



Appeal Decision

Virtual Hearing Held on 20 & 22 April 2021

Unaccompanied Site Visits made on 19 April & 21 April 2021

by Cullum J A Parker BA(Hons) MA MRTPI MCMi IHBC

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

Decision date: 4 May 2021

Appeal Ref: APP/K2420/W/21/3266505

**Hangmans Hall Farm, Twenty Acre Lane, Sutton Cheney,
Nuneaton, CV13 0AJ**

- 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 Mr David Meehan of Elgin Energy EsCo Limited against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 19/01256/FUL, dated 6 November 2019, was refused by notice dated 8 July 2020.
 - The development proposed is described as '*Construction of a solar park, to include the installation of solar photovoltaic panels to generate approximately 35 MW of electricity, with DNO and Client substations, inverters, perimeter stock fencing, access tracks and CCTV. Landscaping and other associated works.*'
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Decision

1. The appeal is dismissed.

Applications for costs

2. At the Hearing an application for partial costs was made by the Appellant. This is the subject of a separate decision.

Preliminary Matters

3. I undertook two site visits; one before opening the Hearing and a second one during the Hearing. Prior notice was given to the main parties and this matter was raised during my opening, where no parties sought an accompanied site inspection.
4. During my site inspections I saw that site notices had been placed at various public places, including entrance points for Public Rights of Ways. I have also been provided with copies of notification letters and a newspaper notice. Whilst the Hearing was undertaken as a virtual event, I am content that the appropriate notices have been given in this instance.
5. I note that near to the appeal site lies the Ashby Canal Conservation Area. The main parties agreed at the Hearing that any impact on this designated heritage asset including its setting arising from the proposal does not constitute a reason for the refusal of permission. Nor did they suggest its dismissal on this basis. I see no reason not to concur with that position.

Main Issues

6. The main issues are:

- The effect of the proposed development on the character of the countryside;
- The effect of the proposal on the significance of nearby heritage assets, with specific regard to the Registered Battlefield 'Battle of Bosworth (Field) 1485' and, if any harm or loss to that significance, whether there is clear and convincing justification for this;
- The effect of the proposed development on buried archaeology interests.

Reasons

Character of the countryside

7. The appeal site is located broadly to the west of the Registered Battlefield 'Battle of Bosworth (Field) 1485' and to the south of Sutton Cheney. Permission is sought for the construction of a solar park on a site of approximately 62 hectares. This would consist of ground-mounted solar arrays in rows on an east-to-west alignment together with associated works. Planning permission is sought for a 30-year operational period, following which the solar park would be decommissioned and the appeal site returned to agricultural use.¹
8. Whilst accepting that the proposal would be 'adverse in nature for both landscape and visual effects' the Appellant's landscape expert concludes that this would be Minor adverse and localised and/or could be mitigated. To the contrary, the Local Planning Authority's (LPA) landscape expert concludes that the impact would be Moderate-Major adverse. In both cases, these are assessments and conclusions undertaken in accordance with GLVIA 3.
9. Whilst this can be a useful tool in determining how to assess impacts on landscape, it is clear that the LPA's reason for refusal refers to 'significant adverse impact' on the undeveloped and rural character of the countryside. In this respect, the proposal would result in a change to the character of the appeal site from roughly ten open fields used for a mixture of pastoral or arable farming to a majority of the site being covered by solar arrays, with the potential for some pastoral farming taking place around these.
10. I acknowledge that the appeal site is not visible in its entirety as one entity. Nonetheless, at the very least, users of the PROW and to a lesser extent surrounding highways, will see rows of industrial human-made solar arrays rather than the natural beauty and open character of the countryside that is currently present. I note the Appellant's point that the site could be partially screened through implementation of the submitted *Environmental Enhancement Strategy* (EES). However, this relies in part, on allowing reinforced stretches of hedges growing to a locally uncharacteristic height of around 4 metres, where the prevailing pattern is of closely clipped hedges of around 2 metres in height.

