

Report of the Head of Planning

PART 5

Decisions by County Council and Secretary of State, reported for information

Copies of the Inspector's appeal decisions area attached.

- **Item 5.1** - Site at Warren Farm, (Sheppey Animal Rescue), Warden Road, Eastchurch, Sheppey, ME12 4HD

Full support for the Council's decision.

- **Item 5.2** - 28 Brier Road, Sittingbourne, ME10 1YJ

A disappointing decision which downplays the actual impact of the extension on the neighbours' amenities.

- **Item 5.3** - Land at Littles Farm, Faversham, ME13 8XZ

Full support for the Council's decision.

Appeal Decision

Hearing held on 7 May 2014
Site visit made on 7 May 2014

by Malcolm Rivett BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 June 2014

Appeal Ref: APP/V2255/A/14/2212592
Land at Littles Farm, Kent, ME13 8XZ

- 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 Mrs Sally Holmes against the decision of Swale Borough Council.
 - The application Ref SW/13/0832, dated 28 June 2013, was refused by notice dated 22 November 2013.
 - The development proposed is Solar Farm comprising the erection of solar arrays, transformers and equipment housing, security fencing and ancillary equipment. Provision of wildflower hay meadows, woodland planting, new boundary landscaping and retention of agricultural use on the land through livestock grazing.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue of the appeal is whether or not the proposal is sustainable development having particular regard to its renewable energy and biodiversity benefits and its use of best and most versatile (BMV) agricultural land.

Reasons

Benefits of the scheme and its use of BMV agricultural land

3. It is anticipated that the development's solar arrays would generate around 9.5 Mw of electricity at peak times, enough to power around 3000 homes which the appellant has indicated would be used locally. There is a strong commitment to renewable energy at international and national level in order to address the threats of climate change, and the scheme would align with one of the 12 core principles of the *National Planning Policy Framework* that planning should support the transition to a low carbon future by, amongst other things, developing renewable energy. This would be a substantial benefit of the scheme and one which is widely recognised, even by most of the objectors to the proposal.
4. Additionally, the development would provide for biodiversity enhancement of the site, primarily through the creation of wildflower meadows which is also supported by paragraph 118 of the *Framework*. There would also be some employment benefits, most notably during construction, although taken over the life of the development I consider the latter to be of relatively modest scale.

5. However, the scheme would be constructed on agricultural land which is predominantly Grade 2 and defined by the *Framework* as best and most versatile (BMV) agricultural land.¹ Paragraph 112 of the *Framework* indicates that authorities should take into account the economic and other benefits of BMV agricultural land and where significant development of agricultural land is demonstrated to be necessary, they should seek to use areas of poorer quality land in preference to that of a higher quality. Moreover, the Department of Communities and Local Government's recently published (March 2014) *Planning Practice Guidance (Renewable and low carbon energy)* advises that in determining applications for large scale solar farms local authorities will need to consider encouraging the effective use of land by focussing such development on previously developed and non-agricultural land, provided that it is not of high environmental value. It also indicates that where use of greenfield land is proposed consideration should be given to whether the use of agricultural land has been shown to be necessary and that poorer quality land has been used in preference to higher quality land. The guidance references a Ministerial speech of April 2013 by the Rt Hon Gregory Barker MP which includes the statements "Solar is a genuinely exciting energy of the future, it is coming of age and we want to see a lot, lot more. But not at any cost... not in any place..." and "Where solar farms are not on brownfield land, you must be looking at low grade agricultural land which works with farmers to allow grazing in parallel with generation..."
6. Given that it is not specific to solar farms and is primarily of relevance to decisions on schemes of national significance I have not given significant weight to the section of *National Policy Statement EN-3* quoted by the appellant. To my mind the more up to date *Planning Practice Guidance*, specifically concerning solar farm schemes being determined by local authorities, is of much greater pertinence.
7. The appellant has indicated that there is no poorer quality, unconstrained land within her control on which to site the development. Whilst she can only feasibly carry out the search for poorer quality land on land within her control, it is to my mind a logical interpretation of the *Framework* and *Planning Practice Guidance*, set out above, that decision makers have regard to the likelihood of schemes coming forward elsewhere on brownfield or lower quality agricultural land. I have been given little evidence concerning brownfield land (and note the argument that such land tends to be secured for higher value uses) but the evidence submitted by the Council indicates that at least seven solar farm schemes have been granted permission on non-BMV agricultural land in Kent since 2012, including two within Swale District. Moreover, there have been pre-application discussions on a further four such schemes.
8. With reference to a 2012 UK Power Networks Plan, it is argued that solar farms in much of Kent are less feasible than the appeal scheme (which would benefit from an overhead power line, with sufficient capacity, crossing the site) because of the likely need for significant upgrades to electricity infrastructure capacity. Moreover, the limited areas of Kent with the necessary capacity are predominantly Grade 1 agricultural land. Nobody at the hearing could definitely

