



Appeal Decision

Inquiry Held on 16 to 18 January 2024

Site visit made on 15 January 2024

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

an Inspector appointed by the Secretary of State

Decision date: 5th March 2024

Appeal Ref: APP/V2635/W/23/3323065

**Land SE of Poplar Farm, Harps hall Road, Walton Highway,
Wisbech, Norfolk, PE14 7DL**

Easting 549701, Northing 310906

- 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 Matthew Bellward of Downing Renewable Developments LLP against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 22/01987/FM, dated 21 October 2022, was refused by notice dated 24 April 2023.
 - The development proposed is described as '*Installation, operation and decommissioning of a solar farm comprising an array of ground mounted solar PV panels and battery storage system with associated infrastructure including inverters and a substation compound as well as fencing, security cameras, cabling and biodiversity enhancement measures.*'
-

Decision

1. The appeal is allowed and planning permission is granted for the Installation, operation and decommissioning of a solar farm comprising an array of ground mounted solar PV panels and battery storage system with associated infrastructure including inverters and a substation compound as well as fencing, security cameras, cabling and biodiversity enhancement measures at Land SE of Poplar Farm, Harps Hall Road, Walton Highway, Wisbech, Norfolk, PE14 7DL in accordance with the terms of the application, Ref 22/01987/FM, dated 21 October 2021, subject to the conditions set out in Appendix A.

Preliminary and Procedural Matters

2. A Case Management Conference (CMC) was held on Friday 24 November 2023 with the Council and Appellant's representatives.
3. On Monday 15 January 2023, I undertook an unaccompanied site visit of the local area, being able to see the appeal site within the wider context from the public realm. This included covering a larger local area due to road works at the junction of Harp's Hall Road/Cow Lake Drove/Station Road. Neither main party sought further accompanied site visit(s). I saw no reason to disagree. Based on the evidence before me, both before and at the Inquiry, I am content that I saw various views from and to the appeal site.
4. On Tuesday 16 January 2024, after the Inquiry had opened, the Council indicated that an area of dispute had not been identified in the agreed of

Statement of Common Ground (SOCG). This relates to 'whether the site selection process was adequate, given the proposal to utilise BMV and having regard to relevant policies' as set out in ID5. I have taken this amended position into account in consideration of the proposal.

5. An Environmental Statement (ES) was produced to accompany the planning application. The original submissions were also supplemented by additional documentation in early 2022, which together comprise the composite ES. I am satisfied that these documents meet the requirements of the *Town and Country Planning (Environmental Impact Assessment) Regulations 2017*. I have taken this environmental information, including the oral evidence given at the Inquiry, into account in my consideration of the appeal proposal.
6. I have also taken into account the mitigation measures proposed by the Appellant in their Summary of Mitigation set out in Chapter 18 of their Environmental Statement¹. Given that these are deliverable against the use of planning conditions and/or part of the embedded design, I am assured that the proposal would not result in any significant adverse environmental effects in this instance.
7. On 5 January 2024, a Planning Rebuttal to the Proof of Evidence of Frazer Blackwood was submitted to the Inquiry. The matter of its acceptance was discussed between the main parties on the first day of the Inquiry. Whilst noting the Council's concerns, I ruled that there had been an opportunity for both the Council and interested parties to consider its content and address it. I therefore accepted it as evidence before the Inquiry.
8. Following the close of the Inquiry, on 7 February 2024, the Appellant brought to my attention an allowed appeal decision (reference 3321094) for a solar farm near Marden, Kent, dated 5 February 2024. That proposal was allowed following an Inquiry. I sought the views of the Local Planning Authority, who considered that it should be disregarded as it was not new government policy or new legislation. I have carefully considered these comments; including those dated 29 February 2024. Due to the fact that the appeal decision could be material to the proposal here (albeit for a similar type of development but in a different part of the country), I resolved that it should be taken into account.
9. Neither party sought the re-opening of the Inquiry on this matter and I dealt with it via written representations. To be clear, given that that decision related to a site in a different part of the country, not having heard the local policy context, the evidence of the parties in that case, nor having a full appreciation of the specifics of that proposal outside of the decision letter, I afford that decision very limited weight in this case, as suggested by the Council.

Main Issues

10. The main issues in this case are:

- (i) The effect of the proposed development on the character and appearance of the Fenland Landscape; and,
- (ii) The effect of the proposal on Best and Most Versatile Agricultural Land, and;

¹ CD1.24

- (iii) The overall planning balance, whether public benefits outweigh any harms identified.

Planning Policy

11. A number of policy documents were discussed at the Inquiry. For brevity, I summarise some of the key policies/documents here.
12. Only one policy was specifically cited in the Local Planning Authority's decision. That is Policy DM 20 – Renewable Energy of the *Site Allocations and Development Management Policies Plan, adopted September 2016* (LP). The Development Plan also comprises the *King's Lynn & West Norfolk Borough Council Local Development Framework – Core Strategy, adopted July 2011* (herein CS). Although, whilst before the Planning Committee when it made its decision to refuse permission, it did not form any part of the reasons for refusal.
13. Put simply, policy DM 20 comprises two elements. Firstly, a balancing of the benefits of proposals for renewable energy against impacts on a set list of factors, including the surrounding landscape. Secondly, in addition to those factors the Council will seek to resist proposals where there is a significant loss of agricultural land or where land in the best and most versatile grades of agricultural land are proposed to be used. Lastly, the policy also has a 'tail end' which provides that development may be permitted where any adverse impacts can be satisfactorily mitigated against and such mitigation can be secured by planning condition.
14. In December 2023, a revised *National Planning Policy Framework* was issued by the Secretary of State. It is this version that the main parties have considered in presenting their evidence to the Inquiry. In particular, the Council indicate in their closings that the proposal would conflict with Paragraphs 180(b), 181 and footnote 62 of the Framework².
15. Paragraph 180(b) sets out that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of best and most versatile land, and of trees and woodland.
16. Paragraph 181 states that '*Plans should:...allocate land with the least environmental or amenity value, where consistent with other policies in this Framework⁶²...*'. With footnote 62 stating '*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. The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development.*'
17. The Written Ministerial Statement of 25 March 2015 (WMS) made by the Secretary of State states, on Solar energy: protecting the local and global environment; '*we want it to be clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be*

