



Appeal Decision

Site visit made on 21 February 2023

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 April 2023

Appeal Ref: APP/V1505/W/22/3301454

Park Farm, Dunton Road, Herongate CM13 3SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr James Nicol of Crouch Solar Farm Limited against the decision of Basildon Borough Council.
 - The application Ref 21/00758/FULL, dated 5 May 2021, was refused by notice dated 27 January 2022.
 - The development proposed is described as “construction and operation of a solar farm together with all associated works, equipment and necessary infrastructure”.
-

Decision

1. The appeal is allowed, and planning permission is granted, for the construction and operation of a solar farm together with all associated works, equipment and necessary infrastructure at Park Farm, Dunton Road, Herongate CM13 3SG in accordance with the terms of the application, Ref 21/00758/FULL, dated 5 May 2021, subject to the conditions in the schedule to this decision.

Procedural Matters

2. The Council reference emerging policies within the Basildon Borough Local Plan 2014-2034. However, the Council withdrew the plan from examination in March 2022. Therefore, these policies are no longer relevant to the appeal. I have therefore determined the appeal on this basis.

Background

3. The whole solar farm development straddles three local authority administrative areas; Basildon Borough Council, Brentwood Borough Council and Thurrock Borough Council. Approximately 35 hectares of the site falls within Brentwood Borough Council, approximately 3 hectares and part of the underground cable route falls within Basildon Borough Council, and a small section comprising part of the underground cable route falls within Thurrock Borough Council.
4. The development contained within Brentwood Borough Council’s administrative area was approved in November 2021¹. The Council referred the decision to the Secretary of State as a departure from the development plan and the Secretary of State confirmed that the application would not be called in. Two separate planning applications for the connector cable were approved by Basildon

¹ Planning Reference 21/00834/FULL

Borough Council in January 2022² and Thurrock Borough Council in December 2021³.

5. This appeal therefore relates only to the approximate 3 hectares of the site that falls within Basildon Borough Council, excluding the connector cable route.

Main Issues

6. The appeal site is located within the Green Belt. The National Planning Policy Framework ('the Framework') states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraphs 149 and 150 of the Framework define different types of development that could be an exception to inappropriate development in the Green Belt. It is uncontested by the main parties that the solar farm would not comply with any of these exceptions. From the evidence before me, I see no reason to disagree with this assertion. The proposal would therefore be inappropriate development in the Green Belt.
7. Accordingly, the main issues are:
 - the effect of the proposed development on the openness of, and the purposes of including land within, the Green Belt, having regard to the Framework; and
 - whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt – Openness and Purposes

8. The Framework identifies the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness has both visual and spatial qualities. Policy BAS GB1 of the Basildon District Local Plan Saved Policies, adopted 2007 (LP) seeks to ensure the long-term expansion of built-up areas is acceptable in the context of the purposes of the Green Belt and other provisions in the Local Plan. Thus, insofar as is relevant to this appeal, LP Policy BAS GB1 is broadly consistent with the Framework.
9. The appeal site comprises approximately one quarter of an existing agricultural field that is demarcated by tree and hedge field boundaries to the south and east and follows the irregular and imaginary line of the Council's administrative boundary to the north and west. It is currently devoid of any buildings or structures. The proposed solar panels would be sited in horizontal rows, covering an area of approximately 3 hectares. Perimeter fencing of 2m in height would be erected along the southern and eastern boundaries and CCTV cameras mounted on top of 2.5m high poles would be positioned at approximate 50m intervals around the perimeter. In spatial terms, the proposed development would reduce the openness of the Green Belt.
10. A Public Right of Way (PRoW) traversing north to south would navigate in close proximity to the appeal site, and a bridleway traverses east to west along the southern boundary of the appeal site. Furthermore, the A127 (the Southend

² Planning Reference 21/01765/FULL

³ Planning Reference 21/01752/FUL

Arterial Road) is located in close proximity of the appeal site to the south which has pavements along either side. Users of the PRoW, bridleway and A-road would be afforded a clear view of the proposed development and therefore it would be visually prominent within localised views. The proposal would also be visible from the property located near to the southeast corner of the appeal site. The undulating landform of the surrounding area together with tree belts would restrict longer-range views of the site.

