

Appeal Decision

Hearing held on 31 May 2023

Site visits made on 30 May and 1 June 2023

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th June 2023

Appeal Ref: APP/G2713/W/23/3315877

Land south of Leeming Substation, west of the village of Scruton, bordering Fence Dike Lane, part of Low Street and Feltham Lane, DL7 0RG

- 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 Lightrock Power Ltd against the decision of Hambleton District Council.
 - The application Ref 21/01362/FUL, dated 29 April 2021, was refused by notice dated 8 August 2022.
 - The development proposed is the installation of a solar photovoltaic array/solar farm with associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of a solar photovoltaic array/solar farm with associated infrastructure at land south of Leeming Substation, west of the village of Scruton, bordering Fence Dike Lane, part of Low Street and Feltham Lane, DL7 0RG in accordance with the terms of the application, Ref 21/01362/FUL, dated 29 April 2021, subject to the conditions set out in Annex A.

Application for costs

2. At the Hearing an application for costs was made by Lightrock Power Ltd against North Yorkshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. On 1 April 2023 Hambleton District Council merged with other Councils in North Yorkshire to form North Yorkshire Council. However, the development plan for the area formally covered by the District Council remains in place until such time as it is revoked or replaced. I have determined the appeal on this basis.
4. The Parish Council has raised concerns that the author of the Agricultural Considerations Report produced for the appellant by Kernon Countryside Consultations has not provided a signed declaration as required for RICS Surveyors acting as an Expert Witness. As such, they state that little weight should be given to this evidence. However, the appeal is being determined by way of an informal hearing not a public inquiry and so participants are not called upon as "expert witnesses", and signed declarations are not required as they are in proofs of evidence submitted to an inquiry.

Main Issue

5. The main issue in the appeal is the effect of the proposed development on, and the potential loss of, agricultural land.

Reasons

6. The appeal site comprises a number of agricultural fields that are used for a mix of arable and pasture. A short distance to the north of the site lies Leeming Bar Substation which would provide a grid connection for the proposed solar farm via an existing underground cable.

Planning Policy Context

7. Policy S1 of the *Hambleton Local Plan (adopted February 2022)* (HLP) sets out a number of sustainable development principles. These include making efficient and effective use of land, protecting and enhancing the high quality natural and historic environment, and supporting development and infrastructure provisions that take available opportunities to mitigate and adapt to climate change.
8. Policy RM6 of the HLP supports renewable and low carbon energy installations where all potential adverse impacts are, or can be made, acceptable. Similarly, paragraph 158 of the *National Planning Policy Framework* (the Framework) also indicates that applications for renewable and low carbon development should be approved if the impacts are, or can be made, acceptable.
9. HLP Policy S5 indicates that development in the countryside will only be supported where it is in accordance with national planning policy or other policies in the HLP and would not harm the character, appearance and environmental qualities of the area. In addition, where significant development is demonstrated to be necessary, the loss of the best and most versatile (BMV) agricultural land should be avoided wherever possible. If the benefits of the development justify the loss, areas of the lowest grade available must be used except where other sustainability considerations outweigh agricultural land quality considerations.
10. The Written Ministerial Statement on solar energy (25 March 2015) indicates that the use of BMV for solar farms has to be justified by the most compelling evidence.
11. The *Planning Practice Guidance* (PPG) on Renewable and low carbon energy, which also dates from 2015, provides a list of planning considerations that relate to large scale ground mounted solar photovoltaic farms¹. These include: encouraging the effective use of land by focussing such developments on previously developed and non-agricultural land provided it is not of high environmental value; and where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.
12. However, the Framework which has been updated on several occasions since 2015, makes no such requirement and only indicates where significant development of agricultural land is demonstrated to be necessary, areas of

¹ Paragraph ID:5-013-20150327

poorer quality land should be preferred to those of higher quality². In addition, whilst the draft *National Policy Statement for Renewable Energy (EN-3) (March 2023)*, seeks to avoid the use of BMV land where possible, it also indicates that land type should not be a pre-dominating factor in determining the suitability of the site location. Whilst this is a draft and relates largely to proposals that form part of the National Infrastructure regime, it still gives an indication of the government's most recent thinking on this issue.