¹ At the time of the determination of the planning application it was assumed that the site was primarily Grade 1 land. A detailed study following the refusal of permission has shown the land to be almost entirely Grade 2 and this has not been challenged by any party to the appeal. However, at the Hearing the Council maintained its original objection to the scheme pointing out that both Grade 1 and Grade 2 land are defined as best and most versatile agricultural land.

explain why the list of recently permitted solar farm schemes includes some sites apparently without sufficient infrastructure capacity to serve them. However, it seems unlikely to me that an applicant would go through the effort and cost of submitting a planning application for a solar farm without having secured some level of assurance that the necessary infrastructure capacity to support it either already exists or could be economically provided.

9. Furthermore, the assumption that much of the land in the areas of Kent shown to have infrastructure capacity to serve solar farms is Grade 1 agricultural land is just that: an assumption. I concur with the Council that the actual grade of land of any site has to be specifically tested and that, as was shown with the appeal site itself, sites may, in reality, be of a lower grade than the assumption suggests.
10. Whilst the UK Power Networks Plan indicates a degree of uncertainty about the feasibility of solar farms in parts of Kent, the number of recently approved such schemes suggests to me that in the foreseeable future at least some solar farms are likely to be constructed elsewhere in Swale and Kent on non BMV agricultural land. Whilst there is not a formal sequential approach for solar farms set out in national or local policy there is also no minimum or target number of such schemes to be delivered in a district or county, notwithstanding the high level renewable energy targets. In the light of this I conclude that the use of BMV agricultural land on the appeal site, as opposed to lower quality agricultural land or previously developed land elsewhere, has not been shown to be necessary.
11. I appreciate that, in accordance with the *Planning Practice Guidance (PPG)*, sheep grazing would maintain agricultural activity on the site and I find the evidence as to whether or not, in financial terms, this would be as productive as its use for arable farming to be inconclusive. Furthermore, I have noted the limitations that may be placed on the site by the aquifer reported to run under it. At the hearing there were also arguments about the effect of the proposal on the land's versatility although I accept that in restricting the options for short term changes in cropping the scheme would have the same effect as an, inevitably long-term, decision to use it for vines or top fruit. However, it is clear that the presence of the solar arrays would rule out many, if not most, forms of arable farming, including vines and top fruit (the latter of which is commonplace in the area). As indicated in Appendix 2 of the appellant's *Agricultural Land Classification Report*, such crops (and many others) either realistically require BMV agricultural land or will produce much better yields on such land. The ability to grow crops which cannot be grown on poorer quality soils (or can be grown only at low yields) is, to my mind, one of the "other benefits" of BMV land to which the *Framework* refers. In contrast, as confirmed at the hearing, the sheep grazing which is proposed for the site could take place on almost any agricultural land, including potentially on a non BMV site also used for solar arrays. To this extent the scheme would not make best use of the high agricultural value of the land, land which, in terms of quality, is in the top 12.9% of agricultural land in the south east of England.
12. There is of course no guarantee that best possible agricultural use of the land would be made even in the absence of the solar farm, although it seems likely to me that most landowners/farmers would do so. I also recognise that Swale has a very high proportion (43.2%) of grades 1 and 2 agricultural land, although I agree with the Council that this is not a good reason to allow the

appeal. BMV agricultural land is a national asset of limited supply and there is nothing in national or local policy to suggest that protection of it should be reduced in areas where there is a relatively large amount of it. Equally, that the scheme involves the use of a very small amount of BMV land (when considered at the holding, district, county or national level) is also not a factor in its favour. This is an argument that could be used again and again in planning applications cumulatively resulting in a significant loss of BMV land. I appreciate that non-arable use of the site would be likely to improve the soil's condition for use once the arrays are removed (assuming that the permission were not to be renewed). However, I have seen no evidence to indicate that the value of this to agriculture, potentially 25 years from now, would outweigh the loss during the lifetime of the development of its ability to be used for crops requiring BMV land. Moreover, in advance of it coming into force I have given little weight in my decision to the potential requirements of the emerging EU CAP Reform Directive.