11. The proposed solar arrays would be relatively modest in mass and footprint and would be spaced at regular 3.2m intervals that would reduce the overall scale of the development. Furthermore, the proposed development would be in place for a period of up to 40 years, before being fully demounted and the land returned to its former condition at the end of its use. As such, whilst 40 years is a long period of time, it is not permanent. Therefore, the impact on the openness of the Green Belt would be reduced with the site ultimately reinstated to its current open character. Consequently, both visually and spatially, the proposed development would result in harm to the openness of the Green Belt.
12. Introducing man-made structures into what is currently an open field, the appeal scheme would represent encroachment of development into the countryside. This would be contrary to one of the purposes of including land within the Green Belt, as set out in paragraph 138 of the Framework.
13. Therefore, in addition to the harm arising from the development comprising inappropriate development in the Green Belt, the proposed development would impact on the openness of the Green Belt in both visual and spatial terms and would be contrary to one of the purposes of including land within the Green Belt. The proposed development would conflict with Chapter 13 of the Framework. For the same reason, it would also conflict with the aims of Policy BAS GB1 of the LP.

Other Considerations

Climate Change

14. The appellant has directed me to a series of international, national and local publications and Acts in respect of climate change. A material consideration in the determination of planning proposals for renewable energy that fall under the Town and Country Planning Act 1990 (as amended) are the National Policy Statements (NPSs) for the delivery of energy infrastructure. The NPSs recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. In September 2021, draft updates to the Overarching NPS for Energy (EN-1) and the NPS for Renewable Energy Infrastructure (EN-3) were published.
15. The draft NPS EN-3 states that:

"Solar farms are one of the most established renewable electricity technologies in the UK and the cheapest form of electricity generation worldwide. Solar farms can be built quickly and, coupled with consistent reductions in the cost of materials and improvements in the efficiency of panels, large-scale solar is now viable in some cases to deploy subsidy-free and at little to no extra cost to the consumer. The Government has committed to sustained growth in solar capacity to ensure that we are on a pathway that allows us to meet net zero

emissions. As such solar is a key part of the government's strategy for low-cost decarbonisation of the energy sector".

16. The UK Government has declared a climate emergency and set a statutory target of achieving net zero emissions against a 1990 baseline by 2050 within the Climate Change Act 2008 (as amended). Furthermore, the government's Net Zero Strategy: Build Back Greener (2021) seeks to fully decarbonise our power supply by 2035 and accelerate deployment of low-cost renewable generation, including wind and solar. Both of which are a material consideration.
17. Paragraph 152 of the Framework states that the planning system should support the transition to a low carbon future and support renewable and low carbon energy and associated infrastructure. While paragraph 158 states that in determining planning applications, applicants are not required to demonstrate the overall need for renewable or low carbon energy; that decision makers should recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and approve the application if its impacts are (or can be made) acceptable.
18. The solar arrays within the appeal site would generate approximately 2.4MW, the equivalent of powering the needs of approximately 797 dwellings in Basildon and saving 539 tonnes of CO₂ per annum. Therefore, the energy benefit of the proposal must be afforded considerable weight.

Approved Scheme

19. The appeal site forms a small part of the overall solar farm. As previously discussed, approximately 35 hectares of the surrounding agricultural fields have approval for a solar farm⁴. Accordingly, approximately three quarters of the field in which the appeal site is located would be covered with solar panels. Furthermore, the three fields to the north of the appeal site would also be covered with solar panels and associated buildings/structures.
20. The approved solar farm would be sited adjacent to the PRoW, closer to it than the appeal site, and would also be sited a similar proximity to the bridleway and the A127. Furthermore, it would be sited close to properties to the north and east fronting onto Dunton Road. Therefore, due to the scale and siting of the approved scheme, it would have a significant impact in visual and spatial terms on the openness of the Green Belt and would represent encroachment into the countryside. Consequently, due to the limited size and scale of the appeal proposal, when compared to the approved solar farm, it would result in limited additional harm to the openness of the Green Belt.

