The Planning Inspectorate

Appeal Decision

Site visit made on 30 April 2024

by Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 May 2024

Appeal Ref: APP/E3335/W/24/3337226
Land North of Transmitting Station, Washford, Watchet, Williton, West Somerset, TA23 0JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Elgin Energy EsCo Ltd against the decision of Somerset Council.
- The application Ref is 3/39/21/028, dated 24 November 2021 and refused by decision dated 31 July 2023.
- The development proposed is Installation of a ground mounted solar farm, battery storage and associated development.

Decision

1. The appeal is allowed and planning permission is granted for the installation of a ground mounted solar farm, battery storage and associated development at Land North of Transmitting Station, Watchet, Williton, TA23 0JD in accordance with the terms of the application, Ref 3/39/21/028, subject to the conditions in Appendix A.

Procedural Matters

2. The proposal was screened by the Secretary of State with regard to *The Environmental Impact Assessment Regulations 2017.* In their letter, dated 17 April 2024, the Screening Direction considered that the proposal is not 'EIA development'. I see no reason to disagree with that Direction, and have proceeded on this basis.

3. On 15 May 2024 the Written Ministerial Statement *'Solar and protecting our Food Security and Best and Most Versatile (BMV) Land'*[1] (the 2024 WMS) was made in Parliament. Both the Local Planning Authority and Appellant were given an opportunity to address any matters arising from the WMS.

Main Issues

4. Taking into account the Council's Decision Notice, the representations made and all the evidence before me, I consider that the main issues are:

   - The effect of the proposal on the character and appearance of the area, and;
   - Whether the proposal would result in the unacceptable loss of Best and Most Versatile Agricultural Land (BMVAL), and;
   - The effect of the proposal on heritage assets.

[1] https://questions-statements.parliament.uk/written-statements/detail/2024-05-15/hcws466 Statement UIN HCWS466

Reasons

Character and appearance

5. Policy NH5: Landscape Character Protection of the *West Somerset Local Plan to 2032* (adopted 2016) (LP) sets out that 'W*ithin the identified landscape character areas … development should be located and designed in such a way as to minimise adverse impact on the quality and integrity of that local landscape character area*.'

6. Policy NH14: Nationally Designated Landscape Areas of the LP sets out that '*Major development proposals within the Quantock Hills Area of Outstanding Natural Beauty will be determined in accordance with national planning policy. Where development is likely to affect the Quantock Hills AONB or Exmoor National Park, regard will be had to their statutory purposes. Applications for development should have regard to location, siting, orientation and landscaping to achieve high quality design and to ensure that the proposals conserve or enhance the natural beauty, wildlife, cultural heritage and tranquillity of the AONB or the National Park and their settings. Development which would conflict with the achievement of the statutory purposes of the AONB or the National Park, or their settings or which would adversely affect the understanding or enjoyment of the National Park's special qualities, will not be permitted.'*

7. The appeal site is located to the northeast of Washford and the A39 with the B3190 to the east. To the north of the site lies the access road to Kentsford Farm. To the east lie agricultural fields, Crossyard Business Park and Washford Transmitting Station with the B3190 beyond. Further to the east is the Quantock Hills Area of Outstanding Natural Beauty[2] (AONB). This is considered to have a 'setting' which is broadly defined within the *Quantock Landscape Partnership Scheme Landscape Character Assessment Final Report February 2019.* This 'setting' does not appear to be replicated on the Policies Map for the LP.

8. To the south lie agricultural fields and the village of Washford. To the west of the site are agricultural fields and the course of the Washford River which flows from south to north entering the Bristol Channel at Watchet. On the opposite, western side of the Washford river is a footpath which follows the course of the old Mineral Line railway. There are no Public Rights Of Way (PROWs) within the appeal site.

9. The appeal site is not located within the Exmoor National Park nor is it located within the Quantock Hills AONB. It is also not located within a locally identified 'setting' for the Quantock Hills AONB. The proposal would not, therefore, have a directly adverse effect on these designated landscapes in themselves. The special qualities of the Exmoor National Park, which include the distinct and diverse landscape of softly rounded hills and ridges, a landscape mostly free of intrusive development such as major roads, power lines, quarrying and light pollution, and a mosaic of habitats supporting a great diversity of wildlife will not be directly affected by the proposal[3]. Accordingly, I find that the special qualities of the Exmoor National Park will not be adversely affected by the proposal.

