



Appeal Decision

Hearing held on 27 November 2024

Site visit made on 10 January 2025

by Gareth W Thomas BSc (Hons) MSc (Dist) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02nd April 2025

Appeal Ref: APP/C4615/W/24/3345744

Land at Illeybrook Farm, Illey Lane, Halesowen B62 0HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Net Zero Eleven Limited against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P23/0940.
 - The development proposed is for a battery energy storage system (BESS) together with associated infrastructure, site levelling works, access onto Illey Lane and ancillary development thereto.
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The following decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 4 February 2025.

Decision

1. The appeal is allowed and planning permission is granted for a battery energy storage system (BESS) together with associated infrastructure, site levelling works, access onto Illey Lane and ancillary development thereto at Land at Illeybrook Farm, Halesowen B62 0HE in accordance with the terms of the application Ref P23/0940, subject to the conditions in the attached schedule.

Applications for costs

2. Applications for costs were submitted by both parties against each other. These applications are subject to separate decisions.

Preliminary Matters

3. A number of minor amendments have been submitted as part of the appeal, including reinstatement through additional planting of historic field boundaries, additional landscaping, the provision of a permissive path around the perimeter of the appeal site and the introduction of fire safety measures. These are minor in nature and no party would be prejudiced should I agree to these amendments.

Main Issues

4. Setting aside the recent concept of 'grey belt', which would not apply to this site, both parties agreed in the Statement of Common Ground that the proposed development would be inappropriate development in the Green Belt having regard to Policy CSP2 of the Black Country Core Strategy 2011, Policies S19 and S23 of the Dudley Borough Development Plan and the National Planning Policy Framework. In addition, the proposal would be located within the Lapal Area of High Historic Landscape Value (AHHLV), which is a non-heritage heritage asset (NDHA). Consequently, the main issues are:

- Firstly, the effect of the proposal on the openness of the Green Belt;
- Secondly, the effect of the proposal on the character and appearance of the AHHL as a NDHA; and
- Thirdly, whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Background

5. It would be remiss to not highlight the direction of travel in terms of Government energy policy at the very outset of my decision. A material consideration in the determination of planning proposals for renewable energy are the National Policy Statements (NPS) for the delivery of major energy infrastructure. The NPSs recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. The Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) both state that the NPSs can be a material consideration in decision making on applications that both exceed or sit under the thresholds for nationally significant projects. Further, Paragraph 213 of The Energy Act 2023 now includes energy provided from battery storage as its own subset of energy generation.
6. The UK Government has set a statutory target to cut greenhouse gas emissions by 100% (compared to 1990 levels) by 2050, and this is a significant material consideration. It has also declared a climate emergency. Since the declaration, the Sixth Assessment Report of the Intergovernmental Panel on Climate Change has indicated that it is more likely than not that global temperature increases will exceed 1.5 degrees Celsius above pre-industrial levels. The report indicated that delay in global action to address climate change will miss a brief and rapidly closing window to secure a liveable future. The UK Energy White Paper, Powering our Net Zero Future (2020), describes the costs of inaction as follows:

“We can expect to see severe impacts under 3°C of warming. Globally, the chances of there being a major heatwave in any given year would increase to about 79 per cent, compared to a five per cent chance now. Many regions of the world would see what is now considered a 1-in-100-year drought happening every two to five years.

At 3°C of global warming, the UK is expected to be significantly affected, seeing sea level rise of up to 0.83 m. River flooding would cause twice as much economic damage and affect twice as many people, compared to today, while by 2050, up to 7,000 people could die every year due to heat, compared to approximately 2,000 today. And, without action now, we cannot rule out 4°C of warming by the end of the century, with real risks of higher warming than that. A warming of 4°C would increase the risk of passing thresholds that would result in large scale and irreversible changes to the global climate, including large-scale methane release from thawing permafrost and the collapse of the Atlantic Meridional Overturning Circulation. The loss of ice sheets could result in multi-metre rises in sea level on time scales of a century to millennia.”

7. The NPSs recognise that to meet the Government’s objectives and legally binding target for 2050, significant large and small-scale energy infrastructure will be required. This includes the need to dramatically increase the volume of energy supplied from low carbon sources to ensure a reduction in the reliance of fossil fuels (which accounted for 79% of energy supply in 2019). Solar (together with wind) is recognised specifically in EN-1 as being the lowest cost way of generating electricity and that by 2050, secure, reliable, affordable, net zero energy systems are ‘likely to be composed predominantly of wind and solar’. The NPS emphasises that it is critical that the UK continues to have secure and reliable supplies of electricity and to meet electricity demand at all times.

