



Appeal Decision

Hearing Held on 24 April 2024

Site visit made on 25 April 2024

by SRG Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2024

Appeal Ref: APP/D0840/W/23/3334658

Land known as Penhale Moor, south-east of Bosprowal Farm and south of Penhale Road, Cornwall.

- 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 Aura Power Developments Limited against the decision of Cornwall Council.
 - The application Ref PA22/06139, dated 29 June 2022, was refused by notice dated 14 August 2023.
 - The development proposed is the installation and operation of a ground mounted photovoltaic solar farm, inclusive of solar arrays, transformers, substation, landscaping, fencing, internal access tracks, access, CCTV and other associated works, for the purpose of generating and exporting renewable energy to the electricity grid network.
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Decision

1. The appeal is allowed and planning permission is granted for the installation and operation of a ground mounted photovoltaic solar farm, inclusive of solar arrays, transformers, substation, landscaping, fencing, internal access tracks, access, CCTV and other associated works, for the purpose of generating and exporting renewable energy to the electricity grid network on land known as Penhale Moor, south-east of Bosprowal Farm and south of Penhale Road, Cornwall in accordance with the terms of the application Ref PA22/06139, dated 29 June 2022, subject to the conditions set out in the attached Schedule of Conditions.

Preliminary Matters

2. The application sought permission for a period of 35 years from the date of commissioning of the solar panels, following which the scheme would be decommissioned.
3. Regard has been had to the Environmental Statement (ES) dated June 2022 submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA).
4. On the 15 May 2024, a Written Ministerial Statement (WMS) was issued regarding "Solar and protecting our Food Security and Best and Most Versatile (BMV) Land". The appellant, local planning authority (lpa) and those notified of the appeal were given the opportunity to comment. Two responses from interested parties were not received by the appellant. Accordingly, the appellant was given a further opportunity to respond.

Application for costs

5. At the Hearing, an application for costs was made by Aura Power Developments Limited against Cornwall Council. This application is the subject of a separate decision.

Main Issue

6. The effect on the supply of agricultural land.

Development Plan and other Guidance

Local Policy

7. The development plan includes the Cornwall Local Plan Strategic Policies 2010 to 2030 (CLP) adopted in 2016, the Cornwall Council Climate Emergency Development Plan Document (DPD) adopted in 2023 and the Gwinear-Gwithian Parish Neighbourhood Plan 2016 to 2030. CLP Policies 1, 2 and 21, DPD Policy RE1, NP Policy 12 are agreed to be the most relevant policies.
8. CLP Policy 1 reiterates the Framework¹ presumption in favour of sustainable development. CPP Policy 2 seeks that proposals help in creating resilient communities by, amongst other things, delivering renewable energy (RE). CLP Policy 21 encourages sustainably sited proposals that take account of the benefits, including food production of Grade 1, 2 and 3a agricultural land. Where significant development of agricultural land is shown to be necessary, poorer-quality land should be used in preference.
9. DPD Policy RE1 indicates that RE schemes will be supported where, they contribute to Cornwall's target of a 100% renewable electricity supply by 2030, they would not have a significant adverse landscape, visual or heritage impacts, the scheme allows for the continued use of land for agriculture and commercial RE schemes include an option for community ownership. Ground mounted solar arrays will be supported where they are focussed on previously developed land and away from BMV land unless exceptionally justified. NP Policy 12 provides support for community part ownership of RE developments.
10. The lpa confirmed that the 2016 Cornwall Renewable Energy Planning Advice is not adopted. It is an advisory document to aid developers and the lpa when considering RE schemes. The lpa acknowledged that the sections referring to the use of Grade 3b agricultural land were more proscriptive than current national policy and attracted limited weight. NP Policy 12b – Solar PV refers to proposals for small solar arrays. At 30MW, it was agreed that the proposal cannot be regarded as "small" and NP Policy 12b was not relevant.

National Policy

11. Framework paragraph 157 supports the transition to a low carbon future and the development of renewable and low carbon energy infrastructure. Framework paragraph 180 says that decisions should contribute to enhance the local environment by, amongst other things, recognising the economic and other benefits of BMV land².

¹ National Planning Policy Framework.

² Grades 1, 2 and 3a.

