



# Appeal Decision

Site visit made on 22 September 2023

**by G Sylvester BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23<sup>rd</sup> January 2024**

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**Appeal Ref: APP/W1525/W/22/3306710**

**Land West of Battlesbridge, Rettendon, Wickford, Essex SS11 7RJ**

- 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 Pelagic Energy against the decision of Chelmsford City Council.
  - The application Ref 22/00179/FUL, dated 21 January 2022, was refused by notice dated 30 May 2022.
  - The development proposed is the construction of a battery energy storage system and ancillary development.
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## Decision

1. The appeal is allowed and planning permission is granted for the construction of a battery energy storage system and ancillary development, at Land West of Battlesbridge, Rettendon, Wickford, Essex SS11 7RJ in accordance with the terms of the application, Ref 22/00179/FUL, dated 21 January 2022, subject to the conditions in the attached schedule.

## Procedural Matters

2. For the banner heading and the grant of planning permission above, I have taken the site address from the appellant's appeal form as it more accurately describes the location of the appeal site, including by a postcode. This address is similar to that used by the Council in determining the planning application and I am satisfied that using it would not prejudice the interests of any party.
3. Accompanying the appeal is a revised drawing (number PPS-2784-OAP1), showing an alternative layout of the development, including an embankment with trees along the east and south boundaries. This drawing would constitute a fundamental change to the proposal that could unfairly prejudice the interests of third parties. Therefore, I have not taken it into account in determining this appeal.
4. Several documents not before the Council when it determined the planning application have been submitted with the appeal. These include appeal decisions, planning permissions granted and reports related to future energy scenarios. Furthermore, an Alternative Site Search report dated March 2023 accompanies the appellant's final comments. Whilst interested parties may not have seen this information, no alternative sites for the development were suggested by any party, and the information does not change the appeal proposal. The Council has had an opportunity to provide submissions on the appellant's final comments.
5. I have had regard to the nature of the objections to the appeal proposal, the information submitted by the appellant, and the principles established in caselaw. In so doing, I am satisfied that by taking account of this information

in determining this appeal, the interests of the parties would not be unfairly prejudiced.

6. The National Planning Policy Framework (the Framework) was revised in December 2023 and is a material consideration in planning decisions. All references to the Framework in this decision relates to the revised document. In having regard to the matters that are most relevant to this appeal, there are no material changes to the Framework of relevance to the substance of this appeal. Therefore, I am satisfied that no party to this appeal would be prejudiced by the changes to the national policy context.

## **Background and Main Issues**

7. The main parties agree that the proposed development would represent inappropriate development in the Green Belt. Based on the evidence before me, I concur with that position. In that context the main issues are:
  - The effect of the proposed development on the openness and purposes of the Green Belt.
  - The effect of the proposed development on the character and appearance of the area.
  - Whether any 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**

### *Openness and purposes of the Green Belt*

8. Paragraph 142 of the Framework states that 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. One of the five purposes of the Green Belt, as set out in Paragraph 143.c) of the Framework, is to assist in safeguarding the countryside from encroachment.
9. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policies S11, DM6 and DM19 of the Chelmsford Local Plan, Adopted May 2020, (the CLP), are consistent with the Framework insofar as they seek to protect the openness and permanence of the Green Belt, and set out that inappropriate development will not be approved except in very special circumstances.
10. Openness can be considered as the absence of buildings and development, and is perceived spatially and visually. The appeal site is an open agricultural field devoid of any buildings or structures. The proposed development would consist of some 78 battery containers and transformers, including a switchgear building, substation compound, ancillary grid compliance structure, perimeter acoustic fencing, CCTV poles, hardstandings and access track. With the exception of the 132kv substation compound, the individual components of the proposal are not particularly tall and would be laid out with gaps between them. However, they would nonetheless cover most of the open undeveloped field, thus resulting in an inevitable reduction in the openness of the Green Belt

in spatial terms. Furthermore, the proposed development would represent an encroachment of built development into the countryside.