13. In conclusion, whilst I recognise that there is not an absolute embargo on the use of BMV agricultural land for solar farms, the scheme would conflict with the *Planning Practice Guidance's* intention that such developments should be focussed on previously developed and non agricultural land. Moreover, contrary to the *PPG* and paragraph 112 of the *Framework*, it has not in this case been convincingly demonstrated that use of the BMV appeal site land is necessary in preference to poorer quality agricultural land. In this respect paragraph 112 applies to "significant development". Whilst temporary and removable, given its scale, likely presence for 25 years (a generation) and its effect in preventing use of the land for this period for most crops which rely on BMV agricultural land, I conclude that the scheme is "significant". Whether or not 25 years is "long term" is of little consequence as, although referred to in the Council's reason for refusal, "long term" is not a test or phrase used in paragraph 112 of the *Framework*.
14. Whilst the renewable energy benefits of the scheme would be substantial there is no convincing evidence that these could not be achieved on many other, non BMV, sites in southern England (albeit with electricity infrastructure upgrades likely to be necessary in some instances). With this in mind, and in view of the *Planning Practice Guidance* I have referred to, I conclude that the site's use of BMV land, and its loss to most crops which rely (or crop most heavily) on such land, would significantly and demonstrably outweigh the renewable energy, biodiversity, employment, farm diversification and other benefits of the scheme and its accord with certain elements of national and local policy. I therefore conclude that the scheme is not the sustainable development for which the *Framework* indicates there is a presumption in favour.
15. I appreciate that, in the context of the UK importing both food and energy, a balance needs to be struck between the production of the two commodities in the UK. However, read together, the *Framework* and very recently published *Planning Practice Guidance* to my mind strike such a balance; strongly promoting solar farms in suitable locations whilst specifically discouraging their development on higher quality agricultural land.
16. The use of BMV agricultural land would be an adverse impact of the scheme and thus I also conclude that the proposal conflicts with policy U3 of the adopted *Swale Borough Local Plan (2008)*. This states that renewable energy schemes will be permitted where they minimise adverse impacts; one of the

policy's listed considerations being the availability of alternative, potentially more beneficial sites. Although not referred to in its reason for refusal, in response to my question the Council's representative at the Hearing stated that she considered the scheme to be contrary to this policy.

Other Matters and Conclusion

17. Views into the site from the surrounding area are limited to a small number of vantage points, the most significant of these being that southwards from Porters Lane and the northwards view from the footpath which passes Littles Manor Oast. In the longer term I envisage that the proposed landscaping would screen the arrays from all but the most ardent, close-up, attempts to peer into the site. Carefully chosen and planted vegetation could achieve this even if it were to be mostly or entirely deciduous and a tall deciduous hedge around the site would be in keeping with those which surround many of the fields in the area on which fruit is grown.
18. However, in the shorter term it is likely that the landscaping would not fully obscure views into the site, particularly from Porters Lane and the footpath. I agree with the appellant's landscape assessment which indicates that it would be likely to take 5 – 7 years for the landscaping to achieve full screening. During the early period of this time the wide expanse of the arrays would be seen in strident contrast to the surrounding landscape of typical agricultural appearance, harming the character of the area. Moreover, the sight from Porters Lane of the arrays in the immediate foreground of the view of the Littles Manor Oast would harm this property's setting, the heritage value of which I consider to be at least partly its isolated presence in agricultural fields. This finding has added weight to my decision based on the main issue. However, in view of the relatively limited period during which the harm would be likely to be experienced, it has not been a determining factor in my decision.
19. I have noted the details of the solar farms which have been approved on BMV land in Kent in recent years. However, given that all the decisions predate the current *Planning Practice Guidance* (and that, unlike now, earlier versions of this guidance did not state that authorities should consider whether use of poorer quality land, in preference to higher quality land, has been used for solar farms), these cases have carried little weight in my decision.
20. I have carefully considered the significant number of letters of support for the proposal. I have addressed most of the detailed points these raise above and have also given weight to the strength of the support expressed. However, I conclude that this, in itself, is not a good reason to allow a proposal I judge to be unacceptable and contrary to national and local policy and guidance.
21. For the above reasons, and having regard to all other matters raised, including the comments about the Council's determination of the planning application, I conclude that the appeal should be dismissed.

Malcolm Rivett

INSPECTOR