8. The Clean Power 2030 Action Plan states that the shift to a clean power system by 2030 forms the backbone of the transition to net zero as the country moves to an economy which is much more reliant on electricity. The Government has therefore identified a need to deliver between 23-27GW of battery storage capacity by 2030, to complement other renewables technology such as wind and solar. At the national level, in combination with the drive to reinforce provision of renewable energy sources, the Government also acknowledges the need to ensure that projects come forward in appropriate locations.
9. Paragraph 157 of the National Planning Policy Framework (the Framework) confirms that the planning system 'should support the transition to a low carbon future in a changing climate', should 'contribute to radical reductions in greenhouse gas emissions' and 'support renewable and low carbon energy and associated infrastructure'. This recognises the responsibility placed on all communities to contribute towards renewable energy production. Therefore, there is a strong strategic policy framework which supports renewable and low carbon development proposals. The Framework also confirms that applicants are not required 'to demonstrate the overall need for renewable or low carbon energy' (para 163).
10. The proposed battery energy storage system (BESS) would allow intermittent renewable energy such as wind and solar power to be stored when supply is high and released to the electricity grid network during times of peak demand. It would enable early connection to the nearby Kitwell GSP Substation some 1.2km to the east and would serve the National Grid rather than a specific local generation facility, with the capacity to store 99.8MW of surplus energy before feeding it into the grid.
11. Battery storage is an essential part of the system services that will enable the National Grid to handle the change in power flows arising from the growth in power from renewable energy sources and the decommissioning of coal and gas power stations. Without the system services to support zero carbon technologies, stabilising the National Grid will be challenging and will constrain the amount of renewable energy that can be utilised by the grid, ultimately hindering the ability to decommission further coal/gas power plants. The NPS recognises the important role that electricity storage will play in meeting Net Zero ambitions. There is therefore considerable urgency for system services including battery energy storage schemes to come forward to enable the National Grid to handle the transition to low carbon energy sources and to underpin energy security.
12. In terms of the policy framework, Policy ENV7 of the Black Country Core Strategy (2011) (BCCS) supports the development of renewable energy sources where proposals accord with local, regional and national guidance and would not significantly harm the natural, historic or built environment or have a significant adverse effect on those living or working nearby in terms of visual, noise, odour, air pollution or other effects. The basis of the policy is about facing up to climate change and promoting sustainable development through, amongst other things, the use of renewable and low carbon energy technologies, which will also have an increasingly important part to play in meeting these principles. Although the policy is silent on the type of development the specific subject of this appeal, the scheme is not in conflict with the most direct relevant strategic policy. Neither does the Dudley MBC Renewable Energy SPD (2015) makes specific reference to battery energy storage as a renewable energy technology. I would agree that the emerging Regulation 18 Consultation Draft Local Plan, which contains a specific policy relating to renewable and low carbon energy proposals, can only be afforded low weight at this time.
13. Given the very positive national planning policy framework which would support the appeal proposal, the scheme would have very significant benefits in supporting the transition to net zero and in helping to secure stability and security in energy supply. There is also a very positive draft planning policy approach at the local level which supports such development, subject to its impacts being acceptable.

Reasons

Green Belt openness

14. The proposed development would be within a secured compound consisting of several components, including primarily of up to 112no. containerised battery storage units, 28no. containerised inverters and associated equipment, a substation switchgear building and 132kv substation compound and associated infrastructure, 4m high pole mounted CCTV cameras and smaller container structures. Access would be provided off Illey Lane. Extensive site levelling operations would be carried out to provide a level platform for the battery storage facility.
15. In the parlance of the Green Belt, openness has both a visual and spatial dimensions. The fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Substantial weight should be given to any harm to the Green Belt and that account should be taken of the extent to which the physical characteristics of developments affect the fundamental purposes of the Green Belt identified in paragraph 143 of the National Planning Policy Framework (the Framework).
16. The site abuts Illey Lane to the east and consists of part of an agricultural field of rough pasture and some 5.2Ha in area that slopes gently from west to east. Although screened from Illey Lane by dense mature woodland and vegetation that characterise the road, the site although well contained by on and off-site landscaping is surrounded by open countryside in agricultural use with a public footpath 180m to the west.
17. A BESS facility has recently been granted planning permission at appeal¹ at Lowlands Farm off Illey Lane some 1.5km to the east of the appeal site utilising the same network and available capacity at the Kitwell GSP substation.
18. The appeal site is located within the Black Country Green Belt (Norton to Lapal) and within a sub-parcel of the Illey and Lapal Area of High Historic Landscape Area. The Black Country Green Belt Study 2019 assesses parts of the Green Belt for their contribution to Green Belt purposes. This part of the Green Belt is defined by the M5 motorway running north-south some 800m to the east and the intersection with the A456 dual carriageway that runs east-west some 1.75km to the north. These features form a distinct boundary to the urban area of Halesowen.
19. Spatially, the development would occupy a considerable area of undeveloped land. Although some of the land would be used for landscape and ecological enhancement works, the type and nature of the development proposed would be highly functional and utilitarian. According to the appellant, the proposed development would cover an approximate area of 1.1Ha of the 5.2Ha site with most of the structures falling below 3m in height. Whilst the development would be reasonably contained within existing and proposed planting, including reinforced landscaped boundaries that would be managed during the lifetime of the BESS, it would not prevent a loss openness in terms of its spatial dimension. Due to the extent and spread of development as proposed, there would thus be a significant loss of spatial openness.
20. In terms of the visual dimension of openness, existing mature planting, although helping to filter views into the site, does not presently effectively screen the site and the proposal would represent a stark contrast to the gently undulating undeveloped agrarian landscape, including a few glimpsed views through trees on Illey Lane and from the public footpath to the west and south of the site. The localised visual effect would increase during the winter months although the existing strong mature planting and its reinforcement and enhancement by new landscaping would mean that the development would be viewed through several layers of planting. Notwithstanding, from close distances, including along

¹ APP/C4615/W/24/3341383 decision dated 4 September 2024

existing public footpaths, the visual effects would be considerable as it would still result in a change from an agricultural landscape to an industrialised and utilitarian landscape.