Agricultural Land Quality

13. The national Agricultural Land Classification map indicates that the site is Grade 2 land. However, as I heard at the hearing this is indicative of the type of land in the area rather than providing an assessment of any particular field. As a result, the appellant submitted an Agricultural Land Classification report (the Amet report). This indicates that the majority of the site is Grade 3b agricultural land with a small portion (5ha) being Grade 2. However, a similar report produced for the Council (the ADAS report) indicates that the majority of the land is Grade 2 with a small amount (5.85ha) being Grade 3b. Both reports find the principal limitation to agricultural use of the land is soil droughtiness. Whilst I note the concerns raised regarding the location of one of the appellant's trial pits, from what I heard at the hearing I consider that the methodology used for both assessments was appropriate.
14. An assessment of both the Amet and the ADAS reports on behalf of the appellant concluded that the difference in the classification of the land turns on whether or not there is the potential to alleviate the compacted layer that both surveys found generally occurs at a depth of around 30-50cm, (although in some places is deeper), by standard agricultural operations. This conclusion was not disputed by other parties.
15. The *Revised guidelines and criteria for grading the quality of agricultural land (MAFF 1988)* (MAFF guidelines) highlights that sandy soils readily form compacted layers if cultivated or traversed when wet. Where such damage can be corrected by normal soil management methods it indicates it does not affect the grading. However, it also states that where significant compaction occurs below 35cm it may be difficult or impossible to ameliorate practically or economically. Such compaction is therefore said to be a long-term limitation which is taken into account through reduced permeability and available water capacity in the wetness and droughtiness assessments.
16. The reports both indicate that the compaction layer occurs below 35cm. Mr Shepherd, a local farmer indicated at the hearing that this was far deeper than a traditional 'plough pan' which would form directly below the layer of the plough at around 20cm. He also indicated that, in his view, it would not be possible to carry out subsoiling to this depth. In addition, the appellant's evidence states that the farmer of West House Farm, whose land comprises the larger part of the appeal site, has tried subsoiling but found it did not benefit yields and was uneconomic to carry out.
17. There was significant evidence provided in support of the different land gradings, including information on yields and evidence on root growth, although the MAFF guidelines clearly states that yield maps are excluded from

² Footnote 58

determining agricultural grade. It was also disputed whether the compaction layer was likely to be a natural or man-made feature.

18. Nonetheless, irrespective of whether this compaction layer is a man-made or natural feature, given its depth, the advice from the MAFF guidelines which is supported by evidence from the farmers, is that both practically and economically it is not possible to ameliorate this compaction layer by normal soil management methods. As such, I consider it is a long term limiting factor that should be taken into account when considering the grading of the land. I therefore consider that the Amet report which takes the impact of the compaction layer into account provides a more reasonable assessment of the agricultural land quality. Given this I consider that the majority of the appeal site does not form BMV agricultural land.

Loss of agricultural land

19. However, even if it were considered to be BMV agricultural land, Policy S5 of the HLP does not prevent the use of such land but requires that the benefits need to justify its loss. Similarly, the national guidance outlined above does not prevent the use of such land.
20. The proposal would change the use of the land for a period of 40 years, which accords with the life expectancy of new panels. Whilst this is a significant period of time it is not permanent. Furthermore, during the operational period the land around the solar panels would be used for the grazing of sheep, with both farmers expecting to expand their current flocks. Given the height and angle of the proposed panels I consider grass will be able to grow under the panels satisfactorily as well as between the rows of panels, enabling such grazing to take place.
21. As a result, apart from the small areas used for the fixed infrastructure, the majority of the land would still be used for some agricultural purposes during the 40 year period the solar farm operated and it is the intention that it would be returned fully to agricultural land at the end. Moreover, I am satisfied from the evidence before me that resting the land from intensive agriculture would be likely to improve soil health by increasing the organic matter in the soil and improving soil structure and drainage, even if a return to arable farming would then start to reverse this improvement.
22. I note the concerns that the productivity and versatility of the land would be reduced. Nevertheless, the specific way agricultural land is used is not a matter that is subject to planning controls. As such, there would be nothing in planning terms to prevent the farmers using the fields that form the appeal site for the grazing of sheep at present or even leaving them fallow. Given this, the fact that the proposal would limit the ability to carry out any arable farming does not, in my opinion, mean that it results in the loss of agricultural land when it can still be used for other agricultural uses. Furthermore, current government schemes actually encourage farmers to take land out of production and put it to grass, meadows, or trees for carbon capture.
23. Various concerns were also raised regarding the potential impact, particularly of the construction phase, on soil quality. A condition requiring a Soil Resource Management Plan can ensure how and when construction work takes place so that damage to the soil is minimised. In addition, I consider that the advice in the *Construction Code of Practice for the Sustainable Use of Soils on*

Construction Sites (DEFRA 2009), does not mean that it is necessary to remove all the top soil on the site prior to any construction taking place. In my view this guidance relates to sites where soil would have to be removed as part of the construction process, rather than every construction site. This is borne out for example, by the advice regarding Soil Resource Plans in section 5.1 which says such plans should provide maps showing the areas where soil is to be stripped and where it is being left in-situ.