12. Planning Practice Guidance (PPG) on Renewable and Low Carbon Energy indicates that increasing the amount of energy generated from renewable and low carbon sources will help to secure our national energy supply and contribute to mitigating climate change. On large scale ground mounted solar farms, PPG lists factors that need to be considered. These include, focussing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value. Where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays³. Attention is drawn to a WMS dated 25 March 2015, that refers to, *"...any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence."*
13. The most up-to-date statement on national policy on energy and RE are contained in National Policy Statements (NPS) EN-1, EN-3⁴ and the May 2024 WMS. Whilst NPSs have effect for decisions on applications for energy developments that are nationally significant under the Planning Act 2008⁵, they can be a material consideration in decision making on appeals made under the Town and Country Planning Act 1990 (as amended).
14. NPS EN- 1 highlights that wind and solar are the lowest cost way of generating electricity and that a secure reliable, affordable, net zero consistent system in 2050 is likely to be composed predominantly of wind and solar.
15. NPS EN-3 highlights that solar farms are one of the UK's most established RE technologies and the cheapest form of electricity generation. As such, solar is a key part of the Government's strategy for low-cost decarbonisation of the energy sector and has an important role in delivering greater energy independence. NPS EN-3 addresses the key considerations that influence site selection. These include, irradiance, network connection and land type. Given its southerly location within the UK, Cornwall experiences increased year-round irradiance levels. This increases the amount of electricity that can be generated, which in turn affects carbon emissions and commercial viability. Network capacity to accept the likely output from a solar farm and distance from the network are critical to the technical and commercial feasibility of a proposal. NPS EN-3 indicates that land type should not be a predominating factor in determining the suitability of the site location. Developers should, where possible, use suitable previously developed land, brownfield land, contaminated land and industrial land. Where the use of agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of BMV land where possible. The use of BMV land is not prohibited although the impact on it is expected to be considered.
16. The May 2024 WMS says that food and energy security are an essential part of national security. On food security, there is a commitment to maintain the current level of domestic food production recognising that it is important that the best agricultural land is protected and food production prioritised. Solar power is acknowledged as a key part of the strategy for energy security, net

³ Paragraph: 013 Reference ID: 5-013-20150327 (Revised 27/03/2015).

⁴ EN-1 Overarching National Policy Statement for Energy & EN-3 National Policy Statement for Renewable Energy Infrastructure.

⁵ The Planning Act 2008, Part 3 S15 (2) c.

zero and clean growth with the expectation of a 5-fold increase in solar deployment by 2035. Referring to NPSs and the Framework, due weight needs to be given to the use of BMV land with the starting position being that applicants should seek to minimise the impacts on BMV land (Grades 1, 2 and 3a) and preferably use land in areas of poorer quality. The WMS highlights the importance of considering not just the impacts of individual schemes, but also cumulative impacts.

17. Other relevant policy and documents are the Paris Climate Agreement 2015, UK Climate Change Act 2008, National Infrastructure Strategy 2020, Energy White Paper 2020, Net Zero Strategy: Build Back Greener 2021, Environment Act 2021, British Energy Security Strategy 2022, Powering Up Britain: Energy Security Plan 2023.

Reasons

18. Before dealing with the main issue, it is necessary to draw some conclusions on local and national policy, particularly as the 2015 WMS is extant. The Statement of Common Ground (SoCG) indicates that no weight can be given to, and reliance placed upon the on the 2015 WMS and PPG on Renewable and low carbon energy where these deal with issues around site selection and the use of BMV land. The WMS and PPG were published before updates to the Framework, the suite of Energy NPSs, and the Climate Change Act which made reaching net zero by 2050 a legally binding requirement. Whilst the 2015 WMS refers to, *"...the most compelling evidence..."*, the Framework, paragraph 180, refers to *"...recognising..."* the benefits of BMV land, NPS EN-3 refers to poorer quality land being *"...preferred..."* and BMV land avoided *"...where possible..."* and the 2024 WMS reference to, *"...due weight needs to be given to the proposed use of..."* BMV land. I agree with the parties on this matter.
19. In light of the above agreement, the consistency of DPD Policy RE1, particularly criterion 3, where it refers to the use of BMV land being *"...exceptionally justified"* needs to be addressed. As this policy was predicated on the 2015 WMS this policy, is inconsistent with the thrust of the Framework, NPS EN-3 and the 2024 WMS.
20. Notwithstanding the submissions of interested parties, the 2024 WMS does not, in my view, materially change the national policy position on the use of agricultural land for solar farming nor does it create a presumption against solar farming on agricultural or BMV land. What the latest WMS does is provide a context for decisions in terms of food security in terms of maintaining the current level of domestic food production and recognising that solar farming has an important role in delivering greater energy independence. What this means is that *"...due weight needs to be given to the use of Best and Most Versatile land..."*.
21. The site, extending to some 51.7ha, comprises 15 fields of varying size spread over 3 separate ownerships. The application was accompanied by a Site and Soil Assessment carried out by an appropriately qualified agricultural assessor. BMV agricultural land is defined as Grades 1, 2 and 3a of the Agricultural Land Classification⁶. As part of the re-consultation process, interested parties queried the classification of Fields 2, 8c, 9a and 10. The appellant acknowledged that there was an error in mapping Field 8c indicating that it

⁶ Framework, Annex 2 – Glossary.

should be shown as Grade 3a. On the basis of the evidence before me, I consider Fields 2, 9a and 10 have been correctly graded as Grade 3b.