21. From further afield, the proposal would occupy a relatively small area of land in the overall landscape. Due to a mix of topography and existing and proposed planting, the effects of the development when viewed from the north and east would be relatively imperceptible. From my site visit, I was able to walk along a series of public footpaths from Bromsgrove Road to the south and west. At these distances (some 2-3km from the site), views of the appeal site were at best sporadic and filtered with an overall sense of the intervening planting comprising wooded areas and strong hedgerow boundaries offering good screening opportunities, particularly when enhanced and managed. There would be inevitable glimpsed views from longer vantage points but these would be at a distance, and would be filtered through topography, existing vegetation and the increasing establishment of new planting over time.
22. In this context, the development would remain visible from a number of viewpoints and although the mitigation would temper the effects, due to the scale of the proposed development and its intermittent visibility particularly at certain times of the year, there would be a considerable loss of openness in terms of the visual and spatial dimensions of the Green Belt.
23. Overall, the proposal's effect on the openness of the Green Belt expressed in terms of its spatial and visual dimensions, despite the time limit of 40 years which in any event, would constitute a generational negative change, would amount to a considerable harm to loss of openness on a temporary but long-term basis. This would conflict with the Green Belt's purpose to safeguard the countryside from encroachment and conflict with policies S23 of the Dudley Borough Development Strategy (the DBDS), which sets out the presumption against inappropriate development in the Green Belt and S19 which requires parts of the Green Network to provide a break between distinct areas. It would also conflict with policy CSP2 of the BCCS, which also seeks to protect the Green Belt from inappropriate development.

The historic landscape and its character and appearance

24. The Council's main concern in relation to the second reason for refusal related to the effects upon the significance of the Illey and Lapal AHHLV and NDHA, which has associations with the ruins of St Mary's Abbey Halesowen, a Scheduled Ancient Monument and Grade I Listed Building located some 1km to the north, and a notable number of ridge and furrow features, including the Illey Brook Ridge and Furrow identified in the Council's Historic Environment Record site. Illey Mill to the north-east and Innage Farm to the south-east are also NDHAs in their own right. The parties accept that due to the intervening distance, the presence of trees and hedgerows and the local topography, the setting of the Abbey and its significance would not be affected by the proposed development. The Council agreed that there would no impacts on Illey Mill or Innage Farm I share the same view.
25. The Black Country Historic Landscape Characterisation Study 2019 building upon the earlier Urban Historic Landscape Characterisation Study that informed the Dudley Borough Development Strategy Development Plan concentrates on historic and archaeological features that lie outside the appeal site.
26. The significance of the Illey and Lapal NDHA is derived from a complex mix of landscape elements but notably, in the context of the appeal site and this part of the AHHLV, are relics of medieval/post-medieval ridge and furrow field management patterns that once stood within medieval strip fields and irregularly shaped fields bounded by hedgerows with mature trees. Evidence reveals that although some relic land management patterns remain, there was significant boundary loss within the appeal site probably during the early 20th century or slightly before.

27. Although the Council highlights the importance of these ridge and furrow features, they were not readily apparent when I visited the site. They did not appear as distinctive or highly legible features that could be associated with the significance of the wider AHHLV and NDHA. The Council at the hearing was unable to contradict the appellant's expert witness who pointed out that there were only faint remnants that could be identified in the lower lying eastern portions of the site whilst the more important elements situated in the western portions lay outside the area where the built components would be sited. From my own observations, the landscape components which would follow the historic field patterns comprising mature trees and hedgerows would remain and these would be enhanced as part of the appeal proposals.
28. In terms of the effect on the landscape of the NDHA, the Council acknowledges the robustness of the appellant's landscape and visual impact assessment and considers that the proposed mitigation measures may go some way towards screening the site although not to the extent that it would screen the development in its entirety. The development would be visible from the proposed access off Illey Lane and potentially through gaps along the Lane during winter months as well as from the public footpath no. HLS0092. The network of public rights of way in this area will inevitably mean that there would also be glimpsed views from the south and west during the early period following commissioning although these will soften as screening matures and be viewed at some distance, which will further dilute views of the development. From the evidence, there are no views of the site from the north or east looking towards the North Worcestershire Hills.
29. The development nevertheless would represent a utilitarian and industrial feature in an otherwise pastoral landscape when viewed from closer distances from the west and south-west. Although the proposed development would be landscaped to a high standard, filtered views would be possible at certain times of the year and landscaping would help mitigate the visual impacts but would not screen the development entirely.
30. The appeal site benefits from its topography and existing vegetation and, in isolation, contains very few of the key important characteristics of the AHHLV and in turn, does not contribute to the significance of the NDHA and its components identified above. It appears to me that the NDHA is derived from the sum of its parts. The contribution that the appeal site makes to the wider NDHA is minimal, particularly as many of its former agrarian features have been denuded over time through changing agricultural practices and loss of historic field boundaries. The complete loss of a small section of the ridge and furrow feature, which is hardly noticeable on the ground, would not cause unacceptable harm to the NDHA. Consequently, the significance of the NDHA overall would not be harmed by the appeal development.
31. The ruins of the 13th century St Marys Abbey are also of significant historic interest. At over a kilometre from the site and, from the evidence, the ruins would not be viewed in context with the appeal site; the appeal proposal would not therefore affect the setting of this heritage asset.
32. I was able to undertake a detailed site visit that involved viewing the landscape from all the agreed viewpoints and following the guided route for the unaccompanied site visit suggested by the parties. I was particularly careful to gain an understanding of the cumulative effects arising from the appeal development in combination with the BESS scheme at Lowlands Farm. The potential theoretical views where both schemes would be seen together would be from the west and south-west. These views are generally beyond 2km from the site with Lowlands Farm beyond that distance. Importantly, they would be filtered by the combination of landform and the enclosure by existing and proposed vegetation. I am satisfied that the two developments would not be viewed in tandem to an unacceptable degree and cumulative visual effects would not therefore arise to any significant extent.