24. Whilst the panels will need to be cleaned on a periodic basis, the appellant indicated that this only requires the use of water, but in any case, this can be controlled by a condition to ensure it does not impact on soil quality.
25. As such, the proposal would not result in either the temporary or permanent loss of BMV land as the land would continue to be used for some agricultural purposes whilst also being used to produce solar energy. Nor would the proposal be detrimental to the soil quality, so a return to arable production at a later date would still be possible.

Food Security

26. Whilst the reason for refusal refers to the impact of the proposal on the nation's food security, the Council agreed in the Statement of Common Ground and at the hearing, that there are no national or local policies, guidance or strategies that relate to food security and production. The appellant highlighted numerous government documents that state, and statistics that show, that there is no food security problem in the country and that the level of food production is good, and none of this was disputed by the Council. This accords with the fact, noted above, that they are paying farmers to take land out of production and/or utilise less intensive production methods. Moreover, I note that the majority of crops grown on the appeal site at present are largely used for industrial purposes rather than supplying the food chain, whereas if it were to be used for grazing of sheep it would be contributing food for human consumption. As such, I am satisfied that the proposed use of the land would not be detrimental to the nation's food security.

Alternative Sites

27. I have not been provided with any evidence that indicates that there is any national or local policy requirement to carry out an assessment of alternative sites for solar farm developments. Nevertheless, the appellant provided a sequential assessment. This concluded that there were no sequential preferable sites in the area. Moreover, the Council have not put forward any brownfield or lower grade alternative sites.
28. It was suggested that the area of search in the assessment could have been wider and that it should have considered more than just the Leeming Bar substation. To this end the Parish Council drew my attention to some other appeal decisions where a more substantial catchment area was required. However, given the proposal is seeking to use the spare grid capacity at this sub-station, and bearing in mind the limited opportunities that currently exist for grid connections nationally, I consider it is, in this case, justified to only consider sites within an area that could also make use of this capacity, rather than capacity that may exist at other substations elsewhere. In addition, from the technical considerations set out by the appellant at the hearing regarding

how connections to the substation need to be made, I consider that the area of search utilised in the appellant's assessment is reasonable.

29. Whilst the levels of solar irradiance are higher in the south of England, given the government's requirement to significantly increase the amount of energy produced from solar power, which I outline in more detail below, I am not persuaded that solar developments should only take place further south in the country.
30. Overall, I consider that even if the proposal is considered to represent the loss of Grade 2 agricultural land, there are no alternative sites available on lower grade land.

Conclusion on main issue

31. Bringing all these points together, I consider that the majority of the appeal site does not form BMV agricultural land. So, to accord with the policies outlined above consideration needs to be given to whether it would harm the character and appearance of the area and if any adverse impacts can be made acceptable. I return to this below.
32. Moreover, even if it was BMV agricultural land, it would not result in the loss of this agricultural land and there are no lower grade alternative sites available, so subject to the above considerations its use would be justified.

Benefit arising from the provision of renewable energy

33. The proposal would have an installed capacity of 49.9MW, estimated to provide sufficient electricity to power around 10,800 homes. The site benefits from an immediate connection to the grid by way of an underground cable to the nearby substation.
34. In recent years both the Government and the local council have declared an Environmental and Climate Change Emergency. Various recent government publications have highlighted the need to significantly increase generation from onshore wind and solar energy production, as it seeks to ensure that by 2035 all our electricity will come from low carbon sources. To achieve this ambitious target, it is clear that considerable growth in large scale solar farms will be necessary and this cannot be achieved solely by the use of brownfield land or roof top installations. In addition, the Council, in seeking to be carbon neutral by 2034, identifies the need to look at viable solar /renewable energy as one of its actions, even if there may not be any quantifiable target for renewable energy production in the area. The proposed development would make a valuable contribution to achieving these local and national goals.
35. Concerns have been raised regarding the manufacturing of the panels and how "green" solar power is. Be that as it may, the government clearly identifies solar energy as a renewable form of energy and one in which they want to see significant growth. Nor is there any requirement for the energy produced to be "needed" or used "locally". Moreover, the efficiency of the panels has increased markedly in recent years.
36. The support in both national and local policy for renewable energy is caveated by the need for the impacts to be acceptable, or capable of being made so, nevertheless, the renewable energy benefit of the proposal must be accorded substantial weight.