22. Some 31.3%⁷ (16.2ha) of the site is Grade 3a, BMV agricultural land. The Grade 3a land includes the whole of Fields 8a, b and parts of Fields 2, 3a, 4, 5a, 5b, 6b and 10. The rest and most of the site, some 64% (33.1ha), is Grade 3b agricultural land i.e., poorer quality land. Not all of the fields would be used to house solar panels. A swathe of land bounded by Fields 9a, 9b 6c and 10 includes a field graded 3b, 2 ungraded fields and large field graded 3a and some 50% of Field 5b, graded 3a, would not house panels. In terms of current land use, 6 fields (2, 3a, 3b, 4, 5a and 6b) some 50% of the site are in arable use (brassicas), 3 fields (8c, 9a and 9b) are permanent grassland used for grazing cattle, Field 5b is grazed by horses, 2 fields (8a and 8b) are mown for silage and 3 fields (6a, 6c, 7 and 10) are unused.
23. The nub of the objection is that here, although the majority of the land is Grade 3b, the mild climate allows for spring and winter vegetable cropping. This productivity and versatility are a significant contributor to the Cornish and national economy. Accordingly, the lpa submits that the Grade 3b land should be lifted into the category of BMV land and interested persons consider that Grade 3b land is in short supply and as such should be protected at any cost.
24. The importance of agricultural and horticultural land to the Cornish and national economy is not disputed. However, the undisputed evidence is that almost 33% of the land (115,250ha) in Cornwall would comprise BMV land and some 37% (129,910ha) comprises Grade 3b land. In this context, the use of Grade 3a and 3b land on the appeal site would comprise a minor proportion of the available agricultural land. Moreover, the proposal does not replace the agricultural use of the site rather, in addition to solar farming, it introduces an alternative agricultural/food producing use i.e., sheep grazing. Indeed, the significant areas not used for agriculture, Fields 5b (part), 6a, 6c, 7 and 10, would be brought back into an agricultural/food producing use. There was nothing in the evidence to suggest that the presence of the panels would limit the ability of the land to provide adequate grazing. Moreover, whilst horticulture is the major land use in the wider area, sheep grazing is not an alien form of agricultural activity.
25. I fully note the concerns raised about potential productivity and the versatility of the land. However, the manner in which land is farmed is not subject to planning control. There is nothing that prevents the landowners here using the holdings for agricultural and non-agricultural⁸ grazing, permanent grass or continuing to leave it unused. Indeed, resting that part of the site currently used for brassicas and bringing into use the unused areas would improve soil health/structure for when the land would revert to agriculture at the end of the 35-year life of the solar farm.
26. Regarding productivity, my visits to the wider area highlighted the extent of land that was under intensive horticultural use. However, from what I was able to observe there was a noticeable difference between these areas and the areas of the site currently used for brassicas. Whilst parts of these areas are

⁷ There are minor differences between the percentages quoted by the appellant and interested persons. The appellant calculates the percentages on the total site area whilst interested persons use the figure quoted for total agricultural land.

⁸ Horse grazing – Field 5b.

also likely to be graded 3a, the majority of the site is graded 3b and as such has to be farmed accordingly. Moreover, as the appellant's detailed analysis shows these fields, even where there are large parts graded 3a they have a high clay and stone content. These factors significantly constrain the versatility and productivity of these fields, limiting them to mostly single cropping and a limited range of crops.

27. World events, particularly the fall-out from the conflict in Ukraine, and climate change have brought the issue of food security into sharper focus. That said, at the end of 2022, some time after the above Ukraine conflict started, DEFRA identified that the UK's food supply chain remains highly resilient with the nation's high degree of food security built on supplies from diverse sources. As far as I am aware that position has not changed. Moreover, the 2024 WMS where it discusses food security refers to maintaining the current level of food production. In this context, the very limited impact the proposal would have on the amount of land used locally for horticulture, the appeal site's constrained versatility/productivity suggests that there would be no material impact on food security. Moreover, the 2 large vegetable packers located in the local area, one of whom appears to manage vegetable growing on part of the appeal site, have made no representations regarding the proposal.
28. In April 2024, the Council agreed to commission research into the economic role of Grade 3b land to inform future policy decisions. This process is at a very early stage and there is no certainty as to its findings. As such, no weight can be attached to the proposed motion.
29. Reference has been to sheep farming being less labour intensive than most arable farming. This was not discussed in detail at the hearing but raised as part of the consultation on the 2024 WMS. The WMS does not comment on the impact of solar farming on agricultural labour. On the limited evidence produced, which the appellant submits is flawed, I am unable to come to any conclusion on this.
30. Drawing all of the above together, given that the site would continue to be used for agricultural purposes/food production as well as solar farming, the proposal would not lead to either the temporary or permanent loss of agricultural land. Indeed, the proposal would bring back into food production unused agricultural land resulting in improved soil health/structure when the land would revert to agriculture at the end of the 35-year life of the solar farm.