Other Matters

21. I have had regard to the comments of interested parties. Matters in respect of works traffic and the route it would use could be controlled by condition, while Essex Highways confirmed that there have been no recorded incidents for two junctions referred to by an interested party. While the construction phase of the development could potentially be disruptive, it would be short-term, and some effects could be mitigated by condition. The potential effect of the development on the environment for animals, birds and plant life could also be mitigated by condition.

⁴ Planning Reference 21/00834/FULL

22. I have no substantive evidence before me to corroborate that solar panels are constructed of dangerous chemicals that have the potential to leak, and there is no indication that this would likely occur in this instance. The loss of a view and the potential devaluation of property are not material planning considerations. In any event, the proposal would not be permanent.

Conditions

23. I have had regard to the conditions suggested by the Council and the tests for conditions set out within the Framework. As a result, I have made amendments to some of the conditions in the interests of clarity, precision and to avoid repetition. In addition to the standard condition, which relates to the commencement of development, I have specified the approved plans for the avoidance of doubt.
24. Conditions requiring a commencement notice to be submitted, and for the cessation of the development and the land returned to its current condition either no later than 40 years from the date of the commencement notice or if the solar farm ceases to export electricity to the grid for a continuous period of 6 months are required to ensure that the development is not permanent, to support the very special circumstances of allowing the proposed development, and to preserve the openness of the Green Belt.
25. Conditions securing the precise details of the proposed development's final layout is necessary to ensure its appearance does not harm the character or appearance of the surrounding area or the living conditions of the occupiers of residential properties. However, it is not necessary to attach a separate condition in respect of the colour and details of materials for any proposed buildings or structures, as the appeal site does not contain any of these features. I have therefore omitted this suggested condition.
26. I am satisfied that conditions in respect of a Construction Management Plan are necessary in respect of highway safety. Conditions in respect of Sustainable Urban Drainage Systems (SUDS) to prevent potential flood risk elsewhere and to mitigate any environmental harm which may be caused to the local water environment are required. However, I have amended the wording of Condition 10(b) to accord with the wording of the same condition applied to the larger part of the site, following a recently approved s73 application⁵ by Brentwood Borough Council. I am also satisfied that a condition in respect of security details is necessary to ensure that the proposed measures are appropriate to the rural character of the site and from a health and safety requirement.
27. Conditions in respect of archaeology are necessary due to the conclusions of the Historic Environment Desk-Based Assessment (2021) submitted with the appeal. Similarly, conditions in respect of a Construction Environmental Management Plan, a Landscape and Ecological Management Plan and a Landscaping Scheme are necessary to conserve and enhance the biodiversity of the appeal site, to reduce the proposal's visual impact on the surrounding area, and to mitigate noise and dust impacts during the construction phase.
28. The appellant has confirmed they are agreeable to the imposition of those conditions that are pre-commencement conditions. I am also satisfied they are justifiably pre-commencement.

⁵ Planning Ref: 22/00667/FUL

Planning Balance and Conclusion

29. The proposed development would be inappropriate development in the Green Belt, it would harm the openness of the Green Belt and it would conflict with one of the purposes of including land within the Green Belt. As such, the Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
30. I have found that considerable weight should be afforded to the benefits of the proposed development in respect of climate change, and that the proposed development would result in limited additional harm to the openness of the Green Belt when considered in the context of the significantly larger approved solar farm of which the appeal site forms a part. Therefore, the material considerations are of sufficient weight to clearly outweigh the substantial harm to the Green Belt and the very special circumstances necessary to justify the development exist.
31. The appellant has advanced other benefits that the proposed development would provide, such as biodiversity enhancements and the economic benefits of the diversification of agricultural businesses. However, as I have already found that the material considerations detailed above clearly outweigh the substantial harm to the Green Belt, I do not consider it necessary to analyse these other benefits.
32. For the reasons set out above, having regard to the development plan as a whole and all other matters raised, I conclude that the appeal should be allowed.

