plan showing 'Wildlife/Habitat Protection Zones' where construction activities are restricted, where protective measures will be installed or implemented; ii. Details of protective measures (both physical measures and sensitive working practices) to avoid impacts during



construction; iii. Requirements and proposals for any site lighting required during the construction phase; iv. A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season); v. The times during construction when an ecological clerk of works needs to be present on site to oversee works; vi. Pollution prevention measures. vii.

Identification of Persons responsible for:

- Compliance with legal consents relating to nature conservation;
- Compliance with planning conditions relating to nature conservation;
- Installation of physical protection measures during construction;
- Implementation of sensitive working practices during construction;
- Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and
- Provision of training and information about the importance of 'Wildlife Protection Zones' to all construction personnel on site.

All construction activities shall be implemented strictly in accordance with the approved plan.

- 12) Within 28 days prior to any pre-development site enabling works an inspection for badgers and otters shall be undertaken by an appropriately qualified and experienced ecologist and the outcome reported in writing to the Local Planning Authority. If new evidence (further to that submitted in support of the approved planning consent), or a change in status, of badgers or otters is recorded during the pre-development survey then the ecologist shall submit a mitigation strategy for prior written approval that sets out appropriate actions to be taken during the construction stage. These measures will be implemented as approved.
- 13) Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features. The submitted scheme shall be designed to take into account the advice on lighting set out in the Institution of Lighting Professionals and Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK (available at <https://www.theilp.org.uk/documents/guidance-note-8-bats-and-artificial-lighting/>). All external lighting shall be installed strictly in accordance with the specifications and locations set out on the plan, and thereafter retained for the lifetime of the development. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.
- 14) Fencing shall be provided strictly in accordance with the details shown on the approved fencing plan reference BKH-DWG005; Fencing Details. Site security shall be provided in accordance with the specifications detailed in the approved drawing reference BKH-DWG006.2 (CCTV Details) and drawing reference BKH-DWG006.1 (CCTV Layout).
- 15) No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in

accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Local Planning Authority prior to the commencement of works.

- 16) Prior to the Commencement Date the operator shall submit for the approval of the Local Planning Authority a complaint procedures scheme for dealing with noise and other amenity related matters from the construction and operational phases of the development. The submitted scheme shall set out a system of response to verifiable complaints of noise received by the Local Planning Authority. This shall include:
  - i. Investigation of the complaint
  - ii. Reporting the results of the investigation to the Local Planning Authority and
  - iii. Implementation of any remedial actions agreed with the Authority within an agreed timescale.
- 17) All photovoltaic panels and other structures constructed in connection with the approved development shall be physically removed from the Site within 40 years of the date of the originally approved development, of 21 October 2022, and the Site shall be reinstated to agricultural fields. The Local Planning Authority shall be provided with not less than one month's notice in writing of the intended date for commencement of decommissioning works under the terms of this permission.

**End of conditions**