Other Matters

37. The application was accompanied by a Landscape and Visual Appraisal which assessed the potential landscape and visual effects of the proposal, including the cumulative effects with other solar farms in the wider area. The Council concluded that the harmful impacts the proposal would create would be relatively localised and could be effectively mitigated. From the evidence before me and what I saw on my site visits, I see no reason to come to a different conclusion.
38. The proposal would include a variety of landscape and biodiversity measures including new and improved hedging, wildflower grass strips, areas of new woodland, and the provision of bird and bat boxes. In addition, ecological and wildlife corridors would be provided across the site, and the areas of woodland would still be accessible to wildlife. The biodiversity metric shows that the proposal would result in a substantial increase in biodiversity net gain in terms of habitat, hedgerow and river units. As such, the limited amount of existing hedging that would need to be removed for the accesses to the site would be more than adequately compensated for.
39. The site is a short distance from junction 51 of the A1M, and the route to the site from this junction is such that traffic to the site would pass a very small number of houses. Given this and the level of traffic generation predicted over the construction period, the impact on the local highway network or on the living conditions of residents would not be significant. Once operational traffic generation would be minimal.
40. Subject to a condition the Ministry of Defence have confirmed that they have no objection to the proposal and its potential effect on pilots using RAF Leeming. The Glint and Glare study also assessed the impact on road users, including the A684. From my own observations, I agree with the conclusion that due to the distance between the road and panels, their relative orientation and the existing and proposed vegetation there is unlikely to be an impact on drivers. Nonetheless, it is recommended that a site survey is undertaken once the proposed perimeter fencing is established to see if further mitigation is required. I consider that would be appropriate.
41. Leases Hall and its Ice House are both Grade II Listed Buildings. The appellant's Heritage Impact Assessment considered the changes to the setting of these as a result of the proposal. Due to the considerable intervening vegetation that already exists, it concluded that the proposal would not harm the setting of these heritage assets. From the evidence before me, and what I saw at my site visits, I agree that there would be no harm to the setting of these heritage assets.
42. There are a number of isolated dwellings in the vicinity, and to the east of the site lies the village of Scruton. The distance between these various properties and the closest panels, together with the existing and proposed intervening vegetation, means that the proposal would not unacceptably harm the living conditions of occupiers, in terms of noise and disturbance or glint and glare. Nor is there any compelling evidence to show that the noise during construction would be detrimental to any horses in the locality.
43. The appeal site is in Flood Zone 1 but due to its size a Flood Risk Assessment was produced. This considered all types of Flood Risk and concluded that there

was a negligible flood risk and no specific mitigation was required. Subject to a condition, the Lead Local Flood Authority had no objection to the proposal. In the absence of any substantive evidence to the contrary I see no reason to come to a different conclusion in this regard.

44. The Parish Council suggested that a Section 106 agreement should be provided to ensure the provision of a community fund for projects in Scruton, a new bridleway and a footpath from Scruton station to the bus stop on the A684. However, I am not persuaded that such contributions would meet the tests set out in the Framework and the CIL Regulations for planning obligations, as they would not be necessary to make the development acceptable in planning terms nor would they be directly related to the development.
45. I note that the Wensleydale Heritage Railway runs to the south of the site. Whilst tourism can rely considerably on the quality of the countryside, the effect on this has already been assessed above and found to be acceptable. I am not persuaded that the changes to the landscape in this case would lead to the loss of viability to the railway or any other existing tourism related business.

Planning Balance, Conclusion and Conditions

46. The Framework sets out a presumption in favour of sustainable development, and renewable energy development is central to achieving a sustainable future. The appeal scheme would make a valuable contribution to this. In addition, significant biodiversity enhancements would be achieved. The proposal would however be a significant development in the countryside and policy requires that any impacts are, or can be made, acceptable. The only adverse impact identified is a limited localised harm to the landscape character and visual impact. This impact can be effectively mitigated.
47. Moreover, although I have concluded the land is not BMV agricultural land, even if it was, the proposal would not result in the loss of the agricultural land and there are no suitable alternative sites on lower grade land.
48. Consequently, I consider the proposal would not have an unacceptable impact on, or result in the loss of, agricultural land and so it would accord with Policies RM6 and S5 of the HLP. As such, there would be no conflict with the sustainable development principles set out in Policy S1 of the HLP.
49. For the reasons set out above I conclude the appeal should be allowed.
50. The Council and the appellant agreed a set of potential conditions, and these were discussed at the hearing. I have considered these in the light of paragraph 56 of the Framework and have revised a number of them following the discussion at the hearing.
51. In addition to the standard implementation condition (condition 1), to provide certainty it is necessary to define the plans with which the scheme should accord (condition 2). Conditions 3, 4 and 5 are reasonable and necessary to limit the period of the permission and to ensure the site is decommissioned either at the end of the permission or when energy generation ceases.
52. In the interest of the character and appearance of the area condition 6 is necessary. For the same reason and in the interest of biodiversity, conditions