A Berry

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun not later than three years from the date of this permission.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans:
 - SP-01 Revision 02
 - DZ-01 Revision 03
 - SD-01 Revision 01
 - SD-01 Revision 02
 - SD-02 Revision 02
 - SD-03 Revision 01
 - SD-04 Revision 02
 - SD-08 Revision 02
 - SD-15 Revision 01
 - SD-16 Revision 01
 - SD-17 Revision 01
- 3) Prior to the commencement of the development hereby permitted, a final detailed site layout plan including full details of the final locations, design and materials for the panel arrays, fencing, gates and CCTV cameras, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter permanently retained in the agreed form.
- 4) If the solar farm ceases to export electricity to the grid for a continuous period of 6 months, a scheme shall be submitted to the local planning authority for its written approval within 3 months from the end of the 6-month period for the removal of the solar farm and associated equipment and the restoration of that part of the site to agricultural use. The approved scheme of restoration shall be fully implemented within twelve months of the written approval being given.
- 5) The development hereby permitted shall not begin the export of electricity until a commencement notice has been submitted to, and acknowledged by, the local planning authority detailing the start date of first electricity export.
- 6) No later than 40 years from the date of the commencement notice detailing the start date of first electricity export, all buildings, hardstandings, access tracks, walls/fences/gates, containers, chattels, plant and related equipment on the site shall be permanently removed from the site, together with all waste materials resulting from such removal, and the restoration of the land to agricultural use. Furthermore, if the use as described in the application permanently ceases before that time, then the site clearance and restoration shall occur within 28 days of that cessation occurring, or other period as may be agreed in writing by the local planning authority.
- 7) Prior to the commencement of development, including any ground works, a Construction Management Plan shall be submitted to, and approved in

writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period and shall provide for:

- a. Suitable construction vehicle routes for all construction vehicles.
 - b. The parking of vehicles of site operatives and visitors.
 - c. Loading and unloading of plant and materials.
 - d. Storage of plant and materials used in constructing the development.
 - e. Wheel and underbody washing facilities.
 - f. The location of the construction compound.
 - g. Construction signage and traffic management measures.
 - h. Details of a nominated developer/resident liaison representative with an address and contact telephone number to be circulated to those residents consulted on the application by the developer's representatives. This person will act as first point of contact for residents who have any problems or questions related to the ongoing development.
- 8) Part 1 – Prior to the commencement of development, a programme of archaeological work shall be secured and implemented, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the local planning authority. The scheme of investigation shall include an assessment of significance and research questions and:
- a. The programme and methodology of site investigation and recording.
 - b. The programme for post investigation assessment.
 - c. Provision to be made for analysis of the site investigation and recording.
 - d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 - e. Provision to be made for archive deposition of the analysis and records of the site investigation.
 - f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
 - g. The site investigation shall be completed prior to the commencement of development, or in such other phased arrangement, as agreed and approved in writing by the local planning authority.

Part 2 - The solar farm shall not be brought into operation until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the local planning authority, in accordance with the programme set out in the Written Scheme of Investigation approved under Part 1 of this condition, and the provision made for analysis, publication and dissemination of results and archive deposition.

- 9) Part 1 - Should the archaeological evaluation referred to in Condition 8 identify any significant archaeological deposits, the final detailed site layout plan required by condition 3 shall include Archaeological Exclusion Zones within which below and above ground development will be excluded or provide sufficient design mitigation including but not limited to the use of above ground cables, concrete shoes or other means to avoid any impact on archaeological deposits if required.

Part 2 - If there are archaeological areas to be preserved in situ, prior to the commencement of development, a management plan for these areas shall be submitted to and approved in writing by the local planning authority, setting out the methodology to secure the ongoing protection of these areas during construction, operation and decommissioning of the solar farm. The development shall be undertaken in accordance with the approved details.

- 10) Prior to the commencement of development, a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, shall be submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the approved details.