33. Drawing the above together, the BESS would, in my view, result in minor adverse landscape and visual effects within a specific and relatively small part of the AHHLV. These effects would be temporary and, as the mitigation proposals mature, would in the medium term be materially reduced. In the longer-term following restoration of the site after decommissioning, the mitigation planting would have positive beneficial landscape and visual effects. The significance of the NDHA would however be preserved.
34. Accordingly, I find that the appeal development would harm the character and appearance of the immediate area in the short term but would not harm the significance of the NDHA which would be preserved. I find that it would therefore conflict with BCCS policies CSP4 and ENV3 and DBDS policies S6 and S8, which together require new development to respond positively to the area's character. As noted above, due to the mitigation that is proposed, I assign only very modest weight to that harm. There would be no conflict with BCCS policy ENV2 that seeks to ensure that the historic character of the Black Country is protected or with DBDS policy S13, which seeks to protect the historic integrity of the AHHLV.

Other Matters

35. The revised appeal proposals included the provision of a new permissive footpath that would provide improved accessibility to the wider public footpath network and offer the opportunity for the public to observe the new BESS facility. The Council pointed out that this section of Illey Lane does not have footways and thus connection to existing public footpaths to the north would involve walking along a busy highway. I was able to experience conditions on a late Friday afternoon during my site visit and noted that existing public footpaths discharge onto Illey Lane without apparent issues. I agree with the appellant that within rural areas, public footpaths will regularly need to discharge onto public highways and this phenomenon is not inherently dangerous.
36. The appellant identifies a series of benefits that would arise should the appeal be allowed. These include the contribution that the BESS would make towards national energy security and mitigating climate change, the availability of a suitable grid connection, the increased flexibility that would arise in terms of energy storage, the provision of BNG, tree and hedgerow planting, an absence of alternative sites and the economic benefits that would accrue. These would be a combination of measurable benefits and material considerations. Of those listed above, I consider contributing to climate change/energy security/flexibility, BNG, tree and hedgerow enhancement and economic matters would fall to be considered as public benefits of the development. The remainder are material considerations to be weighed in the green belt balance.
37. The parties agree that there is a need for this type of development to help deliver net zero and to achieve enhanced energy security by making best use of renewable and low carbon resources. To meet Government target ambitions and tackle the climate emergency, there is a need to dramatically increase BESS facilities to help smooth out intermittent energy supply and to allow the local grid network to store excess energy and release during peak demand thus enabling the grid system to be decentralised thereby reducing the overdependence on centralised fossil fuel facilities.
38. The appeal proposal has an agreed 2026 grid connection offer with the National Grid Electricity Distribution which would enable the facility to be connected to the national grid swiftly and help towards meeting the net zero targets quickly. This is consistent with paragraph 168 of the Framework which states for renewable energy and low carbon development, significant weight should be given to the benefits that would accrue and their contribution towards net zero. The Council has also committed to become a net zero Borough by 2041 having also declared climate change emergency and this proposal would contribute to that objective. The imperative of mitigating climate change, achieving net zero, and the ability of this project to make an early contribution are significant public benefits and attracts very significant weight.

