



Appeal Decision

Site visit made on 10 March 2020

by **Helen O'Connor LLB MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 March 2020

Appeal Ref: APP/N1920/W/19/3240825

Hilfield Farm, Hilfield Lane, Elstree, Hertfordshire WD25 8DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ms Donna Clarke of Capbal Limited against the decision of Hertsmere Borough Council.
 - The application Ref 18/1587/OUT, dated 27 July 2018, was refused by notice dated 28 May 2019.
 - The development proposed is described as 'Development of an energy storage system for a temporary period of 20 years from the date of first import/export of electricity comprising a battery storage compound, electricity compound, fencing underground cabling and other associated works, a new access from Hilfield Lane and hedgerow and tree planting'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is made in outline with all detailed matters reserved for separate consideration. As such, the Proposed Site Plan (Draft)¹ submitted with the appeal is illustrative and there may be alternative ways of developing the site. On that basis, it does not fundamentally alter the nature of the proposal and therefore, I am satisfied that no party will suffer injustice by my taking account of it. Nevertheless, in relation to the likely visual impact arising from the proposal the appellant has referred to the illustrative layout in some detail. Accordingly, I have specified in my decision those areas where I have given the illustrative layout particular consideration.

Main Issues

3. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt, including the effect on openness, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - The effect of the proposal on the character and appearance of the area;

¹ Drawing No. 23101/003/C

- If inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development and consideration of openness

4. The Government attaches great importance to Green Belts. 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 their permanence.
5. Paragraph 143 of the Framework stipulates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Development within the Green Belt is inappropriate with the exceptions of the types of development listed in Paragraphs 145 and 146 of the Framework.
6. Paragraph 145 (g) states that new buildings that constitute the limited infilling or the partial or complete redevelopment of previously developed land may not be inappropriate, subject to the caveat that the development should not have a greater impact on the openness of the Green Belt than the existing development. The appellant does not expressly indicate that the proposal would fall within any of the exceptions listed in paragraph 145, and by referring to very special circumstances², implies an acceptance that the proposal constitutes inappropriate development. However, she does refer to the land as being previously developed as being significant. Therefore, for completeness, I have considered whether paragraph 145 (g) applies in this case.
7. A building is defined in s336 of the Town and Country Planning Act 1990 as including any structure or erection, and any part of a building, but not plant or machinery comprised in a building. I am satisfied that the setting up of an Energy Storage System (ESS) similar to that shown on the illustrative layout and details³ would amount to operational development of a sufficient size, physical attachment and permanence so as to constitute a new building for the purposes of paragraph 145 of the Framework.
8. The Framework defines previously developed land as '*Land which is or was occupied by a permanent structure, including the curtilage of the development land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.*' The parties disagree to the extent that the appeal site constitutes previously developed land, with the appellant suggesting that based on the planning history of the site, this amounts to over 80%⁴. Part of the appeal site has a Certificate of Lawfulness (CLEUD)⁵ referred to as 'Yard 7' which established the lawfulness of the use of the land for the storage of building equipment and materials. The submitted photographs⁶ and my observations, show an area of hardstanding which would facilitate such storage. Nevertheless, aside from the hardstanding,

