

Gate Burton Energy Park Valued Landscape Technical Note

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1. Introduction

1.1 Purpose

- 1.1.1 This Technical Note has been provided to assess whether the landscape where the proposed Gate Burton Energy Park would be located should be considered to be a 'valued landscape' when considered in the context of the National Planning Policy Framework (Ministry of Housing, Communities & Local Government, July 2021) (NPPF).
- 1.1.2 The Gate Burton Energy Park is a proposed development comprising a large-scale photovoltaic array and Battery Energy Storage System (BESS) development, connecting to the National Electricity Transmission System (NETS) at National Grid's Cottam 400kV Substation (hereafter "the Scheme"). The Scheme constitutes a Nationally Significant Infrastructure Project (NSIP) and therefore requires an application for a Development Consent Order (DCO) to be submitted to the Planning Inspectorate for determination by the Secretary of State. The Scheme will be located within the Order limits which straddle the counties of Lincolnshire and Nottinghamshire and the districts of West Lindsey and Bassetlaw.
- 1.1.3 The DCO application was submitted in January 2023, with the Examination into the Application commencing on 4 July 2023. On 24 August 2023 an Issue Specific Hearing was held on the Scheme, with Session 2 focusing on landscape and land use. At this hearing, the Examining Authority asked whether the Applicant considers that the landscape in which the Gate Burton Energy Park is situated is a 'valued landscape' in terms of policy in the NPPF. This Technical Note provides the Applicant's answer to that question.

2. What is a valued landscape?

2.1 National Planning Policy Framework and Relevance to Gate Burton Energy Park

2.1.1 The latest iteration of the National Planning Policy Framework (NPPF) was published in July 2021, with previous iterations published in 2019, 2018 and 2012. The NPPF contains the Government's national planning policies for England and sets out how these are to be applied when making decisions on planning applications. It was written to guide decision making on planning applications submitted under the Town and Country Planning Act 1990 and is a material consideration when making decisions on those applications.

2.1.2 Paragraph 5 of the NPPF states that:

'The Framework does not contain specific policies for nationally significant infrastructure projects. These are determined in accordance with the decision making framework in the Planning Act 2008 (as amended) and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the National Planning Policy Framework)...

2.1.3 The Applicant considers that the NPPF and its policies are capable of being important and relevant matters when making decisions on DCO applications. However, the weight applied to those policies will depend partially on the extent to which they are relevant to NSIPs, particularly where they conflict with policy documents that have been developed specifically for decision making on DCO applications such as the designated and draft National Policy Statements on Energy.

2.2 What does the NPPF say about valued landscapes?

2.2.1 Paragraph 174 of the National Planning Policy Framework (July 2021) states that [our emphasis]:

'Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan) ...'

2.2.2 The term 'valued landscape' as set out in paragraph 174 was first introduced in paragraph 109 of the NPPF dated March 2012. The text in bold above has remained consistent since the publication of the first NPPF in 2012. The text in brackets was added between the 2012 NPPF and the 2018 NPPF, clarifying that the protection and enhancement should be commensurate with the landscape's statutory status or identified quality in the development plan.

- 2.2.3 Prior to the NPPF adoption, policy on the countryside was contained in Planning Policy Statement 7, which discussed protecting all countryside ‘for its own sake’. The NPPF changed this approach by introducing a distinction paragraph 174 between ‘valued landscapes’ that should be ‘protected and enhanced’, and ‘the countryside’, whose intrinsic character and beauty should be ‘recognised’. This distinction has also been established in case law, for example, Mrs Justice Lang stated in December 2016 that *‘the NPPF does not include a blanket protection of the countryside for its own sake, such as existed in earlier national guidance (e.g. Planning Policy Guidance 7)’¹...*”.
- 2.2.4 The NPPF therefore gives more protection to ‘valued landscapes’ than the countryside in general. For this reason, it is important to establish whether a landscape is a ‘valued landscape’ or merely ‘countryside’ when assessing the extent to which a development complies with policy in the NPPF.