11. The appeal site is situated on relatively flat land to the north of the River Crouch. It is set at a lower level than the raised highway embankments which are substantially planted with trees and converge to the north. The openness of the site is mostly experienced by the drivers of vehicles in elevated views at relatively close distances from the nearby roads. Considerably longer distance views from a Public Right of Way are possible as recorded in the appellant's Landscape and Visual Impact Assessment (LVIA).
12. The LVIA states that the appeal site is some 7 metres below the maximum height of the highway embankments. The proposed buildings and structures would not be particularly tall especially when seen in the context of the raised highway embankments. The proposed 132kv substation compound would be the tallest element of the proposal, however the submitted drawings show that the upper parts of this would largely comprise of narrow profiled components with a good degree of visual permeability through them. The substation would also be set at the northern extent of the site and relatively close to the raised highway embankments of both the A130 and A1245, limiting its visual effects. As such, the proposed development would, in totality, be mostly seen by drivers looking downwards from the roads across the appeal site, and against the backdrop of the dense tree coverage and planting growing on the raised embankments.
13. The visibility of the development in the landscape would therefore be limited to views from the nearest roads and a few very distant viewpoints identified in the LVIA, due to the containment of the site between the road embankments and localised topography. Nonetheless, the cumulative volume of the individual components of the proposed development, along with their site coverage and the extent to which they would spread across the site, would cause a significant loss of visual openness of the Green Belt in those relatively localised views.
14. The harm caused by the appeal development to the Green Belt, would be reversible and intended to be so. The Planning Practice Guidance<sup>1</sup> (PPG) acknowledges that 'duration and remediability' are relevant considerations when assessing the impact of a proposal on openness. Nonetheless, the duration of the planning permission and the harm to the Green Belt would persist for a significant period of time.
15. In having regard to the Caselaw drawn to my attention by the appellant on the concept of openness, I find that the appeal proposal would significantly harm the openness of the Green Belt. It would also conflict with its purpose of assisting in safeguarding the countryside from encroachment by development. This harm would be in addition to that resulting from the proposed development's inappropriateness. As such, it would be contrary to CLP Policies S11, DM6 and DM19, insofar as they seek to protect the Green Belt from inappropriate development and protect its openness, permanence and purposes.

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<sup>1</sup> Paragraph: 001 Reference ID: 64-001-20190722

### *Character and appearance*

16. The countryside in the area of the appeal site is generally characterised by cultivated agricultural fields on either side of the course of the nearby river. These fields are set amongst a wider undulating landscape of fields marked by hedgerows and bisected by roads, including those on raised embankments.
17. Tall electricity pylons are highly visible in the landscape and roads extend across the fields on raised embankments, including the nearby A130 dual carriageway. However, the A130 and the vehicles travelling along it are relatively well screened by planting on the raised embankment. Therefore, despite these elements of infrastructure being visible, the area has a generally rural and pastoral agricultural character and appearance. The largely cultivated appearance of the appeal site contributes positively to this.
18. As an assemblage of elements with an industrial aesthetic spread across the appeal site, including shipping-type containers, transformers, substation, CCTV poles and boundary fencing, the proposed development would fundamentally change the character and appearance of the site within the wider landscape. However, the appeal site occupies something of a hollow in the ground due to the raised road embankments and there is relatively dense vegetation alongside the roads. As such, the site is relatively well contained between these embankments, which largely restricts its visibility to relatively close distance views from passing road users, particularly when the vegetation is in leaf.
19. Seen in those elevated views from the nearby roads and mostly against the backdrop of planting, the industrial appearance of the development would harm the character and appearance of the area, albeit to a relatively localised extent. The proposed planting would be capable of limiting views of the development, however it would take a number of years to establish. In longer distance views from the public right of way in viewpoints H, I and J in the appellant's LVIA, I observed that there would be limited visibility of the development.
20. For these reasons, the proposed development would cause a moderate degree of harm to the character and appearance of the area, contrary to CLP Policies S11 and DM19, which seek to ensure that development does not have an adverse impact on the different roles and character of the countryside.

### *Other considerations*

21. The proposed battery energy storage system (BESS) would store renewable and non-renewable electricity supplied by the National Grid (the grid) and this would be fed back into the grid at times of high demand. The evidence states that due to fluctuations in the supply of renewable energy from wind and solar generators, there is an increased national need for energy storage facilities to secure reliable and constant energy supply.
22. The evidence before me includes reference to a series of reports and documents which identify the importance of energy storage to the overall energy strategy and how it will assist with the achievement of Net Zero.
23. The Climate Change Act 2008 set into legislation the UK's approach to tackling and responding to climate change, introducing a legally binding 2050 target to reduce greenhouse gas emissions by at least 80% relative to 1990 levels. The Net Zero Strategy: Build Back Greener HM Government 2021, sets out the need to take action to ensure that by 2035 all electricity is generated from low-

carbon sources. The British Energy Strategy 2022, outlines the Government's encouragement for all forms of energy flexibility with an emphasis on ensuring there is sufficient large-scale, long-duration electricity storage to balance the overall system.