Other Matters

Site Selection

31. The lpa submits that there was a lack of a robust assessment of alternative sites praying in aid an appeal decision at Lullington, South Derbyshire⁹ and a subsequent High Court judgement¹⁰. Interested persons submit that the thrust of the 2024 WMS requires the promoter of a solar farm to undertake a sequential assessment.
32. Unlike here, in the Lullington case the weight attributed to the 2015 WMS was not an issue and not something that the Court could or did rule on. Moreover,

⁹ APP/F1040/W/22/3313316.

¹⁰ Lullington Solar Park Limited v Secretary of State for Levelling Up, Housing and Communities and South Derbyshire District Council [2024] EWHC 295 (Admin).

that judgement provides no authority for determining that an applicant is required to submit an alternative site assessment. A more relevant judgement¹¹ relates to an appeal decision¹² allowing a solar farm at Bramley, Hampshire. Here, the court ruled that PPG does not mandate the consideration of alternative sites and still less does it require a sequential test to be adopted. Similarly, neither the NPSs nor the 2024 WMS refer to the need for an alternative sites assessment or a sequential test to be carried out. Had the authors of these documents thought that such assessments were required, they would have said so.

33. The process of site selection is covered in the ES and the Ipa acknowledges it understands the applicant's rationale¹³. Five elements determined the preferred area were, grid connection, irradiation, environmental sensitivity, land availability and road access. Of all the factors involved in site selection, the key one is the ability to obtain a network connection. NPS EN-3 specifically highlights that, "*The capacity of the local grid network to accept the likely output from a proposed solar farm is critical to the technical and commercial feasibility of a development.*" Indeed, the chatter around the development of solar energy indicates that access to the local grid is the biggest constraint facing the industry, with, in some cases, connection dates being offered as late as the mid-2030s. Here, the site is crossed by power lines capable of accepting the electricity generated, and the appellant has secured a specific point for the grid connection. This guaranteed on-site connection not only maximises the amount of electricity captured but also minimises the environmental disturbance from a longer cable route. The scale of the solar farm has been reduced¹⁴ from its original inception and further reducing its scale to exclude Grade 3a land would significantly reduce the amount of energy produced, undermining the local policy and national legal commitment to achieving net zero. These factors, show that, here, the use of agricultural land is necessary.
34. Reference has been made to the use of the roofs of commercial/industrial buildings or brownfield land as alternatives. No evidence was produced to support these assertions, and as referred to above there is no legal or policy requirement for the appellant to undertake an alternative sites assessment.

Heritage

35. Located to the west and north-east respectively are, the Grade 2 listed, Carnhell Farmhouse and the Grade 2* listed Trevithick's Cottage. Intervisibility between the site and these designated heritage assets is limited by distance and mature screening, which could be strengthened by added planting. The scheme would have no effect on the setting or significance of these assets. Modern solar arrays sit lightly on the surface and any impact on below ground archaeology would be mitigated by a planning condition.

Biodiversity.

36. CLP Policy 23 says that development should protect and where possible enhance biodiversity. Consistent with Framework paragraph 180d, DPD

¹¹ Bramley Solar Farm Residents Group v Secretary of State for Levelling Up, Housing and Communities, Bramley Solar Limited & Basingstoke and Deane Borough Council & Others [2023] EWHC 2842 [Admin].

¹² APP/H1705/W/22/3304561.

¹³ Reason for Refusal.

¹⁴ Environmental Statement paragraph 4.3.7.

Policies G2 and RE1 (1) (e) require proposals to achieve a minimum of 10% Biodiversity Net Gain (BNG). Although there would be some harm to biodiversity through development on marshy areas and some loss of habitat for invertebrates beneath the arrays, the proposal would result in a BNG of 66.5% in habitat units and an 11.23% in hedgerow units. Mitigation would include the removal/control of invasive species, fauna enhancement measures, fencing that would allow continued wildlife commuting and enhanced monitoring. The mitigation works would be the subject of construction, environmental, landscape and ecological management plans.