2.3 What is a valued landscape?

National Policy and Guidance

- 2.3.1 The glossary to the NPPF in Annex 2 does not define the term ‘valued landscape’, nor is it defined elsewhere in the NPPF. The National Planning Practice Guidance paragraph 036 Ref ID:036-20190721 provides advice on the use of policies for landscapes of a particular local value but provides no guidance on how to identify such landscapes. The PPG also does not explain what a valued landscape is or how to assess whether a landscape is valued. This uncertainty has led to debate in planning decisions, appeals and judicial reviews on what constitutes a valued landscape.
- 2.3.2 In 2021, the Landscape Institute published Technical Guidance Note 02/21: ‘Assessing landscape value outside national designations’ (TGN 02/21). Appendix 4 ‘The valued landscape ‘policy test’” summarises the history of the definition and attempts to provide some guidance for assessing whether a landscape is valued. The Guidance notes the following of relevance here:
- That locally designated landscapes *can* be valued landscapes but designation alone may not be sufficient evidence.
 - Landscapes that are not locally designated can also be valued landscapes.
- 2.3.3 TGN 02/21 goes on to state:
- ‘Evidence that has been used in reaching judgements about whether a landscape should be considered to be a valued landscape includes:*
- *factors that are generally agreed to influence landscape value as set out in GLVIA3 Box 5.1;*
 - *the presence of qualities in the landscape that are identified in the development plan (which includes neighbourhood plans) as requiring protection, such as in policies that require development to respect key aspects of a local landscape identified in the local landscape character assessment; and*

¹ Borough of Telford and Wrekin v Secretary of State for Communities and Local Government & Anor [2016] EWHC 3073 (Admin) (01 December 2016)

- *when a local designation exists, whether the landscape in question demonstrates the landscape qualities that are identified as important for that designation.*

The Landscape Institute supports the evidence-based approach. The Landscape Institute does not consider that planning authorities which removed local designations following previous policy guidance, or those which never had local landscape designations, should be considered to have no 'valued landscapes' outside nationally designated areas.

Where a landscape has a statutory status, it will not be necessary to undertake an assessment based on Box 5.1 of GLVIA3 or the factors identified in Table 1 of this TGN. It may also be unnecessary where a local designation is supported by a strong evidence base. However, where there is little published evidence to support existing local landscape designations, an assessment based upon these factors would be helpful to support planning decision making.'

2.3.4 TGN 02/21 goes on to offer the following definition of a valued landscape:

'A 'valued landscape' is an area identified as having sufficient landscape qualities to elevate it above other more everyday⁴⁴ landscapes.'

2.3.5 Footnote 44 in the above clarifies that 'everyday' landscapes may nevertheless have value to people.

2.3.6 TGN then provides the following guidance:

'Where possible the development plan should be referenced to support the value placed on the landscape. Where the development plan is silent, evidence should be provided in the form of professional analysis. Key points to note are as follows:

- *It is not possible to set a definitive threshold in this TGN above which a landscape is considered to be a 'valued landscape'. It is a judgment that must be made on a case-by-case basis, based on the evidence. There should be a weight of evidence that supports the recognition of a landscape as valued above more everyday landscapes.*
- *The character and quality of landscapes across England are variable and what may be defined as reaching the 'valued landscape' threshold/criteria in one part of the Country may be considered to be an 'everyday landscape' in another.*
- *It would be expected that a 'valued landscape' would demonstrate the presence of a number of indicators of landscape value, as set out in Table 1, although it is possible for one indicator to be of such importance (e.g. rarity, association or perceptual aspects) that the landscape is judged to be a 'valued landscape' even if other indicators are not present.*
- *The identification of landscape value needs to be applied proportionately ensuring that identification of 'valued landscape' is not over used.*
- *In line with the ELC's approach, landscapes that are not judged to be 'valued landscapes' may still have value, and NPPF paragraph 170 b) requires planning policies and decisions to recognise the intrinsic character and beauty of the countryside. It is well-established that a landscape does*

not have to be a 'valued landscape' to be afforded protection from inappropriate development (see Appendix A5)

- 2.3.7 TGN 02/21 is considered to be a relevant and important matter when considering the question the ExA has posed to the Applicant as no other guidance has been located on this topic.
- 2.3.8 The definition of a valued landscape has also been considered in case law and appeal decisions, further detail is provided below.

Case Law: What is a valued landscape?

- 2.3.9 The 'Stroud Judgement'² was the first time 'valued landscape' (in relation to the NPPF) was defined in a High Court judgement. The Stroud Judgement was taken following the decision of a Planning Inspector to allow an Appeal lodged by Gladman Developments Ltd for development of 150 houses at the foot of the escarpment to the Cotswold Hills (Appeal reference APP/C1625/A/13/2207324). In his decision on the Appeal, the Inspector acknowledged that the site is valued '*as it is valued by neighbouring residents*'. However, he stated that:

'I accept that, currently, there is no agreed definition of valued as used in this paragraph. In the absence of any formal guidance on this point, I consider that to be valued would require the site to show some demonstrable physical attribute rather than just popularity. In the absence of any such designation, I find that paragraph 109 is not applicable to the appeal site.'