² ID14, Page 22, Para. 58

justified by the most compelling evidence. Of course, planning is a quasi-judicial process, and every application needs to be considered on its individual merits, with due process, in light of the relevant material considerations.' Although nearly a decade old, it remains extant and referred to in the national Planning Practice Guidance. It therefore continues to form part of government policy on relevant development.

18. There are two National Policy Statements (NPS) which are relevant in this instance. The Department for Energy Security & Net Zero *Overarching National Policy Statement for Energy (EN-1)*³ was designated in January 2024. It should be noted that the application here is **not** Critical National Priority infrastructure as defined in EN-1⁴. Nor does the size of this application (of 49.9 mW) mean that it falls to be determined under the Planning Act 2008 as a nationally significant infrastructure project (NSIP).
19. Nonetheless, EN-1 is clear in that it has a role in the wider planning system⁵ and may be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Given the nature of the development here, NPS EN-1 should be considered as a material consideration in this instance.
20. The Department for Energy Security & Net Zero *National Policy Statement for Renewable Energy Infrastructure (EN-3)* was designated in January 2024. Similar to EN-1, it sets out national policy in respect of renewable energy and states that '*There is an urgent need for new electricity generating capacity to meet our energy objectives.*' NPS EN-3 should be considered as a material consideration in this instance.

Reasons

Character and appearance of the Fenland Landscape

21. The appeal site is located within the Fens National Landscape Area (NCA 26) and the Fens – Settled Inland Marshes landscape character type (LCT D4). It is noted that the appeal site does not fall within any designated landscape nor is it a 'valued landscape'; the protecting and enhancing of which are sought by Paragraph 180 a) of the Framework. It nonetheless has a value to the local community and its characteristics and appearance make an important positive contribution to their daily lives and well-being.
22. The Council's Landscape Character Assessment⁶ identifies that the key characteristics of the wider landscape in which the appeal site sits include orchards and conifer planting, with distracting features such as pylons and main roads. As confirmed within the Council's closings, where conifer hedges are present in the landscape, they are usually planted to provide shelter to

³ ID9

⁴ The Glossary to EN1 states that CNP is: *A policy set out at Section 4.2 of EN-1 which applies a policy presumption that, subject to any legal requirements (including under section 104 of the Planning Act 2008), the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy. CNP Infrastructure is defined as nationally significant low carbon.*

⁵ See Page 6, Paras. 1.2.1 and 1.2.2

⁶ ARD 37, *King's Lynn and West Norfolk Borough Landscape Character Assessment, Final Report*, March 2007, Pages 57-58 in particular.

- houses and farmsteads.⁷ During my site inspection, I saw that these wider characteristics of the local landscape are present in and near to the appeal site.
23. In addition to the original evidence, both main parties submitted landscape and visual Proofs to the Inquiry. The points of difference between the submitted Proofs are relatively narrow – the Council’s case being focussed on the impacts on the proposal on the landscape resource rather than visual impacts on human beings, and both parties cases are differentiated by the appropriate scale at which to judge the proposal. The evidence of Mr Etchells (for the Council) centred around close proximity to the site, whereas Mr Lanchbury (for the Appellant) looked at a slightly wider area.
24. Clearly, the views closest to the site would be the greater impacted given the intervening distance and vegetation and other structures between the viewer and the appeal site. The introduction of solar panels and associated infrastructure over 33ha of the 87ha site would result in noticeable changes to the character and appearance of the area. It would alter from a relatively open arable field used for growing crops for anaerobic digestion to one that is used for pastoral farming (with sheep or similar animals) and solar ‘farming’. There would, however, be no change to the field pattern and a retention of field margins, a conserving of drainage patterns, an enhancement of ecology and wildlife corridors through hedging, and the proposal would restore orchards which, according to the Council’s position ‘many which have fallen into decay’⁸.
25. In order to minimise the impact, mitigation has been proposed in the Landscape Mitigation Plan (Figure 5.5 of the LVIA). This includes the provision of sizeable areas of wildflower mix, native orchard mix and retained habitat. There would also be the provision of hedging to ‘screen’ areas of the development from wider views, meaning that in practical terms the visual and landscape impacts would be very limited through being highly localised in nature. The mitigation planting proposed would take some time to establish (for example I heard that the hedging might take 5-7 years to establish depending on species used) and its effectiveness will change over the year as the seasons cause deciduous plants to lose their leaves.
26. Nonetheless, the landscape mitigation plan would effectively screen the appeal site and the proposed development from most views into and out of the site and for most of the year. The mitigation proposed is appropriate to the locality and would have the added benefit of improving biodiversity on the site (which the main parties do not dispute). My overall assessment is that the impact of the proposal on the character and appearance of the area and Fenland Landscape is that it would introduce no greater than moderate localised harm – and harm which is principally restricted to close proximity to the site. This is harm that would reduce over time as the mitigation strategy is implemented and takes effect thereafter.
27. I note the points raised in terms of the proposed coniferous hedging to be used around and near to the battery storage element of the proposal. At the Inquiry I heard that the coniferous hedging was considered to be at odds with the character of the area. This was especially so in terms of the extended length proposed, which some parties considered was excessive. However, there are two key points in this respect.