24. National Grid's 'A Day in the Life 2035', identifies that energy storage, especially long-duration storage, will be critical to make best use of low-cost energy, and balance demand and supply. National Grid's Future Energy Scenarios report 2022 forecasts that electricity storage will need to increase significantly to support the decarbonisation of the system, with estimates of twelve fold and seven fold increases in capacity and volume being needed respectively from 2021 to 2050, as part of credible ways that the UK can achieve Net Zero by 2050.
25. The proposed BESS does not generate energy and is not associated with a particular renewable energy project. The evidence indicates that storage of electricity can take different forms and is not solely battery storage. Nonetheless, the evidence provided demonstrates a national need for this type of installation in terms of its contribution to achieving Net Zero through making best use of low-cost and renewable energy, and assisting in the reliable supply of energy.
26. The need for energy storage and its public benefits are not disputed between the main parties. The Council's position is, in effect, that the public benefits of the development are generic and would be the same anywhere in the country, thus falling short of the 'very special circumstances' in the context of national and local Green Belt protection policies.
27. The Council contends that the appellant has failed to demonstrate that the proximity of the appeal site to Rayleigh Substation (RS) is unique or very special, and why, given that it would be connected to a national grid, it could not be located within the same distance of a non-Green Belt substation. As such, the Council did not find the appellant's site search process to have been sufficiently robust. Furthermore, even if the Council had robust evidence of a lack of alternative sites outside the Green Belt for the appeal proposal, it considers that the harm would not be outweighed by the benefits.
28. The evidence indicates that the location of the proposed development has been derived following a site selection process based primarily on distance from the RS. This process took account of the significant expense and viability of installing a cable connection to the grid network, thus placing a viable 'limit' of approximately 3km or so between the proposal and RS. The appeal site, at some 3.8km from RS, is close to the viable limit.
29. RS is a 'hub' supplying the electricity distribution network covering a large area of South East England and East Anglia, and operated by UK Power Networks. The appellant's evidence indicates that it is locationally important due to its position on the boundary between two National Grid regions and in an area of the grid that receives a significant proportion of energy from solar and offshore wind generators, and I have no substantive basis to consider differently. The evidence suggests that the energy supply from these renewable generators fluctuates and requires 'balancing' by energy storage facilities. Furthermore, the distribution network in this location is heavily constrained for new connections in that the available capacity to accept new energy generators would, when including the appeal proposals, be either used up or close to being

used up by existing generating projects. As such, making additional capacity available in the network of RS would require costly upgrades reportedly taking many years to implement.

30. The evidence also suggests there is an urgent need for 'reactive power' across the south of England for essential 'balancing' services and that the appeal site is within a reactive power priority area<sup>2</sup>. Without the balancing services provided by the appeal proposal, energy generating connections to the grid from renewables projects would be 'curtailed' (switched-off), in order to manage fluctuations in the flow of power and avoid overloading the network. Those projects that have secured grid connections are reportedly fundamental to achieving Net Zero targets given the increased requirement for storage capacity. Furthermore, the proposed BESS would be able to contribute to repowering the network (so called 'black start' capability), in the event of a power outage, which the evidence suggests has become more difficult due to the transition from traditional generators to renewable generation.
31. The appellant's final comments include evidence of the site search area, the site selection criteria and how it was applied to select the appeal site, and the reasons for discounting alternative options. This process involved an interrogation of the brownfield land register, detailed consideration of short-listed sites and their constraints, and direct contact with land agents to determine potential availability. The search has confirmed that there are no allocated industrial sites or brownfield sites outside or inside the Green Belt that would be sequentially preferable than the proposed appeal site. Furthermore, no areas of open countryside outside of the Green Belt were found to be available within the viable 4km study area.
32. Taking account of all the above, I am satisfied on the basis of the evidence before me, that the appellant has demonstrated a need for a development of this type within relatively close proximity to the RS. Furthermore, the appeal proposal would secure the last, or at least one of the last unconstrained connections into the area's network, which the evidence suggests can be delivered by 2025. This is important in this location as the network is constrained and without facilities such as the appeal proposal it would not be able accept additional connections from new generators until costly network upgrades are delivered.
33. Given that existing generating projects, together with the appeal proposal, would take up the available grid capacity at RS, the deliverability of the appeal proposal weighs considerably in its favour. Moreover, the robust site search assessment demonstrates that there are no suitable sites outside of the Green Belt, nor sequentially preferable sites within it, to deliver the proposal's technical and environmental benefits.
34. The environmental benefits of the development would not be confined to the locality of the appeal site. However, this would not diminish the overall weight to be attributed to the benefits of the proposal, particularly given the demonstrable need for battery storage in relatively close proximity to the RS, so as to deliver the technical 'balancing' and 'reactive power' capabilities. Taking account of the relative absence of other suitable sites to achieve these benefits, I give the benefits of the proposal very substantial weight.