- 14 and 15 are required. Also, for biodiversity reasons, conditions 17, 18 and 19 are necessary.
53. To protect soil quality and so enable the reinstatement of its agricultural land quality, conditions 7, 8 and 20 are required. Conditions 9 and 10 are necessary for reasons of highway safety. For this reason, as well as to protect the living conditions of local residents, condition 16 is required. In the interest of aviation safety condition 13 is necessary.
54. Condition 11 is necessary to ensure sufficient access for the maintenance of the water mains, whilst condition 12 is required to ensure the site is properly drained. To protect and record any potential archaeological remains on the site, condition 21 is necessary.
55. Conditions 7, 16 and 21 are all pre-commencement conditions and need to be so because they relate to how the construction phase is carried out. Conditions 9 and 13 are also pre-commencement conditions. The former because it is necessary to ensure a safe access is provided for construction traffic before construction work begins and the latter because the Glint and Glare Plan could affect the design of the proposal. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the appellant has provided written agreement to the pre-commencement conditions.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Burrell BSc(Hons) DipUP MRTPI	Planning Director, Pegasus
Tony Kernon BSc(Hons) MRICS FBIAC	Kernon Countryside Consultants Ltd
James Fulton	Amet Property
Thea Osmund-Smith	Counsel
Chris Sowerbutts	Lightrock Power

FOR THE LOCAL PLANNING AUTHORITY:

Ian Nesbit	Senior Planning Officer, North Yorkshire Council
Ruth Metcalfe	ADAS

INTERESTED PARTIES:

Maurice Daley	Scruton Parish Council
Harry Shepherd	Scruton Solar Action Farm Group
Tim Chapman	Local Farmer

DOCUMENTS SUBMITTED AT THE HEARING

1. Copies of various of the submitted plans at A3
2. Location Plan and EIA Screening Opinion Decision for a potential Solar Farm at Cobshaw Lane, Langthorne.
3. Schedule of suggested conditions with comments submitted by the appellant
4. Copy of email sent on 9 April 2023 in response to the appeal notification by Mr T Chapman
5. Sequential Testing and Alternatives legal opinion submitted by the appellant.

Annex A Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Planning Drawing 1a 4004-REP-037; Land Under the Applicants Control Planning Drawing 1b 4004-REP-038; Indicative Site Layout 4004-SCT-DR-PRE-0002 REV G; Typical PV Panel Section Planning Drawing 4 4004_SCT_P_0001; Inverter/Transformer Planning Drawing 5 4004_SCT_P_0002; 53ft Battery Container (HVAC on ground) Planning Drawing 6 4004_SCT_P_0003; 2MW Inverter Transformer skid (8m) Planning Drawing 7 4004_SCT_P_0004; Security Fencing and CCTV Planning Drawing 8 4004_SCT_P_0005; Security Gate Planning Drawing 9 4004_SCT_P_0006; Access Track Cross Section Planning Drawing 10 4004_SCT_P_0007; Container Storage Units Planning Drawing 11 4004_SCT_P_0008; Indicative Temporary Construction Compound Planning Drawing 12 4004_SCT_P_0009; Client Substation Planning Drawing 13 4004_SCT_P_0010; DNO Substation Planning Drawing 14 4004_SCT_P_00011; Landscape Mitigation Plan 4004-DR-LAN-101 REV D; Proposed Access Junction Visibility Splay Assessment 4004-DR-ALR-002a; and Fence Dike Lane Proposed Access Junction Visibility Splay Assessment 4004-DR-ALR-0003.
- 3) The permission hereby granted shall be limited to a period of 40 years from the date when electricity is first exported from the solar panels to the electricity network (the First Export Date). Written notification of the First Export Date shall be given to the local planning authority within 14 days of the event occurring.
- 4) Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the First Export Date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to the local planning authority for its written approval. The solar farm and its ancillary equipment shall be dismantled and removed from the site and the land restored in accordance with the approved scheme and timescales.
- 5) If the solar farm hereby permitted ceases to operate for a continuous period of 12 months, then a scheme for the decommissioning and removal of the solar farm and ancillary equipment, shall be submitted within 6 months of the end of the cessation period to the local planning authority for its written approval. The scheme shall make provision for the removal of the solar panels and associated above ground works approved under this permission. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures.