39. There is no requirement either in Framework or the development plan for a developer to undertake an alternative site assessment (ASA) and consequently, there is no requirement placed upon the decision maker to consider whether the proposed development would be better sited elsewhere. Although the site is within the Green Belt, is a designated NDHA and is close to another similar facility that has received planning permission on appeal, the appellant has submitted an ASA, which concludes that there is no available previously developed land available and that a Green Belt location would be necessary to accommodate this development. A review of the Green Belt land revealed that there was no reasonable preferable alternative location that would facilitate this development within the 3km of point of grid connection. The Council did not contest these findings at the hearing. I would concur with the appellant that this assessment is a material consideration that attracts significant weight given the national imperative explained above.
40. The hedgerow and tree planting proposals submitted to mitigate the landscape and visual impact of the BESS together with the provision of a new native woodland belt to provide visual enclosure to the western and most prominent edge would strengthen the characteristic of the wider landscape whilst the proposal would lead to ongoing landscape management during the lifespan of the facility. I have considered these along with the appellant's biodiversity net gain (BNG) assessment. This is not an application where the statutory 10% BNG is required. However, the predicted BNG gains of some 33% in habitat units and just under 55% gain in hedgerow units (original and revised appeal totals). Although the BESS is a temporary feature, the habitat gains and the opportunities they will provide as new and enhanced wildlife corridors is a benefit that attracts significant weight.
41. There would be economic benefits derived from construction and decommissioning; however, there would be little employment required in the day-to-day operation of the facility. As the economic benefits have not been quantified, I can only assign moderate weight to those benefits.

Green Belt Balance

42. The proposal would constitute inappropriate development in the Green Belt and should not be approved except in very special circumstances. The Framework at paragraph 153 requires the decision maker to give substantial weight to any harm to the GB, including harm to its openness, which is one of the purposes of including land within the Green Belt. Moreover, very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
43. The very significant weight attached to the contribution to mitigating climate change and to energy security, the significant weight attached to the absence of alternative sites and to the potential for permanent BNG and the moderate weight that the economic benefits generated by the proposal clearly outweighs the temporary harm, to the character and appearance of the area. Accordingly, overall, very special circumstances exist which justify the development.

Conditions

44. I have considered the conditions suggested by the Council and have amended some to improve clarity and enforceability, which are not considered prejudicial to either party. In addition to the standard time limit condition for commencement of development, conditions specifying the approved plans and to include the provision of the permissive path are necessary in order to provide certainty and enhance public accessibility of the countryside. A condition is also necessary to provide certainty that would require cessation and reinstatement of the land after a period of 40 years from first energisation of the BESS.
45. A condition relating to the design and external finishes are necessary to protect the character and appearance of the area. A condition is also necessary requiring approval of

all external lighting on site in order to protect wildlife habitats. Given the relic ridge and furrow features that are alleged to exist on site, conditions requiring the submission of a prior archaeological assessment and, if any important features are revealed, subsequent final reporting are necessary in order to properly record relevant archaeology.

46. A condition relating to the setting of maximum noise limits for the operation of the facility is necessary to protect noise sensitive developments.
47. I have included a condition that would set the requirements for the provision of a safe access into the site in order to secure the safety of highway users.
48. Conditions (seven in number) are included requiring the submission and implementation of landscaping to be based upon the landscape proposals submitted at appeal together with measures to ensure the safeguarding and protection of trees in order to protect the character and appearance of the area.
49. A condition is necessary for a Landscape and Ecological Management Plan to be agreed and maintenance secured in order to protect and enhance biodiversity of the site.
50. I have not imposed the condition suggested by the Council requiring the public rights and ease of passage across existing public rights of way as there are other regulatory procedures that would secure these rights.

Conclusion

51. I have found that the proposal would fail to accord with the Development Plan taken as a whole. However, there are important and overriding material considerations that indicate that a decision should be taken other than in accordance with it. For the reasons given above, I conclude that the appeal should be allowed.

Gareth W Thomas

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following plans
 - Site Location Plan FST002-SP-01 Rev 04
 - Site Layout Plan FST002-PL-01 Rev 06
 - Contextual Elevations FST002-EL-01 Sheet 1 of 5 Rev 05
 - Contextual Elevations FST002-EL-01 Sheet 2 of 5 Rev 05
 - Contextual Elevations FST002-EL-01 Sheet 3 of 5 Rev 05
 - Contextual Elevations FST002-EL-01 Sheet 4 of 5 Rev 05
 - Contextual Elevations FST002-EL-01 Sheet 5 of 5 Rev 05
 - Existing Site Layout Plan FST002-PL00 Rev 03
 - 132kV Substation (Plan) FST002-SD-01 Rev 02
 - 132kV Substation (Section) FST002-SD-02 Rev 02
 - 40 Ft Spare Parts Container FST002-SD-02 Rev 02
 - Battery Interface Cabinet FST002-SD-04 Rev 02
 - Aux Transformer FST002-SD-05 Rev 02
 - Twin Skid (Tx) FST002-SD-06 Rev 02
 - PCSK Inverter FST002-SD-07 Rev 02
 - Trina Elementa Battery Units FST002-SD-08 Rev 02
 - 2.4m Palisade Fence and Security Gate FST002-SD-09 Rev 02
 - CCTV Camera and Pole FST002-SD-10 Rev 02
 - Access Track FST002-SD-11 Rev 02
 - DNO Control Room FST002-SD-13 Rev 03
 - Customer Switchgear FST002-SD-14 Rev 02
 - Landscape Masterplan Rev B
3. Prior to the first energisation of the development, details of the Permissive Footpath hereby permitted as shown on Landscape Masterplan Revision B including a specification, construction method statement including a programme for construction and a plan showing safe entry and egress to the Permissive Footpath shall be submitted to the local planning authority. Following an approval, the scheme shall be implemented in accordance with the details as so approved detail.
4. Within 40 years following first energisation of the development hereby permitted, or 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 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. 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.

