

National Infrastructure Planning
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Our Ref: CHSP/WR/06/2019
Your Ref: EN010085
Date: 26 June 2019
Contact: Mr G Thomas

BY EMAIL TO: CleveHillSolarPark@planninginspectorate.gov.uk

Dear Sir/Madam

Planning Act 2008–Section 88 and The Infrastructure Planning (Examination Procedure) Rules 2010–Rule 6

Application by Cleve Hill Solar Park Limited for an Order Granting Development Consent for the Cleve Hill Solar Park Project

Further to the Examining Authority's Written Questions published in 7th June 2019 the Borough Council is responding to the following questions as set out below.

Question 1.0.2.

Part A: With regard to whether the Council is content with the summary of local planning policies in Chapter 6 of the Environmental Statement (ES):

1. These comments confine themselves to policies within the Swale Borough Local Plan 2017.
2. Chapter 6 of the ES does not provide a summary of Swale Borough local planning policies but merely identifies the relevant policies. The Council is therefore therefore unable to comment on whether it is content with the summary.
3. Table 6.1 of Chapter 6 of the ES does, however, list the policies which the applicant considers relevant. There is an error in this table as DM 18 is listed as 'Flooding and Drainage'. It is in fact 'Local Green Spaces'.
4. A number of potentially relevant polices are not included in this table, some of which are mentioned in paragraph 5.3.1 of the Council's Local Impact Report, whilst other policies which are listed do cross over with these policy areas. It would be appropriate if these policies were included in this list. These include:
 - a. CP 1 - Building a strong, competitive economy which aims at point 9 to 'safeguard or enhance Swale's 'Principal Tourism Assets' and consolidate or widen the Borough's tourism potential, particularly where embracing principles of sustainable tourism. The coast (including wild landscape and marshes), the countryside and built heritage are all included in the list of Swale's principal tourism assets. Point 10 of CP1 aims to 'focus large scales of development where they utilise the strategic and primary road networks'.

- b. DM 6 Managing transport demand and impact requires the preparation of a Transport Assessment and Travel Plan alongside a commitment that necessary improvements to the highway network are provided.
- c. DM 32 Development involving listed buildings seeks to preserve the architectural and historic interest of listed buildings and their settings.
- d. DM 33 Development affecting a conservation area expects development, including that which affects the setting of a conservation area, to preserve or enhance the features that contribute to the area's special character or appearance.
- e. DM 34 Scheduled monuments and archaeological sites seeks to protect these sites and assets.

Part B: With regard to whether we are content with the analysis of local planning policies at Appendix A of the Planning Statement:

Appendix A consists of a list of the policies followed by an analysis of whether the development complies with the policy, under the following headings:

Principle of the Development

ST 1 (Delivering Sustainable Development in Swale) - summary does not mention 'supporting a prosperous rural economy' from this policy and this is therefore not included in the analysis which is an omission.

ST 7 (The Faversham area and Kent Downs Strategy) - summary does not mention the aspiration to 'safeguard' tourism focus and this is therefore not included in the analysis which is an omission.

As explained above CP1 (Building a strong, competitive economy) is not included in the list of policies but the points regarding tourism from CP1 and the road network are relevant.

DM 20 (Renewable and Low Carbon Energy) – the Council is satisfied that this summary lists the policy objectives but does not agree that the impacts on residential amenity and safety (in particular around traffic impact) are minimised and mitigated to an acceptable level.

Design, Landscape and Visual Considerations

CP 4 (Requiring Good Design) - summary but does not include point 8, 'be appropriate to the context in respect of materials, scale, height and massing' which would appear to be relevant and should be included. As such the Council does not agree with the analysis provided.

DM 19 (Sustainable Design and Construction) – the Council is satisfied with this summary and analysis.

DM 24 (Conserving and Enhancing Valued Landscapes) - summary does not properly recognise that the local landscape designation is a reflection of a landscape which is recognised in policy as being of high value. This means that the planning judgement will be different for a scheme within a local landscape designation than for an equivalent scheme outside a landscape designation, and that for a scheme with harm to be permitted within a local landscape designation the benefits of that scheme would have to be greater than if an equivalent scheme were to be permitted in a non-designated landscape.