- 6) Prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures 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 be maintained as such for the lifetime of the development hereby permitted.
- 7) Prior to the commencement of each phase of development (Construction, Operational and Decommissioning), a Soil Management Plan shall be submitted to, and approved in writing by, the local planning authority. The plan shall include, but not be limited to details pertaining to careful soil management during each phase, including consideration of the appropriate time of year for soil handling, planting beneath the panels and return to the former land quality as indicated in the Agricultural Land Classification survey dated 8th December 2020 – Issue 2 carried out by Amet Property. The Management Plan shall adhere to the guidance set out in the following documents (or any subsequent replacement versions):
 - Defra's Construction Code of Practice for the Sustainable Use of Soils on Construction Sites (September 2009); and.
 - The British Society of Soil Science Working with Soil Guidance Note on Benefiting from Soil Management in Development and Construction.

The Soil Management Plan as so approved shall be implemented, and adhered to, for each phase of the development.

- 8) To ensure against soil compaction and overland flow route disruption during construction, the soil should be chisel ploughed or similar and it should be restored to a pre-construction condition immediately post construction, the date of which should be notified in writing to the local planning authority within 14 days of it occurring. For the first three years after the completion of the construction phase, every six months, inspections of the planting and soil must be carried out by a qualified soil scientist, to ensure adequate growth of the planting and that any compaction or channelisation of the soil can be identified and addressed. Any remedial work identified in the inspection should take place within 6 months of the date of the inspection.
- 9) No development shall take place until the details on the accesses to be provided to Low Street and Fence Dike Lane have been submitted to, and approved in writing by, the local planning authority. Prior to the commencement of the development the site access on Low Street shall be constructed and prior to the First Export Date the access on Fence Dike Lane shall be constructed. Both accesses shall be provided in accordance with: the approved details; with Standard Detail number E20 Rev A; and the following requirements:
 - any gates or barriers must be erected a minimum distance of 13m back from the edge of the carriageway of the existing highway and must not be able to swing over the existing highway.
 - Provision to prevent surface water from the site discharging onto the existing highway have been constructed and maintained thereafter to prevent discharges.

The accesses shall be retained as such for the lifetime of the development hereby permitted.

- 10) Prior to the proposed accesses on Low Street or Fence Dike Lane being brought into use, the visibility splays shown on the following approved plans

- Proposed Access Junction Visibility Splay Assessment 4004-DR-ALR-002a and
- Fence Dike Lane Proposed Access Junction Visibility Splay Assessment 4004-DR-ALR-0003

shall have been provided. Once constructed the visibility splays must be maintained clear of any obstruction and retained for that purpose at all times.

- 11) No building or other obstruction including landscape features and tree planting shall be located over or within five metres either side of the centre line of both public water mains that cross the site i.e. a protected strip width of ten metres. If the required stand-off distances are to be achieved via diversion or closure of the water main(s), the developer shall submit evidence in writing to the local planning authority that the diversion or closure has been agreed with the relevant statutory undertaker and that prior to construction in the affected area, the approved works have been undertaken.
- 12) The development hereby approved shall not be brought into use until the surface water drainage arrangements have been provided in full, in accordance with details which shall previously have been submitted to, and approved in writing by, the local planning authority. The approved measures shall be retained for the lifetime of the development.
- 13) No development shall take place until a Glint & Glare Management Plan (GGMP) has been submitted to, and approved in writing by, the local planning authority. The submitted GGMP shall contain, but not be limited to:
- detailed design, to include specifications of both solar panel (surface types, anti reflective coating), mounting systems, illustrated with sectional plans as appropriate to show the angle of elevation and angle of azimuth of each solar panel in the development.
 - a schedule to regularly check and maintain the alignment of the solar panels;
 - a protocol through which glint and glare complaints can be submitted, investigated, and any issues rectified/ addressed/ mitigated to include procedures to ensure that any mitigation needed is implemented following MOD consultation and agreement only;
 - procedures through which complaints, associated actions/outcomes will be recorded/communicated and made available to the MOD on request;
 - provision to urgently address any incidents of a major impact that may occur that restricts aviation operations at RAF Leeming to

apply interim measures that will stop the source of glint or glare until measures to provide an enduring mitigation can be implemented; and

- timescales for completing investigations, implementing remedial works and the provision of interim and, or enduring mitigations to address any impact.

