
Appeal Decision

Site visit made on 6 October 2014

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 13 November 2014

Appeal Ref: APP/D2320/A/14/2222025

Land at Tithe Barn Lane, Heapey, Chorley, Lancashire

- 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 Cassidy and Ashton Group Ltd against the decision of Chorley Borough Council.
 - The application Ref 13/00811/FULMAJ, dated 28 August 2013, was refused by notice dated 14 January 2014.
 - The development proposed is construction of a (up to 8MW) solar photovoltaic (PV) farm and associated works.
-

Decision

1. The appeal is dismissed.

Reasons

2. The majority of the appeal site is in the Green Belt and the Appellant accepts, given that the panels would be wholly within the Green Belt, that the solar farm would be inappropriate development. Paragraph 87 of the National Planning Policy Framework (NPPF) states that "...inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances", and paragraph 88 states that "Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations".

3. The main issues, therefore, are; first, whether the proposed solar farm would cause any harm other than by reason of inappropriateness; second, other considerations to be weighed in the planning balance; and third, whether the harm caused is clearly outweighed by other considerations.

The first issue - other harm

4. The appeal site is about 18.4 hectares of undulating countryside to the north-west of the nearby town of Chorley. The site is roughly L-shaped and has a long west boundary to Black Brook, east and south boundaries to Tithe Barn Lane, in which there is a right angled bend, and a north-east boundary to Chapel Lane. From the bend in Tithe Barn Lane two footpaths cross the site; one in a roughly westwards direction towards Black Brook and beyond to Hey's Farm, and one in a north-eastwards direction to Chapel Lane. To the east of the site and with a frontage to Tithe Barn Lane is a residential property, Tithebarn Farm. The countryside is mainly pasture that is interspersed by blocks of woodland.

Openness of, and a purpose for including land in, the Green Belt

5. The proposed solar panels would not occupy the whole of the site, they would be set back from boundaries and significantly from a pond close to Tithe Barn Lane, but would nevertheless occupy over 15 hectares of countryside. The top edges of the solar panels would, on flat ground, be about 2.6 metres above ground level but on sloping parts of the site top edges of some panels would be as high as about 3.8 metres above ground level. Furthermore, the site would be surrounded by a 2.4 metre high mesh security fence. For these reasons the development would result in a significant loss of openness of the Green Belt.

6. Paragraph 80 of the NPPF states that the Green Belt serves five purposes; one of which is to assist in safeguarding the countryside from encroachment. Solar panels are engineered products that have an industrial appearance. They are not, inherently, products that fit into a countryside environment. On the scale proposed the solar panels, if installed on the site and together with the industrial type fence that would surround them, would result in significant encroachment into the countryside. Paragraph 79 of the NPPF states that "The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence".

Character of the landscape and the visual amenity of the countryside

7. The application was accompanied by a thorough Landscape and Visual Impact Assessment (LVIA) which was the subject of an Addendum Report following concerns expressed by the Council with regard to the visual impact of solar panels on sloping ground on the west side of the site close to Black Brook. The LVIA and its addendum fairly assesses the impact of the proposed solar farm and highlights mitigation measures, such as the planting of perimeter vegetation and enhancing existing boundary hedgerows, that would assimilate the development into the landscape. However, it is inevitable that the character of the landscape, which is currently pastoral, would be adversely affected though this adverse effect would be limited to the site and its immediate surroundings and the overall adverse effect on the character of the landscape would be less than significant.

8. The effect of the development on the visual amenity of the area is of greater concern than its effect on the character of the landscape. There is no reason to doubt third party submissions that the footpaths that cross the site and others in the vicinity are well used by residents of the area and by visitors from nearby urban areas. There was, in this regard, evidence on the ground that the footpaths are well used. The site, furthermore, is bounded by two roads, Chapel Lane and Tithe Barn Lane, and it was noted at the accompanied site visit and a subsequent unaccompanied site visit that these roads, particularly Chapel Lane, are well used country roads. From both roads there are views across the site through intermittent boundary hedgerows. For those using the footpaths and for passengers in vehicles on the roads views across the site will contribute to their appreciation of the attractive countryside of the area.

9. Significant mitigation measures are proposed and could be ensured by imposition of a landscaping condition such as that suggested by the Council. Additional planting could effectively screen the development but would itself be visually intrusive by undermining open views across the site. Furthermore, vegetation, even if standard plants are used, would take some years to become effective. In the interim there would be clear views from the footpaths and roads of the many rows of solar panels, which would be no lower than 2.6 metres in

height and which would block all views across the site. Their industrial appearance would be alien in this countryside location and the solar panels, in views from footpaths and roads around the site, would have a significant adverse effect on the visual amenity of the area.

