STATUTORY PLANNING APPEAL PURSUANT TO SECTIONS 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

AGAINST RUSHCLIFFE BOROUGH COUNCIL

APPEAL BY RENEWABLE ENERGY SYSTEMS (RES) LIMITED

LAND TO THE WEST OF WOOD LANE AND STOCKING LANE, KINGSTON ESTATE, GOTHAM

Inquiry opening 20 May 2024

APPEAL REFERENCE: APP/P3040/W/23/3329235

LPA APPEAL REFERENCE: 22/00319/FUL

COUNCIL'S OPENING SUBMISSIONS

Abbreviations used below

AC	Andrew Cook
ET	Emily Temple
NC	Nigel Cussen
NPPF	National Planning Policy Framework
PCPA	Planning and Compulsory Purchase Act 2004
PoE	Proof of Evidence
PROW	Public Rights of Way
SoCG	Statement of Common Ground
VSC	Very Special Circumstances

Introduction

1. Ma'am, your post case management conference note identified a number of main issues. On the assumption that they remain the same, these opening submissions address those main issues.

(a) The effect of the proposal on the openness and purposes of the Green Belt

2. It is common ground that the Appeal Site is entirely within the Green Belt[1] and amounts to inappropriate development[2]. Therefore, the default position, derived from paragraph 152 of the NPPF, is that permission should not be approved except in VSC.

3. There is, therefore, in principle harm through the development proposal, which must be afforded substantial weight by virtue of paragraph 153 of the NPPF.

4. Further, the Council contend that there would be harm to the openness of the Green Belt and also to purpose C of Green Belt policy (ie. para 143 of the NPPF), namely that the Green Belt is there to assist with safeguarding the countryside from encroachment.

5. As regards whether there is harm to purpose C, the SoCG records this as a matter of dispute between the parties[3]. It is unclear why this is the case, as the Appellant's evidence accepts that there is moderate harm in this respect, within both Mr Cook's PoE[4] and also Mr Cussen's[5]. Thus, despite the SoCG, it would appear that the Appellant's case has evolved and they have sensibly acknowledged harm in this respect.

[1] SoCG para 2.7
[2] SoCG para 4.1(a)
[3] SoCG para 5.1(b)
[4] AC PoE para 11.24
[5] NC PoE para 7.30

6. As regards the openness of the Green Belt, it is well established that the concept of openness relates to freedom from development. This has been recognised to have both a spatial and visual component.

7. The Site is currently open and undeveloped. The development proposal will introduce development for a period of 40 years- ie. an entire generation will experience development in this part of the Green Belt. The Appellant recognises that this will introduce moderate adverse harm to the openness of the Green Belt.

8. The Council contend that the harm is greater in both respects, which will ultimately be matters for the evidence and your subjective assessment Ma'am.

(b) The effect of the proposal on the character and appearance of the landscape

9. Similar to point (a), the extent of the harm to the character and appearance of the landscape will be matters informed by your Site visit Ma'am. These harms give rise to conflict with the development plan, entirely separate to the impacts on the Green Belt. The Appellant recognises harm in this respect, but seemingly does not recognise any resulting policy conflict, which is a matter that will be tested through the evidence.

(c) The effect of the proposal on users of the public rights of way network

10. The Appellant acknowledges some harm to the PROW, albeit seeks to narrow the extent of harm beyond that of the Council. Again Ma'am, this will largely call for you to make subjective assessments through your Site visit. The debate does not turn on methodological or technical disputes, but rather the extent to which users of the PROW will be affected. The Council say that irrespective of your conclusions on the extent of harm on these subjective elements, it is ultimately common ground that this amounts to harm that is in addition to the in principle harm to the Green Belt.

(d) Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it

11. The Council recognise that there are significant benefits associated with providing renewable energy. However, a key feature this case raises is whether these benefits could be achieved elsewhere without causing harm to the Green Belt.

12. Indeed, a significant feature of the Appellant's case for VSC is that the Appeal Site needs to be within 2km of a grid connection and that there are no alternative sites within this search area that could provide these benefits. The Appellant is correct to note that there is no policy requirement to demonstrate this. However, they invite you Ma'am to give the lack of alternative sites significant weight in this appeal[6] and seemingly rely on this heavily in support of their argument for VSC.

13. However, the evidence in support of these propositions is entirely lacking. Indeed, the justification for why the search area is 2km is unsupported by any objective analysis. It appears entirely arbitrary and lacking any proper evidence in support. Vague justifications have been provided as to the costs involved in going beyond 2km, but without any assessment as to what those costs would be and why it ought to be 2km as a search distance as opposed to 2.5km or 3km or otherwise. Further, no viability evidence has been provided to balance any costs with this search area against the reality of what turnover the development proposal would be anticipated to make. Thus, the costs of going beyond 2km might well be negligible in the context of what revenue the scheme would be anticipated to generate. The point is that no proper evidence has been provided to justify any of this.

[6] NC para 11.46

14. The simple point is that connections to the grid can be achieved through power lines, whether above or below ground. Thus, there is no practicable reason why the scheme needs to be located within the Green Belt and a connection beyond 2km would cause any difficulty. The only reason that has been provided for this is related to costs, but, as stated, no evidence on this has been provided. Thus, this rather underscores the point that there is in fact no proper evidence as to why this scheme needs to be located within the Green Belt at all. The Appellant does not suggest that there is a shortage of land to accommodate the development proposal outside of the Green Belt and thus, on any proper objective analysis, there is no reason why this development proposal needs to be found in the Green Belt at all. This rather undermines the entirety of the VSC case when, in reality, it is recognised that the reason for locating this scheme in the Green Belt is owing to a commercial preference of a developer who has provided no financial evidence (at all) to demonstrate why the scheme needs to be located in the Green Belt.

15. Ultimately Ma'am, the Council will contend that whilst there are undoubtedly compelling benefits of the proposal in the context of a national recognition of the need for renewable energy, the benefits are insufficient to amount to VSC and that the case has not been proven that these benefits could not be achieved in a more appropriate location – namely outside of the Green Belt.

16. In any event, the overriding question this appeal raises is whether there is compliance with the development plan and, if not, whether there are material considerations that justify a departure from the development plan – in accordance with section 38(6) of the PCPA.

17. In light of the impacts associated with the scheme, the Council contend that this gives rise to conflict with the development plan as a whole. This is not a case where the Appellant contends that the development plan is out of date. Thus, paragraph 12 of the NPPF applies, namely that, *'where a planning application conflicts with an up-to-date development plan (including any*

neighbourhood plans that form part of the development plan), permission should not usually be granted'.

Sensitivity Study

18. Ma'am you will recall that through correspondence the Council have brought to your attention that a sensitivity study is being produced. Essentially, the Council have commissioned work entirely independent of this inquiry to ascertain the locations across the Council's jurisdiction which are best placed for solar farms. The Council have imposed a strict 'Chinese Wall' between those producing this work and the appeal team, so as to ensure that the study remains entirely independent of the inquiry. It was thought that this study might be available prior to the inquiry, but regrettably it is not. The latest information is that this will be available by the end of June. The Council's appeal team are unclear what, if anything, this might say about the Appeal Site. However, it seems sensible that provided the work is not delayed further, you may wish to have regard to this in your decision letter – whether this benefits the Council's or Appellant's respective arguments.

19. In summary, the Council will respectfully invite you Ma'am to dismiss the appeal at the conclusion of the inquiry.

Killian Garvey

Kings Chambers

21 May 2024