[2] Areas of Outstanding Natural Beauty (AONB) are also now known as 'National Landscapes', albeit this name change is not reflected within local planning policy or many parts of national policy or legislation. To avoid confusion I have adopted the familiar term AONB as used in the local plan.
[3] See Appellant's Appendix I (i Part 1) pages 26 to 27

10. Turning to the indirect potential effects, the Appellant has submitted a Landscape and Visual Impact Assessment (LVIA) together with an Addendum to it. The Addendum provides further viewpoints and photo viewpoints showing the proposed development and the wider context. It is possible to see that the proposal would be situated within a mixed and managed landscape. Whilst there is a predominance of what most people would recognise as 'countryside' visible within the views, this predominates towards the fringes of the site to the east and west respectively, where the Exmoor National Park and Quantock Hills AONB are located.

11. Beyond and outside of these designated areas, there are a number of visual features within the landscape including the settlements of Williton, Watchet, and Washford. It is also possible to see manmade features in the form of the tall Radio transmitting towers at Washford, which are a dominant technological landmark within the countryside, and Hinkley Point Power Stations located a few miles away to the west.

12. I acknowledge the various objections and concerns raised by local residents and also by bodies such as the Exmoor National Park Authority. The latter who have reiterated s245 of the *Levelling Up and Regeneration Act 2023* in terms of the duty to seek to further National Park purposes[4].

13. Clearly, the insertion of a solar farm with associated infrastructure into what are currently agricultural fields used for pastoral and arable farming, will change their character and appearance for a period of around 40 years. There would be some change in character in comparison to arable farming, with solar and pastoral farming taking place.

14. However, I concur with the assessment of the LVIA in that the views from within the National Park and AONB would not be significantly impacted by the proposal. This is because such views would not only be mitigated through the use of sensitive landscaping within the appeal site over its lifetime, which could be reasonably secured by condition, but also because the proposed development would be viewed within the wider landscape. Most viewers would see the proposal as a tiny part of a kinetic experience when travelling through the AONB and/or National Park rather than as a visually dominating feature within the landscape. Furthermore, when seen from limited viewpoints within either the National Park or AONB, most viewers are likely to feel a heightened sense of 'specialness' of those designated landscapes themselves and their importance which, in the main, are devoid of modern developments.

15. I undertook an unaccompanied site visit on Tuesday 30 April 2024 to view the site from various locations. I was able to see the many views from the local highway network, along roads such as the A39, Washford Hill (the B3190) and Cleve Hill, are obscured. This is not only because the development itself would be located a distance away from these highways, but also due to the fact for large stretches of these roads they are lined with dense hedging of a height that prevents car drivers or passengers sight of the appeal site. Together, with the undulations in the landscape, means that for most road users (and passengers) there would be limited-to-no views of the proposal. As such, I do not find that

[4] Pursuant to the Planning Inspectorate as a 'relevant authority' in accordance with section 11A of the National Parks and Access to the Countryside Act 1949. Thus, it has a duty to seek to further National Park purposes, of conserving and enhancing the natural beauty, wildlife and cultural heritage of the national parks; and of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.

proposal would have an adverse effect on the character and appearance of the area in this respect.

16. I note that there is a Public Right Of Way (PROW) which runs along the railway line to the west. This is located some distance from the site, with intervening Washford River and fields separating the site from the footpath. Given the ensuing vegetation along this path and the vegetation forming the field boundaries and proposed as part of the landscaping of the site, I do not find that the proposal would have an adverse effect on the users of this footpath.

17. Accordingly, I find that the proposal would promote the understanding and enjoyment of the Exmoor National Park including its multiple special qualities. For similar reasons, I find that the setting of Quantock Hills AONB – in its broadest sense and beyond that identified locally – would not be adversely affected by the proposal.

18. Lastly, when considering the proposal in more general character and appearance terms, whilst I note that it would be visible from various viewpoints by users, such as walkers, it is mitigated in part by existing vegetation or the undulating landform and there are suitable and appropriate ways in which it can be appropriately mitigated. As such, I conclude that the proposal would not have an adverse effect on the character and appearance of the area. It would not, therefore, conflict with Policies NH5 and NH14 of the LP which seek the aforesaid aims.

19. I also find that the proposal would accord with the Policies of the *National Planning Policy Framework* (the Framework) which include Paragraphs 180 to 184, in relation to development within National Parks and AONBs, and to Paragraph 180 in relation to recognising the intrinsic character and beauty of the countryside.

Agricultural Land

20. Policy NH8 of the LP requires that the best and most versatile agricultural land (grades 1, 2 and 3a) will be protected from significant development proposals. The 2024 WMS reiterates national policy, including highlighting that food security is an essential part of national security. It also sets out information in respect of cumulative impacts, soil surveys and supporting solar on rooftops and brownfield sites.