Landscape & Visual Impact

37. Consistent with the objectives of Framework paragraph 180b, DPD Policy RE1c and CLP Policy 23 require that proposals resulting in significant adverse impacts on the local environment that cannot be satisfactorily mitigated, including cumulative landscape and visual impacts will not be permitted. Here, the site lies within the Mount's Bay East Landscape Character Area (LCA), with its distinctive landscape characteristics being river valleys enclosed by woodland and wetland habitats but dominated by agricultural use, a mix of improved and semi-improved grassland and occasional arable on plateau, with neutral grassland in valleys and well vegetated hedges with some trees on boundaries.
38. The ES includes a Landscape and Visual Impact Assessment (LVIA) which found that significant landscape effects of the scheme would be highly localised and limited to the immediate area. In terms of visual effects, with the exception of a small number of properties and Public Rights of Way, there would be no significant visual effects on the visual amenity of most residential and visitor receptors. The LVIA concludes that there would be no significant cumulative landscape and visual effects in conjunction with other operational solar farms.
39. The proposal would result in a temporary change to the landscape character of the immediate area. However, most of the above key characteristics of the LCA would be kept and enhanced. The lpa concluded that the scheme would not have unacceptable landscape and visual impacts and would not conflict with development plan or Framework policy. I have no reason to disagree with those conclusions.

Cumulative Impact.

40. The cumulative impact of the proposal was not a matter raised as part of the reason for refusal. The 2024 WMS indicates that nationally, whilst the total area of land used for solar generation is very small and acknowledges that, even in the most ambitious scenarios, solar generation would occupy less than 1% of the UK's stock of agricultural land. Here, it is acknowledged that there is some clustering of sites although not to the extent identified in other part of the County. However, given the need to locate development where a grid connection is available and avoid designated landscapes, it is inevitable that some clustering will occur. Here, there is nothing to suggest that this development would result in adverse cumulative impacts when considered with existing and committed schemes. Where schemes are in the pipeline, it will be for the Council to consider whether there would be adverse cumulative impacts.

Benefits

41. The solar farm would have an installed capacity of 30MW with an estimated power output of some 42,180MWh of electricity per annum, sufficient to power some 8,000 homes. This would be a significant benefit in mitigating the wider impacts of climate change. Both the Government and Cornwall Council¹⁵ have declared a climate emergency. The Council, through DPD Policy RE1 (1) (a), has set an ambitious target of achieving a 100% renewable electricity supply by 2030. Government strategy¹⁶ is to reach net zero by 2050 and current guidance confirms that solar power is crucial in meeting that target. Whilst the Council has made significant progress to achieving this target, some 40%, there is still some way to go. This project, given the confirmed grid connection and as far as I am aware, no other constraints that would prevent early implementation, would make a very significant contribution to achieving the Council's aspiration. Accordingly, this contribution attracts substantial weight.
42. DPD Policy RE1 (1) (f) requires, subject to viability, commercial RE schemes of this scale to include an option for the community to own at least 5% of the scheme. NP Policy 12 says that RE schemes that are fully or partly owned by the community will be supported. The lpa and the appellant have agreed that, prior to the completion of construction, a Collaborative Benefits Report (CBR) will be submitted for approval. Where the CBR shows that community ownership is financially, commercially, legally and operationally viable an offer is to be made to the local community within 12 months of commercial operation. Whilst a community benefit, this is something required by development plan policy and as such attracts neutral weight in the planning balance.
43. The proposed biodiversity mitigation measure would provide substantial BNG gains (66.5% in habitat units and an 11.23% in hedgerow units) over the 10% required by DPD Policy RE1 (1) (e). On this basis, it is a benefit that attracts significant weight. The proposal would result in some local economic benefits during construction, which attract moderate weight.

Planning Balance & Conclusion

44. Development plan policy is supportive of RE proposals, setting an ambitious target of a 100% renewable electricity supply by 2030. National policy sets out a presumption in favour of sustainable development and highlights that RE, particularly the solar generated energy is critical to achieving net zero. This proposal, given it has a guaranteed grid connection in a location that would maximise the amount of energy generated, would make an early and significant contribution to achieving local and national objectives.
45. Although some of the site is BMV land, the proposal would, in addition to solar farming, remain in agricultural and food productive use. The appellant has properly assessed the quality of the agricultural land and, based on the site selection criteria, properly justified the use of BMV land. Accordingly, the proposal maximises the uses of poorer quality land and would not result in the permanent loss of agricultural land. Following on from the earlier conclusion regarding the inconsistency of DPD Policy RE1 with national policy, I conclude

¹⁵ 2019.