- 2.3.10 The Inspector for the Appeal therefore concluded that whilst the landscape was valued, it was not a 'valued landscape' in NPPF terms. The site was within 50 m of the Cotswolds Area of Outstanding Natural Beauty (AONB) and visible both from it and the popular Cotswolds Way running parallel with the boundary of the AONB. Three, well-used public footpaths also crossed the site and from these footpaths, views towards the escarpment of the Cotswolds AONB could be obtained. The development was acknowledged to have some harm to the landscape.
- 2.3.11 The Local Authority sought to challenge the Inspector's decision in the High Court on four grounds including the Inspector's approach to 'valued landscapes'. The Council argued that the Inspector had equated designated landscapes with valued landscape and had therefore incorrectly determined that the area was not a 'valued landscape'.
- 2.3.12 In his judgement in February 2015, Mr Justice Ouseley stated that:
- Being valued by the community is not sufficient in itself for a landscape to be a 'valued landscape' in NPPF terms.
 - If the Inspector had concluded that designation was the same as valued landscape he would have been wrong because in the NPPF, the word 'designation' is used when designation is meant and 'valued' is used when valued is meant and the two words are not the same. Mr Justice Ouseley concluded that the Inspector had not made this error.

² Stroud District Council v Secretary of State for Communities and Local Government and Gladman Developments Ltd [2015] EWHC 488 (Admin) (6 February 2015)

- The debate was not *‘primarily about the definition of a valued landscape but about the evidential basis upon which this land could be concluded to have demonstrable physical attributes’* that would make it a valued landscape.
- The Inspector was entitled to come to the conclusion that the site did not have demonstrable physical attributes that would make it a valued landscape. In paragraph 16 Mr Justice Ouseley states:
‘It is not difficult to see that the sort of demonstrable physical attributes which would take this site beyond mere countryside, if I can put it that way, but into something below that which was designated had not been made out in the Inspector’s mind. The closing submissions of Miss Wigley referred to a number of features and it is helpful just to pick those up here. The views of the site from the AONB were carefully considered by the Inspector. There can be no doubt but that those aspects were dealt with and he did not regard those as making the land a valued piece of landscape. That is a conclusion to which he was entitled to come.’

2.3.13 Following the Stroud Judgement, other High Court judges have similarly concluded that³:

- a valued landscape need not be formally designated,
- a valued landscape is not merely one that is popular, and
- a landscape was only a ‘valued landscape’ if it had physical attributes which took it “out of the ordinary”.

2.3.14 Mr Justice Ouseley himself re-considered the definition of ‘valued landscapes’ in a separate high court decision in 2018⁴. In this case the Inspector had concluded that the site in question was a valued landscape, with her rationale including statements that the site was:

- *‘an example of one of the localised pockets of higher quality landscape management’*,
- a visible part of the Landscape Character Area and a focal point,
- part of the setting of the Chilterns AONB,
- crossed by an important footpath, and
- part of the rural setting of the adjoining Site of Special Scientific Interest.

2.3.15 Mr Justice Ouseley endorsed the approach taken by the Inspector and dismissed the claim. He noted that in the Stroud Judgement the Planning Inspector had used the term ‘demonstrable physical attributes’ so Mr Justice Ouseley had used the same terminology. The need for ‘demonstrable physical attributes’ was one of, rather than the only way to define a valued landscape so it was not an issue that the Inspector did not use this terminology here.

2.4 When is a locally designated landscape a ‘valued landscape’

³ For example see *Forest of Dean District Council v Secretary of State for Communities And Local Government & Anor* [2016] EWHC 2429 (Admin) (04 October 2016)

⁴ *CEG Land Promotions II Ltd v Secretary of State for Housing Communities And Local Government* [2018] EWHC 1799 (Admin) (18 July 2018)

- 2.4.1 It has been well established in appeal decisions and case law that ‘valued landscape’ does not mean ‘designated landscape’ and that landscapes can be valued despite not being designated. There appears to be less case law considering this the other way round; the extent to which a local landscape designation indicates that a landscape is a ‘valued landscape’. However, it is clear from appeal decisions that locally designated landscapes are not necessarily valued landscapes.
- 2.4.2 For example, in March 2020 an Appeal was dismissed by the Planning Inspectorate for 126 dwellings and associated infrastructure at Land Adjoining Tuffs Road and Maple Way, Suffolk⁵. In this case, the site was designated as part of a Special Landscape Area (SLA) within the 1998 Local Plan. However, the Inspector noted that the SLA was based upon an old Structure Plan and the parties agreed that there were no detailed records or evidence of how the specific SLA’s were drawn. The Inspector stated that regardless on the SLA designation, there should be demonstrable physical attributes for the site to be a ‘valued landscape’. In this case the Inspector considered that the site is of moderate value and ‘*does not exhibit any particularly unique qualities or rarity*’, although it had a rural quality, conservation interest and recreational value through the footpath network. She concluded that the site was not a ‘valued landscape’.
- 2.4.3 Therefore, a local landscape designation *can* indicate that an area is likely to be a ‘valued landscape; and evidence behind the designations can support the case, but it is necessary to evaluate the landscape on a case by case basis as a local designation does not necessarily mean that landscape is a ‘valued landscape’.