The provisions set out in the GGMP and any modifications/mitigation, as agreed in writing with the local planning authority shall be maintained for the life of the development.

- 14) The development hereby approved shall be implemented in accordance with the management measures set out in the Landscape and Biodiversity Management Plan prepared by Arcus Consultancy Services dated April 2021.
- 15) Notwithstanding the previously submitted details, prior to the erection of the solar panels, a landscaping scheme shall be submitted to, and approved in writing by, the local planning authority. The submitted scheme shall include, but is not limited to:
- details of the species;
 - numbers and locations of planting;
 - timescales for implementation; and
 - a Management and Maintenance plan covering the life of the development.

The landscaping of the site shall take place in accordance with the approved details and implementation programme. The site shall be maintained in accordance with the approved Management and Maintenance Plan for the life of the development hereby approved, and any planting which within a period of five years of planting dies, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

- 16) No development shall commence until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan shall include but not be limited to:
- Details relating to traffic management including measures to enable vehicles to enter and leave the site in a forward gear;
 - Hours of operation and hours during which construction and delivery traffic will travel to and from the site; and
 - Measures that will be implemented to minimise the creation and impact of noise, vibration and dust resulting from the site preparation, groundwork and construction phases of the development.

The Construction Management Plan as so approved shall be adhered to throughout the construction period.

- 17) The development hereby approved shall be implemented in accordance with the recommendations contained within paragraph 5.3.1 of the Ecological Impact Assessment prepared by Arcus Consultancy Services dated April 2021.

- 18) No external lighting shall be installed other than in complete accordance with a scheme that has previously been submitted to, and approved in writing by, the local planning authority. Any external lighting so installed shall thereafter be maintained in accordance with the approved details for the lifetime of the development.
- 19) Prior to the First Export Date the Biodiversity enhancements shown on the Landscape Mitigation Plan 4004-DR-LAN-101 REV D, and the mitigation and enhancement measures detailed within section 5.4 of the Ecological Impact Assessment prepared by Arcus Consultancy Services dated April 2021 shall be implemented and retained as such for the lifetime of the development hereby approved.
- 20) Prior to the First Export Date details of the cleaning procedure for the panels shall be submitted to, and approved in writing by, the local planning authority. The details shall include but not be limited to the frequency of cleaning, volumes of water required, details of any detergents to be used and any required mitigation. The cleaning of the panels shall thereafter take place in accordance with the approved details.
- 21) No development shall take place until a written scheme of investigation (WSI) has been submitted to, and approved in writing by, the local planning authority. The WSI shall include:
 - the statement of significance and research objectives;
 - the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works; and
 - the programme (including timescales) for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material.

The written scheme of investigation will need to be prepared and implemented by a suitably qualified professionally accredited archaeological practice.

No development shall take place until the site investigations and post investigation assessment has been undertaken in accordance with the agreed programme and details.



Costs Decision

Hearing held on 31 May 2023

Site visits made on 30 May and 1 June 2023

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th June 2023

**Costs application in relation to Appeal Ref: APP/G2713/W/23/3315877
Land south of Leeming Substation, west of the village of Scruton,
bordering Fence Dike Lane, part of Low Street and Feltham Lane, DL7 0RG**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Lightrock Power Ltd for a full award of costs against North Yorkshire Council.
 - The appeal was against the refusal of planning permission for the installation of a solar photovoltaic array/solar farm with associated infrastructure.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the *Planning Practice Guidance* (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application for an award of costs is made on substantive grounds. It is highlighted that the Committee of the Council determining the application decided not to accept the recommendations of its Officers to grant permission. It is argued that the Council has prevented or delayed development which should have been permitted having regard to the development plan, national policy and other material considerations and has failed to substantiate the reason for refusal on appeal. The PPG indicates that, in such circumstances, costs may be awarded against a Council.
4. Whilst the Committee of the Council responsible for determining planning applications is not required to accept the recommendations of its Officers, in circumstances where the professional advice of Officers is not followed, it is reasonable to expect the Council to be able to produce relevant evidence on appeal to support the decision.
5. It is not disputed that the Council provided two witnesses at the hearing, who both had considerable experience in their respective fields, and that the Council produced a statement of case, albeit short in length. However, this in itself does not mean that they have substantiated, at appeal stage, their decision to refuse the application.
6. The application had 2 inter-related reasons for refusal. These relate to the proposal's use of Grade 2 agricultural land, the unjustified loss of this Best and Most Versatile (BMV) agricultural land and the impact of this loss on the ability

to provide food for the security of the nation. The reason for refusal sets out the development plan policies and the parts of the *National Planning Policy Framework* (the Framework) to which the Council considered the scheme would be contrary.