5. No development shall take place until details including colour of external finishes of the battery containers, transformers, substation structures and type and height of fencing and CCTV installation equipment has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
6. Prior to the erection of any external lighting on site, a lighting plan, shall be submitted to and approved in writing by the local planning authority. The submitted plan should include details of the specification and design of the fixtures to be erected and should be accompanied by contour diagrams that demonstrate minimal levels of lighting on receptor habitats, including trees and hedges. The lighting should be designed in accordance with Bat Conservation Trust/ Institution of Lighting Professionals Guidance Note 08/23 'Bats and Artificial Lighting in the UK'. Development shall be carried out in accordance with the approved details and retained for the lifetime of the development.
7. No development shall take place until an archaeological Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the Local Planning Authority. The WSI shall include an assessment of significance and research questions and: the programme and methodology of site investigation and recording; the programme for post investigation assessment;
 - the provision to be made for analysis of the site investigation and recording;
 - the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - the provision to be made for archive deposition of the analysis and records of the site investigation; and
 - the nomination of a competent person or persons/organization to undertake the works set out in the WSI.

No development shall take place other than in accordance with the approved WSI.

8. Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the local planning authority in writing within five working days of their being revealed. Works shall be immediately halted in the area affected until provision shall have been made for their retention and recording in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
9. Within 12 months of the date of completion of the archaeological fieldwork a final archaeological report shall be submitted for approval in writing by the local planning authority to include completion of post excavation analysis, preparation of a full site archive and a report ready for deposition at a local museum and submission of a publication report.
10. The rating level of sound emitted from any fixed plant and/or machinery associated with the development shall not exceed background sound levels by more than 5dB(A) between the hours of 0700-2300 at any sound sensitive premises and shall not exceed the background sound level between 2300-0700 at any sound sensitive premises. All measurements shall be made in accordance with the methodology of BS4142: 2014+A1:2019 (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments.

11. No development, including site clearance and site preparation, shall take place until the access shown on the approved has been constructed in accordance with approved plans and shall be provided splays with a X distance of 2.4m and Y distance of 90m that shall be kept free of any wall, fence or any other obstruction including and vegetation or planting in excess of 600m in height. The access and the associated visibility splays shall thereafter be retained and maintained for the life of the development. Any gates to the access shall be located at least 6m from the back edge of the vehicular carriageway and shall be provided in a manner that they open into the site only.
12. No development shall take place until a detailed hard and soft landscaping scheme has been submitted to and approved in writing by the local planning that shows the existing trees, shrubs and hedgerows to be retained and:
 - a) specification of soft landscape works (in accordance with British Standards), including a schedule of species, size, density and spacing of all trees, shrubs and hedgerows to be planted (British native species only);
 - b) areas to be grass seeded or turfed, including cultivation and other operations associated with plant and grass establishment;
 - c) paved or otherwise hard surfaced areas including the extent and specification for footways and kerbing, together with the type and specification of all permeable paving and asphalt surfaces;
 - d) existing and finished levels shown as contours with cross-sections as necessary;
 - e) means of enclosure and boundary treatments; and
 - f) protection and enhancement measures for retained vegetation in or adjacent to the site which may be reasonably affected by the proposed development and ongoing management of such features

Such details as approved, shall be implemented in their entirety during the first planting season (October to March inclusive) following approval, or in any other such phased arrangement as may be agreed in writing by the local planning authority. 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 five years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.

13. No development shall commence until details of the tree protection measures of those trees and hedgerows to be retained on site have been submitted to and approved in writing by the Local Planning Authority. The agreed tree protection measures shall be erected / installed prior to the commencement of the development (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and or widening, or any operations involving the use of motorised vehicles or construction machinery) and shall not be taken down moved or amended in any way without prior written approval of the local planning authority. The tree protection details shall include:
 - a) A plan showing the location and identification (with reference to a survey schedule if necessary) of all trees on, or directly adjacent to the development site, that are to be retained during construction. These trees are to be marked with a continuous outline.

- b) A plan showing the location and identification (with reference to a survey schedule if necessary) of all the trees on, or directly adjacent to the development site that are to be removed prior to, or during development. These trees are to be marked with a dashed outline.
 - c) A plan showing the extent of the Root Protection Area, which is to be protected by physical barriers during development. The extent of the area that is to be protected will be calculated in accordance with Clause 4.6 of British Standard BS:5837 – 2012 ‘Trees in Relation to Design, Demolition and Construction– Recommendations’.
 - d) Design details of the proposed protective barriers and ground protection to be erected around the trees during development. Any protection barriers should be designed and constructed in accordance with the provisions set out in section 6.2 of British Standard BS:5837 – 2012 ‘Trees in Relation to Design, Demolition and Construction– Recommendations’.
14. No development shall commence nor shall any other operations commence on site or in connection with the development hereby approved, (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and or widening, or any operations involving the use of motorised vehicles or construction machinery) until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning authority. No development or other operations shall take place except in complete accordance with the approved Method Statement. Such method statement shall include full detail of the following:
- a) Implementation, supervision and monitoring of the approved Tree Protection Plan.
 - b) Implementation, supervision and monitoring of the approved Treework Specification.
 - c) Implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected in the approved Tree Protection Plan.
 - d) Timing and phasing of arboricultural works in relation to the approved development.
15. No development shall commence nor shall any other operations commence on site or in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and or widening, or any operations involving the use of motorised vehicles or construction machinery) until a detailed service (gas, electricity and telecoms) and foul and surface water drainage layout has been submitted to and approved in writing by the Local Planning Authority. Such layout shall provide for the long term retention of the trees. No development or other operations shall take place except in complete accordance with the approved service/drainage layout.
16. All excavations to be undertaken within the Root Protection Area (as defined by Clause 4.6 of British Standard BS:5837 – 2012 ‘Trees in Relation to Design, Demolition and Construction– Recommendations’) of any existing trees on site shall be undertaken in accordance with NJUG Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees (NJUG Volume 4).
17. The soil levels within the root protection zone of the retained trees are not to be altered, raised or lowered, without the prior written approval of the Local Planning Authority.