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<sup>2</sup> Figure 3 of the appellant's statement.

## **Other matters**

35. Based on the evidence before me there would not be any visibility of the development from the Battlesbridge Conservation Area (CA) or the listed building within it. These heritage assets would be separated from the appeal proposal by relatively long distances. There would be very limited intervisibility between the listed Church of All Saints, which occupies a prominent elevated position and the proposed development, which is mostly a low-rise development that would be relatively well contained within the wider landscape. Although some nearby second world war pillboxes are considered non-designated heritage assets, these are situated on the opposite side of the raised road embankment to the appeal site. As such, the appeal proposal would not cause any harm to the significance of the CA, and it would preserve the settings of the listed buildings. The significance of the non-designated heritage assets would not be harmed.
36. The main source of noise at the appeal site would be the continual operation of cooling condensers and transformers. I observed on my site visit that road noise was constantly audible and that the closest dwellings to the appeal site were located on the opposite side of the raised A1245 road embankment. The homes to the south are located at greater distances from the appeal site. Although my experiences of the site and its surroundings were a snapshot in time, I am satisfied on the basis of the appellant's Noise Impact Assessment, and in the absence of any substantive evidence to the contrary, that the appeal proposal would not result in noise effects that would harm the living conditions of nearby residential occupiers. I have no substantive evidence to support the contention that the appeal proposal would pose an unacceptable risk of contamination or pollution to the environment, including to the nearby river.

## **Conditions**

37. The Council has suggested a number of planning conditions in the event of the appeal being allowed. I have considered them in accordance with the tests for imposing conditions set out in the Framework and the PPG. Where necessary I have amended the wording of the suggested conditions to ensure compliance with the tests. In the interests of certainty of the planning permission granted, conditions are imposed to necessarily indicate the time limit for implementation and specify the approved plans.
38. Conditions are necessary to ensure that the planning permission is temporary, and to ensure that the development is removed from the land at the end of its operational period, thus restoring the openness of the Green Belt, and in the interests of the character and appearance of the area. A detailed scheme for this, including a timetable for its completion, is necessary for certainty.
39. Landscaping details, including boundary treatments and finished ground levels, along with details of the colour finishes of the equipment and an outdoor lighting scheme, are necessary with regard to the appearance of the development. I have simplified the lists of requirements in the recommended conditions to give the parties flexibility over what needs to be addressed.
40. A construction management plan is necessary in the interests of highway safety, along with measures to prevent pollution of the nearby watercourse.

41. Details of the works to the on-site access road are necessary in the interests of highway safety to ensure satisfactory access arrangements are in place. For the same reason it is necessary to ensure that on-site parking provision is in place for the duration of the development and any entrance gates do not force vehicles to wait in the carriageway.
42. Details of a drainage strategy are necessary before development commences. This is to ensure the site is suitably drained from the outset and flood risk to surrounding areas is not increased and that surface water is not discharged onto the highway where it could pose a safety risk.
43. In the interests of avoiding harm to biodiversity and achieving an enhancement to biodiversity it is necessary to control outdoor lighting and ensure development is carried out in accordance with the submitted Ecology Report.

### **Green Belt Balance and Conclusion**

44. Paragraphs 152 and 153 of the Framework state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, and that substantial weight should be given to any harm to the Green Belt. The proposal would be inappropriate development in the Green Belt. It would cause significant harm to the openness of the Green Belt and conflict with the purpose of the Green Belt in safeguarding the countryside from encroachment. Together, I must give substantial weight to the totality of the proposal's harm to the Green Belt, added to which is the relatively localised harm to the character and appearance of the area, which weighs moderately against the development.
45. The other matters raised above do not result in harm or cause effects that cannot be made acceptable and mitigated through planning conditions. They are matters of neutral weight in the balance.
46. The other considerations attract very substantial weight in favour of the appeal proposal. Although they might arise elsewhere and are not wholly unique, I have not seen or read anything in the evidence that limits very special circumstances in this instance to those that are wholly unique. Taken together, they clearly outweigh the totality of harm to the Green Belt and the harm to the character and appearance of the area. Consequently, the very special circumstances necessary to justify the development do exist, and the appeal proposal would comply with CLP Policies S11, DM6 and DM19 insofar as they set out that inappropriate development will not be approved except in very special circumstances.
47. For the reasons given above and having regard to all matters raised, I conclude that the appeal proposal is consistent with the development plan when read as a whole. The appeal should be allowed.

