

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING & DEVELOPMENT CONTROL COMMITTEE**

DATE: **18TH JANUARY 2016**

REPORT BY: **CHIEF OFFICER (PLANNING AND ENVIRONMENT)**

SUBJECT: **APPEAL BY SEP WOOD FARM LTD AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE PROPOSED DEVELOPMENT OF SOLAR PHOTOVOLTAIC PANELS AND ASSOCIATED WORKS INCLUDING INVERTER HOUSING, ACCESS TRACK, SECURITY FENCING AND CAMERAS ON LAND AT 2 SITES ON DEESIDE LANE, SEALAND - DISMISSED.**

1.00 APPLICATION NUMBER

1.01 053686 & 053687

2.00 APPLICANT

2.01 SEP Chester Ltd and SEP Wood Farm Ltd

3.00 SITE

3.01 Sites at land West of Deeside Lane and land at Manor Farm, Deeside Lane, Sealand.

4.00 APPLICATION VALID DATE

4.01 8th May 2015

5.00 PURPOSE OF REPORT

5.01 To inform Members of a decision in respect of linked appeals following the decisions of the Local Planning Authority to refuse to grant planning permissions for the development of 2No. solar farms on land at Deeside Lane, Sealand. The appeals were heard by way of a Public Informal Hearing. Both Appeals were DISMISSED

6.00 REPORT

The Main Issues

- 6.01 The Inspector considered that the main issues in these cases were:
- whether the proposals represent inappropriate development in the green barrier for the purposes of development plan and national policy;
 - the effect of the proposed development on the openness of the green barrier and the purposes of including land within it;
 - whether any harm by reason of inappropriateness and any other harm to the green barrier would be clearly outweighed by other considerations; and if so, do very exceptional circumstances exist to justify the harm to the green barrier;
 - the effect of the proposals on the character and appearance and visual amenity of the area;
 - the effect of the developments on the availability of best and most versatile (BMV) agricultural land; and
 - the effect of the development with regard to other matters raised.

6.02 Whether the proposals represent inappropriate development in the Green Barrier for the purposes of development plan and national policy

6.03 The Inspector noted the presumption within PPW against inappropriate development within Green Barriers. She further noted that development which would otherwise be inappropriate should only be permitted in very exceptional circumstances. The Inspector considered that the proposed development amounted to buildings and structures which would comprise inappropriate development as they did not satisfy any of the exceptions set out in PPW.

6.04 The Inspector noted the Appellants contention that Policy GEN4 supported the proposals as a rural location was essential given the extent of land take required to facilitate the proposal. She did not agree with this argument, observing that they can just as readily be developed upon land in other areas.

6.05 She therefore concluded that the proposals did amount to a form of development which was not supported development plan policies.

Effect on the Green Barrier

6.06 The Inspector noted the flat, open character of the landscape within which both sites are located and had regard to the purposes of the designation of the Green Barrier in this location to prevent further encroachment and to protect the open character and appearance.

- 6.07 The Inspector took the view of the Council that the proposals would have a significant adverse impact upon the openness of the Green Barrier. The Inspector also made the important distinction that 'openness' is not solely restricted to visibility but to the lack of development within an area. Similarly, the Inspector agreed that, notwithstanding the suggested 25 year lifetime of the developments, both proposals amounted to a clear encroachment into the undeveloped countryside which would materially alter the openness of the green barrier and be harmful.

Very exceptional circumstances

- 6.08 The Inspector noted the wording of PPW in relation to Green barriers, such that if exceptional circumstances can be demonstrated, then development may be permitted. In this regard, she noted the contribution towards the generation of renewable energy and how this related to both national and local policy in this regard. She gave this issue significant weight.
- 6.09 The Inspector noted that there was no dispute between the parties in relation to the Sequential Analysis which had examined the availability of previously developed land and available commercial roof space. Whilst the Inspector noted the appellant's position that few connection points exist with sufficient capacity and most land within a viable connection distance lay within the green barrier, she noted that no wider assessment evidence was presented, nor was an assessment of other available land outside of the Green Barrier but within the 5km study area presented.
- 6.10 The appellant drew the Weighbridge Road solar park to the Inspector's attention as a comparable development which they contended established a precedent for this form of development within the Green Barrier. The Inspector noted the particular circumstances of that case in a very finely balanced decision.
- 6.11 The appellant also tabled the contention that the power arising from the proposal could be supplied to local firms and noted the expression of interest from Praxis to purchase the power to use at The Airfields development site. However, the Inspector noted that no legal obligation was tabled in these regards and furthermore, noted that The Airfields site had yet to obtain Reserved Matters approval and therefore there was no guarantee that that development would be in a position to utilise any energy from this site for some years ahead.
- 6.12 Further support was suggested by the appellants in the form of appeal decisions in respect of golf driving ranges in green barrier and wind turbines upon common land. The Inspector considered each an entirely different form of development in their own context and concluded they did not bear upon her consideration of the appeals.