The scheme should include but not be limited to:

- a. Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
 - b. If infiltration is not viable, then the drainage scheme should be shown to be limiting discharge rates to Q1 greenfield run-off rate for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change. All relevant permissions to discharge from the site into any outfall should be demonstrated.
 - c. Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
 - d. Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event.
 - e. Final modelling and calculations for all areas of the drainage system.
 - f. The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
 - g. Detailed engineering drawings of each component of the drainage scheme.
 - h. A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
 - i. A written report summarising the final strategy and highlighting any minor changes to the approved strategy.
- 11) 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 prevent pollution shall be submitted to, and approved in writing by, the local planning authority. The development shall be undertaken in accordance with the approved details.
- 12) Prior to first use of the development hereby permitted, a maintenance plan detailing the maintenance arrangements including, who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, shall be submitted to and agreed in

writing, by the local planning authority. It should additionally show that there is a regular and strict maintenance plan in place for the outfall to reduce the risk of blockage. Should any part be maintainable by a maintenance company, details of long-term funding arrangements should be provided. The development shall be undertaken in accordance with the approved details.

- 13) The applicant or any successor in title shall maintain yearly logs of maintenance which should be carried out in accordance with any approved maintenance plan. These must be available for inspection upon a request by the local planning authority.
- 14) Prior to the commencement of development (including ground works and vegetation clearance), a construction environmental management plan (CEMP) shall be submitted to and approved in writing by the local planning authority. The construction process shall be undertaken in accordance with the approved details.

The CEMP shall include the following:

- a. Risk assessment of potentially damaging construction activities.
 - b. Identification of "biodiversity protection zones".
 - c. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
 - d. The location and timing of sensitive works to avoid harm to biodiversity features.
 - e. The times during construction when specialist ecologists need to be present on site to oversee works.
 - f. Responsible persons and lines of communication.
 - g. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
 - h. Use of protective fences, exclusion barriers and warning signs.
 - i. Details for the control and management of noise and dust during the construction phase.
 - j. Shall have due consideration of noise guidance contained within BS 5228:2009+A1:2014.
- 15) Prior to the commencement of development, a landscape and ecological management plan (LEMP) shall be submitted to, and approved in writing by, the local planning authority. The content of the LEMP shall include the following:
 - a. Description and evaluation of features to be managed.
 - b. Ecological trends and constraints on site that might influence management.
 - c. Aims and objectives of management.
 - d. Appropriate management options for achieving aims and objectives.
 - e. Prescriptions for management actions.
 - f. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
 - g. Details of the body or organisation responsible for implementation of the plan.
 - h. Ongoing monitoring and remedial measures.
 - i. Details of seed mixtures to be sown in 'cover crop' areas.

- j. Details of appropriate management of cover crops.
- k. Details of stocking densities (if sheep are to be used to manage grassland areas).
- l. Details of maximised grassland margins to increase likelihood of providing nesting Skylark habitat.
- m. Details of proposed planting specifications.
- n. Details of landscaping and biodiversity net gain areas.
- o. Details of who will manage and maintain these areas once operational.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

- 16) Prior to the commencement of development, and notwithstanding the details contained with the LEMP, a landscaping scheme containing details of both hard and soft landscape works and soft landscaping management shall be submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the approved details prior to the first exportation to the National Grid, or in the first available planting season following such exportation and shall be permanently retained and maintained in accordance with the agreed lifetime of the development.

The details to be submitted shall include:

- a. Hard surfacing including pathways and driveways, other hard landscape features and materials.
 - b. Existing trees, hedges or other soft features to be retained.
 - c. Planting plans including specification of species, trees, planting centres, number and percentage mix.
 - d. Details of planting or features to be provided to enhance the value of the development for biodiversity and wildlife.
- 17) Prior to the first use of the development, full details of the security systems and physical measures to protect the equipment from damage and discourage unauthorised entry (for example CCTV, fencing and other safety or monitoring systems) shall be submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the approved details.

*****End of Conditions*****