⁵ Appeal Ref: APP/W3520/W/18/3215534 Land adjoining Tuffs Road and Maple Way, Eye, Suffolk.

3. Is the Gate Burton Energy Park Situated in a Valued Landscape?

3.1 Introduction

- 3.1.1 The landscape in which the Gate Burton Energy Park is proposed is clearly popular in the local community, as evidenced by the content of Relevant Representations and oral submissions at Open Floor Hearings 1 (4 July 2023) and 2 (22 August 2023) for the project. The Applicant recognises this and has sought to protect and enhance the landscape where practicable in the design of the Scheme. However, as described in Chapter 2, whether a landscape is a 'valued landscape' in NPPF terms is not about the popularity of the landscape.
- 3.1.2 The Gate Burton Energy Park application is supported by an extensive Landscape and Visual Impact Assessment, presented in Chapter 10: Landscape and Visual Amenity of the Environmental Statement **[REP2-010/3.1]**. The methodology in the assessment had regard to the approach set out in the Guidelines for Landscape and Visual Impact Assessment, 3rd Edition (GLVIA), including the criteria set out in Box 5.1 as referenced in TGN 02/21 above. Given the wealth of information already provided, this Technical Note does not re-iterate this method or findings, but instead explains how the conclusions of the assessment have led to the Applicant's answer to the question raised. Please refer to Chapter 10 for more information.

3.2 Is this a 'Valued Landscape' in NPPF terms?

- 3.2.1 Whilst acknowledging the value of the landscape to the local community, the Applicant does not consider that the Scheme is located within a 'valued landscape' in NPPF terms.
- 3.2.2 The landscape character of the study area including the physical location of the Scheme is rural but not out of the ordinary. It is in general an intensively farmed landscape within the River Trent valley interspersed with individual trees, hedgerows, tree belts (linear), small woodland blocks and farm access tracks. Several small rural villages are located adjacent or close to the Order limits. Topographical interest is provided by a low ridge running in a north-south direction through the study area and along the eastern side of the River Trent. Cottam and West Burton Power Stations located west of the River Trent apply an industrial layer to sections of the study area and form landmarks visible beyond the study area including the Lincoln Cliff along Middle Road / A1398 to the east and the Lincolnshire Wolds AONB further east. Associated overhead electricity transmission lines form also prominent vertical structures in the western section of the study area and beyond.
- 3.2.3 Individual elements of landscape value include Gate Burton estate, which is located west of the railway line and along a low ridge east of the Trent valley. It is a designed historic landscape partially separated by the A156 / Gainsborough Road. Other elements include mature / ancient woodland

plantations, which are dispersed in a south to north direction starting east of Gate Burton estate and up to Gainsborough (eastern fringe) and beyond. These woodland parcels are generally surrounded by farmed fields but are not a defining characteristic in the wider landscape. It is not considered that these features provide sufficient qualities to elevate it above other more everyday landscapes, using the criterion in TGN 02/21.

- 3.2.4 The Gate Burton estate and the band of landscape containing the woodland plantations are designated as an Area of Great Landscape Value (AGLV) in the Central Lincolnshire Local Plan 2023. This designation includes the area of the Solar and Energy Storage Park to the west of the railway line, but not the area to the east. It is not made clear in the Central Lincolnshire Local Plan 2023 and its predecessors on what rationale the boundaries of this AGLV have been defined. In addition, information regarding the designation of the AGLV and the elements that make up the 'distinctive value' of this area have not been defined by West Lindsey District Council and without evidence of the rationale behind the designation, it is not considered that this designation provides sufficient justification for the landscape to be considered a 'valued landscape'. Indeed, the case may be similar to the Tuffs Road appeal discussed above, where although a designation exists, the evidential basis is limited and the landscape, whilst locally valued, does not exhibit particularly unique qualities or rarity.
- 3.2.5 The landscape also does not appear to contain sufficient features that could elevate the landscape above 'mere countryside' (Mr Justice Ouseley) 'out of the ordinary' (Mr Justice Hickinbottom) or an 'everyday landscape' (TGN 02/21). The site is not close to or visible from an Area of Outstanding Natural Beauty; it is not visible from well-used national footpaths; the majority of the site is not crossed by local footpaths; it is not a focal point in the landscape and the site is not particularly visible in the landscape. The Landscape Character Areas that the Solar and Energy Storage Park is located within are assessed as having largely a 'medium' sensitivity at the Regional, County and District Level.
- 3.2.6 When considering the landscape of the site and its surroundings as a whole, and taking into account the character and quality of landscapes in this area of the Country, the Applicant concludes that this is not a 'valued landscape'.