21. Local tenant farmers, who farm parts of the appeal site, have submitted a report undertaken in June 2018 by Luscombe Maye. The report indicates it was for the 'sole purpose of the assessment of the land in relation to its suitability for solar development'. The report summarises that 'it is considered that the land at Washford is an example of some of the better quality arable land in this area of West Somerset.' This appears to be an assessment made on the basis of a site inspection and desktop research, with the ALC map indicating the site comprising mainly Grade 2 agricultural land (within BMVAL). However, given the limited remit of the report, as indicated above, and the fact that the analysis and assessment is based on little more than a walk-over of the fields and high level ALC maps from the 1980s, I afford this report little weight in this case.

22. CPRE Somerset submitted a document called the Soil Site Report – Extended Soil Report Kentsford, dated 28 Jan 2022. However, this report is for personal use, and appears to be based upon a desktop assessment as part of the

National Soil Map for England and Wales, produced by Cranfield University's National Soil Resources Institute. Yet, the report offers no detailed analysis of the appeal site itself. Instead it is around 80 pages of perhaps interesting soil groups, but it adds little to understanding the agricultural land classification of the site. This report is therefore afforded little weight in this instance.

23. Lastly, the Appellant has submitted an *Agricultural Land Classification (ALC)* report[5], dated September 2018 following survey work in November 2017. This survey work included a soil investigation in accordance with the *'Agricultural Land Classification of England and Wales: Revised Guidelines and Criteria for Grading the Quality of Agricultural Land', October, 1988*. During this assessment, the soil's properties and profile at 63 locations across the site were examined using a Dutch (Edleman) soil auger. Two soil pits were hand dug. Top soil samples from six auger locations were sent to a laboratory to determine the definitive texture class of the topsoil; including to distinguish between medium clay loams, heavy clay loams and clays. The report goes on to conclude that:

    'the detailed ALC survey work undertaken identifies that the Site comprises entirely lower quality Grades 3b and 4 agricultural land. The Site therefore comprises no "best and most versatile" agricultural land and the proposed development would not significantly harm agricultural interests…'

24. With concerns raised by local farmers, who indicated that the Appellant's ALC report did not appear to accurately reflect the grade of the land (including the rates they were paying which regarded the land as higher than Grades 3b and 4), the Council appointed Mott Macdonald to independently review the Appellant's ALC report. On the basis of this review, the Local Planning Authority considers in their Appeal statement that *'there may be areas of the site that can be classified as Grade 3a'*.

25. This evidence presents a conflicting picture. Soil samples from the site indicate that the site comprises 'entirely lower quality Grades 3b and 4 agricultural land'. However, I recognise that the ALC process is based on more than soil samples. Factors such as soil wetness and flooding are also factored into the equation. Moreover, changes in the weighting of these factors have the potential to alter the overall Grade of the land.

26. At the same time, the national maps for ALC from the 1960s-80s, which although not showing detailed site specific information, indicate that the land could be within the category of BMVAL. This view is fortified by the fact that local farmers, who have farmed the land for some time, attest to its bountiful harvest over the years. Whilst not a scientific measure in the way soil samples can be, this is important local knowledge that should be considered in informing a decision.

27. Taken in the round, I am nonetheless persuaded by the evidence of the Appellant in this instance. This is because even though it has limitations, it is based upon more than a walk over of the field as undertaken by Luscombe Maye or a desktop assessment of soils as undertaken by Kentsford (CPRE Somerset). Whilst I acknowledge the local knowledge of farmers and the limitations inherent within the number of soil samples taken and then analysed at the

[5] With their Statement of Case, Appendix E (viii)

laboratory, I find that the evidence before me points towards the site not comprising land that falls within the category of BMVAL in this case.

28. At the same time, it is important to note that the appeal site is to be used for pastoral farming as well as solar 'farming' – the latter not being an agricultural use. I also note the concerns raised by interested parties that the productivity and versatility of the land would be reduced. Nonetheless, the specific way agricultural land is used is not a matter that is subject to planning controls. For example, there would be nothing in planning terms to prevent the farmers and/or landowners[6] using the fields that form the appeal site solely for the grazing of sheep at present or even leaving them fallow.

29. 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 purposes. As such, the proposal would not result in either the temporary or permanent loss of BMVAL as the land would continue to be used for some agricultural purposes whilst also being used to produce solar energy. Furthermore, the proposal would not be detrimental to the soil quality, so a return to arable production at a later date would still be possible.