¹⁶ Net Zero Strategy: Build Back Greener October 2021.

the proposal accords with national policies regarding the use of BMV land including the 2024 WMS.

46. The adverse impacts identified relate to highly localised harm to landscape character and visual amenity. This harm can be acceptably mitigated by imposing conditions and is heavily outweighed by the benefits of the proposal, particularly the mitigation of climate change.

Conclusion

47. For the above reasons, and having full regard to the 2024 WMS, this proposal would not conflict with CLP Policies 1, 2, 21, 23, DPD Policy RE1 and NP Policy 12 of the development plan when read as a whole. The proposal would accord with the objectives of national planning and energy policy when read as a whole. Accordingly, the appeal is allowed.

Conditions

48. Conditions including several pre-commencement conditions, suggested by the lpa were discussed in detail. Following the close of the Hearing an agreed list of conditions was submitted. The appellant has confirmed in writing agreement to the imposition of the pre-commencement conditions. Where necessary in the interests of precision and enforceability, I have amended the suggested conditions.
49. In the interests of clarity and certainty, conditions 2 and 3 are necessary. In the interests of the appearance of the area, conditions 4, 14 and 15 are reasonable and necessary. In the interests of maintaining and enhancing biodiversity, conditions 5 and 6 are reasonable and necessary. In the interests of protecting neighbours' living conditions, condition 7 is reasonable and necessary. To mitigate the potential for flooding, conditions 8, 9, and 10 are reasonable and necessary. In the interests of highway safety, conditions 11 and 12 are reasonably necessary. To mitigate the impact of the development on potential underground archaeology, condition 13 is reasonable and necessary. To accord with the objectives of DPD Policy RE1, condition 16 is reasonable and necessary.

George Baird

Inspector

SCHEDULE of CONDITIONS

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.
2. The development hereby permitted is for a period of no more than 35 years of electricity generation, after which electricity generation shall cease, the solar panels and all ancillary infrastructure shall be removed from the site and the land restored to its former condition (i.e., agricultural). At least 12 months prior to the cessation of the generation of electricity from the proposed development, a Decommissioning Method Statement (DCM), including traffic management and noise/dust/odour control, shall be submitted to and approved in writing by the local planning authority. The DCM shall include the timing for decommissioning of all, or part of, the solar farm if it ceases to be operational, along with the required measures and a timetable for its completion. The subsequent decommissioning of the site shall be carried out in accordance with the agreed details within 6 months of the expiry of this permission or within 6 months of the permanent cessation of the production of electricity (whichever is sooner). The applicant or operator shall advise the local planning authority, in writing, and with no less than one week's notice, of the cessation of electricity production and the intended date for commencement of decommissioning works under the terms of this permission.
3. The development hereby permitted shall be carried out in accordance with the following plans, Figure 1-1: Site Location, Figure 4-1 (a – g): Site Layout (Sheet B1-B7), Figure 4-1: Site Layout, Figure 4-2: Route to Site, Figure 4-3: Site Entrance Overview and 3a – 3c Site Entrance Detail, Figure 4-4: Track Cross Section and Figure 5.6: Proposed Mitigation Plan.
4. Prior to their installation, details of the final layout, dimensions, design, materials and colour (where appropriate) of the solar panel arrays, cable trenching, transformers, substation, CCTV and other associated works shall be submitted to and approved in writing by the local planning authority, the details to be in general accordance with those shown on the plans listed below.

Figure 4-5: Indicative Panel Elevation,
Figure 4-6: Typical Inverter /Transformer Station,
Figure 4-7: Typical Client Control Building,
Figure 4-8: Typical DNO Control Building,
Figure 4-9: Typical Substation Plan,
Figure 4-10: Indicative Spare Parts Container,
Figure 4-11: Indicative Cable Trench Cross Section,
Figure 4-12: Indicative Fence and Gate,
Figure 4-13: Indicative Hedge Gate.

Development shall be carried out in accordance with the approved details and retained as such for the lifetime of the use.

5. The development hereby permitted shall be carried out in accordance with the Natural England Biodiversity Metric 3.0 document, produced by Plan for Ecology Limited (dated 3 May 2022), to ensure that there is a minimum 10% net gain in biodiversity within a 30-year period as a result of the development. Monitoring reports shall be submitted to the local planning authority during Years 2, 5, 10, 20 and 30 from commencement of development (unless otherwise stated in the Assessment) demonstrating how the scheme is

progressing towards achieving its objectives, evidence of arrangements and any rectifying measures needed.