¹ As detailed in the Appellant's *Appeal Statement of Case*, pages 4-6, dated January 2021

11. Ms Ahern, for the LPA, explained at the Hearing that the Appellant's LVIA had placed too much emphasis on physical definitions. Instead, she suggested it is important to take into account the natural, cultural and perceptual elements of the landscape and how this results in an experience of ruralness associated with people and history. This approach appears to be both proportionate and logical given that how humans interact with the natural environment extends to more than just visual senses.
12. In the LPA's view, the proposal would result in a large-scale development that would adversely affect its rural and tranquil nature. It would also intrude on perceptions of field patterns, the rural setting of the nearby villages, and that the site directly links into and contributes to the strong historical character of the area.
13. Mr Cook, for the Appellant, directed the Hearing to Paragraph 170)b) of the Framework, which requires that planning decision should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. In this respect, he put forward that the proposal would be assimilated into the landscape, and that the proposal takes into account the receptor site and how the works fits into this.
14. However, the fact remains that the proposal would introduce numerous rows of solar arrays, deer fencing, and other associated structures that would be at odds with the prevailing rural character of the area – not only in simple visual terms, but also in terms of how the site links into the natural, cultural and perceptual elements of the wider area. This is especially acute in this instance given the proximity of the Registered Battlefield and how the landscape and character of the area has both changed but has also retained features of interest that relate to all three elements Ms Ahern identifies.
15. I note the points made by the Appellant that the site cannot be easily seen in its entirety, and that the EES, which can be secured by means of a planning condition, provides for various enhancements – such as tree and hedge planting. I also note that the EES suggests the provision of a 'heritage trail route' by providing a short stretch of permissive footpath near to the Ashby Canal, utilising a diverted existing PROW T65/2 that would dogleg around the site, and diverting existing PROW T68/3 for a short part to potentially provide an educational facility in the form of a circle of logs and opening up some views towards the Registered Battlefield. There is also the opportunity to provide new information boards and public art as set out in the EES. These are commendable activities which, nonetheless, could potentially take place regardless of whether permission was forthcoming or not.
16. I therefore conclude that the proposal would have a significant adverse effect on the character of the countryside and that the mitigation measures proposed are insufficient to detract from or mitigate this. Accordingly, it would be contrary to Policies DM2, DM4, DM11, and DM12 of the *Sites Allocation and Development Management Policies Development Plan Document (2016)* SADMPD, which amongst other aims seeks to ensure development in the countryside will be sustainable where it does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside. It would also conflict with Paragraph 170 of the Framework as indicated above.

Impact on the significance of the Battle of Bosworth (Field) 1485

17. Full details of the historical record are presented in the evidence of the main parties, which I will not rehearse here. However a brief synopsis is useful. The Battle of Bosworth took place on 22 August 1485. Whilst taking place over a few hours and directly concerning only a few thousand men, its importance in English history cannot be understated.
18. It is generally regarded to be the key event signifying the end of the War of the Roses, seeing the dynastic change between the House of York part of the Plantagenet family with the death of Richard III, to the start of the Tudor dynasty under Henry VII, and the era from which history moved from the medieval to the early modern period. The Battle itself is notable for other reasons too, such as the last battle in which an English King died on the battlefield and the first extensive use of artillery in England in such a manner.
19. In terms of significance, as suggested by the Appellant's heritage expert², the significance of the battle site largely lies within the bounds of the Registered Battlefield; as extended following the reinterpretation of the landscape. Nevertheless the appeal site makes a modest contribution to how the Battlefield is experienced and the events of 1485. Historic England identify four key elements including Topographical integrity, which indicates that whilst agricultural land management has changed since the battle, the battlefield remains largely underdeveloped and permits the site of encampments and the course of the battle to be appreciated. It is possible to see this within the wider landscape, which the appeal site forms part of, where there is generally an absence of large-scale developments, structures or buildings of a man-made nature outside of existing settlements.
20. It is important to note that the appeal site itself lies outside of the Registered Battlefield, which was mostly recently extended in 2013 following further study of both the landscape archaeological and documentary evidence. Nonetheless, the Framework indicates that the setting of a heritage asset are the surroundings in which the heritage asset is experienced. This is a logical starting point in assessing any potential impact arising from the proposal.
21. Both main parties agree in their respective written submissions that the proposal would result in less than substantial harm to the significance of the Registered Battlefield 'Battle Bosworth (Field) 1485'. However, they disagree on the magnitude of that harm on a scale within the less than substantial harm threshold. The Appellant considers that it would be to the lower end of any such spectrum whereas the LPA considers it would be to the higher end. Beyond the reference within the national Planning Practice Guidance, which indicates that the within each category of harm, 'the extent of harm may vary and should be clearly articulated'³, there is no explicit spectrum.
22. To articulate here, the harm in this case would principally be the impact on views from and to the Battlefield⁴, the erosion of shared landscape characteristics between the appeal site and the Battlefield, and the loss in how an observer would experience the events of August 1485 through tracing the most recent and constantly developing interpretation of the events of the battle