² Paragraph 7.2.1.1 Appellant's Statement of Case

³ Drawings 23101/003/C & 23101/006

⁴ Paragraph 7.2.1.4 Appellant's Statement of Case

⁵ Reference 17/2489/CLE dated 27 February 2018

⁶ Appendix 10, Appellant's Statement of Case

- the evidence falls short of establishing that the wider appeal site is, or was otherwise occupied, by a permanent structure.
9. Moreover, the fragmentation of the occupation and uses of the land and buildings at Hilfield farm⁷ suggest that the appeal site does not comprise part of the curtilage to those existing buildings. Accordingly, notwithstanding that other parts of the appeal site may have been used in the past for parking, agricultural and other industrial and commercial uses⁸ (a matter to which I shall return later in my reasoning), based on the evidence presented, only a modest proportion of the site appears to fall within the Framework's definition of previously developed land.
 10. Planning Practice Guidance⁹ advises that openness is capable of having both spatial and visual aspects. The illustrative layout indicates that the positioning of the associated battery containers, transformer, switchrooms, access point and track, steel palisade fencing, CCTV and lighting would encompass an area of land considerably larger than the hardstanding within 'Yard 7' on the CLEUD. This is reinforced by the comparative aerial photograph and image of the illustrative model shown in the submitted Landscape and Visual Impact Assessment (LVIA)¹⁰.
 11. Moreover, the elevations and details of the main components of the development indicate that they would generally comprise of rectilinear structures of approximately 4 metres in height, set out in a fairly regimented format. The presence of the existing buildings at Hilfield Farm, Elstree Substation approximately 200 metres to the north, pylons and the M1 to the west do not diminish the physical effect of further built form. Therefore, the new structures and associated works would have an adverse spatial impact upon the appeal site exacerbated by their likely distribution across the land. Furthermore, the proposal would impact on the spatial openness of the appeal site to a greater extent than that shown historically for Yard 7 in the photographic evidence.
 12. In visual terms, although the LVIA, verified photography and 3D modelling show that there would be limited impact to wider views, there would nevertheless, be a moderate adverse change in the character of views from the local roads in the immediate vicinity¹¹. This would be particularly evident via the proposed new access onto Hilfield Lane. Whilst additional planting would mitigate the impact on wider views, it would be likely to take some time for this to establish. Furthermore, the illustrative layout indicates 7 lighting poles which, notwithstanding that controls might be exerted over external illumination to a degree, by comparison to the existing land would increase its visual prominence and have a negative effect.
 13. I acknowledge that the proposal would be for a limited 20 year period from first import/export of electricity, after which it would be possible to return the land to its former condition. This would reduce the harmful impact upon openness to an extent. Even so, such a period of time is considerable.

⁷ Appendices 2 & 3 Appellant's Statement of Case

⁸ Paragraph 7.2.1.3 Appellant's Statement of Case

⁹ Paragraph:001 Reference ID:64-001-20190722

¹⁰ Page 23, LVIA prepared by Broom Lynne Planning and MS Environmental Ltd

¹¹ Paragraph 1.4, LVIA prepared by Broom Lynne Planning and MS Environmental Ltd

14. The above factors lead me to find that the development would diminish openness at the site, and moreover, this would have a greater impact on openness than the existing situation. Consequently, the proposal would not fall within any of the exceptions listed in the Framework and would constitute inappropriate development in the Green Belt. In addition, the development would encroach into the countryside to a greater extent than at present and would therefore, conflict with one of the five purposes of the Green Belt set out in paragraph 134 of the Framework. However, in view of the limited lifetime of the proposal and the ability to increase planting to reduce its impact in wider views, it would overall, result in moderate harm to openness.

Character and appearance

15. The LVIA demonstrates that the appeal site lies within the Borehamwood Plateau within the Hertfordshire Landscape Character Assessment which is primarily characterised by its gently undulating landform and pasture. Within the vicinity of the appeal site, the predominantly rural character is eroded to an extent by the presence of notable infrastructure including the M1, the Elstree substation, large pylons and power lines. Nevertheless, the surrounding pasture land, established hedgerows and trees and generally limited sporadic clusters of buildings and their associated form, retain a discernible rural character.

16. The appeal site is visually separated from the M1 and Elstree substation by distance and intervening pasture land. Land to the north and east of the site has a rural, open, agricultural character. The site, as part of Hilfield Farm lies adjacent to a collection of buildings and yards of a somewhat utilitarian appearance commensurate with a working rural landscape. My observations of the appeal site revealed that there was some hardstanding and storage of building materials and equipment on part of the site which has a negative visual impact. However, significant parts of the site are devoid of obvious development. The extent and prominence of the mature hedgerow adjacent to Hilfield lane makes a notable positive contribution to the area.

17. The ESS would include battery containers with acoustic fencing, a transformer, a high level disconnecter, switch rooms, CCTV, lighting poles, palisade fencing and access, which in combination, would have an industrial appearance spread across the approximately 4500sqm site area¹² and would necessitate the reduction of existing vegetation within the site. The proposed access would require the removal of part of the existing hedgerow at a publicly prominent point directly adjacent to Hilfield Lane which would allow for views into the site. In combination, these factors would further diminish the prevailing rural character of the area.

18. I acknowledge, based on the verified photography in the LVIA, that the visual harm would be localised as existing vegetation and proposed planting would assist in limiting the wider visual impact of the proposal. Nevertheless, the LVIA concedes that the character of the site itself will change. Moreover, the planting would not entirely overcome the localised harm.