6. Prior to the commencement of the development hereby permitted, a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority. The content of the LEMP shall include the following:

- a) description and evaluation of the features to be managed.
- b) ecological trends and constraints on site that might influence management.
- c) aims and objectives of management.
- d) appropriate management options for achieving aims and objectives.
- e) prescriptions for management actions, including the following:
 - i. the mitigation and enhancement recommendations set out in sections 6.2, 6.3 and 6.4 of the submitted Ecological Impact Assessment, produced by Plan for Ecology Limited (dated 23 June 2020).
 - ii. the mitigation recommendations set out in section 4.0 of the submitted Hedgerow Assessment, produced by Plan for Ecology Limited (dated 24 November 2021).
 - iii. the mitigation recommendations set out in sections 5.1 and 5.2 of the submitted Badger and Invasive Plant Survey Report, produced by Plan for Ecology Limited (dated 13 November 2020).
 - iv. the mitigation and enhancement recommendations set out in sections 5.0 and 5.1 of the submitted Protected Species Survey: Reptiles, produced by Plan for Ecology Limited (dated 5 November 2020).
 - v. the mitigation recommendations set out in section 4.1 of the submitted Breeding Bird Survey Report, produced by Plan for Ecology Limited (dated 5 November 2020).
 - vi. the mitigation recommendations set out in section 4.0 of the submitted Invertebrate Survey Report, produced by Plan for Ecology Limited (dated 3 November 2020).
 - vii. the mitigation recommendations set out at section 5.3 of the Ecological Summary produced by Tyler Grange (dated 16th November 2023).
- f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) details of the body or organisation responsible for implementation of the LEMP.
- h) ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanisms by which the long-term implementation of the plan will be secured by the developer with the management bodies responsible for its delivery. The Plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The relevant parts of the LEMP shall be implemented prior to the first operation of the development hereby permitted and shall thereafter be maintained for the lifetime of the development.

7. Prior to the commencement of the development hereby permitted, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the local planning authority. The approved CEMP shall be adhered to throughout the construction period, and should include:
- a) the location and appearance of any site compound/material storage areas, including heights of any cabins to be sited and details of any external lighting.
 - b) measures to control the emission of smoke, dust and dirt during the construction/installation of the development.
 - c) measures for the storage/recycling/disposal of waste resulting from the construction works.
 - d) any hoarding/security fencing to be erected.
 - e) details of measures to mitigate adverse impacts upon nearby residences.

The approved CEMP must be adhered to at all times throughout the construction period of the development.

8. No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management has been submitted to and approved in writing by the local planning authority. The details shall include:
- a) a description of the surface water drainage systems' operation.
 - b) details of the final drainage schemes including groundwater monitoring results, calculations and layout.
 - c) a Construction Phase Surface Water Management Plan.
 - d) a Construction Quality Control Plan.
 - e) a plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features.
 - f) a timetable of construction.
 - g) a plan for the future management and maintenance of the drainage systems and overland flow routes. The plan shall include a drawing which clearly indicates the management responsibility for each drainage element and a schedule of maintenance.

The surface water drainage systems shall fully manage surface water flows resulting from the developed site up to the 1 in 100-year peak rainfall event, plus a minimum allowance of 50% for the impacts of climate change. Flows discharged from the site shall be no greater than the rates specified for each parcel of development for all rainfall events, set out in the submitted Surface Water Drainage Strategy by Nijhuis Saur Industries (dated 7 February 2023). The approved scheme shall be implemented in accordance with the timetable and the scheme shall be managed and maintained in accordance with the approved details for the lifetime of the development.

9. No development approved by this permission shall be commenced until the results of groundwater monitoring undertaken at the position of each surface water drainage feature have been submitted to and approved in writing by the local planning authority. The details shall include:
- a) a site plan with the location of the monitoring boreholes shown, each borehole individually referenced, the below ground depth of the borehole

- marked, and the position and base depth of the proposed surface water drainage features shown.
- b) continuous monitoring for the period from the end of October to the end of May must be provided. The borehole depth and the depth recorded from the ground surface of each borehole to the surface of the groundwater for each borehole.
 - c) the results must demonstrate that the seasonal groundwater peak has been reached and that there has been a continuous fall in the level following the peak for a minimum of 2 months.
 - d) a record of the weather conditions must be maintained throughout the monitoring period and submitted with the groundwater monitoring results.
 - e) the monitoring results for each borehole shall be tabulated and presented in both a table and line graph format.
 - f) all results must be provided including the results for those boreholes which fail.
10. The development hereby permitted shall be undertaken in accordance with the mitigation measures set out in section 6.0 of the submitted Flood Risk Assessment, produced by Nijhuis Industries (dated March 2023), and shall be retained as such throughout the lifetime of the development.
11. Before any other building or engineering works are carried out on the site, all land within the visibility splays, shown on approved drawing refs Figure 4-3a: Site Entrance Detail Sheet 1 and Figure 4-3b: Site Entrance Detail Sheet 2, shall be reduced to a height not exceeding 0.9m above the adjoining carriageway level and thereafter no obstruction shall be permitted within the approved visibility splays.
12. The development hereby permitted shall be undertaken in accordance with the submitted Outline Transport Management Plan, produced by Dulas (dated June 2022), during the construction and operational phases of the development.
13. A) No development shall take place until a programme of archaeological recording work including a Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions, and:
- 1. the programme and methodology of site investigation and recording
 - 2. the programme for post investigation assessment
 - 3. provision to be made for analysis of the site investigation and recording
 - 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - 5. provision to be made for archive deposition of the analysis and records of the site investigation
 - 6. nomination of a competent person or persons/organisation to undertake the works set out within the WSI.
- B) No development shall take place other than in accordance with the WSI approved under Part (A).
- C) The development shall not become operational until the site investigation and post investigation assessment has been completed in accordance with the