² See G Stoten Heritage Appeal Statement, Page 23, paragraph 6.51

³ Paragraph: 018 Reference ID: 18a-018-20190723 Revision date: 23 07 2019

⁴ As articulated by G Stoten Heritage Appeal Statement, page 25 onwards

through the landscape. The latter two aspects even in light of how the landscape has changed since 1485 through various changes in the rural landscape including with agricultural farming practices and the insertion of the Ashby Canal, for example.

23. As such, and as a matter of planning judgement, I concur with the views of the main parties that the proposal would result in at least less than substantial harm to the significance of the Registered Battlefield through adverse changes in its setting arising from the proposal. This is a view that concurs with those of the Government adviser on the historic environment, Historic England, who consider that the proposal site lies within a highly sensitive location within the setting of the Battlefield which will harm its significance.
24. Considerable importance and weight should be given to the need to conserve such assets in a manner appropriate to their significance. The Framework indicates at Paragraph 196, where less than substantial harm is identified this should be weighed against the public benefits of the proposal. This is echoed in the pre-Framework publication *Overarching National Policy Statement for Energy (EN-1) July 2011*⁵ at section 5.8 and in particular paragraphs 5.8.12 to 22.
25. In this case, the Appellant considered the benefits⁶ to be (summarised here):
- (i) The generation of renewable energy and the contribution to a low carbon economy; with the proposal generating electricity to power around 10'500 homes and contributing to meeting the UK's commitment to reduce greenhouse gas emissions by 100% or net zero compared to 1990s levels by 2050, and be in accordance with Paragraph 148 of the Framework which sets out that the planning system should support the transition to a low carbon future in a changing climate. It would also be for a time limited period of 30 years;
 - (ii) The provision of a heritage trail and education facility which would enhance public access by including permissive paths to form a circular walk linking with other existing Public Rights of Way and the provision of interpretation boards;
 - (iii) Landscape enhancements which are considered to create a more coherent landscape framework across the appeal site which would enhance landscape character;
 - (iv) Ecological enhancements which include additional planting, re-profiling of existing ponds, and the provision of bat and bird boxes; and,
 - (v) Economic benefits including construction jobs and a capital investment of around £35 million.
26. Taken together, I do not find that these public benefits outweigh the less than substantial harm to the significance of the designated heritage asset through changes to its setting. These changes would deprive future generations of

⁵ As indicated within the document itself, EN-1 is likely to be a material consideration, see paragraph 1.2.1.

⁶ Detailed in pages 29 to 32, Planning Appeal Statement of J Walker, January 2021, and confirmed orally at the Hearing by P Burrell.

being able to understand and experience the events leading to and of the battle itself, and appreciating the rural character of the Battlefield and the wider context. Even taking into account the time limited nature of the proposal – for around 30 years after which it would be removed – this would be an extensive period of time where people will be deprived of features within its setting that contribute to its significance.

27. Accordingly, the proposal would be contrary to Policies DM2, DM4, DM11, DM12 of the SADMPD, which, amongst other aims, seek to ensure that the benefits of the proposal will outweigh any harm caused and that proposals that adversely affect the Bosworth Battlefield or its setting should be exceptional and such proposal will be assessed against their public benefits. It would also be contrary to the Policies identified in the Framework and the paragraphs within EN-1; both of which are material considerations.

