

**BURNLEY BOROUGH COUNCIL**  
**DEVELOPMENT CONTROL COMMITTEE**

Date: 7 June 2018

**PART 3**

Town and Country Planning Act 1990

**Planning Appeal by Mr Jason Bradbury (ZL Energy)**

**APP/2016/0434** Appeal against the refusal of planning permission for the erection of a gas fuelled electricity generating plant (20mw) to provide standby power.  
**Land south of Blackburn Road Padiham**

**Background**

The appeal was made to the Secretary of State against the Council's refusal of planning permission for the standby electricity generating plant.

There were two reasons for refusal:

1. *The development would be contrary to Policy E26 of the Burnley Local Plan Second Review and paragraph 88 of the National Planning Policy Framework in that it is inappropriate development in the Green Belt where very special circumstances have not been adequately demonstrated which outweigh the harm caused to the Green Belt.*
2. *It has not been sufficiently demonstrated that the development will not cause unacceptable harm to the ecological interests on the site having regard to Policy E5 of the Burnley Local Plan Second Review.*

The decision was made under delegated powers by the Head of Housing and Development Control.

Appeal Decision – **The appeal was dismissed.** Approximate cost of appeal: £250

The appeal was dealt with by written representations.

**Inspector's Considerations**

The Inspector considered the main issues to be:

- whether the proposal would be inappropriate development in the Green Belt as set out in the *National Planning Policy Framework* and the development plan;
- the effect of the development on the openness and purposes of the Green Belt;

- iii) the effect on the character and appearance of the area;
- the implications of the proposal for ecology; and
- if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to very special circumstances necessary to justify the development.

### *Appropriate development*

In considering whether the proposal would be inappropriate development the Inspector had regard to The *National Planning Policy Framework* ('the Framework') which establishes that certain types of development are not inappropriate in the Green Belt provided that they preserve openness and do not conflict with the purposes of including land within it. The appeal proposal does not accord with any of the exceptions set out in paragraph 89 of the Framework nor does it comprise one of the 'other forms of development' cited in paragraph 90. Similarly, Policy E26 of the *Burnley Local Plan Second Review (2006)* states that development in the Green Belt is inappropriate unless it is for one of a limited number of purposes, none of which are applicable in this case.

Accordingly, the proposal comprises inappropriate development which is, by definition, harmful to the Green Belt, with the Framework indicating that such harm carries substantial weight.

### *The effect on openness and purposes of the Green Belt*

The appeal site extends to about 1.2ha and lies close to the busy junction of Blackburn Road and the A6068. The sloping land is down to rough grass and is largely enclosed on three sides by trees, hedges and scrub with the River Calder corridor on the southern boundary. The surrounding area is characterised by a mix of built development, including housing and industrial, office, storage and commercial buildings, and extensive tracts of open countryside.

The proposed 20MW gas-fired embedded electricity generating plant would include two ranks of generators (20 in total), a switch room, a gas reception kiosk, a steel oil storage tank, a control & welfare room and a HV/LV switchroom in steel containers and 10 step-up transformers. Associated parking and access/circulation tracks are also proposed together with CCTV cameras and 2.4m high steel palisade security fencing to the site boundaries. Four portable office/security buildings, a storage compound and 10 parking spaces are also proposed during the construction period.

The plant would be connected below ground to the local distribution network via an electricity sub-station located in the Shuttleworth Mead Business Park to the east of the site. The appellant advises that the lifespan of the development would be about 20 years after which the site would be cleared.

Openness is one of the essential characteristics of the Green Belt. It is the absence of buildings or development. Openness is thus characterised by a lack of buildings,

structures or other above-ground items rather than those that are unobtrusive or screened in some manner. There is therefore a clear distinction between openness and visual impact, and the containment of the appeal site by hedges and trees has no bearing on this assessment. It is clear that the proposed structures, buildings and containers together with parked vehicles would diminish the openness of the Green Belt.

Furthermore, the proposal would conflict with two of the five purposes of the Green Belt set out in paragraph 80 of the Framework, namely checking the unrestricted sprawl of large built-up areas and assisting in safeguarding the countryside from encroachment.

The Inspector gave significant weight to the reduction in openness, encroachment of the development into the countryside and contribution to unrestricted sprawl in the planning balance.

#### *Effect on the character and appearance of the area*

The Inspector considered that this would be a substantial development which would be locally prominent from hedgerow gaps and the new and existing (and significantly widened) accesses on Blackburn Road, and also from the elevated road bridge over the River Calder adjacent to the site. In addition it would be clearly visible from the public right of way on the south side of the river opposite the site and, at a greater distance, from a higher level footpath on the east side of the A6068 near Shuttleworth Hall.