19. Taking these factors together, I find that the proposal would have a limited negative impact on the prevailing rural character and appearance of the area. Although the Council does not cite specific policies of the development plan in

¹² Section 5, Planning application form

its second refusal reason on the decision notice, it does identify relevant policies in its delegated report. Therefore, it would run counter to policy SADM30 of the Hertsmere Local Plan, Site Allocations and Development Management Policies Plan, November 2016 (SADM). This policy in setting out design principles for new development, states amongst other things, that it supports development provided it makes a positive contribution to the built and natural environment. Furthermore, it would conflict with policy CS22 of the Hertsmere Local Plan, Development Plan Document, Core Strategy, January 2013 (CS) which amongst other matters, states that development proposals should take advantage of opportunities to improve the character and quality of an area.

20. I note that the Council's delegated report also refers to policy SADM3 and Part D of the draft Hertsmere Planning and Design Guide, 2016. However, as the former relates to residential development and the latter gives general guidance largely in relation to conventional residential or commercial schemes, I do not find that the proposal would conflict with them.

Other Considerations

21. The appellant refers to national policy objectives to achieve 15% of national energy consumption from renewable sources by 2020, 80% by 2050 and zero carbon emissions by 2050, as well as the report 'Operating the Electricity Transmission Networks in 2020' (June 2011). This outlines how UK electricity generation is moving from a reliance on fossil fuel to a greater reliance on renewable energy, general support for which is found in paragraph 148 of the Framework. As the production of energy from renewable sources is more volatile, ESS's can generally assist in storing surplus electricity at peak times of generation and in providing balancing services to the National Grid to support the security and continuity of electricity supply. Furthermore, in doing so, ESS's are emission free and may involve less infrastructure in comparison to other types of grid balancing services.
22. As such, although the proposal does not have a role in renewable energy generation directly, nor could it be guaranteed to exclusively balance renewable energy as it depends on the UK mix overall, it would indirectly support the increasing reliance of renewable energy as a proportion of that mix.
23. The evidence provided outlines that there are a number of relevant locational and technical constraints for ESS's, including grid connection requirements, the consideration of grid capacity, distance, cost and land availability. As a result, there will be a finite number of suitable opportunities.
24. In support of the proposal the appellant has provided an assessment of how the appeal site was selected¹³ and sets out locational and technical criteria applying them to potential alternative sites through a four stage procedure. However, I have concerns regarding the adequacy of the justification for the first stage which effectively establishes the catchment area for comparative sites. The report states that it covers part of the UK Power Network Distribution Network Operator (DNO) area because it is known to be a constrained network. Nevertheless, it is not explained why it was necessary to limit the area to only

¹³ Grid Connection and Site Review prepared by Origin Power Services, October 2019

part of the DNO network, which as one of 14 in the country¹⁴ is therefore, likely to relate to a larger area of the country, and potentially cover land that is not in the Green Belt. It follows that there is limited explanation to link the regional and national benefits¹⁵ that the ESS would provide to necessitating development in the specific location of the appeal site.

25. In addition, although the appellant refers to the benefits of the ESS as being significant¹⁶, the submitted information does little to quantify the extent of the service that would be provided to the electricity supply network at regional or national level. Neither is there any reference to what extent, if any, this is already being addressed within the wider DNO. Overall, I am not assured that there are no suitable alternative sites that might deliver similar benefits that would not result in similar harm to the Green Belt. Nevertheless, in view of the general support the proposal would provide to the transition to a low carbon economy, this matter attracts moderate weight.
26. Reference is made to 16 other planning permissions granted by other local planning authorities for ESS development in the Green Belt. Although a summary table is provided, I do not have full details of the plans, officer reports nor all the circumstances put forward to justify the proposals which inhibits a meaningful comparison with the proposal before me. It is evident from the limited descriptions provided that some of the examples relate to considerably smaller scale ESS than the appeal proposal. As I cannot be sure that they represent a direct parallel to the development before me they attract little weight.
27. My attention is drawn to four appeal decisions¹⁷ which the appellant considers provide support for the proposal. However, none of those appeal decisions related to inappropriate development in the Green Belt, and therefore, the Inspectors were applying different policy tests in reaching their overall conclusions. I have noted that in those cases, the benefits of providing ESS was given weight in favour of the proposal, and in this regard, my approach is consistent. However, in relation to the overall balance in each case, the examples are of limited weight as each case needs to be considered on its own merits.
28. The appellant asserts that much of the site could be lawfully used for industrial or storage purposes which could have significant visual impacts on the Green Belt. The CLEUD establishes that part of the appeal site can lawfully be used for the storage of building equipment and materials. However, otherwise I have seen little evidence to substantiate that it would be lawful to use the site on a 'far more intensive basis' such as for the storing of fairground equipment or waste materials¹⁸, nor is there evidence to suggest that this is a realistic prospect.
29. Furthermore, the appellant acknowledges¹⁹ that no planning permission or CLEUD exists for the parking, storage of vehicles, agricultural and other industrial materials for the remainder of the site (referred to as Plot 2 by the