DM 29 (Woodland, Trees and Hedges) – the Council is satisfied with the summary and analysis, although not necessarily with the conclusions of the Landscape and Biodiversity Management Plan and tree planting plans.

Ecology and ornithology

CP 7 (Conserving and Enhancing the Natural Environment) - this section summarises the policy and explains how the development addresses the policy issues. The question of whether this development complies with this policy is a matter for experts on ecology and ornithology and wider ecosystem services.

DM 28 - Biodiversity and Geological Conservation - is summarised in brief and the justification of how the development complies with the policy is set out. The question of whether this development complies with this policy is a matter for experts on ecology and ornithology.

Cultural heritage and archaeology

CP 8 (Conserving and enhancing the historic environment) - repeats the relevant sections of the policy. As set out above, policies DM 32 (Development involving listed buildings), DM 33 (Development affecting a conservation area) and DM 34 (Scheduled Monuments and archaeological sites) are not referred to in the Planning Statement.

Noise and vibration

DM 20 (Renewable and Low Carbon Energy) - the section on noise is adequately summarised.

Hydrology, Flood Risk and the Coast

DM 21 (Water, Flooding and Drainage) - the relevant sections are adequately summarised.

DM 22 (The Coast) - is summarised/quoted, but the policies and proposals of the Shoreline Management Plan (the Environment Agency's plans for Managed Retreat) are not addressed. Furthermore, the analysis does not address the obvious point that this development will not support 'conservation and enhancement' of the undeveloped coast. Additionally and importantly, whilst it is common practice for solar farms to be time limited, the question of the inherent sustainability of a scheme of this size, with its construction and decommissioning impacts, lasting for only 40 years (a requirement if the managed retreat objectives of the Shoreline Management Plan are to be realised) needs to be considered. The Council does not agree with the analysis of this policy.

DM 23 (Coastal Change Management) - has been briefly summarised. With reference to the definition of essential infrastructure from Planning Practice Guidance Paragraph: 066 Reference ID: 7-066-20140306 (i.e. 'infrastructure which has to be located in a flood risk area for operational reasons, including electricity generation') the Council does not agree that the development comprises essential infrastructure as it is not necessary (and is indeed unhelpful) that it is located next to the coast. As such the Council does not consider that this development complies with this policy.

Access, Transport and Traffic

DM 3 (Rural Economy) - is adequately summarised including reference to DM 6 and DM 26. The Council does not agree with the analysis that 'the development will not physically or as a result of traffic levels harm the character of rural lanes', however, the Council defers to the Highway Authority on matters of transport and traffic here and below.

DM 14 (General Development Criteria) – the Council agrees with the summary but not the conclusion that safe vehicular access will necessarily be achieved.

DM 6 (Managing transport demand and impact) is not included in the Planning Statement. It requires that 'where the residual cumulative impact of development on traffic generation would be in excess of the capacity of the highway network' that improvements to the network are ensured and that 'priority is given to the needs of pedestrians and cyclists'. Whilst the Council defers to the Highway Authority on this issue, it does not believe that the development, as currently proposed, achieves this.

Agricultural Land

DM 31 (Agricultural Land) whilst the Council agrees with the summary it is not so sure about the analysis. Whilst it may be beyond the control of the applicant, the need for renewable energy could be met on land within built-up area boundaries. The Council is also not convinced of the viability of sheep grazing alongside the development as proposed

Air Quality

DM 20 (Renewable and Low Carbon Energy) - is adequately summarised.

Socioeconomics

DM 3 (The Rural Economy) – the Council agrees with summary and understands that choosing a more suitable, available site of this scale may be beyond the control of the applicant. However, other sites (possibly more suitable) of smaller scale may well be available. Furthermore, the Council does not agree that the development complies with this policy in that it understands that it will result in significant harm to the historical, architectural, biodiversity, landscape and rural character of the area and will produce scales of traffic generation incompatible with the rural character of the area.