Potential impact on buried archaeological remains

28. Paragraph 189 of the Framework sets out that where there is potential for archaeological interest on sites, an appropriate desk-based assessment and, where necessary, a field evaluation should be undertaken. In this case a desk-based assessment was submitted by the Appellant. At the Hearing the main parties discussed various ways in which a field evaluation can take place; including geophysical/LiDAR surveying and a metal detector survey.
29. Leicestershire County Council (LCC), acting in its capacity as professional advisers to the LPA on archaeology, reaffirmed its position at the Hearing that due to the lack of trial trenching at the appeal site it is not possible to ascertain the significance of buried archaeological remains. In such circumstances, it considers that the decision-maker is then unable to undertake the balancing exercise set out at Paragraph 197 of the Framework.
30. If further field evaluation work was undertaken, such as trial trenching, the hypothesis of LCC is that this might further reveal the precise route of the 'Roman Mancetter Road', and such survey work might demonstrate the existence of a road on the same route during the late-medieval period at around the time of the Battle of Bosworth. If that were the case, then that road might have reasonably been used by Richard III and the Royalist host to travel to the camps from the Leicester direction in the days before the battle.
31. To the contrary, the Appellant points to the study by Foard and Curry in their book *Bosworth 1485: A battlefield Rediscovered* (2013), who concluded that this route was unlikely to be extant at the time of the battle. Instead, it is suggested that a route to the north of the appeal site known as 'Leicester Lane' was the most probable route.⁷ However, there is little further evidence before me or that I have been directed to, such as metal detecting or trial trenching surveys, that corroborate this particular theory in depth.
32. I have also been directed to the position generally accepted between the main parties and Historic England that there is evidence of medieval landscape in the form of ridge and furrow within the appeal site. The Appellant contends that the presence of this feature within part of the landscape infers that it is very unlikely the Roman Road or other roadway following its line was still extant at the time of the Battle. At the Hearing, LCC further developed the hypothesis

⁷ See G Stoten Heritage Appeal Statement, page 14, Plate 2, showing Figure 4.14 from Foard and Curry (2013)

- that the geophysical surveys showed the potential line of the roman road in an arc across the northern part of the site which includes the area of ridge and furrow. This interpretation of the survey results was disputed by the Appellant.
33. The metal detector survey report conclusion found that 'a number of finds of Roman date were made, including some of a character unusual for a rural site. The distribution of these finds has some similarity with the line of the Mancetter Road which is postulated to have passed through this area'. The same survey found that 'no finds that could be clearly related to the Battle of Bosworth...were made'⁸.
 34. Clearly there is an incomplete picture in the evidence before me. The geophysical survey has found evidence of ridge and furrow medieval farming practices; yet it is unclear whether there is any discernible evidence to the route of the Roman Road passing through the site and even less clear whether such road was present at the time of the Battle of Bosworth. At the same time, I heard that geophysical surveys can provide limited information in which to ascertain such details. Conversely, there is metal detecting surveying which found a number of finds from the Roman period in roughly the location of where the Roman Mancetter Road may have been located (in the north east edge of the site).
 35. My role is to consider what is reasonable and proportionate based upon the available evidence before me. As identified elsewhere, the Battle of Bosworth was a dynasty changing epochal event in English and British history. Even today, as will future generations, we are still learning about the events that took place in late August 1485. I have no doubt as to the professional expertise of the Appellant's heritage witness. Nevertheless, despite evaluation carried out to date, I cannot be assured of the specific nature or significance of the potential buried archaeological remains.
 36. An understanding of the significance of any heritage asset is the starting point for determining any mitigation, and therefore I am unable to assess whether the mitigation proposed would be appropriate. Similarly, I cannot be certain of the potential harm that may result to the archaeological interest from the appeal proposal, for example through the siting of solar arrays and the groundworks required.
 37. The heritage asset might have archaeological interest which could be unlocked through further field evaluation which would enable a greater understanding of any remains and their wider context. On this basis, and given that the significance of the potential remains could be of local and potentially regional importance (or greater if associated with the adjacent Registered Battlefield), I find that the Council's approach is proportionate to the potential asset's importance and no more than is sufficient to understand the potential impact of the proposal. This approach is consistent with Paragraph 189 of the Framework which sets out that developers should submit an appropriate desk-based assessment and where necessary a field evaluation.
 38. Furthermore, I do not consider that the imposition of a planning condition would provide adequate mitigation for the safeguarding of what amounts to a non-designated heritage asset, given the affected land immediately adjoins

⁸ G Stoten Heritage Appeal Statement, Appendix 4, Metal Detecting Survey Report 2021 (Draft 4), University of Leicester Archaeological services, page 22

land that forms part of the Registered Battlefield. I acknowledge the Appellant's example of an appeal where an Inspector considered a suitably worded planning condition in order to address incomplete archaeology information (ref 3243720). I do not have the full details of that scheme before me. Nonetheless, that was on a different appeal site in Trafford, in a different part of the country and with no relationship with the Registered Battlefield at Bosworth.