¹⁴ Paragraph 1.2 Grid Connection and Site Review prepared by Origin Power Services, October 2019

¹⁵ Paragraph 7.2.1.3 Appellant's Statement of Case

¹⁶ Paragraph 7.2.1.12 Appellant's appeal statement

¹⁷ Referenced APP/X1545/W/18/3204562, APP/N1730/W/17/3167123, APP/D3830/W/16/3151730 & APP/M2325/W/18/3196360

¹⁸ Paragraph 7.2.1.7 Appellant's Statement of Case

¹⁹ Paragraph 7.2.1.8 Appellant's Statement of Case

appellant). In any event, even if I were to accept the lawfulness of these activities, the limited evidence does not demonstrate that overall they would be less preferable than the appeal proposal in visual terms and therefore, this factor carries little weight in support of the appeal proposal.

30. Although landscaping is a reserved matter, reference is made to the additional planting that would be provided as part of the proposal. It will be seen from my reasoning above that I have already taken account of this in the likely screening and softening of the visual impact of the new development. Such new planting is likely to bring associated ecological benefits. However, as suitable landscaping and ecological mitigation is a normal requirement of development plan policies, it is not shown that there would be a significant benefit arising from the proposal. Therefore, these are neutral factors in the overall Green Belt balance.
31. Similarly, the absence of harm in relation to highway safety or to nearby residents from noise impact²⁰ does not count as a benefit in favour of the proposal.
32. I am mindful that paragraph 147 of the Framework indicates that elements of many renewable energy projects will comprise inappropriate development in the Green Belt and that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. However, whilst ESS's contribute towards balancing the grid and mitigating the unpredictable nature of renewable energy supplies, they do not generate energy and are not renewable projects of themselves.

Other Matters

33. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires that, when considering planning proposals, decision makers should have special regard to the desirability of preserving listed buildings or their settings. A Grade II listed barn is, or was, located close to the south east boundary of the site. Based on the list entry information, its significance derives from its age and timber framed construction and therefore, primarily relates to its historic fabric and aesthetic appearance. The appellant points out that the building is no longer in situ due to storm damage, which is consistent with my observations of the site whereby there was no obvious structure present, and any remaining historic fabric at the site was fenced off and beneath tarpaulins.
34. It is therefore uncertain what the future of the heritage asset will be, and whether or when, it will be reinstated. Furthermore, the surroundings within which the asset is experienced include a cluster of buildings with a functional appearance. Notwithstanding that the proposal is made in outline, the LVIA²¹ illustrates that it would be possible to provide a reasonable buffer of woodland planting between the location of the building and the proposed development in order to provide a significant level of screening. Overall, and in the absence of evidence to suggest to the contrary, I have little basis to find that the development would harm the way in which the heritage asset is experienced.

²⁰ Noise Impact Assessment, DB Consultation Ltd, October 2019, Appendix 7 Appellant's Statement of Case

²¹ Page 24

Green Belt balancing exercise

35. Paragraph 144 of the Framework advises that substantial weight should be given to any harm to the Green Belt. Moreover, very special circumstances to allow inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In this case, the proposal amounts to inappropriate development, and moderate harm would be caused to the openness of the Green Belt. There would also be limited harm to the character and appearance of the area.
36. Any harm to the Green Belt, attracts substantial weight, and the harm to the character and appearance of the area, although limited, attracts significant weight. Even when taken cumulatively, the other considerations in this case do not attract more than moderate weight overall and therefore, do not clearly outweigh the harm identified. Consequently, the very special circumstances necessary to justify the development do not exist.
37. Accordingly, the proposal would be contrary to the Framework and to policies SP1 and CS13 of the CS which, amongst other matters, seek to protect the Green Belt from inappropriate development.
38. The Council has also referred to policy SP2 of the CS and policies SADM22 and SADM26 of the SADM in their first refusal reason. Policy SP2 sets out a general presumption in favour of sustainable development and does not specifically refer to the Green Belt. As such, I find no specific conflict with it. Policy SADM22 establishes the boundary of the Green Belt within which the provisions of policy CS13 will apply. Policy SADM26 sets out development standards in the Green Belt and therefore, as confirmed in the supporting text²², it is generally aimed at development that is not inappropriate. It follows that these policies are not directly applicable to the circumstances of the appeal proposal and I do not find direct conflict with them.

Conclusion

39. For the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

²² Paragraph 4.97