CP 1 (Building a strong, competitive economy) is not included within the Planning Statement. Point 9 of this policy aims to 'safeguard or enhance Swale's 'Principal Tourism Assets' and consolidate or widen the Borough's tourism potential, particularly where embracing principles of sustainable tourism'. The coast (including wild landscape and marshes), the countryside and built heritage are all included in the list of Swale's principal tourism assets. Point 10 of CP 1 aims to 'focus large scales of development where they utilise the strategic and primary road networks'. The Council does not consider that the development as proposed complies with these objectives.

Miscellaneous

DM14 (General Development Criteria) - is summarised, however the Council does not agree with analysis that the development reflects the positive characteristics and features of the site and locality, conserves and enhances the natural or built environment, is well sited and of a scale, design, appearance and detail that is sympathetic to the location and will cause not significant harm to amenity or achieve safe vehicular access.

One issue identified by CP 7 (Conserving and enhancing the natural environment) is that of ecosystems services (for example this could include the impact on soils during construction, operation, decommissioning) - this is not addressed in the Planning Statement, however it is an important issue in an analysis of the sustainability of this proposed development and it should be included.

Question 1.0.8.

The Council has already addressed this point to some extent both in its Local Impact Report (paragraphs 5.1.1 to 5.1.4), comments which should be taken into account here, and in its Written Representation (paragraph 8). The Council's view is principally to the effect that as there is no NPS

for solar power or battery storage local policy must be given greater weight than might otherwise be the case in an NSIP examination, and that the NSIP process itself is not the place to lead such guidance.

Having said this, NPS EN-1 does contain useful policy on the generic impacts of energy schemes which are relevant and useful, in particular on air quality, biodiversity, flood risk, historic environment, landscape and visual, noise and vibration, socio-economic and traffic and transport. For instance, within para 5.13.12 on mitigation for traffic impacts the NPS sets out that 'if an applicant suggests that the costs of meeting any obligations or requirements would make the proposal economically unviable this should not in itself justify the relaxation by the IPC of any obligations or requirements needed to secure the mitigation'.

National Planning Practice Guidance (NPPG), particularly paragraph 013 of the section on Renewable and low carbon energy, gives useful national guidance on solar farms and recognises the importance of landscape and amenity impacts and that the views of local communities likely to be affected should be listened to. It encourages the focusing of large scale solar farms on previously developed and non-agricultural land, and where it is allowed on agricultural land that the proposal allows for continued agricultural use.

The Council would also like to draw attention to a speech by Minister for Energy and Climate Change (Greg Barker) on 25th April 2013 where he stated that whilst solar energy is an exciting opportunity to be seized this should not be 'at any cost...in any place...if it rides roughshod over the view of local communities' and its use should be 'mindful of the wider environmental and visual impacts'.

Finally, in a Written Ministerial Statement of 25th March 2015 the Secretary of State for Communities and Local Government (Eric Pickles) wrote that 'Protecting the global environment is not an excuse to trash the local environment' and 'meeting our energy goals should not be used to justify the wrong development in the wrong location'.

To the extent mentioned here the Council considers that in the absence of an NPS there are already clear signals from Government, and from local policy, that large scale solar farms on agricultural land are not without potential objection. The Council remains concerned that in the absence of NPS for solar or battery storage development this application is premature and may proceed in advance of properly considered policy advice, which it may not accord with.

The Council can entirely appreciate why NSIPs are dealt with as they are, relieving the Local Planning Authority of the task of rehearsing and deciding on matters already determined by National Policy Statements. In this case there is no relevant NPS and it seems that the applicant considers that the decision should be taken in accordance with the existing NPSs that are not specific to this technology. The Council does not consider this to be good enough. In the absence of a relevant NPS there are enough caveats and caution in existing NPSs and in the NPPG, as well as in local Development Plan policy, to indicate that now is not the right time to approve a scheme of this nature with its enormous scale, set right on the edge on the coast and the Special Protection Area, utilising untried battery storage technology and, due to its position on low lying land liable to flooding, being designed at a height quite unlike other solar farms in an area of extremely flat topography where its effect on landscape, heritage assets and residents will be magnified.

Question 1.0.9.