⁷ Page 17, Para. 34

⁸ LPAs Closings Para 33, Pages 16-17

28. Firstly, coniferous or evergreen hedging is found in the locality and these are typically used to shelter farmsteads or houses. Their usage here to provide shelter to the Battery Storage and associated infrastructure element of the proposal (which is a small part of the overall development in the westernmost part of the site) would not appear as odd or out of keeping with what is a part of the character of the wider locality.
29. Secondly, it is clear looking at the submitted drawings, that the usage of coniferous or evergreen planting would be extremely limited in extent. It would not present itself as hundreds and hundreds of metres of alien hedging within the landscape, but rather would appear as a small cluster not unlike others found in the wider landscape. As such, I do not find that this element of the proposal would result in any harm to the character or appearance of the Fenland Landscape.
30. When considered in light of the mitigation strategy, the opportunity to restore orchards and the retention of field patterns, the long term impact on character and appearance, in my view, would be low. This is before taking into account the fact that the proposal is reversible and a condition could be imposed to ensure that at the end of its operational life (after 30 years) the land is restored to its former state to be used solely for agricultural purposes.
31. I therefore find that there would be some very limited and localised immediate harm to the character and appearance of the Fenland Landscape when the proposal is implemented. However, the harm would reduce to a very low level after a period of no greater than 5-7 years, and this is harm that would diminish each year to the point when the mitigation is fully established. Mitigation planting would also reduce the impacts to the surrounding landscape whilst also providing positive ecological benefits. Accordingly, I find that the proposal would accord with Policy DM20 of the LP in respect of landscape impact.

Best and most versatile agricultural land

32. The site is a mixture of Grades 2, 3a and 3b agricultural land, presently used for growing crops (whole crop maize and sugar beet)⁹ to produce biomass for anaerobic digestion. This is identified within the Agricultural Land Classification Report by that the *'quality of agricultural land at the Site is limited by soil wetness to mainly Subgrade 3b (i.e., 40.0 ha, or 45.20% of the Site), with some land limited by soil droughtiness to Grade 2 (i.e., 12.0 ha or 13.60% of the Site), or Subgrade 3a (i.e., 36.50 ha or 41.20% of the Site)'*¹⁰.
33. A significant part of appeal site (roughly 54.8%) comprises Best and Most Versatile Agricultural Land (BMVAL)¹¹ as defined by the glossary of the *National Planning Policy Framework* (the Framework). This is land that for a period of 30 years – a time period which could reasonably be secured by planning condition - would not be readily available for arable farming. However, it would be available for grazing and pasture. This is a common approach used on solar developments in order to manage the grassed areas around solar panels and represents a *de facto* dual use of the land for both agriculture and creation of renewable energy.

⁹ POE Daniel Baird, Page 13

¹⁰ AD1 *Agricultural Land Classification: Meerdyke Solar Farm, Norfolk* by Askew Land & Soil Limited dated 6th October 2022, Page 13, Para 5.1.4

¹¹ 13.6% + 41.2% = 54.8%

34. The development of 33ha of agricultural land (with relatively low physical impact being simple piled insertions into the ground) would represent a tiny fraction of the totality of arable land availability within the Borough. Even at the full extent of the appeal site, of around 87ha, this would represent about 0.08% of the arable area in the Borough. Put another way, this would be 87ha out of approximately 142,857ha total farmable area in the King's Lynn and West Norfolk area, and 87ha within the East of England area of approximately 1,394,000ha. These figures are contained within the agreed SOCG¹². The quantum of the development proposed would be relatively insignificant within the substantial available agricultural land within this area.
35. Furthermore, the agricultural land would not be 'lost'. It can continue to be farmed, albeit in a different way, with the grazing of sheep or similar animals. What is more, at the end of the life of the solar farm, in 30 years time, the relatively simple act of removing metal stakes and associated infrastructure from the site would allow its use to return to arable farming, should that be the most effective and efficient use of the land at that time. The land would not, as the Council suggests, be lost. Albeit for a period of 30 years it would be used for different agricultural purposes than arable farming, being instead a mix of pasture farming and as a solar farm.
36. It should be noted that in practical terms the planning system has very little control over the crops or animals that farmers decide to use their land for. As indicated in the evidence of Daniel Baird, (for the Appellant on Soil quality and the only agriculture-related witness before the Inquiry) *'Farmers are able to grow crops for energy production rather than food production. The site is currently in rotations of whole crop maize and sugar beet which are destined to supply Anaerobic Digester (AD) plant generating power... the most productive crop is miscanthus...will average 63MWh/ha/year...biodiesel from an oil seed crop will average 11MWh/ha/year...In contrast the Applicant anticipates an energy output from this site of 724MWh/ha/y.'*¹³ The distinction in this case, is that the site would be used not only for the creation of renewable energy – and of a greater level than existing arable crops on the site, but also continue to be used for agricultural purposes. In light of such circumstances, I do not find that the proposal would result in a 'significant loss of agricultural land' as is resisted by part a) of Policy DM 20 of the LP.
37. Turning to part b) of Policy DM 20, the policy is slightly misaligned with national policy in the Framework. Policy DM 20 sets out that the Council will seek to resist proposals where land in the BMVAL grades are proposed to be used. Read plainly, the starting point is resistance to the use of BMVAL for renewable energy proposals. There is a slight tension within the local development plan, whereby renewable energy schemes are broadly supported and directed to areas outside of development boundaries (see Policy DM 2 – Development Boundaries) yet there is little analysis within the LP as to the availability of land outside of the BMVAL classification.
38. Put another way, Policy DM 2 indicates that renewable energy generation is identified as suitable in rural areas, but then Policy DM 20 undermines this by saying that when BMVAL is present, and there is a lot of potential BMVAL in this Borough as identified above, the default position in local policy terms is 'resistance'.

