

Appeal Decision

Site visit made on 22 June 2022

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2022

Appeal Ref: APP/C3430/W/22/3292837

Land West of Wolverhampton West Primary Substation, South Staffordshire Railway Walk, Wolverhampton, WV4 4XX

- 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 Balance Power Projects Ltd against the decision of South Staffordshire District Council.
 - The application Ref 21/00440/FUL, dated 23 April 2021, was refused by notice dated 23 December 2021.
 - The development proposed is the construction, management and operations of a battery based electrical storage scheme with associated infrastructure, together with access improvements, internal access tracks, vehicular parking, herringbone filtered drains, security measures and landscaping works.
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Decision

1. The appeal is allowed and planning permission is granted for construction, management and operations of a battery based electrical storage scheme with associated infrastructure, together with access improvements, internal access tracks, vehicular parking, herringbone filtered drains, security measures and landscaping works at Land West of Wolverhampton West Primary Substation, South Staffordshire Railway Walk, Wolverhampton, WV4 4XX in accordance with the terms of the application, Ref 21/00440/FUL, dated 23 April 2021, and subject to conditions detailed in the attached schedule.

Applications for Costs

2. An application for costs was made by Balance Power Projects Ltd against South Staffordshire Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
 - Whether the proposed development would be inappropriate development in the Green Belt;
 - The effect of the proposed development on the openness of the Green Belt, and;
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

4. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 149.
5. Paragraph 147 sets out that, by definition, inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to this harm, and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
6. Policy GB1 of the South Staffordshire Local Plan (LP) broadly conforms to the general thrust of national Green Belt policy, supporting limited infilling and changes of use of land. This policy approach also conforms with the provisions of the Framework, in this regard.
7. The appeal proposal would see the introduction of a number of structures, including 28 containerised battery units, 14 inverters, 14 transformers, 2.4-metre paladin fence, welfare units and compounds, to a site that is currently an open field. Consequently, the proposed development would not fall into any of the exceptions listed in paragraph 149 of the Framework. I therefore conclude that it would be inappropriate development in the Green Belt contrary to LP Policy GB1 which covers similar matters.

Openness

8. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects. It can be considered to be the absence of buildings and development. The appeal site forms part of an equestrian paddock associated with buildings to the north of the site. It is currently devoid of any buildings or structures. As such, the introduction of the facility, and all that it would entail, would unavoidably reduce the openness of the Green Belt in both spatial and visual terms.
9. In addition to the introduction of the battery storage facility and all its associated structures into what is currently an open field, the proposal 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.
10. Therefore, in addition to the harm arising from the fact that the development would be inappropriate, there is a degree of harm arising from the loss of openness and from being contrary to one of the purposes of including land within the Green Belt.

Other Considerations

11. The proposed scheme is designed to store 50MW within the batteries and would be able to release or absorb energy from the power network.
12. The provision of low carbon energy is central to the economic, social and environmental dimensions of sustainable development set out in the Framework. There is strong national policy support, from the Government's Energy White Paper¹ (EWP) and National Policy Statement EN-1² (NPS), for the development of battery storage, which would aid in the storage of energy generated from renewable sources which by their nature, intermittently generate energy. Additionally, the NPS advises that storage is needed to reduce the costs of electricity and increase its reliability.
13. National Grid's Future Energy Scenarios (2021) advises that currently the energy storage capacity in the UK is 4GW and by 2050 it is anticipated that 40GW of capacity would be required in order to meet the UK's target of net zero carbon by 2050. Although the scheme is modest in size, paragraph 158 of the Framework confirms that even 'small-scale projects provide a valuable contribution to cutting greenhouse gas emissions'.
14. The policy support for renewable energy and associated development given in the Framework is caveated by the need for the impacts to be acceptable, or capable of being made so. Nevertheless, the energy storage benefit of the proposal must be accorded substantial weight.

Green Belt Balance

15. The proposal would be inappropriate development in the Green Belt, which, by definition, is harmful. To this must be added further moderate harm arising from the loss of openness, and from being contrary to the purposes of including land within the Green Belt. Paragraph 148 of the Framework indicates that any harm to the Green Belt should be given substantial weight.
16. Paragraph 151 of the Framework accepts that very special circumstances will need to be demonstrated if developments are to proceed in the Green Belt. It states that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. Although modest in scale, the appeal scheme would make a valuable contribution to cutting greenhouse gas emissions, by increasing the opportunity to store energy, and this also attracts substantial weight.
17. National policy advises that developments should be located where impacts are, or can be made, acceptable. I consider that the location of the proposed development, adjacent to an existing substation and agricultural buildings, together with the existing and proposed landscaping means that this would be the case here. Additionally, whilst the proposed development would be located at the site for a number of years, it is reversible and capable of being removed from the site.
18. Therefore, and in my judgement, the environmental benefits of the proposal and the fact that the impacts can be made acceptable, are sufficient to outweigh the harm to the Green Belt. Consequently, the very special

¹ Energy White Paper Powering out Net Zero Future (2020)

² Draft Overarching National Policy Statement for Energy (EN-1) (2021)

circumstances necessary to justify the proposal do exist and the scheme would not conflict with LP Policy GB1 or the Framework.