*G Sylvester*

INSPECTOR

### **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: DWG003; HE-01-15-DWG001 Revision B4; HE-01-15-DWG004 Revision B4; PLG001 Revision A1; PLG004 Revision A1; PLG005 Revision A1; PLG006 Revision A1; PLG008 Revision A1; PLG009 Revision A1; PLG0012 Revision A1, and PLG0013 Revision A1.
- 3) The planning permission hereby granted shall be limited to a period of 40 years commencing from the date electricity is first stored or distributed to the National Grid. The local planning authority shall be notified in writing of the date of first electricity storage by or distribution from the development within 10 working days of the event date. At the end of this 40-year period, or in the event the battery energy storage system and ancillary development is no longer required for power storage and distribution in connection with Rayleigh substation or becomes redundant, whichever occurs first, the development shall be permanently removed from the site and the land restored to its previous agricultural use in accordance with a scheme of works containing the details set out in Condition 4, that shall have previously been submitted to and approved in writing by the local planning authority under the terms also set out in Condition 4.
- 4) No later than 6 months prior to the expiry of the planning permission, or within 6 months of the cessation of electricity storage and distribution by this facility, whichever is the sooner, a detailed scheme of works for the removal of the development (excluding the approved landscaping and biodiversity works) shall be submitted to and approved in writing by the local planning authority. The scheme of works shall include the following details:
  - i) a programme of works;
  - ii) a method statement for the decommissioning and dismantling of all equipment and surfacing on site;
  - iii) details of any items to be retained on site;
  - iv) a method statement for restoring the land to agriculture;
  - v) timescale for the decommissioning, removal and reinstatement of the land;
  - vi) a method statement for the disposal/recycling of redundant equipment/structures.

The scheme of works shall be undertaken in accordance with the approved details and timescales. The local planning authority shall be notified in writing of the date of the cessation of electricity storage by or distribution from the development within 10 working days of the event date.
- 5) No development shall commence until details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The landscaping details shall include:
  - i) hard surfacing materials;

- ii) boundary treatments, including details of measures to allow the ingress and egress of small mammals;
- iii) soft landscape details;
- iv) species type, size and planting density;
- v) finished ground levels;
- vi) implementation programme;
- vii) maintenance and management details.

The hard and soft landscape works shall be carried out, and thereafter maintained and managed in accordance with the approved details.

- 6) No development shall commence until a Construction Management Plan (CMP), to include the following details, has been submitted to and approved in writing by the local planning authority.
- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in construction of the development;
  - iv) wheel washing facilities;
  - v) measures to prevent pollution of nearby watercourses;

The approved CMP shall be adhered to throughout the construction period of the development.

- 7) No development shall commence until a scheme for access to the site from the A1245, including a timetable for implementation, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include provision of a metalled haul/access road from the A1245, including a hard-bound material for at least the first 6m from the back edge of the highway carriageway. The development shall be carried out in accordance with the approved scheme and thereafter retained for the duration of the development.
- 8) No development shall commence until a surface water drainage scheme, together with a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall ensure that there is no discharge of surface water from the development onto the Highway and it shall be implemented in accordance with the approved details and timetable, and thereafter retained for the duration of the development.
- 9) The substation, substation building, switchgear housing, battery storage units, grid compliant equipment, CCTV poles, and battery transformers shall not be installed until details of the colour finishes of their external surfaces have been 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 in the approved colour finishes.

- 10) The vehicle parking spaces and turning areas shall be provided in accordance with the approved drawings before first use of the development and thereafter kept available for those purposes.
- 11) Any entrance gates erected shall be hung to open inwards and away from the highway, and shall be set back a minimum distance of 6m metres from the carriageway edge and thereafter maintained in that condition.
- 12) The development hereby permitted shall be carried out in accordance with the recommendations and mitigation measures contained in the Ecology Report dated October 2021 by Wild Frontier Ecology Ltd.
- 13) Outdoor lighting shall not be installed at the site except in accordance with a detailed lighting scheme, that shall first have been submitted to and approved in writing by the local planning authority. The detailed lighting scheme shall be maintained thereafter in accordance with the approved details.

**End of schedule**