¹² See ID5, Pages 12-13

¹³ D Baird POE, Page 13, para 11.1 to 11.2

39. Paragraph 180 of the Framework takes a more proportionate approach. It sets out that decisions should contribute and enhance the natural or local environment by recognising the economic and other benefits of BMVAL, and for plans at footnote 62, to Paragraph 181: 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. Put another way, rather than 'resisting' development on BMVAL, national policy indicates that there needs to be a justification given for the use of BMVAL.
40. This broadly accords with the Written Ministerial Statement of 5 March 2015¹⁴ (herein the 2015 WMS), which indicated that *'we want it to be clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence. Of course, planning is a quasi-judicial process, and every application needs to be considered on its individual merits, with due process, in light of the relevant material considerations.'*
41. In this respect, the Appellant has undertaken a site selection process¹⁵. This is based on the logical approach of contacting UK Power Network, who are responsible for large parts of the electricity infrastructure network, and identifying a Point of Connection (PoC). One such point was identified at Walsoken substation. Once capacity was identified the Appellant then sought to identify areas within a 3.5km search area. This sought to identify land for use as a solar farm, and assessing its potential within this search area by considering factors such as visual impacts, agricultural land classification, and ecological considerations¹⁶.
42. I acknowledge that the Council have criticised the narrowness of this search area and basing it on this PoC over others that may exist locally. The Council considers that for it to meet the threshold of 'compelling evidence' the site selection process should have considered other PoC within the area. However, such an approach is akin to a form of 'sequential test'. That is not what policy at either local or national level requires; and neither main party was able to direct me to where such a requirement exists.
43. I find that the Appellant has adopted a pragmatic and proportionate approach in this case. A PoC, and one with capacity, which is fundamental to getting the energy from the solar farm into the National Grid, is a logical starting point in order to inform the potential location(s) of energy creating development. This document forms part of the 'compelling evidence' in favour of justifying this proposal.
44. However, it is not just this document that has been submitted to support the compelling evidence case. The Appellant has also demonstrated how they have carefully considered the use of BMVAL, how to minimise the impact of the proposal on local residents and the local environment. Where harm does arise – for example in terms of localised visual impacts and character and appearance – it is possible to use conditions to mitigate these. Moreover, at the end of the operational life of the proposal it is possible to restore the site back to its previous use for arable farming after 30 years of dual usage.

¹⁴ ARD39

¹⁵ ARD15

¹⁶ See ARD15, page 15, Table 1 Meerdyke Solar Farm, Feasibility Considerations

45. The 'compelling evidence' also exists in the wider context of renewable energy creation, the overall trend towards a 'net zero' future, tackling climate change and providing energy security. Since 2015 the government has published a plethora of documents¹⁷ outlining the urgency of the UK moving towards a low carbon and net zero future. Most recently, this has been reiterated by the Written Ministerial Statement on 17 January 2024¹⁸ where the SoS for Energy Security and Net Zero set out that five National Policy Statements have been designated which '*support our efforts to build an energy system that will meet our net zero objectives, and provide the country with greater energy security, helping the UK maintain energy supplies at affordable prices*'.
46. The *National Policy Statement for Renewable Energy Infrastructure (EN-3)*¹⁹ (designated January 2024), whilst relating to schemes of 50MW, indicates that '*there is an urgent need for new electricity generating capacity*²⁰ and that '*solar is a key part of the government's strategy for low cost decarbonisation of the energy sector*²¹ and that '*whilst the development of solar arrays is not prohibited on BMVAL...applicant's should explain their choice of site...*²² This is a compelling policy position which supports the urgent and current need for renewable solar energy to contribute to the nation's energy and environmental needs. An urgent need that all proposals, including those smaller than the thresholds for NSIP/CNP schemes, can make positive contributions towards.
47. Taken in the round, as a matter of planning judgement, I find that the Appellant has provided compelling evidence which justifies the use of BMVAL, as sought by the 2015 WMS, in this case. The proposal would comply with national policy set out in the Framework in respect of non-Nationally Significant Infrastructure Projects with regard to the use of BMVAL. It would also align with the aims of material considerations including the National Policy Statements on Energy (EN-1) and Renewable Energy (EN-3).
48. Returning to Policy DM 20 of the LP, the tail piece of the policy refers to the fact that development may be permitted where any adverse impacts can be satisfactorily mitigated and secured by planning condition. In this case, a condition can be used to ensure that the site is restored to its former use at the end of the operational life of the solar farm. This would accord with the national Planning Practice Guidance which sets out '*that solar farms are normally temporary structures and planning conditions can be used to ensure that the installation are removed when no longer in use and the land is restored to its previous use*²³. Accordingly, the proposal would accord with Policy DM 20 of the LP when read as a whole.
49. To conclude on agricultural land matters, I do not find that the proposal would result in a significant loss of agricultural land. Whilst the proposal would result in the non-exclusive use of BMVAL, I have found that this use has been

¹⁷ For example; ARD6 White paper Powering our Net Zero future 2020, ARD5 British Energy Security Strategy 2022, ARD7 Net Zero The UK's contribution to stopping global warming, 2019 and ARD8 Progress in reducing emissions 2023 Report to Parliament.