18. The existing trees shown on the approved plans to be retained shall not be damaged or destroyed, uprooted, felled, lopped or topped during the construction period of the development without prior written consent of the local planning authority. Any trees removed without such consent or dying or being seriously damaged or diseased during that period shall be replaced with healthy trees of such size and species as may be submitted to and agreed in writing by the local planning authority. The replacement trees shall be after provided in accordance with a timetable to be submitted to and agreed in writing by the local planning authority and shall thereafter be retained for the life of the development.
19. The development hereby by approved shall not be first energised until the nature conservation mitigation and enhancement works which are recommended within the submitted nature conservation report/assessment have been undertaken and completed. The nature conservation enhancement and/or mitigation works shall thereafter be retained and maintained in accordance with the recommendations of the nature conservation report/assessment for the lifetime of the development.
20. No development shall take place until a landscape and ecological management plan (LEMP) has been submitted to and approved in writing by the local planning authority. The content of the LEMP shall include the following:
 - a) description and evaluation of features to be managed;
 - b) ecological trends and constraints on site that might influence management;
 - c) aims and objectives of management;
 - d) appropriate management options for achieving aims and objectives;
 - e) prescriptions for management actions;
 - f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period); g) details of the body or organisation responsible for implementation of the plan; and
 - h) ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the approved scheme. The LEMP will be implemented in accordance with the approved details.

APPEARANCES

For the Appellant

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Laura Garcia BA(Hons) MCIFA

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For the Council

Ian Lowe

Jane Pilkington

Richard Stevenson

Rachel Deeley

Principal Planning Officer

Historic Environment Officer

Principal Policy Officer

Planning Officer

Interested Persons

Roy Burgess

Nigel Everett

Gail Anne Hollies

Ranjit Singh Nahal

Halesowen Abbey Trust

Landowner

Landowner

Local neighbour

DOCUMENTS SUBMITTED AT THE HEARING:

Document 1: Written statement of Mr Roy Burgess

Document 2: Statement of objection from Hales Owen Abbey Trust

Document 3: Council's written response to appellant's application for costs

Document 4: Council's cost application form

Document 5: Copy of appeal decision APP/C4615/W/24/3341383 – Land at Lowlands Farm, Illey Lane, Halesowen



Costs Decision

Hearing held on 27 November 2024

Site visit made on 10 January 2025

by Gareth W Thomas BSc (Hons) MSc (Dist) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2025

Costs applications in relation to Appeal Ref: APP/C4615/W/24/3345744

- The two applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- Application A - The application is made by Net Zero Eleven Limited for a full award of costs against Dudley Metropolitan Borough Council.
- Application B – The application is made by Dudley Metropolitan Borough Council for a partial award of costs against Net Zero Eleven Limited
- The appeal was against the refusal of planning permission for a battery energy storage system (BESS) together with associated infrastructure, site levelling works, access onto Illey Lane and ancillary development thereto.

Land at Illeybrook Farm, Illey Lane, Halesowen, B62 0HE

Decisions

1. **Application A** – The application for an award of costs is partially allowed.
2. **Application B** – The application for a partial award of costs is refused.

Reasons

3. 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. And the main points are set out below.
4. The Planning Practice Guidance (PPG) states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore, the PPG includes the failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis as possible examples of unreasonable behaviour.

Application A

5. The application is made on substantive grounds. The applicant suggests that the Council acted unreasonably by refusing the original application which they consider to be policy compliant without adequate reasoning and justification for their reasons for refusal. The applicant maintains that a number of aspects of the Council's case

were pursued in an unreasonable way in so far as its case, at both the application and appeal stages, failed to grapple with the harms identified making glib unsubstantiated general statements in relation to the effects upon the Green Belt and landscape rather than providing robust evidence of its own.