30. In terms of the 2024 WMS, I note that the Government has *'heard concerns about the perceived inaccuracy and unfairness of soil surveys undertaken as part of the planning process for solar development'.* However, in this instance there is no evidence that the soil surveys and the person(s) undertaking them were not suitably qualified[7] – in this case they are members of the British Society of Soil Science – and as such I see no reason to doubt the veracity of the soil analysis and evidence undertaken by them.

31. Accordingly, I find that the proposal would not result in the unacceptable loss of Best and Most Versatile Agricultural Land. It would therefore accord with Policy NH8 of the LP which seeks to protect BMVAL from significant development.

32. For similar reasons, I also find that the proposal would be in accordance with the broad thrust of national Policy and Guidance relating to such matters. For example, it would accord with Footnote 62 of the Framework in 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 quality (as part of Paragraph 181). It would also accord with the 2024 WMS in relation to solar and protecting our food security and Best and Most Versatile Agricultural Land.

Heritage assets

33. Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended, requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the Secretary of State shall have special regard to the desirability of preserving the building or its setting.

[6] This does not impinge on how a tenant farmer may or may not use the land; rather it is to make the point that in planning terms how land is farmed is not controlled by the planning system. The tenancy itself is a separate (and private) matter from planning controls between the parties involved. I consider the tenancy aspects within the Other Matters section of this decision.
[7] In this case, they are members of the British Society of Soil Science and I see no reason to doubt the applicability of this professional body here.

34. Historic England, the government's adviser on the historic environment, provide comments to the application in March 2022 and January 2023. They, together with other consultees, identify that the proposal is within what they consider are the setting of a number of designated heritage assets.

35. This includes Daws Castle to the north of the proposal, Battle Gore round barrow Cemetery to the east and Cleeve Abbey to the south. These are all Scheduled Monuments. There are also a number of listed buildings which Historic England identify the settings are affected by the proposals, including the Grade II* Listed Building Kentisford Farmhouse around 27 metres to the north-west from the proposed site, and the Grade I Listed Church of St Decuman to the north, which also includes a Scheduled Monument cross within the church yard.

36. Historic England consider that the proposals are harmful as a result of the marked change from a rural landscape to a large industrial development with fields of PV panels and associated infrastructure. The changes that would bring to the historic rural landscape which forms part of the setting of the heritage assets above would result in harm in these views and to the significance derived from the setting of this historic landscape. This would result in harm of a less than substantial magnitude, which should nonetheless be afforded great weight.

37. In considering the points raised by Historic England, I have dealt with broader character and appearance matters earlier in this decision. My focus here is on the potential harm to heritage assets through changes to their settings. In this respect, I concur that the proposal would alter the context of how various heritage assets are experienced. This would be especially so for those sharing a close proximity to the appeal site and/or a historic connection – through use or experience. The Grade I listed building of St Decuman's Church for example, would have its existing rural setting partly eroded through the introduction of pastoral and solar farming in fields located a short distance to the south.

38. There are other assets identified, such as the pre-historic barrow at Battle Gore which is a Scheduled Monument, where the setting is more ambiguous. The Appellant has submitted a response from Foundations Heritage dated 24 February 2023, provided by a Member of the Chartered Institute for Archaeologists. This response details that Historic England do not comment on how the setting contributes to the setting of that scheduled monument. The response goes on to detail how such settings are usually connected with the ritual site itself and their contribution marking boundaries along with the construction of new social hierarchies.

39. In light of this, it is unclear as to how the proposal would result in harm to the setting of this asset beyond the fact it lies within a distance of the appeal site. The Appellant's ascribes negligible effect on setting to this asset at worse. I see little reason not to concur with that assessment given that 'setting' for some heritage assets in this case appear to have been sometimes mistakenly conflated with visual amenity.

40. Nevertheless, taken in the round, I agree that the proposal would result in harm to the setting of nearby heritage assets through changes in their context arising from the proposal. This would be harm that falls into less than substantial harm category set out in the Framework; albeit to articulate this harm further, as suggested by the national Planning Practice Guidance, this harm would be towards the low end of the less than substantial scale.

41. This is because, as a matter of planning judgment, I consider that the proposal would not result in any changes to the fabric of any of the structures or listed buildings. Moreover, only small parts of the visual settings of the heritage assets would be affected by the proposal. In the main, as an example, future generations would still be able to see the fortified Saxon site called Daws Castle and its relationship with the sea and as a defensive works against Viking coastal incursions in the late AD800s. Similar experiences could continue to be had between the other heritage assets and their settings.