¹⁸ ID9 Energy National Policy Statements, Statement made on 17 January 2024 by Claire Coutinho, Secretary of State for Energy Security and Net Zero

¹⁹ ARD4

²⁰ ARD4, Page 4, Para 1.1.1

²¹ ARD4, Page 88, Para 2.10.9

²² ARD4, Page 92, Paras 2.10.30 and 2.10.31

²³ <https://www.gov.uk/guidance/renewable-and-low-carbon-energy>, What are the particular planning considerations that relate to large scale ground-mounted solar photovoltaic farms? Paragraph: 013 Reference ID: 5-013-20150327, Revision date: 27 03 2015

justified by the evidence before the Inquiry which I find to be 'compelling evidence'. Moreover, even if I am wrong in terms of this assessment as a matter of planning judgment, the adverse impacts through the temporary and limited loss of BMVAL for 30 years can be satisfactorily mitigated through the use of planning conditions.

50. Accordingly, I find that the proposal would not have an adverse effect on the economic and other benefits of BMVAL. Moreover it would accord with Policy DM 20 of the LP which seeks the aforesaid aims. The proposed development would also accord with various material considerations including those expressed in the Framework, the national Planning Practice Guidance, the WMS of 2015, and the National Policy Statements on Energy.

Other Matters

51. A number of concerns have been raised by interested parties. I now consider these before considering the overall planning balance.
52. In terms of the fire risk from the Battery Energy Storage Systems (BESS) the national Planning Practice Guidance²⁴ indicates that such systems can enable us to use energy more flexibly and de-carbonise our energy system cost-effectively. They are, therefore, an important element in the creation of solar energy. The Guidance goes on to indicate that the relevant local fire and rescue service should be engaged. Norfolk Fire & Rescue Service did not raise an objection to the proposal in their formal consultation response of 7 September 2022, nor did they raise any specific safety concerns over the use of BESS in this location. I see no reason to disagree with the professional advice provided by the local fire and rescue service.
53. In terms of transport and traffic movements, I saw that roads to the appeal site are generally narrow and winding, with sharp bends in places. Large lorries in particular are likely to find access to and from the site difficult to achieve. At the Inquiry I heard concerns from the local residents group about the quantum of traffic during the construction phase. I also heard how the rise in traffic during this time would dramatically alter the generally peaceful character of the area. An area that is enjoyed by residents and visitors for daily walks.
54. I acknowledge that during the construction phase there would be a noticeable increase in traffic in the area. However, the Appellant has sought to address this through mitigation such as the use of smaller vehicles and/or limiting construction times. This could reasonably be secured by planning condition. Whilst noting that the proposal would result in a short term impact on local residents and visitors during construction, I do not find that this would result in harm that would justify the refusal of permission in this instance.
55. With regard to flood risk, the submitted *Flood Risk Assessment and Drainage Strategy* (September 2022) has taken into account the potential for increases in sea levels due to climate change. Were a breach in defences to occur, this would likely be limited to the northwest area of the site. Mitigation has been proposed to address this. As such the appeal scheme not only allows for flood risk, but also provides adequate mitigation for a potential breach of defences. This could be secured by means of planning conditions. The evidence before

²⁴ <https://www.gov.uk/guidance/renewable-and-low-carbon-energy> Paragraphs: 032 to 036 Reference ID: 5-032-20230814. Last updated 14 August 2023

the Inquiry indicates that the proposal would not be unacceptable on flood risk grounds. I am reinforced in this view by the absence of objections from the Lead Local Flood Authority (LLFA) or the King's Lynn Drainage Board in relation to flood risk.

56. In terms of noise, solar panels do not usually generate perceptible levels of noise or vibration. However, noise can be created in the substation and cooling equipment of the BESS. To address this, the Appellant has sited this around 270 metres from the nearest dwelling. Moreover, a planning condition could reasonably be used to ensure that any noise from this to local residents can be suitably mitigated. This does not, therefore, form a reason for dismissal of the appeal.
57. In terms of views and outlook from nearby residential dwellings, I heard from local residents and the evidence of Mr Etchell²⁵. I have also been informed by my site inspection of the site and its wider context. Looking at drawing labelled 'Landscape Mitigation' Project Number 1620013921 Figure No. 5.5, it is possible to see that the proposal has been designed to set back the solar arrays and associated infrastructure from the boundaries with residential dwellings. Furthermore, there would be hedgerows with native species planted. The combination of the distances involved together with screening provided by the planting of native hedgerows would mean that whilst there would be a change to the outlook from some nearby dwellings, these would not amount to a level of change justifying the refusal of permission.
58. In considering the various concerns raised by interested parties, including the local residents group, local residents and Borough Councillors, at the application and appeal stages, I do not find that the objections raised, whether individually or cumulatively, justify the dismissal of the proposal in this case.

Overall planning balance

59. The proposal would result in a very low level of time-limited localised harm to the character and appearance of the area. It would also result in the temporary loss of areas of BMVAL used for arable farming. Moreover, in both instances, the harm can be mitigated through either the use of mitigation planting or the reversible temporary nature of the proposals. The mitigation can be secured through the use of planning conditions. Given this, both 'harms' are afforded no more than moderate weight against the proposal, which reduces to low harm when considered in light of the mitigation.
60. Set against these harms are a number of benefits, including; the proposal would provide renewable energy for a period of 30 years, for which there is an urgent need as expressed in various national strategies and NPS. The proposed development would also enable a more efficient use of the land for renewable energy creation – solar panels compared to anaerobic digestion – whilst also allowing its continued use for agriculture. These benefits are afforded substantial weight given that it would generate substantially greater levels of renewable energy, whilst allowing a dual use with pastoral agriculture of the site.
61. The proposal would provide an overall Biodiversity Net Gain – indicated as a net gain of 176% for area-based habitats, a 1101% net gain for hedgerows

²⁵ ID10

and a 29% net gain for rivers²⁶, which would benefit local wildlife over the life of the development. This benefit is afforded moderate weight in favour of the proposal, as suggested by the Council, as it could also be secured by normal management of the land and setting aside land on the site for such use.