7. As detailed in my decision, I have concluded that the appeal site is not BMV agricultural land. However, I recognise that the agricultural land classification of the site is a matter of judgement, and given the evidence from their own consultant, I consider that it was not unreasonable for the Council to adopt a different position in this respect.
8. Nonetheless, the Council's appeal statement provides no evidence to refute or counter the appellant's evidence that, even if the site was BMV agricultural land, the proposal would not result in the loss of the land for agriculture, or to explain why given the appellant's sequential assessment, the use of this land was not justified. In addition, whilst the statement highlights the need to balance the objective to achieve a low carbon economy with the objective to protect a finite resource and the ability to produce food for the nation, it does not carry out any such balancing exercise. Consequently, I consider that the Council's statement does not substantiate the reasons for refusal.
9. At the hearing the Council indicated that their concerns regarding the loss of agricultural land was related to the impact the proposal would have on the versatility in the use of the land and its productivity. However, both in the Statement of Common Ground (SoCG), and at the hearing, the Council agreed that there is no legal or policy mechanism to control the specific agricultural use an owner makes of land. Moreover, the Council did not dispute the fact that the government currently provides financial incentives to farm in less intensive ways and take land out of production for biodiversity reasons. In the light of this, the productivity or otherwise of the land, and whether or not it is used in a versatile way cannot reasonably support an argument that the proposal would result in the loss of agricultural land.
10. Additionally, in the SoCG the Council acknowledge that some agricultural use of the land will continue alongside the solar farm through sheep grazing and they did not dispute that it is the intention for the land to revert to agricultural use when the solar farm ceases to operate. Whilst the land would not be able to be used for arable production whilst the site is being used as a solar farm, the Council have provided no evidence that the use of the land for grazing sheep would be contrary to any policy, whether or not it is BMV land. Given this, it cannot be reasonably argued that the proposal will result in either the temporary or permanent loss of agricultural land.
11. Whilst in their response to the costs claim the Council have argued that it was not unreasonable for them to place significant weight on the ability to grow crops on BMV agricultural land, given that it is agreed by the Council that there is no mechanism to require crops to be grown, it is indeed unreasonable to put significant weight on this.
12. Similarly, both in the SoCG and at the hearing the Council confirmed that there were no legislative, planning policy or guidance at any level that relates to food production or security. Whilst their response to the costs claim suggests that the proposed revisions to the Framework refer to the need to address food security, the explanatory text to the Framework revisions, highlights that as a nation we have a high degree of food security and does not set out that any

additional food security needs to be achieved. Therefore, I consider that at appeal stage the Council have provided no evidence to substantiate this part of the reason for refusal.

13. It was agreed in the SoCG that there is no national or local policy requirement for a sequential test to be undertaken for renewable energy proposals. Policy S5 of the *Hambleton Local Plan (adopted February 2022)* (HLP) indicates that where significant development in the countryside is demonstrated to be necessary the use of BMV land should be avoided wherever possible. This does not require a sequential test, nonetheless one was provided by the appellant.
14. No concerns regarding the methodology or approach of the appellant's sequential assessment were raised in either the Officer's report or the Council's appeal statement. At the hearing it was stated that it could have used a wider search area, but no evidence was provided as to what search area should have been used. Neither did the Council provide any evidence themselves, to counter that in the appellant's sequential assessment, to show that there were any other potential alternative sites utilising lower grade agricultural land or brownfield land, that could use this, or another connection to the grid.
15. In their response to the application for costs the Council refer to HLP Policy EG7 in support of their case for retaining BMV land. However, this is not a policy to which they had made any previous reference, nor that was listed in the SoCG as a policy that was relevant to the case. Whilst the part of the policy quoted provides support for sustainable forms of farming rather than providing any support to the Council's case for the retention of BMV, it is still unreasonable at this late stage of the appeal process to start relying on new policies.
16. Overall, I consider that the Council has not produced relevant evidence at appeal stage to support their decision to refuse planning permission and has therefore delayed a development that should have been permitted, having regard to the development plan and other material considerations. I therefore consider that the Council's approach does represent unreasonable behaviour, and this has resulted directly in the need for this appeal.
17. Consequently, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated, and a full award of costs is justified.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Yorkshire Council shall pay to Lightrock Power Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to North Yorkshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alison Partington

INSPECTOR