42. Nonetheless, Paragraph 208 of the Framework requires that the less than substantial harm is weighed against the public benefits of the proposal. The proposal in this case would lead to a renewable energy development providing energy equivalent to around 7,500 dwellings. This is power that would contribute to national targets to reduce greenhouse gas emissions and help power homes, schools, businesses, and/or hospitals through distribution to the wider power grid network. I find that the public benefits arising in the form of the not insignificant creation of renewable energy outweighs the less than substantial harm to the identified heritage assets.

43. I therefore conclude that the proposal would accord with Policy NH1 of the LP in that any harm to settings of heritage assets are outweighed by the public benefits in this case. In doing so, I take a similar view to that of the Council's Officer Report to Committee, and by extension the Council, who did not object to the proposal on the grounds of heritage harms[8]. It would also accord with Policies of the Framework, including those set out in Chapter 16. Accordingly, the harm to heritage assets arising here do not provide justification for the dismissal of the appeal.

Other Matters

44. A number of other matters were raised by interested parties during the 18 months or so the application was with the Local Planning Authority. Further representations have also been made at the appeal stage. I have taken all of these into account in determining this appeal. More specifically concerns have been raised on the following matters, which I consider in more detail below.

Tenant farmers

45. There are two tenant farmers, including one with an interest in approximately 21 hectares of the appeal site land. Written submissions have been made by the tenant farmers, as well as agents acting on their behalf and the Tenant Farmers Association and the National Farmers Union. The written submissions indicate that the holdings are farmed for both arable and pastoral agriculture. It has been indicated that permitting the proposed development would have an impact on the tenants owing to the potential reduction of roughly 21 hectares in their overall land holdings of around 120 hectares.

46. There is disagreement between the Council and these parties as to the materiality of such matters in the decision-making process. The Committee Minutes of 18 July 2023 indicate that:

'*Personal circumstances. It was clarified that Officers were not advising Members that they were unable to take personal circumstances into account. Personal circumstances were capable of being material considerations, but only*

[8] See also the Committee Minutes where heritage harm is not detailed.

exceptionally. It was a matter for Members to consider and decide whether the circumstances of the tenant farmers were exceptional and should be treated a material and, if so, the weight to be afforded to the same in the planning balance. It was the view of Officers that little or no weight could be afforded, but ultimately it was a matter for Members to determine.'

47. I am unable, on the basis of the Minutes[9], to ascertain what weight the Committee gave in its decision. Typically land ownership and tenancy are private matters between the relevant parties. Moreover, it is well established planning practice that planning acts in the wider public interest, and the personal circumstances of specific parties do not typically outweigh those.

48. Nonetheless, the tenant farmers in this case have a specific interest in the land that they farm and have farmed for a number of years. This is not only in terms of an economic interest – though that clearly is an important personal factor given that farms are not 'charities' but instead businesses – but also in terms of how the land is managed. The tenant farmers have a vested interest in ensuring that the land is managed in a way that it is protected for future generations; regardless of ALC grade or whether that is for arable or pastoral farming. Were they to fail in that endeavour, then it would likely have adverse impacts; not only on their livelihoods, but also on the immediate local environment through a lack of land management.

49. In this respect, I find that the personal circumstances of the tenant farmers, as detailed in their submissions and those of Unions/Associations and of local residents on their behalf, are material in this case. I also note the references to caselaw including that of *R v Vale of Glamorgan District Council (ex parte Adams) [2000]* and *Westminster City Council v Great Portland Estates plc [1985].*

50. I acknowledge the points made that:

'*the legislation governing the tenancy enjoyed by one of the tenant farmers confers security of tenure for his lifetime and with rights of succession, should this planning application be approved, he would face an incontestable notice to quit from his landlord, which would unseat him, and his son, being his future successor, from his agricultural tenancy on the land comprised within this application. The land he farms within this application forms a substantial part of his holding, and it includes some of the best arable land within his holding. Losing this area to the proposed development would be devastating to his farm business*'[10].

51. However, I have not been provided with any detailed information on the scale or quantum of this impact on this tenant farmers business. That is not surprising given that it is private business information. That said, I have no reason to doubt that the use of the appeal site for solar and pastoral farming rather than arable farming will alter the financial returns for the land owner(s) and the tenant farmers. What it is not possible to establish from the evidence before me, is whether such financial returns would inevitably be negative for both parties.

52. I am also cognisant with the fact that the planning system has no control over what is farmed on agricultural land. I understand that one of the tenant

[9] Either those of 20 June 2023 or 18 July 2023.
[10] See representation from the Tenants Farmers Association dated 26 April 2024.

farmers already grazes and keeps sheep on parts of the site. It is not illogical to assume that such activities would continue to take place in and around the proposed development. It is also not unreasonable to consider that the tenant farmer would seek to maximise the yields from their fields to ensure a financially sustainable future. This might include responsibilities for land stewardship around the solar panels and associated infrastructure in addition to grazing sheep.