Other Matters

19. I have had regard to the representations made by local residents regarding the proposed development. The concerns relating to the Green Belt have been addressed above. However, they have raised a number of concerns relating to biodiversity, noise, disturbance, safety and archaeology.
20. With regards to ecology and noise, evidence in the form of an Ecological Impact Assessment and Noise Assessment were submitted with the appeal. These detail how the development would be acceptable in terms of its impact on biodiversity and nearby residents. The Council's Ecologist and Environmental Health team do not object to the proposed development. As such, I consider that, subject to the addition of conditions relating to biodiversity and noise levels and mitigation, that the proposed development would not have a harmful impact in relation to these matters.
21. With regards to disturbance during construction works, a Construction Traffic Management Plan has been submitted with the appeal. Additionally, a condition has been requested limiting the hours of operation. As such, whilst there may be some disturbance to nearby residents during the construction of the proposed development, this would be limited to daytime hours. Whilst a temporary access would be provided to facilitate the construction works, this would be removed once the development is complete, and the Council's Highways Department are content with this. I see no reason to disagree with this conclusion.
22. In terms of battery safety, the appellant has provided information relating to the various standards that are required to be met for a battery storage facility. I have not been provided with evidence that would lead me to believe that such facilities would be unsafe.
23. Representations make reference to the use of the site as a WW2 Gun site. I have no evidence before me that the site is of great archaeological value. I have had regards to the comments made by the Council's Archaeologist that the site has a degree of historic environment interest, however they do not object to the proposed development. The scale of the scheme is modest, and therefore its associated impact on archaeology would be limited. As such, I have no reason to disagree with the Council's Archaeologist on this matter.

Conditions

24. The Council has provided a list of conditions, which I have assessed in regard to the advice provided in the Planning Practice Guidance (PPG). The appellant has provided comments on the conditions proposed by the Council.
25. The condition regarding surface water drainage is necessary to ensure adequate drainage is provided for the proper functioning of the proposed development. Conditions relating to construction environmental management plan, noise mitigation, monitoring, hours of operation and construction traffic plan are necessary in order to ensure that the living conditions of nearby residents are safeguarded. Conditions regarding the cessation of the temporary access track is necessary in the interest of highway safety. Landscaping, lighting, tree and biodiversity conditions are necessary in order to ensure the

proposed landscaping and biodiversity mitigation is completed and maintained. I have altered the wording of some conditions in order to ensure they comply with the PPG. I have also amended the timeframes in some of the conditions in order to make them more reasonable.

26. With regards to the Council's request for a condition requiring further details of external materials, I note that no schedule is included. As such, I consider that this condition should be included. With regards to the condition relating to the temporary nature of the development and its decommissioning, I consider this to be necessary in order to return the land to its current use should the development no longer be required.
27. I do not consider it necessary to include the condition relating to the provision of a proactive maintenance schedule as this will likely vary between the different equipment at the site. Such a condition would therefore be imprecise and unreasonable.

Conclusion

28. I have concluded above that, for this appeal, very special circumstances exist to justify inappropriate development in the Green Belt that would reduce openness. My findings on other matters do not lead me to reach a different conclusion. Consequently, the proposal would comply with the relevant provisions of the Framework and the development plan when considered as a whole. The appeal should therefore be allowed.

Tamsin Law

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 050-PL-WV44XX-001 (Rev B), 050-PL-WV44XX-101 (Rev B), 050-PL-WV44XX-201 Proposed Elevation - AA (Rev A), 050-PL-WV44XX-202 Proposed Elevation - BB (Rev A), 050-PL-WV44XX-201 Proposed Elevation - CC (Rev A), 050-PL-WV44XX-202 Proposed Elevation - DD (Rev A), Planning Design and Access Statement, Flood Risk and Drainage Assessment, Noise Assessment, Landscape and Visual Impact Assessment, Construction Traffic Management Plan (October 2021), Ecological Impact Assessment (October 2021), Arboricultural Implications Assessment (October 2021).
3. Within 35 years and six months following completion of construction of the development hereby permitted, within 12 months of the cessation of operational use, or within six months following a permanent cessation of construction works prior to the battery facility coming into operational use, whichever is the sooner, the batteries, transformer units, inverters, all associated structures and fencing approved shall be dismantled and removed from the site. The developer shall notify the Local Planning Authority in writing no later than five twenty-eight working days following cessation of power production. The site shall subsequently be restored in accordance with a scheme and timescale, the details of which shall be first submitted to and approved in writing by the Local Planning Authority no later than six months following the cessation of power production. (Note: for the purposes of this condition, a permanent cessation shall be taken as a period of at least 24 months where no development has been carried out to any substantial extent anywhere on the site).
4. Before the development hereby permitted is commenced, full details of facing materials to be used 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 retained thereafter.
5. Before the commencement of any construction related activity on site, an Arboricultural Method Statement, providing comprehensive details of all underground service/utility runs, ground protection measures, 'No-Dig' construction types, construction methods within the Root Protection Areas of retained trees and a finalised Tree Protection Plan shall be submitted and approved in writing by the Local Planning Authority. Subsequently, all measures within the approved method statement and Tree Protection Plan shall be adhered to until all construction related activity has been completed
6. Before the development hereby permitted is commenced, a detailed landscape and planting scheme, shall be submitted to and approved in writing by the Local Planning Authority. The approved landscape and planting scheme shall thereafter be implemented within the first available planting season following the development being brought into use.