39. I have carefully considered the archaeological matters arising in this instance and find that whilst the evidence is not compelling that there was a road present on the appeal site at the time of the Battle, the evidence is incomplete. I therefore conclude that the appeal proposal fails to provide sufficient evidence regarding potential archaeological remains or features of interest, such that I cannot be assured that material harm to archaeological remains would not result.
40. Accordingly, the appeal would fail to accord with Policy DM11, DM12 and DM13 of the SADMPD, which, amongst other aims, seeks to ensure that all proposals which have the potential to affect a heritage asset will be required to demonstrate an understanding of the significance of the heritage asset, and the impact of the proposal on the asset, and that particular regard will be had to maintaining archaeological remains of the Battlefield. Those Policies requires an approach to the conservation of archaeological remains that is consistent with the Guidance, Framework, and other material considerations such as EN-1. The proposal would also conflict with Section 16: Conserving and enhancing the historic environment of the Framework

Planning Balance and Conclusion

41. Section 38(6) of the *Planning and Compulsory Purchase Act 2004*, as amended, requires that if regard is to be had to the development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
42. I have found that the proposed development would not accord with the adopted development plan Policies DM2, DM4, DM11, DM12 and DM13, nor when the SADMPD is considered as a whole. There would also be conflict with Policies of the Framework and the *Overarching National Policy Statement for Energy (EN-1) July 2011*, as aforesaid.
43. Material considerations put forward by the Appellant include a number of benefits in the form of; renewable energy at a time when local and national governments have declared a 'climate emergency' and are seeking to move to a low carbon economy, the provision and/or diversion of permissive and Rights of Way footpaths, landscape and ecological enhancements, and economic benefits. These benefits taken together are afforded significant weight. However, these material considerations are not sufficient to outweigh the conflict with the development plan and the harm identified in the three main issues.
44. Whilst I am not entirely convinced that such a balance is required in this case, the Appellant has suggested that 'any adverse impacts of the proposed development would be significantly and demonstrably outweighed by the benefits, were it to be found that the proposed development did not accord

with the development plan as a whole⁹. This echoes the wording of Paragraph 11 of the Framework and Policy DM1 of the SADMPD.

45. For clarity, I find that the adverse impacts of allowing the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework and/or development plan when taken as a whole.

46. For the reasons given above, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR

⁹ Planning Appeal Statement (author J Walker), Page 34, Para. 9.36 (presented by P Burrell)

APPEARANCES

FOR THE APPELLANT:

Paul Burrell, BSc(Hons), DipUP, MRTPI	Executive Director	Pegasus Group - Planning
Andrew Cook, BA(Hons), MLD, CMLI, MIEMA, CENV	Executive Director	Pegasus Group – Environment
Gail Stoten, BA(Hons), MCIfA, FSA	Executive Director	Pegasus Group – Heritage

FOR THE LOCAL PLANNING AUTHORITY:

Rhiannon Hill, BSc(Hons) MA MRTPI	Team Leader, DM	HBBC
Paul Grundy, BSc(Hons) MA, PgCert	Senior Planning Officer (Conservation and GIS)	HBBC
Richard Clark BA(Hons) MA	Team Manager (Heritage)	Leicestershire CC
Sophie Clarke BA(Hons)	Senior Planning Archaeologist	Leicestershire CC
Kate Ahern BSc MSc CMLI	Director of Landscape Planning	Land Use Consultants Limited

DOCUMENTS SUBMITTED AT THE HEARING

1. Site Location and Land Rights Plan, Drawing Number P18-0089_31
Dated 24/04/2021
2. List of suggested conditions (amended) 21.04.2021
3. Template of a Permissive Path Agreement
4. Rebuttal Note Heritage

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