62. In this instance, applying Policy DM 20 of the LP, which the Council indicates is the most relevant in this case, I find that the benefits the proposal brings in terms of energy generated outweigh the impacts on landscape. Whilst noting the 'resisting' element of the policy in relation to agricultural land, I find that the adverse impacts arising – principally to character and appearance and temporary loss of BMVAL for arable farming – are partly mitigated through the dual use of the land and further satisfactorily mitigated and can be secured by planning condition.
63. Accordingly, the proposal would comply with Policy DM 20 of the LP, and with the LP when considered as a whole. The planning balance, weighing the harm or adverse impacts arising against the benefits, clearly weighs in favour of the grant of planning permission in this case.

Conditions

64. A number of suggested planning conditions were suggested by the main parties and informed a round table discussion at the Inquiry. I have taken these into account in light of Paragraph 56 of the Framework and the Guidance in respect of the use of planning conditions. I also note that contained within version 2: 18 January 2024 of the *SOCG Appendix 1_Suggested conditions* document the Appellant confirmed that pursuant to s100ZA of the TCPA 1990 to the use of pre-commencement conditions.
65. Conditions requiring the proposal to be begun within three years of the permission and in accordance with the submitted drawings are necessary and relevant to the permission to provide certainty and for the avoidance of doubt.
66. Conditions requiring a Construction Traffic Management Plan, off-site highway works and a construction management scheme are necessary in order to minimise the risks to other highway users and protect the living conditions of nearby residential occupiers during construction works.
67. A condition requiring the submission and approval of external lighting details is necessary and reasonable in order to minimise light pollution and safeguard the amenity of nearby residents and ecological interests.
68. Planning conditions requiring the submission of surface water drainage arrangements and the development being carried out in accordance with the Flood Risk Assessment dated September 2022 are necessary to minimise the risk to life or property arising from surface water run-off and/or flooding.
69. Conditions relating to limiting the times of the year works can be undertaken to hedges, trees, shrubs or brambles, the submission and approval of a Construction Environmental Management Plan for Biodiversity, and works being carried out in accordance with the Habitats Management Plan October 2022 are necessary and reasonable in order to protect existing biodiversity on or near to the site, and in order to enhance the site's biodiversity and ecological interests

²⁶ Approximate figures from LPA Planning Proof of Evidence, page 41, Para. 6.4 and Appellant's Planning Proof of Evidence, Executive Summary, page 41

in accordance with Policy CS12 of the *Kings Lynn and West Norfolk Core Strategy 2011*, with Policy DM15 and DM 20 of the LP.

70. Similarly, the submission of a biodiversity gain plan which accords with the Biodiversity Net Gain Assessment is necessary and reasonable to ensure that the scheme delivers the biodiversity net gain which is proposed, demonstrating beneficial biodiversity conservation of features and measurable net gain in line with the principles outlined within the statutory Biodiversity Metric, and habitat creation.
71. A condition requiring an archaeological written scheme of investigation is reasonable and necessary in order to minimise the impact on any archaeology present on the site.
72. Conditions relating to details of soft and hard landscaping and being carried out in accordance with the landscape mitigation measures are reasonable in order to ensure that the planting mitigation proposed will secure its aims over the life of the development.
73. A condition relating to the decommissioning and restoration of the site is reasonable, necessary and enforceable to ensure that the land is returned to its previous condition at the end of the temporary period sought here.
74. In terms of a noise condition, a condition requiring the battery storage facility to be enclosed with sound-insulating materials, is necessary in order to minimise the noise emanating from this part of the site and the subsequent effect that may have on nearby residents.
75. A condition requiring a battery fire safety management plan to be submitted and approved by the Local Planning Authority is necessary and reasonable in order to comply with Policies DM 15 and DM 20 of the LP and to minimise the potential risk to nearby property and/or life arising from the proposal.

Conclusion

76. In accordance with s38(6) of the *Planning and Compulsory Purchase Act 2004*, as amended, the proposal would accord with the adopted development plan for the area when considered as a whole. Furthermore, there are a number of material considerations, including the Framework, the Guidance, the WMS 2015 and NPS which weigh positively in favour of the proposal.
77. For the reasons given above, I conclude that the appeal should be allowed.