The Green Belt evidence

6. It is argued that the Council relied heavily on broader assessments, which were at best of limited utility given the need to specifically address the impacts of this development at this specific location. Although it is likely that these strategic studies had probably residential and industrial developments in mind rather than energy developments, these studies were helpful in identifying the more sensitive parts of the Green Belt as well as highlighting the key qualities of certain parts of the Green Belt, including how the immediate area contributed towards the five Green Belt purposes. The Council's principal arguments related to the effects on openness. Although somewhat lacking in rigour, the Council identified the locations where views of the development would be possible. I do not consider that a GLVIA was essential in order to substantiate Green Belt harm. Neither do I agree that the Council failed to acknowledge the landscape mitigation that had been proposed although this analysis was scant. It was always going to be down to a detailed site visit to ascertain the level of harm to the effects on openness of the Green Belt and this was carried out.

The landscape evidence

7. There was a degree of uncertainty right up to the start of the hearing whether the Council's focus would relate to landscape impact or the effects on the heritage value of the site or both. When this was challenged by the applicant at the beginning of the event, it was clear that the Council was intending to focus only on the effects to the non-designated heritage asset (NDHA) and would be offering no evidence on landscape matters despite the agreed Statement of Common Ground that explicitly referenced that issue. The reason for refusal No.2 inferred that the Council believed that there would be both landscape harm and harm to the significance of the NDHA. This in turn triggered the applicant to undertake detailed work on landscape impact as well as heritage. A full landscape impact assessment would have been unnecessary had the Council focussed its reason for refusal entirely on heritage impact. It is particularly pertinent that the Council's second reason for refusal referred to "landscape context" and cited landscape planning policies in support of its reasoning. It is unsurprising therefore that the applicant commissioned unnecessary landscape impact assessments in order to defend its position.
8. Turning to heritage, I am satisfied that the Council had carefully identified the significance of the NDHA and that it assessed the appeal proposal against those characteristics of significance. The Council was clear that it agreed with the applicant that the relative size of the development in the context of the wider NDHA was small but that it was the level of impact on the NDHA that was of concern as it felt the ridge and furrow was an important feature of the asset's significance. Given that there would be a total removal of part of the ridge and furrow feature on site, it was a matter of judgement as to whether this loss would have an unacceptable impact on the significance of the wider NDHA. I agreed with the applicant that the ridge and furrow feature was not particularly important, given that there were numerous other better examples of these features elsewhere within the

wider NDHA, including on part of the site that would not be developed. That said the Council had every right to adopt its stance given the feature's total removal. I am satisfied that both parties carried out a heritage balance with differing conclusions.

The planning balance

9. I accept that the national energy imperative and the Council's own climate change emergency and the key role that battery storage will play in facilitating the roll out of renewable energy opportunities represents very special circumstances should be accorded substantial weight. I do not accept that the Council failed to carry out a balancing exercise despite not articulating this balance by applying a numeration weighting exercise. I do not consider this to be fatal and both the written material and the oral submissions at the hearing led to an understanding of the Council's balancing position.
10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted and abortive expense has occurred but that this relates to the landscape element of the additional work only. A partial award of costs is therefore warranted.

Application B

11. The applicant has sought a partial award of costs on what I would say are procedural rather than substantive grounds. The applicant is critical of the extraordinary volume of documents presented for the appeal. The applicant complains about the repetitive nature of the case as presented and alleges that the respondent was afforded the opportunity to present rebuttal evidence and provide commentary on the recent revised National Planning Policy Framework, which would have been best left to oral submissions at the hearing itself. The voluminous material submitted by the appellant resulted in the Council having to review and prepare responses for the hearing which involved the need for additional resources to be assigned by the Council.
12. Although the volume of documents was akin to that normally only seen at public inquiries, the applicants did not slavishly present those documents to the hearing but rather summarised their case orally by answering a series of questions posed by me and responding to the Council's case as the hearing unravelled. The weighty tome that comprised the applicant's evidence was only referred to from time to time during the event and there was nothing unusual in this. There was sufficient time for the applicant to present updated draft national policy analysis at the hearing event. It is irrational for the Council to suggest that the draft Framework placed it in a disadvantaged position. It had the opportunity to comment freely on the draft document both prior to and during the event.
13. The application has no foundation, and I cannot identify any unreasonable behaviour whatsoever. The respondent is critical of the alleged rather spurious nature of the application. But overall, this is a lesson for the applicant to better prepare for events of this nature and to take care in constructing reasons for refusal. It is also reminded of PINS guidance concerning Statements of Common Ground, which have great value in guiding areas of disagreement and must be carefully drafted to avoid wasted time and expense at hearings and public inquiries.

Conclusion

Application A

14. For the reasons set out above I conclude that the Council exhibited unreasonable behaviour in some respects in terms of the PPG. In particular, I find that the drafting of Reason No.2 did not reflect the Council's position and that wasted and unnecessary expense has been incurred by the applicant in the appeal process in relation to addressing matters of landscape only, and no other matters. I therefore conclude that a partial award of costs to cover the expense incurred by the applicant in contesting part of the Council's reason for refusal relating to landscape impact is justified.

Application B

15. For the reasons set out above, I consider that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted with regards to Application B.

Costs Order in respect of Application A

16. 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 Dudley Metropolitan Borough Council shall pay to Net Zero Eleven Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred connected with matters related to landscape impact, such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant, Net Zero Eleven Limited, is now invited to submit to Dudley Metropolitan Borough 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.

Gareth W Thomas

INSPECTOR