10. The greatest harm to the visual amenity of the area would be for those using the footpaths that cross the site. These footpaths would pass through corridors between solar panels on both sides. On both sides of the longest footpath, which would be about 270 metres long, there would be, successively, a 2 metre wide planting strip, a 2.4 metre high security fence, and an access track 4 metres wide. Planting within the landscaping strips, at such close proximity, would not screen the panels to any significant degree. The visual experience for users of this footpath, and of the other footpath though to a lesser degree given its length of about 100 metres, would be wholly unsatisfactory. Rather than passing through a field with attractive views all round, walkers would enter an industrial tunnel with only forward views to the countryside beyond the site.

11. The fact that the longest path through the site only takes a few minutes to walk does not alter the conclusion that those using the footpath, and the other footpath through the site, would incur serious harm to their visual amenities whilst traversing the site, and their enjoyment of the countryside would be undermined. Also of concern are the visual amenities of walkers on the footpath that passes Hey's Farm to the west of the site. From this footpath views are slightly upwards and would be towards solar panels on sloping ground. The panels, the highest of those that would be on the site, would be on the skyline, would be visually intrusive, and would not be effectively screened by planting.

12. The Appellant maintains that "...there is no evidence that the development will have an incongruous or inappropriate appearance as it will have the appearance of a solar farm which is now an accepted form of development in the countryside of the UK". A solar farm can only be an accepted form of development if it does not cause unacceptable harm that is not outweighed by other considerations. With regard to visual harm, the harm would be unacceptable because the development, particularly for walkers on footpaths, who are regarded to be in the highest category of sensitivity to the visual effect of development, would have an incongruous and inappropriate appearance that would be alien to its countryside location. The proposed solar farm would have a significant adverse effect on the visual amenity of the area which could not be adequately mitigated.

13. The proposed development would have a minor adverse effect on the character of the landscape but would have a significant adverse effect on the visual amenity and appearance of the countryside, particularly for those using footpaths through the site and in the vicinity. Whilst the harm to landscape character would not be unacceptable, the harm that would be caused to the visual amenity of the area would be unacceptable. The proposal thus conflicts with policy 28 of the Central Lancashire Adopted Core Strategy (CS).

The amenities of residents of Tithebarn Farm

14. Tithebarn Farm is a residential property and the only such property that adjoins the site. Access into the property is close to the south-east corner of the site and the driveway extends to a substantial outbuilding at the rear of the dwelling. From the driveway, which is likely to be used by residents of the property on a daily basis, there would not only be views of the ends of the panels and of the gaps between the panels but also oblique views that would be of an

uninterrupted band of panels between 1 metre and 2.6 metres above ground level. The closest panels would be about 20 metres from the driveway. The solar panels would be visually intrusive from within the property and the current open outlook across the site would be obscured. Planting could screen the panels but would similarly obscure the open outlook from the property to the west.

15. Though this matter did not feature as a reason for refusal of the application, the proposed development would have an adverse effect on the visual amenities of residents of Tithebarn Farm, though the harm that would be caused, given that there are no direct views from with the dwelling, would not result in the property becoming an unattractive or unpleasant place to live.

Other matters

16. With regard to ecology, the Appellants submitted with the application an assessment of potential harm to great crested newts, a protected species. There is some doubt as to whether the assessment included sufficient information to consider whether the requirements of the Conservation of Habitats and Species Regulations 2010 (as amended) have been met. The assessment included mitigation measures and a condition suggested by the Council would require that these be fully implemented. Such a condition could be amended to require the submission of further information, to satisfy the Regulations, before the development is carried out. This matter could be covered by imposition of a condition and does not contribute to an assessment of overall harm.

17. Eight conditions suggested by the Council relate to highway matters and seek to address concerns about the impact of construction traffic on the highway network. Two of the conditions require the prior approval and implementation of a Construction Management Plan, a Traffic Management Plan, a Deliveries Management Plan and a Framework Construction Traffic Plan. Together with the other highway conditions these would address all highway safety and access concerns and highway matters do not contribute to an assessment of overall harm.

18. No other matters mentioned by the Council or by third parties contribute to an assessment of overall harm.

Conclusion on the first issue

19. The proposed solar farm development would result in a significant loss of openness of the Green Belt and would result in significant encroachment into the countryside, thus undermining one of the purposes of including land in the Green Belt. In addition, the development would have a minor adverse effect on the character of the landscape, a significant adverse effect on the visual amenity of the area, and an adverse effect on the visual amenities of residents of Tithebarn Farm.

The second issue – other considerations

20. The other considerations cited by the Appellant are the renewable energy benefits and sustainability credentials of the proposed development, environmental and ecology benefits, the temporary nature of the development, and the continuing use of the site for agriculture.