53. The point being that whilst the personal circumstances of the tenant farmers and their families are material in this case, I do not find that they provide justification in themselves for the dismissal of the appeal scheme. The land would continue to have an agricultural function during the lifetime of the proposed development; albeit focussed towards biodiversity and pastoral farming rather than arable farming. Furthermore, at the end of the proposed lifetime, an element which can be secured by condition, the land would then again be available for arable farming.

Impact on local tourism and no benefits for local people

54. Concerns have been raised that developers are 'making lots of money and get the benefits' whereas the proposed development would affect local people. This includes the potential impact on tourists visiting the area, which makes up an important part of the local economy. One reason for tourists visiting is to enjoy the natural splendour of Exmoor National Park and the Quantock Hills AONB.

55. I acknowledge this, and also that tourists will also visit the area to see the coast, stand at Daws Castle (and experience how life may have been in the 800s), or to visit Tropiquaria Wildlife Park, amongst many other activities. However, the proposal would be set back from the main highways and views, as detailed elsewhere in this decision, would be partially screened – either through existing vegetation and/or proposed vegetation in addition to the distances involved. The impact to tourists visiting the area is unlikely to be any different to other users of the surrounding area, which I have found to be acceptable.

56. I note the points made in terms of benefits arising to the developer. However, as discussed elsewhere, I have found that whilst there would clearly be benefits to the operator of the proposal, there would also be a number of economic, social and environmental benefits to the local area. This includes the creation of renewable energy to power various buildings and services – including jobs – and biodiversity benefits, for example.

57. I do not, therefore, find that proposal would have an adverse effect on local tourism which would justify the dismissal of the appeal in this case.

Electromagnetic Compatibility (EMC) or Electromagnetic Field (EMF)

58. As part of their consideration of the planning application the Council consulted with a number of statutory consultees, including the HSEs Explosive Inspectorate, the Office for Nuclear Regulation, and Wales and West Water Utilities, due to its proximity to its infrastructure. None of these consultees raised an objection to the proposed development.

59. There are also no detailed objections from the Council's environmental health team regarding the potential impact on human health or other services from the proposal. I note the points made in terms of electromagnetic fields and compatibility. However, in the absence of any objections from statutory

consultees on such matters and with limited evidence before me that suggests the proposal would interfere with such activities, I find no reason to dismiss the appeal on these grounds.

Biodiversity

60. I note the concerns raised in terms of biodiversity and the potential impact on mammals including deer from the fencing restricting movement. However, approximately 1.70km of new native species hedgerow will be planted within the appeal site and managed to be in 'good' condition. The hedgerows will comprise a mixture of native shrubs and trees and will be maintained at a width of 2-4m and a height of 3-4m.

61. Furthermore, the scheme proposes new tree planting in the area which provides some habitat gain and also the opportunity to provide some additional screening to the western boundary. Lastly, the Biodiversity Net Gain Assessment concludes that the proposal would exceed the 10% biodiversity net gain objectives of recently adopted legislation. I do not, therefore, find that this provides justification for the dismissal of the appeal.

Highway safety during construction phase

62. In terms of highway safety during the construction phase, typically the implementation of permission for schemes such as that proposed here occur within a short timeframe – months rather than years. Whilst during such periods there would be a small increase in vehicular traffic movements to and from the site, this would be onto main roads and can be reasonably managed through a construction management plan. This does not, therefore provide justification for the dismissal of the appeal scheme.

Battery Energy Storage Systems (BESS) and fire risk

63. In terms of the potential risk of fire, the HSE have advised that BESS proposals are typically not a relevant development in relation to land use planning in the vicinity of major hazard sites and major accident hazard pipelines. This is due to them not introducing people into the area.

64. The national Planning Practice Guidance[11] (the Guidance) was updated in August 2023, and encourages Local Planning Authorities to consult with their local fire and rescue service as part of the formal period of consultation. The Guidance was updated after the Council made its decision and the Guidance only 'encourages' this to take place.

65. However, there are some residential dwellings (such as Kentisford Farm, those clustered along the highways known as Five Bells and near to Washford, for example) and businesses such as those based at Crossways Business Park and Tropiquaria Wildlife Park, that naturally would be concerned that there was no specific Battery Safety Management Plan in place that had been reviewed by the local fire and rescue service. As the Guidance advises, consideration should be given to what would happen in the event of an incident, prevention of the impact of thermal runway, and emergency services access.