C Parker

INSPECTOR

Appendix A – List of conditions imposed

1. The development hereby permitted must be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted must be carried out in accordance with the following approved plans Drawing Nos -
 - 2.3 Typical Array Details (Received 17 Nov 22)
 - 2.4 Typical Substation and Battery Storage Details (Received 17 Nov 22)
 - 2.5 Typical Switchgear and Transformer Housing (Received 17 Nov 22)
 - 2.6 Typical Fence and CCTV Details (Received 17 Nov 22)
 - 2.1A Existing Site Plan (Received 14 Nov 22)
 - 2.1B Existing Site Plan (Received 14 Nov 22)
 - 2.2A Proposed Site Plan (Received 14 Nov 22)
 - 2.2B Proposed Site Plan (Received 14 Nov 22)
 - 1620013921Site Location Plan (Received 8 Nov 22)
3. Prior to the commencement of development a Construction Traffic Management Plan (CTMP), which includes details of construction traffic routing, provision for addressing any abnormal wear and tear to the highway as a consequence of the development, provision of wheel cleaning facilities and details of any traffic management must be submitted to and approved in writing by the Local Planning Authority. The CTMP should include the mitigation measures outlined in paragraph 6.5 of the Environmental Statement. For the duration of the construction period of the development, all traffic associated with the construction of the development must comply with the CTMP.
4. The development authorised by this planning permission must not begin until a detailed scheme for off-site highway works as shown on drawing numbers 2, 3, 4, 5, 6 and 7 in Appendix B of the Transport Statement (reference GB01T21/A18/11041722) has been submitted to and approved in writing by the Local Planning Authority. Prior to commencement of any works being undertaken on the development hereby permitted the off-site highway improvement works must be completed.
5. Prior to commencement of development a detailed construction management scheme must be submitted to and approved by the Local Planning Authority, this must include:
 - (a) Hours of construction,
 - (b) Details relating to deliveries/collections.
 - (c) Attenuation measures for noise and vibration from any piling.
 - (d) The location of any fixed machinery, their sound power levels,
 - (e) The location and layout of the contractor compound,
 - (f) The location of contractor parking,

(g) Soil management plan during construction.

(h) The location and layout of the materials storage area, machinery storage area and waste & recycling storage area,

(i) Proposed attenuation and mitigation methods to protect residents from noise, lighting, vibrations, dust (in accordance with Section 8 of IAQM Guidance) and litter.

The detailed construction management plan shall be substantively in accord with the assessment of traffic impacts in the Environmental Statement.

The construction management scheme must be implemented as approved.

6. Prior to the installation of any external lighting, a detailed outdoor lighting scheme must be submitted to and approved in writing by the Local Planning Authority. The scheme must include:

a) Details of the type of lights.

b) The orientation/angle of the luminaries.

c) The spacing and height of the lighting.

d) The extent/levels of illumination over the site and on adjacent land and the measures to contain light within the curtilage of the site.

e) Identification of those areas/features on site that are particularly sensitive for bats, badgers, nesting birds and otters and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging.

f) Demonstration of how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

The scheme must be implemented in accordance with the approved scheme and thereafter maintained and retained as agreed.

7. Prior to the commencement of development, full details of the surface water drainage arrangements must be submitted to and approved in writing by the Local Planning Authority. The drainage details must be constructed as approved before any part of the development hereby permitted is brought into use.
8. No removal of hedgerows, trees, shrubs or brambles shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a detailed check of vegetation for active birds' nests no more than 48 hours prior to the commencement of vegetation clearance and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the Local Planning Authority for approval.

In the event that any bird nests or actively breeding pairs are encountered, works will not commence on site until a further survey has been submitted in writing and approved by the Local Planning Authority confirming that any nesting attempts are concluded and any chicks in nests have fledged.

9. Prior to the commencement of development, a construction environmental management plan (CEMP: Biodiversity) must be submitted to and approved in writing by the local planning authority. The CEMP must include, but not be limited to, the following:
- Risk assessment of potentially damaging construction activities;
 - Identification of 'biodiversity protection zones' including buffers around known badger setts, hedgerows and ditches, particularly those with water vole present. A figure identifying these areas should be included;
 - Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction;
 - The location and timing of sensitive works to avoid harm to biodiversity features;
 - Construction timed to be outside of breeding bird season (1st March and 31st August inclusive) unless a competent ecologist has undertaken preconstruction checks for nesting birds.
 - Works with the potential to cause disturbance of barn owls nesting at locations identified within the breeding bird report should be preceded by a nest check by a licensed barn owl ecologist to ascertain whether any occupied breeding sites are present. If occupied breeding sites are identified within 200m of works locations as recommended in Section 6.2.5 of 'Breeding Bird Survey Report' by RSK Biocensus 2022,
 - The times during construction when specialist ecologists need to be present on site to oversee works;
 - Direction of security/construction lighting away from protection zones, tree canopies and watercourses in line with the lighting strategy;
 - Measures to prevent wildlife becoming trapped in excavations etc;
 - Tool-box talk which is specific to the risk factors identified
 - Responsible persons and lines of communication;
 - The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
 - Use of protective fences, exclusion barriers and warning signs.
 - A soil management and restoration plan.

The approved CEMP: Biodiversity must be adhered to and implemented through the construction phases strictly in accordance with the approved details, unless first submitted to and agreed in writing by the Local Planning Authority (LPA).

A 'statement of good practice' shall be signed upon completion by the competent ecologist, and be submitted to the LPA, confirming that the specified enhancement measures have been implemented in accordance with good practice upon which the planning consent was granted.

10. All ecological measures and/or works must be carried out in accordance with the details contained within the Habitat Management Plan October 2022 as already submitted with the planning application and agreed in principle with the Local Planning Authority prior to determination.
11. Prior to the commencement of development, an archaeological written scheme of investigation (WSI) must be submitted to and approved by the Local Planning Authority in writing. The scheme must include:
 - 1) The programme and methodology of site investigation and recording.
 - 2) The programme for post investigation assessment.
 - 3) Provision to be made for analysis of the site investigation and recording.
 - 4) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 - 5) Provision to be made for archive deposition of the analysis and records of the site investigation.
 - 6) Nomination of a competent person or persons/organization to undertake the works set out within the written scheme of investigation.
 - 7) any further project designs as addenda to the approved WSI covering subsequent phases of mitigation as required.

Development shall proceed in accordance with the approved details and any addenda to that WSI covering subsequent phases of mitigation.