- 6.13 Accordingly, The Inspector considered that the appeal circumstances are fundamentally different from those at Weighbridge Road and even when taken together with all of the other considerations tabled, concluded that they clearly did not outweigh the harm to the Green Barrier and therefore exceptional circumstances did not exist.

Effect of the proposals upon the character and appearance of the area and upon visual amenity

- 6.14 The Inspector considered the Landscape and Visual Impact Assessments which had been submitted in respect of each site and had regard to the characterisation of the site in the LANDMAP Visual and Sensory classification. She noted particularly that this classification identified the openness of the area as a key quality which should be conserved.
- 6.15 The Inspector considered that both sites retain much of the characteristics identified as being features of the area and noted that, notwithstanding site A being more contained by hedgerows, both sites are clear components of the wider agricultural landscape and make an important contribution to the overall landscape character.
- 6.16 The Inspector concluded that the proposals would introduce an industrial scale and appearance of development to the area which would be incongruous and alien features to the area which would result in the loss of openness, a key quality of the landscape which should be preserved. She further noted that the 'temporary' nature of the proposals did not alter this view.
- 6.17 In considering impacts upon visual amenity, the Inspector had regard to the view expressed by local residents of The Bowery in relation to the impact of the proposals at site A upon their outlook. She concluded that the relationship between the site and the dwellings was oblique, at some distance and screened by mature vegetation. She concluded therefore that there was no unacceptable impact upon The outlook from the dwellings.
- 6.18 The Inspector also considered the impacts of the proposals upon users of the network of footpaths leading to the All Wales Coastal path, and users of the path itself in relation to site A, and users of a bridleway in relation to site B. In respect of Site A, the inspector concluded that the proposals introduced an industrial scale of development which would be a dominating and alien feature in the open rural scene enjoyed by users of the paths. She considered that screening could not mitigate the proposals due to their scale and the elevated nature of surrounding footpaths. In respect of Site B, the Inspector concluded that users of the bridleway did so in the context of adjoining large agricultural buildings and concluded that the proposals at Site B would not give rise to significant visual amenity impact.

- 6.19 In summarising her considerations in respect of impact upon landscape character and visual amenity, the Inspector concluded that both proposals would be harmful to the character and appearance of the area. Whilst Ste B would not give rise to harm to visual amenity, it was nonetheless harmful to the overall integrity and qualities of the landscape character and, in the case of site A, harmful to the amenities enjoyed by users of surroundings rights of way and therefore the proposals were in conflict with the applicable development plan policies.

Impact upon Agricultural Land Quality

- 6.20 The Inspector noted that PPW seeks to conserve the BMV agricultural land as a finite resource for the future and noted that considerable weight should be given to protecting such land from development. Land in grades 1, 2 and 3a should only be developed if there is an overriding need for the development, and either previously developed land or land in lower agricultural grades is unavailable or available lower grade land has an environmental value. She noted that the Agricultural Land Classification Map (1983) published by MAFF, indicates that both appeal sites comprise Grade 2 agricultural land (i.e. very good agricultural land with minor limitations which affect crop yield, cultivation or harvesting) and noted the appellants evidence that a combination of the frequency and duration of flooding in the winter results in the land on both sites being Grade 3b.
- 6.21 In responding to the application the Welsh Government's Land Quality Advisory Service (LQAS) commissioned ADAS to carry out a review of the surveys as part of the appeal submissions. ADAS's view was that both sites could be under drained and blocked culverts could be cleaned and any soil water problems relating to shallow compaction could be easily remedied through normal agricultural practices. The report found that the land at both sites would gauge as Grade 1 when applying the standard assessment. However, due to surface capping that can restrict the infiltration of rainwater to about 1mm an hour and potentially affect crop yield both sites are downgraded to Grade 2 to take account of this minor limitation.
- 6.22 The Inspector noted that the main area of dispute in this matter was the extent to which the sites suffer from wetness and how this affects the grading. She noted the evidence from the farmer and third parties in respect of flooding and noted that NRW has informed ADAS in its report that there would be very little risk of flooding from rivers or sea occurring. Nonetheless, she considered that the evidence suggested that the sites are the subject of pooling in some areas but noted that NRW is of the view that groundwater would be controlled to around 2 metres below ground level by deep drainage channels surrounding the site. She considered that the appellants did not provide any convincing evidence that this was not the case. Accordingly, she

concluded that this was a short term limitation that does not affect the agricultural grading.