21. Environmental benefits of the proposed development, to offset the effects of climate change, include the supply of up to 8 MW of renewable energy; which would contribute to achieving the national target of meeting 15% of the United Kingdom's energy demand from renewable resources by 2020. The scheme would

offset about 340 tonnes of CO₂ per annum from being released into the atmosphere and would provide electricity sufficient to provide power for between 2000 and 2500 dwellings. There is no doubt that the scheme would make a significant contribution to energy security and reducing greenhouse emissions.

22. Paragraph 14 of the NPPF states that there is a presumption in favour of sustainable development and three dimensions to sustainable development, economic, social and environmental roles, are identified in paragraph 7. The environmental role is stated to be 'contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy'.

23. The tension in the environmental role of sustainable development between protecting the natural environment and moving to a low carbon economy is encapsulated in CS policy 28, which is supportive of low carbon energy schemes, such as that proposed in this case, but only if the "...proposal would not have an unacceptable impact on landscape character and visual appearance of the local area". There is a balance to be struck between these factors but it is reasonable to conclude that if the impact on landscape character and visual appearance, and other factors, outweighs the low carbon energy benefit of a scheme that it should not be regarded to be sustainable development.

24. Mitigating potential harm to protected species cannot be regarded to be an ecology benefit of the scheme. Strengthening existing hedgerows and new planting alongside footpaths passing through the site would improve the biodiversity value of the site but this cannot be regarded to be a significant benefit. The site would remain suitable for sheep grazing and would thus continue in agricultural use throughout the lifetime of the development but this is no more than a neutral factor in the balancing exercise.

25. The solar farm would be removed, in accordance with a condition if planning permission was to be granted, 25 years after it is brought into use. The land would also be restored to its original appearance and would not become classified as being previously developed land. 25 years, however, is about a third of a person's lifetime and is the span of a generation. Furthermore, there is no guarantee that planning permission would not be granted, after 25 years, for the replacement of the solar panels for a further 25 year period. Very little weight is therefore given to the reversibility of the scheme.

26. The scheme would make a significant contribution to energy security and reducing greenhouse emissions, and would, though not to any significant degree, enhance the biodiversity of the area. Whether the scheme would meet the environmental role of sustainable development depends on the balancing exercise to be considered in the third issue.

The third issue – whether other considerations clearly outweigh the harm caused

27. The harm that would be caused is by reason of inappropriateness, by a significant loss of openness of the Green Belt, and by significant encroachment into the countryside. In addition, minor harm would be caused to the character of the landscape, significant harm would be caused to the visual amenity of the countryside, and less than significant harm would be caused to the visual amenities of residents of Tithebarn Farm.

28. The landscape of Lancashire is not immune from the effects of climate change. Flooding is a serious issue and will have affected the area and the lives of those who live within the area. This one effect of climate change causes erosion of the landscape and alters how the landscape can be farmed and used. It also causes severe hardship for those who suffer the direct consequences; flooding of their homes and businesses.

29. Planning Policy Guidance on Renewable and Low Carbon Energy explains that the importance of increasing energy from renewable technologies “will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses”. The application proposals contribute to meeting these objectives. The NPPF supports renewable energy proposals. The transition to a low carbon future is one of its core planning principles and paragraph 93 states that planning plays a key role in supporting the delivery of renewable energy.

30. The presumption in favour of sustainable development does not supplant the primacy of the development plan in the decision making process; this is recognised in paragraph 11 of the NPPF. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determination of a planning application or appeal must be made in accordance with the development plan unless material considerations indicate otherwise. The balancing exercise that is required by section 38(6) of the Planning and Compulsory Purchase Act 2004 and to determine whether the solar farm scheme can be considered to be sustainable development requires planning judgement to be exercised.

31. The Appellant has sought to compare the required balancing exercise with those made in other appeal decisions. It is a well-established planning principle that a development proposal must be judged on its individual merits and the circumstances in this case, which must be regarded to be site specific, cannot be compared with the circumstances in other cases.

32. On the third issue, it is my view that the proposed solar farm would have an unacceptable impact on landscape character and, in particular, on the visual appearance of the local area, and that the proposed development thus conflicts with CS policy 28. Furthermore, as set out in paragraph 79 of the NPPF, “The Government attaches great importance to Green Belts”. It is also my view that the harm that would be caused by reason of inappropriateness, by a significant loss of openness of the Green Belt, and by significant encroachment into the countryside, in addition to the harm that would be caused to the character of the landscape, to the visual amenity of the countryside, and to the visual amenities of residents of Tithebarn Farm, is not clearly outweighed by the environmental and biodiversity benefits of the proposed renewable energy scheme.

Overall conclusion

33. The proposed development is not sustainable development and planning permission for the construction of a (up to 8MW) solar photovoltaic (PV) farm and associated works on land at Tithe Barn Lane, Heapey, Chorley must be withheld.

John Braithwaite

Inspector