From these vantage points the proposal would be seen to consolidate and extend development beyond the urban fringe into the countryside to the detriment of the character and appearance of the area. The prominence of the development would be increased during the autumn and winter months when the boundary foliage thins out. The proposed bund and planting adjacent to the river would not provide effective screening of the site from the south.

It was considered therefore that the proposed development would cause harm to the character and appearance of the area in conflict with Local Plan Policy E27 which, amongst other things, seeks to protect the Borough's distinctive landscape character. This additional harm carries moderate weight in the planning balance.

#### *Implications for ecology*

The appellant's *Ecology Constraints Appraisal* submitted with the planning application concludes that the improved grassland site does not contain Schedule 1 species and the proposed development would not constitute a risk to any protected species or habitats. However, the Inspector shared the Council's view that this 'desk-based' appraisal lacks sufficient detail and rigour. For example, it does not include mitigation measures or demonstrate how the scheme would achieve a net gain in biodiversity, and the implications for trees along the site boundaries are unclear.

In response, the appellant has submitted an *Extended Phase 1 Habitat Survey* with the appeal papers. Amongst other things, it concludes that the site is of low

ecological value, and whilst the loss of an area of grassland to the development would have a temporary negative impact on biodiversity it would not be significant in the long term as wildflower areas would be created within the site. It also advises the site is not considered to have the potential to support badgers, reptiles, notable terrestrial invertebrates or notable flora.

The Framework makes it clear that the planning system should contribute to and enhance the natural and local environment by minimising the impacts on biodiversity and providing net gains in biodiversity where possible. Policy E5 of the Local Plan broadly reflects these objectives.

On the basis of the evidence before the Inspector, he was not satisfied that the ecological impacts of the appeal proposal would be adequately mitigated; specifically, it has not been demonstrated that the provision of wildflower areas on the site would be sufficient to offset the negative impacts of the development identified in the appellant's habitat survey and this would be in conflict with Policy E5.

### *Other Considerations*

There is no dispute that continuity of electricity supply, including from renewable sources, is essential both nationally and locally, especially during periods of peak demand. The appeal proposal would provide a flexible supply of back-up electricity for the local (DNO) network and thus contribute to meeting this objective in an efficient and effective manner with minimal transmission loss. In this respect the proposal would accord with the recognition in the *Overarching National Policy Statement for Energy* EN-11 that back-up electricity capacity is necessary to ensure security of supply until other storage technologies reach maturity. These factors attract significant weight in favour of the proposed development.

In terms of the three dimensions to sustainable development set out in the Framework, the proposal would perform an economic role thorough the provision of infrastructure and a social role in supporting strong, vibrant and healthy communities. These factors are accorded moderate weight in favour of the proposal.

The appellant submits that there are no sequentially preferable sites for the development in the area, arguing that those identified at Simonstone Road, Whalley Road and Whalley Road/Blackburn Road have land-use planning, physical and environmental constraints that render them unsuitable. However, from the information before me I consider that the assessment of these sites lacks sufficient detail and rigour. Furthermore, whilst there are operational and practical benefits in having a site local to the sub-station at Shuttleworth Mead Business Park, including avoidance of traffic disruption, there is no evidence to show that other sites in the wider area could not fulfil the criteria without encroaching upon the Green Belt. I therefore attach limited weight to this argument.

Whilst the development would be removed after some 20 years this is a significant period for the Green Belt and landscape to be affected by the scheme, and I am not persuaded that it can reasonably be regarded as a short-term installation. Furthermore, the fact that the site comprises low grade agricultural land and may be

prone to fly-tipping is of little merit in favour of the proposal. Limited weight is therefore afforded to these submissions.

### **The Planning Balance and Overall Conclusion**

In this case, in addition to harm by reason of inappropriateness, substantial weight must be attributed to the harm to the openness of the Green Belt and the harmful effects in relation to encroachment and unrestricted sprawl. The Inspector also identified a moderate degree of harm to the character and appearance of the area and to ecology.

It was concluded that although the energy benefits of the proposal carry significant weight and the economic and social benefits attract moderate weight, they do not clearly outweigh the harm by reason of inappropriateness and the other harm identified. The very special circumstances necessary to justify inappropriate development in the Green Belt do not therefore exist. As such, the proposal would be contrary to paragraph 87 of the Framework and Policies E26 and E27 of the Local Plan.

Therefore, for the reasons given above and having regard to all other matters raised, it was concluded that the appeal should be dismissed.

Accordingly, the appeal was **dismissed** for the above reasons.

#### Background Papers

Planning application and appeal file APP/2016/0464

The above papers are available for inspection from Housing & Development Control, Parker Lane Offices, Burnley, BB11 2DY. Telephone (01282) 425011

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