66. To that end, I would impose a planning condition requiring the submission and approval of a Battery Safety Management Plan before the installation of any

[11] https://www.gov.uk/guidance/renewable-and-low-carbon-energy
Paragraphs: 032 to 36 inclusive. Reference ID: 5-032-20230814

such equipment on the appeal site. This would be a reasonable condition and necessary to minimise any risks arising from the Battery Energy Storage System to human health and property should an incident arise.

67. I also note that Wales and West Utilities have provided comments and informatives at the application and appeal stages. It is, therefore, not only clear as to where utility lines may run, but also the need to inform various bodies when works may take place in order to minimise the risk to such infrastructure.

Other Appeal decisions

68. The Appellant has brought to my attention a number of planning appeal decisions. Whilst I note that these relate to solar developments, I do not have the full particulars. Moreover, I note that these decisions relate to sites across England including in Essex, Burnley and Ludlow. I afford them little weight in relation to the appeal before me, which, in any case, I have determined on the basis of its own merits.

Summary on Other Matters

69. I have considered a number of other matters raised by interested parties. I find, when taking all of these into account, they do not provide justification whether individually or cumulatively for the dismissal of the appeal proposal.

Conditions

70. At the Planning Committee stage, the Local Planning Authority suggested a list of 17 planning conditions to impose were permission to be granted. I have taken these into account in light of Paragraph 56 of the Framework and the Guidance and the use of planning conditions. I have also taken into account the Appellant's final comments in relation to conditions, dated 20 May 2024.

71. Conditions relating to time limits for implementation, the total time limit for the 'temporary' development of forty years, the removal of the development at the end of its lifetime, and for it to be carried out in accordance with the submitted drawings are necessary to provide certainty and for the avoidance of doubt. However, I alter the removal period from three months to six to give ample opportunity for the removal of the parts of the proposed development no longer required at the end of the permission time period.

72. A condition requiring material samples would be onerous and it is unclear as to why such a condition is necessary in this case. As it does not meet the tests set out in Framework Paragraph 56, I have not imposed it.

73. Conditions requiring the site access road to be provided, and details of turning, parking and so on, are necessary and reasonably related to the scale of the proposal in order to minimise any effects on highway safety and to ensure the safety of operators on site.

74. Suggested condition 8 refers to a joint inspection of the route to be used by construction vehicles and that any damage to the highway resulting from traffic movements generated by the application site shall be repaired within three months of detection and at no cost to the Highways Authority. I find that this condition is imprecise and not reasonable. This is because it is unclear as to whom the costs would be borne by and fails to identify the methodology for determining damage to the highways arising from the proposal and damage to

the highways which can arise through inadequate maintenance or other road users. This condition does not meet the tests of Paragraph 56 of the Framework and I have not therefore imposed it.

75. The submission of a Written Scheme of Investigation relating to archaeology is reasonable given that the proposal will involve ground works which could unknowingly affect such heritage assets.

76. A condition requiring an ecological mitigation and enhancements scheme to be submitted and approved is necessary and reasonable given that these are a benefit weighing in favour of the proposal and to ensure that biodiversity gains are achieved for the local environment.

77. Conditions relating to landscaping schemes, no forms of external illumination (except low level), and the submission of a colour scheme for plant, equipment and buildings are necessary and related in scale and kind to the development in order to protect the visual amenity of the area.

78. A condition requiring the submission and approval of a Construction Environmental Management Plan (CEMP) is necessary in order to minimise the impact of the proposal on local residents and businesses arising from the proposed development during its construction phase. This includes that the CEMP contains delivery hours, wheel washing facilities, and workers parking for example. I have tweaked this slightly to insert the wording 'typically being' as the original wording could prevent vehicles from leaving their depot until within the set times.

79. A condition requiring the Construction Traffic Management Plan to be implemented as submitted is necessary to ensure highway safety for all road users.

80. A condition requiring the submission of a Battery Storage System Safety Plan is necessary and reasonable in order to reassure the Council, local residents and businesses to the safe operation of this element of the proposal. It would also assist in ensuring that operatives, when on the site, are protected from any risks arising from such infrastructure.

81. Lastly, a condition requiring detail and a scheme to minimise off-site flooding arising from surface water flooding in order to prevent pollution is necessary and reasonable in order to minimise any risks to the local environment from such occurrences.

Planning Balance

82. Section 38(6) of the *Planning and Compulsory Purchase Act 2004*, as amended, sets out that if regard is to be had to the development plan for the purpose of any determination under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

83. In this case, I have found that the proposal would not conflict with Policies NH5, NH8 and NH14 of the LP. I also find, in the absence of conflict with these policies and those of the Framework, that the proposal would not conflict with Policies CC1 and SD1 of the LP which relate to sustainable development. Whilst I have found there to be less than substantial harm to the setting of heritage assets, this harm is outweighed by the public benefits. Accordingly, the proposal would accord with the development plan when considered as a whole.