12. The development permitted by this planning permission must be carried out in accordance with the approved Flood Risk Assessment (FRA) (Ref: RUK2022N00166-RAM-RP-00018) carried out by Ramboll (dated September 2022) and in particular, the FRA recommends that:
 - Site infrastructure (including the substation and battery array) will be raised 0.8m above ground levels;
 - Flood resilient measures will be incorporated into the design of the switching and control kiosks; and
 - PV panels will be raised at least 0.6m above ground levels.
13. Notwithstanding the submitted details, prior to the operation of the development hereby approved, full details of both hard and soft landscape works must be submitted to and approved in writing by the Local Planning Authority. Soft landscape works must include planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment) schedules of plants and trees noting species, sizes and proposed numbers and densities where appropriate.
14. All hard and soft landscape works must be carried out in accordance with the approved details. The works must be carried out prior to the operation of any

part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority. Any trees or plants that within a period of 5 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 as those originally planted.

15. The development shall be carried out in accordance with the landscape mitigation measures set out in paragraph 5.9.3 of the Environmental Statement unless provided for in any other conditions attached to this planning permission.
16. Decommissioning of the development and restoration of the site must commence no later than 30 years from the final date of commissioning of the development.
 - i. Unless otherwise agreed in writing by the local planning authority a decommissioning and restoration plan will be submitted to and approved by the local planning authority 6 months before the 30-year anniversary of the date of final commissioning of the development or 6 months after the cessation of commercial export from the site, if before.
 - ii. No decommissioning may take place unless the decommissioning and restoration plan has been approved by the local planning authority.

The decommissioning and restoration plan must be implemented as approved.

17. Prior to the commencement of development, a biodiversity gain plan must be submitted to and approved in writing by the local planning authority. The plan shall accord with the Biodiversity Net Gain Assessment [1620013921, October 2022] and accompanying calculations, demonstrating the post-development biodiversity gains outlined in Table 5.1 of the assessment, calculated using the Biodiversity Metric, including information about the steps taken or to be taken to minimise the adverse effect of the development on biodiversity of the onsite habitat and any other habitat identify how the Habitat will be secured and monitored for at least 30 years and the mechanism to achieve it. Development shall be carried out in accordance with the approval plan.
18. Before the battery storage facility is first brought into use, it must be enclosed with sound-insulating material and mounted in a way which will minimise emission of structure-borne sound and in accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in accordance with the approved details and shall be retained thereafter.
19. Prior to commencement of development a battery fire safety management plan must be submitted to approved by the Local Planning Authority. The battery fire safety management plan must prescribe measures to facilitate safety during the construction, operation and decommissioning of the battery storage component of the development. The battery fire safety management plan must be implemented as approved.

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

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, Barrister

Instructed by Stuart Ashworth of the Borough
Council of Kings Lynn and West Norfolk

He called;

Jon Etchells

MA BPhil CMLI

Mark Reynolds

BSc (Hons) MSc MRTPI

Landscape and Visual matters

Planning matters

FOR THE APPELLANT:

Mark Westmoreland Smith

Instructed by Richard Griffiths, Partner, Pinsent
Masons LLP

He called;

Ian Lanchbury

BA(Hons) BLandArch CMLI

Daniel Baird

M.I. Soil Sci

Fraser Blackwood

BA (Hons), MSc, MRTPI

Landscape and Visual matters

Agricultural land matters

Planning matters

INTERESTED PERSONS:

Malcolm Stead

Local resident and spoke on behalf of '*Residents
against Meerdyke Solar*' residents group

Councillor Terence Parish

Leader of the Borough Council of King's Lynn and
West Norfolk

Councillor Brian Long

Borough and County Councillor

Councillor Sue Lintern

Borough Councillor

DOCUMENTS SUBMITTED AT INQUIRY

- ID1 Opening Statement on behalf of the Appellant
- ID2 Opening Statement on behalf of the Borough Council of King's Lynn and West Norfolk
- ID3 The Residents Against Meerdyke Solar four documents:
 - a) Signatures collected from Emneth, Marshland St James and Walton Highway residents in support of The Residents Against Meerdyke Solar, January 2024
 - b) Position Statement by The Residents Against Meerdyke Solar, dated December 17 2023
 - c) Calculations of traffic flows by The Residents Against Meerdyke Solar dated January 2024
 - d) Transcript of presentation delivered to the public enquiry (sic) dated January 2024
- ID4 Statement from Cllr Terence Parish
- ID5 Statement of Common Ground Version 3 January 2024 – inserting new first bullet point on page 13, Section 5.1.1.
- ID6 Written version of statement made by Councillor Brian Long to Inquiry
- ID7 Policy DM20 – Renewable Energy policy context excerpt from Local Plan pages 68 and 69
- ID8 Minutes of Planning Committee meeting of 24 April 2023 relating to 22/01987/FM, pages 1014 to 1017
- ID9 Energy National Policy Statements, Statement made on 17 January 2024 by Claire Coutinho, Secretary of State for Energy Security and Net Zero
- ID10 Three documents comprising;
 - a) List of residential properties near to appeal site in Mr Etchell's evidence which occupiers of may be affected by visual impacts from the proposal
 - b) Plan with 140m buffer
 - c) Plan with broad area groups of properties with visual effects
- ID11 National Planning Policy Framework, 2012 version
- ID12 Statement of Common Ground, Appendix 1 Suggested conditions
- ID13 Amended version of Statement of Common Ground Appendix 1 suggested conditions following roundtable discussion
- ID14 Closing Submissions on behalf of the Borough Council of King's Lynn and West Norfolk, dated Friday 29 January 2024
- ID15 Closing Statement on behalf of the Appellant, dated 31 January 2024