programme set out in the WSI approved under Part (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

D) The archaeological recording condition will normally only be discharged when all elements of the WSI including on site works, analysis, report, publication (where applicable) and archive work has been completed.

14. All planting, seeding or turfing comprised in the approved scheme of landscaping, shown on approved drawing ref Figure 5.6: Proposed Mitigation Plan and detailed in the accompanying text, shall be carried out in the first planting and seeding seasons following the development becoming operational or the completion of the development, whichever is the sooner. Any trees or plants which die, are removed or become seriously damaged or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species as those originally planted.
15. Prior to its installation, full details of the proposed height, siting, appearance and construction of all fencing associated with the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The fencing shall be constructed in full in accordance with the approved details prior to the development becoming operational. The fencing shall not thereafter be altered or removed throughout the lifetime of the development, other than by necessary replacement.
16. Prior to completion of construction, the developer shall submit a Collaborative Benefits Report (CBR) to the local planning authority for approval. The CBR must set out details of the process of engagement with local stakeholders, define the relevant community and set out clear guidance on the methodology for the valuation of, and the mechanism of any offer to be made to the community to own a minimum of 5% of the development. The CBR will set out the details of how the offer may be accepted, and the developer's obligations following acceptance of the offer as well as defining the terms of community ownership for the lifetime of the scheme.
 - i. if it is demonstrated within the CBR that community ownership in respect of the development is not financially, commercially, legal or operationally viable, then the developer shall not be required to make any offer of community ownership.
 - ii. if community ownership is financially, commercially, legally and operationally viable, then an offer of at least 5% of the development will be made to the local community prior to the expiry of the first year of commercial operation in accordance with the CBR.
 - iii. within 3 months of the offer being made, notice will be given to the local planning authority of the offer. If the offer is accepted, then notice will be given to the local planning authority.

The development will be carried out in accordance with the approved scheme.

Appearances

FOR THE APPELLANT

Thea Osmund-Smith, Counsel.

Peter Thomas BSc (Hons), MSc, PhD.

Head of UK Development, Aura Power Developments Limited.

George Wilyman BA (Hons), MA, MRTPI.

Head of Planning, Aura Power Developments Limited.

Andrew Ross BSc (Hons), MA, MRTPI.

Planning Director, Turley.

Tony Kernon BSc (Hons), MRICS, FBIAC.

Kernon Countryside Consultants.

FOR THE LOCAL PLANNING AUTHORITY

Peter Blackshaw BA (Hons) MRTPI.

Principal Development Officer (Appeals), Cornwall Council.

INTERESTED PERSONS

Cllr L Pascoe.

Cllr Perry.

Cllr Jewell.

Cllr Harvey.

Ms S Eustice.

Ms R Rodda.

Ms J Charmain.

Ms V Perrin.

Ms Wills.

Ms Pascoe.

DOCUMENTS

Documents submitted before the Hearing.

- Appellant's application for costs.

Documents submitted at the Hearing.

- Local Planning Authority response to the application for Costs.

Documents submitted after the Hearing.

- Email confirmation of the appellant's agreement to pre-commencement conditions.
- Agreed list of conditions.

Documents submitted regarding the May 2024 WMS.

- Local Planning Authority response dated 23 May 2024.
- Appellant's first response dated 29 May 2024.
- Further submissions by Gwinear-Gwithian Parish Council.
- Further submissions by Ms R Rodda.
- Further submissions by the Rt Hon George Eustice MP dated 29 May 2024.
- Further submissions by Ms S Eustice dated 31 May 2024.
- Further submissions by Cllr. L Pascoe.
- Appellant's second response dated 17 June 2024.
- Appellant's Final response dated 27 June 2024.