- 6.23 Whilst noting the farmers evidence that he has not produced a winter crop for the last few seasons, and some of the summer crops have been disturbed by water, she considered that there was no substantive evidence before her that normal agricultural management methods and improved land drainage could not remedy the problems and difficulties that the tenant farmer has been experiencing. Furthermore, it was noted on the site visit that a substantial proportion of the Appeal A site had recently been harvested for potatoes.
- 6.24 The Inspector therefore concluded that she had no reason to believe that the site are not Grade 2 land and thus comprise BMV agricultural land.
- 6.25 The Inspector then considered UDP policy RE1 and noted the conformity of both it and PPW in respect of the tests required. She also noted The Practice Guidance further advises that the use of high quality agricultural land and the reversibility of a development are relevant factors.
- 6.26 Having concluded that the sites are BMV land, the Inspector turned to consider the PPW requirement that such land only be developed where, amongst other things, land in lower agricultural grades is unavailable. She also noted the appellants contention that even if the sites comprise BMV land, the proposals would not result in its loss (temporary or permanent) as the sites would be continued to be grazed for sheep and the developments would be temporary and totally reversible and therefore there is no requirement to carry out any form of sequential test in relation to lesser grade land.
- 6.27 The Inspector noted the LQAS objection on the basis that there was no guarantee that the sites would be returned to their Grade 2 quality post development and as such the conservation of the land quality as a finite resource was not assured. Whilst sheep would be able to graze, the land would be out of crop production for 25 years which would alter its essential components.
- 6.28 The Inspector considered there to be a substantial risk that there would be extensive ground disturbance and importation of aggregates for trenching, access ways and structures which would result in the degradation of the quality of the agricultural land. I consider that this would be very difficult to remove in its entirety at the end of 25 years and note that TAN 6 finds the return of land to BMV grading to be seldom practicable. She gave weight to the fact that BMV land comprises only some 7% of all land and noted the Councils evidence that the area of land by the River Dee is one of the most extensive high value areas of land in Wales with its retention essential for food security.

- 6.29 The Inspector concluded that she had no reason to disagree and considered that there is a likelihood that the proposals would result in the permanent loss of a substantial portion of BMV land and noted that in any event, any agricultural use of the land would not be exploiting its full potential for a period of 25 years.
- 6.30 She also concluded that in the absence of any assessment of other available land of a lesser grade she was unable to reach a view as to whether such land is unavailable. She noted the appellants' reference to other appeal decisions and further noted that in those cases it would appear that an assessment of the availability of lesser grade land was provided. Accordingly she considered these to be materially different to the appeal proposals. She concurred with the Council's concerns that as no consideration was given to available lower grade agricultural land, and in its absence, she was unable to reach a view as to whether it is essential that the proposals take place on the BMV land.
- 6.31 Therefore, there is a likelihood that the proposals would result in the loss of the BMV land and as no evidence had been provided to demonstrate that land in lower agricultural grades is unavailable or other available lower grade land has an environmental value which outweighs the agricultural considerations, the proposals are not in accord with UDP policy RE1 or the relevant national planning policy.

Other matters

- 6.32 In addition to the ian issues, the Inspector considered matters in relation to;
- Flooding;
 - Ecology; and
 - Access

Flooding

- 6.33 The Inspector noted the comments of the appellant in respect of flooding as contributor to soil quality. She also noted that NRW had advised soil wetness was not a result of tidal or fluvial inundation at this point. She noted the site is located within Flood zone C1 and noted the exceptional circumstances within TAN15 for development in such locations. Highly vulnerable development should not be located there but concurred with both parties that the proposals did not amount to such development. However, she noted that as the land was not previously developed land it failed to be land which met the criteria in this regard. In addition, she noted that a Flood Consequence Assessment had not be submitted and therefore there was no evidence that flood risk could be properly managed.