84. In terms of material considerations, I have considered these throughout this decision including the personal circumstances of tenant farmers. However, as a matter of planning judgement, I have not found that these material considerations point to a decision of dismissing the appeal given its accordance with the LP.

Conclusion

85. For the reasons given above the appeal should be allowed.

C Parker

INSPECTOR

Appendix A - List of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The permission hereby granted shall be limited to a period of forty years from the date when electricity is first exported from the solar panels to the electricity network (The First Export Date). Written notification of the First Export Date shall be given to the Local Planning Authority within fourteen days of the event occurring.

3) The development hereby permitted shall be carried out in accordance with the approved plans:

DRNO JPW0622-WASHFORD-013 REV B Red Line Boundary

DRNO JPW0622-WASHFORD-12 REV I Solar Layout

DRNO 24 Landscape Proposal Rev E

DRNO JPW1056-001 Typical Panel Planning Details

DRNO JPW1056-002 Typical Invertor Planning Details

DRNO JPW1056-003 Typical CCTV Planning Details

DRNO JPW1056-004 Typical Access Road Planning Details

DRNO JPW1056-005 Typical Fence and Gate Planning Details

DRNO JPW1056-006 Typical DNO Building Details

DRNO JPW1056-007 Typical Battery Unit Details

DRNO JPW1056-009 Existing and Proposed Cross Sections

4) Within six months of the solar array permanently ceasing to be used for the generation of electricity, or the end of this permission, whichever is the earliest, the development hereby permitted shall cease and the array, and associated infrastructure, shall be permanently removed from the land, and the site restored to its former condition (allowing for any appropriate enhancements) in accordance with details to be submitted to, and approved in writing by, the Local Planning Authority prior to such works being carried out.

5) No other part of the development hereby approved shall be commenced until the site access roads shall be hardened, surfaced, drained and maintained thereafter for a distance of not less than 6 metres back from its junction with the public highway.

6) Subject to Condition 5 hereof, no other part of the development hereby approved shall be commenced until the until the access, parking facilities, commercial vehicle loading/unloading area, visibility splays, turning area and access drainage have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times.

7) No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been first submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other scheme as may be subsequently agreed in writing by the Local Planning Authority.

8) Prior to the commencement of development a detailed scheme of ecological mitigation and enhancement measures set out in a Biodiversity Management Plan (BMP), in accordance with the recommendations of the submitted Biodiversity Net Gain Assessment (January 2023, Ref: ECO02396 1), has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include proposals for protective measures during the construction process; external lighting; and planting, including a timetable for implementation. The development shall thereafter be undertaken in accordance with the approved BMP.

9) All approved landscaping details shall be carried out in the first planting and seeding seasons following the erection of the solar panels, and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards.

10) No external form of illumination of the site shall be installed or used on the site other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits.

11) The installation or construction of all plant, equipment, and buildings shall be undertaken using a colour scheme which has previously been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be retained in accordance with the approved colour scheme.

12) Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. In respect to the protection of residential amenity and the local environment, the CEMP shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise, vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development and manage Heavy/Large Goods Vehicle access to the site. It shall include details of the hours of operation and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways. The following specific details should also be included in respect to highway safety:

(a) the timetable of the works;

(b) daily hours of construction;

(c) any road closure;

(d) hours during which delivery and construction traffic will travel to and from the site, typically being between 8:00am and 6pm Mondays to Fridays inclusive: 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank or Public Holidays unless agreed in writing by the Local Planning Authority in advance;

(e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;

(f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;

(g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;

(h) hours during which no construction traffic will be present at the site;

(i) the means of enclosure of the site during construction works;

(j) details of wheel washing facilities and road sweeping measures with the respective obligations;

(k) details of the amount and location of construction worker parking;

All works shall be carried out in accordance with the approved CEMP thereafter.

13) The construction of the development shall be undertaken in accordance with the Construction Traffic Management Plan prepared by RPS dated April 2021 (JNY9508-03).

14) Prior to the implementation of the Battery Energy Storage System comprised in the development, a detailed Battery Safety Management Plan (BSMP) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and operated only in accordance with the approved BSMP.

15) Prior to the commencement of development a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and to prevent pollution has been submitted to, and approved in writing, by the Local Planning Authority. The scheme shall subsequently be implemented as approved.

***** END OF CONDITIONS *****