This question refers to paragraph 60 of the non-technical summary and paragraph 162 of the main ES (although this appears to mean paragraph 163). The matter at issue is whether any approved working hours ought to be extended in exceptional circumstances, and whether or not the prior approval of the Council ought then to be sought. In the Council's views there should no question of

any approved working hours being extended other than in unanticipated emergency situations, especially considering the allowance for a start up and close down hour at either end of the core working hours.

In an emergency situation (unless the emergency requires a prolonged response) it seems unreasonable, and very likely impractical, to seek prior approval for out of hours activity so the Council cannot see any circumstances in which prior approval is logical. However, a requirement to notify the Council of any exceptional situations or breaches of approved working hours within 48 hours of these occurring might be sensible and allow for monitoring of the situation.

Question 1.1.1

No comment.

Question 1.1.4

No comment.

Question 1.1.8

No comment.

Question 1.3.3

It is not obvious what mitigation measures could be included in the scheme, although to say that none other than embedded in the scheme can be included is a little misleading as no such measures are included here. Nor does there appear to be any embedded design mitigation in respect to any other built heritage assets other than the removal of panels from Field Y (see paragraphs 130 and 134 of Chapter 11 of the ES) which does not really relate to mitigation for impact on built heritage assets.

Question 1.5.11

Confirmed.

Question 1.6.1

Confirmed.

Question 1.6.17

The Borough Council does not have any observations to make on the approach, scope and findings of the LVIA. However, as set out in the Council's Written Representation at paragraph 18, the proposed tree, shrub, scrub and grassland planting could be more in keeping with the landscape character area and biodiversity within which the planting is proposed. The Council also notes that the Outline Landscape and Biodiversity Management Plan only relates to the scheme layout which has been proposed, rather than acting to inform that scheme layout. As such it is essentially responsive and dealing with areas that are not developed, not setting the agenda for site layout or intended to minimise the impact of the scheme on landscape and biodiversity.

In relation to the RVAA the applicant's methodology is accepted, but with due regard to the Landscape Institute's Technical Guidance Note on RVAA (March 2019) and the applicant's reference to the recognised test of whether or not a development would make a particular property an

unattractive place to live, the conclusions are queried. The Council has followed a similar methodology in respect of certain closest properties at Nagden and Warm House and finds the applicant's conclusions in respect of the impact on these properties to underplay the impact here.

The conclusion of the RVAA at paragraph 52 (Section 6) is that the effects of the development do not present a "visual intrusion of such magnitude as to render either properties as unattractive places in which to live". Whilst this may be factually correct, and the Council does not suggest that the properties will be rendered unpleasant to live in, the conclusion at paragraph 52 does not sit comfortably with the recognised Major Adverse impacts set out in relation to certain view from properties at Nagden Cottages and Warm House. These properties currently enjoy unusual outlooks which are not often found. The development is not just in their view but the existing long views will be effectively wiped out (either by the solar panels or the screen planting) and their current amenities very substantially diminished. It is not clear whether similar circumstances have existed in previously decided cases where new development may have merely impinged on rather than eliminated certain views; and it is hard to see how a more significant change in terms of whether certain properties would become unattractive could be found than that which arises here.

Question 1.7.2

The Borough Council is content with this approach.

Question 1.7.3

The Borough Council would not consider the additional groups mentioned to be sensitive receptors as their presence in locations that could be affected by noise from this development is not sufficiently long enough and the Council would not investigate any noise complaints from such people/receptors. The legislation the Council enforces centres around owner/occupiers of properties, not transitory people.

Question 1.7.4

The Borough Council is content with this approach.

Question 1.7.6

The Borough Council is content with this proposal from the applicant. The production of a noise management plan is a sensible step to take to ensure that any noise from completed plant and equipment can be properly and effectively mitigated once in place.

Question 1.8.2

The Borough Council does not any suggestions for reducing the effect of users of public rights of way during construction beyond those suggested at paragraph 169 of Chapter 11 of the ES, assuming that the operation of the gates across the spine road (both during construction of the spine road itself and during transportation of solar panels etc to sites to the west of the path) provides priority for users of the path rather than users of the spine road.

This concludes the Council's response to these Written Questions.

Yours Sincerely

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