Ecology

- 6.34 The Inspector had regard to the proximity of the Water Bird Assemblage as a feature of the Dee Estuary Special Protection Area (SPA) and Ramsar Site but noted neither site was within either designation. Having regard to the ecological appraisals submitted with each application and the Council's assessment of likely significance, the Inspector concluded that there was no evidence that either sites was used by any species which are a feature of either designation. As such, she concluded there was no requirement for a planning obligation to make financial contribution to mitigate against any impact. Accordingly this did not impact upon the Inspectors determination.

Access

- 6.35 The Inspector heard concerns raised by residents in relation to the condition of approach roads to the sites but noted the roads were private. She noted the construction management plans and the fact that the Local Highway Authority did not object to either proposal upon highway safety or access grounds. This matter did not impact upon her deliberations.

7.00 CONCLUSION

- 7.01 The Inspector weighed all of the above matters into the planning balance in coming to her determination. She noted that the energy contributions would make significant contributions to renewable energy targets and gave this significant weight. However, she did not conclude that very exceptional circumstances sufficient to outweigh harm to the Green barrier. Therefore, the proposals fail in relation to the presumption against inappropriate development.

- 7.02 In addition, she considered the harm to the character and appearance of the area, the loss of BMV, lack of adherence to policy upon flood risk, compelling grounds to dismiss both appeals. She concluded that the temporary nature of the development would not mitigate against the effects which would be evident for a considerable period and, in respect of BMV, would result in the likely loss of a finite resource. She did not consider any mitigation would outweigh this harm in either case.

- 7.03 Accordingly, and for the reasons given above, the Inspector concluded that both of the appeals should be DISMISSED

8.00 COSTS DECISION

- 8.01 The appellants made an application for costs against the Council during the course of the hearing. This application was based upon the

appellant's view that the Council, in coming to its decisions, had not had sufficient regard to the latest national policy and Ministerial guidance in relation to renewable energy generation proposals. In addition, the appellant alleged that the Council was applying policy inconsistently, especially when regard was had to recent similar proposals elsewhere in the county.

- 8.02 The Council's rebuttal of this claim highlighted that the decisions were made having regard to all applicable policies and material considerations. The Council's case pointed out that just because weight was applied differently in the planning balance by the Council in coming to its decisions, to that which the appellant considered was appropriate did not amount to unreasonable behaviour. Furthermore, The Council's case pointed out that each application had to be considered upon its own merits.
- 8.03 The Inspector considered the application in the light of advice in Circular 23/93: "Awards of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings". This advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily. The Inspector had regard to the need for the LPA to evidence its stance and noted that the Council's decisions were based on two main reasons for refusal.
- 8.04 The Inspector considered that the officer reports to committee clearly set out the policy framework at both a local and national level. The reports weigh up the support at national and local levels for renewable energy generation against the issues relating to the BMV land and development in the countryside/green barrier. She considered they explain how the proposals fail to accord with national and local policy and how the significant weight to be afforded to renewable energy proposals is outweighed by other considerations. Accordingly she concluded that the Council had not behaved unreasonably in applying relative weight to the adopted plan and national planning policy as a material consideration.
- 8.05 In respect of the reason for refusal relating to BMV, the Inspector considered the Council had set out in its officer reports and evidence why it considered the sites to comprise the BMV land based on specialist advice and set out why it considered that the proposals would not comply with the applicable policies relating to the BMV land. Its reasons for recommending refusal were specified to its committee and are clearly set out in its decision notices. The Council made its case based on specialist advice and with regard to local and national policies. The Inspector considered that in order to address the concerns relating to the significant impact on the soil resource and given there was no confidence that the sites would be returned to their BMV status, the appellants would have been required to provide evidence at the appeals on this matter irrespective of the Council's

position in this regard. As such no unnecessary or wasted expense by the appellants was incurred on this matter.

- 8.06 In respect of the second reason for refusal, the Inspector concluded that the Council had clearly set out in its officer reports and evidence how it found the proposals to impact on the countryside, the green barrier designation and the character and appearance of the area. The fact that the Council found, and has since found, similar developments elsewhere in the green barrier to be acceptable does not mean that all developments in the green barrier should also be approved. She did not find that the Council has behaved inconsistently in allowing a different case on its own merits.
- 8.07 The Inspector therefore concluded that no unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 23/93, had been demonstrated and refused to grant costs in this matter.

LIST OF BACKGROUND DOCUMENTS

Planning Application & Supporting Documents
National & Local Planning Policy
Responses to Consultation
Responses to Publicity

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