7. Before the development hereby permitted is commenced, the applicant shall install acoustic mitigation, designed specifically to mitigate the frequencies emitted by the plant and equipment. The proposed solution is to be approved by the Local Planning Authority prior to installation and once installed, shall thereafter be maintained for the life of the development.
8. Before any construction works hereby permitted are commenced, a Construction Environment Management Plan (CEMP) and Habitat Management Plan (HMP) detailing, in full, measures to protect existing habitat during construction works and the formation of new habitat to secure net gain of the site's Biodiversity Value, shall be submitted to and approved in writing by the Local Planning Authority. Within the CEMP/HMP document the following information shall be provided: Descriptions and mapping of all exclusion zones (both vehicular and for storage of materials) to be enforced during construction to avoid any unnecessary soil compaction on area to be utilised for habitat creation; Details of both species composition and abundance where planting is to occur; Proposed management prescriptions for all habitats for a period of no less than 25 years; Assurances of achievability; Timetable of delivery for all habitats; and A timetable of future ecological monitoring to ensure that all habitats achieve their proposed management condition as well as description of a feed-back mechanism by which the management prescriptions can be amended should the monitoring deem it necessary. All ecological monitoring and all recommendations for the maintenance/amendment of future management shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken and thereafter maintained in accordance with the approved CEMP and HMP
9. Before the commencement of any construction related activity on site, a lighting plan for the construction phase of development. shall be submitted to and approved in writing by the Local Planning Authority. All lighting should be designed in accordance with Bat Conservation Trust/ Institution of Lighting Professionals Guidance Note 08/18 Bats and artificial lighting in the UK. Submitted lighting plans should be accompanied by contour diagrams that demonstrate minimal levels of lighting on receptor habitats, including trees and hedges. The construction works shall thereafter be carried out in accordance with the approved details, with lighting removed as necessary, upon the completion of these works.
10. No building hereby permitted shall be first occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; include a timetable for its implementation; and, provide, a

management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

11. Before the commencement of any construction related activity on site, a scheme to monitor dust, noise and water quality, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and shall be complied with for the duration of the construction works
12. Prior to first operation of the development hereby permitted, a lighting plan for the operation phase of development, shall be submitted to and approved in writing by the Local Planning Authority. All lighting should be designed in accordance with Bat Conservation Trust / Institution of Lighting Professionals Guidance Note 08/18 Bats and artificial lighting in the UK. Submitted lighting plans should be accompanied by contour diagrams that demonstrates minimal levels of lighting on receptor habitats, including trees and hedges. Development shall be carried out in accordance with the approved details and retained thereafter.
13. The proposed development must be undertaken in adherence to all recommendations and methods of working detailed within the Arboricultural Impact Assessment (Barton Hyett project ref. 4255).
14. Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site, which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.
15. The development hereby permitted shall be carried out in accordance with the submitted Construction Traffic Management Plan dated October 2021 (reference P21- 0192/TR02).
16. The development hereby permitted shall be carried out in accordance with the requirements of the approved 'Ecological Impact Assessment', produced by Clarkson & Woods Ecological Consultants, dated October 2021.
17. The temporary access and route from Langley Road to the battery compound hereby permitted shall be closed and the area reinstated to its existing condition within 6 months of completion of construction related activity.
18. The noise level from the operation of the battery storage plant and associated plant and machinery between the hours 07:00 and 23:00 shall not exceed 39dB L(A)eq 1- hour as measured 1m from the boundary of nearest residential receptors. The noise level from the operation of the battery storage plant and associated plant and machinery between the hours 23:00 and 07:00 shall not exceed 35dB L(A)eq 15- minute as measured 1m from the boundary of nearest residential receptors.
19. Operational hours of any demolition and construction activity, including vehicle movements to and from the site are restricted to 0800 to 1800

Monday to Friday and 0800 to 1300 Saturday, and at no time on Sundays or Bank and Public Holidays.