

Little Covenhope, Aymestrey, Herefordshire, HR6 9SY

APPEAL REF. APP/P3040/W/23/3330045

Land East Of Hawksworth and Northwest Of Thoroton, Nottinghamshire, NG13 9DB

Application by Rule 6(6) Party, the Hawksworth and Thoroton Action Group (HTAG), for costs in the Appeal

The R6P requests that it is awarded full costs from the Appellant in the event that the inspector finds that the appeal proposals would exceed the threshold for a Nationally Significant Infrastructure Project (NSIP).

The R6P raised concern that the proposals are likely to exceed the 50MW threshold, by email dated 6<sup>th</sup> April 2024 (appended) as early as possible in the appeal process. Rule 6 Party status was granted on 2<sup>nd</sup> April.

In the 6<sup>th</sup> April email, the R6P requested a review of the case to determine whether the proposals should have been considered under the NSIP process, rather than by planning application and s.78 appeal. In doing so, the R6P hoped to avoid the significant costs of the inquiry.

In response, the Appellant provided, at the inspector's request, a note on capacity dated 16<sup>th</sup> April 2024. The note confirmed that the appeal proposals were significantly above the NSIP threshold, with solar panel capacity of 78.5 MW.

The Appellant's evidence in the Statement of Case and the Planning Witness Proof is that the excess solar capacity is overplanting to enable more energy to be delivered over longer periods, with the excess clipped before the grid connection.

The R6P's position from the outset is that this is not permitted by Renewable Energy Statement EN-3, which says at Footnote 92:

“Overplanting” refers to the situation in which the installed generating capacity or nameplate capacity of the facility is larger than the generator's grid connection. This allows developers to take account of degradation in panel array efficiency over time, thereby enabling the grid connection to be maximised across the lifetime of the site. Such reasonable overplanting should be considered acceptable in a planning context so long as it can be justified and the

Little Covenhope, Aymestrey, Herefordshire, HR6 9SY

electricity export does not exceed the relevant NSIP installed capacity threshold throughout the operational lifetime of the site.”

In the light of the Appellant’s argument in this and another case, the R6P sought clarification from the Department for Energy Security & Net Zero. This was provided in a letter from Minister for Energy and Net Zero Justin Tomlinson dated 22<sup>nd</sup> May 2024, which said:

“In the Energy Policy Statement EN-3 guidance, overplanting is countenanced where reasonable, to address panel degradation. Unreasonable overplanting, or overplanting for any other reason, would not be supported. It will be a matter of planning judgement for the decision maker in any case to decide what the purpose of the overplanting is and whether it is reasonable.”

The Appellant has confirmed that solar panels degrade at a rate of less than 0.5% per year, so the absolute maximum overplanting permitted by EN-3 would be 10MW over the 40-year lifetime of the development.

The appeal proposals would substantially exceed the NSIP threshold, meaning the application should have been for a Development Consent Order under Section 15 of the Planning Act 2008.

The Appellant has argued that the proposals would be constrained to remain below the NSIP threshold by a 49.9MW connection to the grid. EN-3 specifically precludes this as a means of controlling capacity. Paragraph 2.10.56 says: “AC installed export capacity should not be seen as an appropriate tool to constrain the impacts of a solar farm. Applicants should use other measurements, such as panel size, total area and percentage of ground cover to set the maximum extent of development when determining the planning impacts of an application.”

EN-3 was revised earlier this year to establish that solar site capacity is measured by the capacity of the inverters in alternating current (AC). Previously, capacity could be measured

Little Covenhope, Aymestrey, Herefordshire, HR6 9SY

either by the combined capacity of installed solar panels (in DC) or of the inverters, which convert the power to AC.

The amendment was made to bring solar into line with other forms of renewable energy development, in which capacity is delivered as AC. The new EN-3 does not suggest that the capacity of solar panels is no longer relevant.

In *Galloway v Durham*, Mr Justice Fordham referred to the amended EN-3, which was in draft at the time of the case, and described paragraph 2.10.56 as an “accompanying proviso” to the combined inverters method for measuring site capacity. He said:

“It is the recognition that inverter capacity is not sufficient to address planning acceptability, and consideration should be given to panel size, total area and percentage of ground cover.”

In the light of the above, the R6P asks the inspector awards the R6P its full costs in the appeal.

MARCHES PLANNING

MAY 2024

Little Covenhope, Aymestrey, Herefordshire, HR6 9SY



Helen Hamilton

To: Brown, Kerr

Bcc: Carly Tinkler; [REDACTED]



Sat 06/04/2024 18:13



Galloway AC 2023 LDS 000229 ...

153 KB

Dear Mr Brown

**APP/P3040/W/23/3330045****Land East Of Hawksworth And , Northwest Of Thoroton , Thoroton, Nottinghamshire, NG13 9DB**

I have been appointed to represent the Rule 6(6) Party in this inquiry relating to a proposed solar development described as having an "export capacity of up to 49.9MW."

I am concerned that the Appeal proposals would have a significantly greater generating capacity than 49.9MW and that the application for these proposals should have been for a Development Consent Order for a Nationally Significant Infrastructure Project (NSIP).

The Appellant has not provided information to demonstrate how capacity has been calculated. National Policy Statement for Renewable Energy Infrastructure (EN-3) says at 2.10.53 "*From the date of designation of this NPS, for the purposes of Section 15 of the Planning Act 2008, the maximum combined capacity of the installed inverters (measured in alternating current (AC)) should be used for the purposes of determining solar site capacity.*" EN-3 came into force in January this year.

The appeal documents advise there will be 26 inverters, but do not say what the capacity of the inverters will be. I note that in another appeal case involving the same developer, the Appellant has asserted that a solar development proposing 17 inverters would also have a capacity of 49.9 MW. (Appeal ref. 3329235)

In that appeal, the Appellant proposed some 91,000 solar panels of identical size and design to those shown in the drawings for this one. In this case, the Appellant proposes 139,568 panels. The appeal documents are inconsistent as to the size of the panels with the drawings showing panels 2.5m x 1.1m, and the Statement of Case describing the panels as 2.27m x 1.13m.

This would provide between 358,006 sq m and 383,812 sq m of panels. Based on typical solar panel output of 225W/sq m, this indicates a site capacity of between 80MW and 86MW. However, the Appellant is proposing bi-facial panels, which have a higher output than typical panels, so output may be even higher.

In the recent case of Galloway v Durham County Council (judgement attached), the High Court held that the granting of planning permission for a proposed solar development with an agreed grid connection of 49.5 MW was unlawful because the Local Planning Authority did not know

Little Covenhope, Aymestrey, Herefordshire, HR6 9SY  
the generating capacity of the site and should have considered whether it was granting permission for proposals that exceeded the NSIP threshold.

The Claimant, Mr Galloway, had calculated the output of the development as in excess of 75MW, based on the type of solar panel and the square metreage of panels.

In the light of the above, it appears that the Appellant may have understated the capacity of the proposed development to circumvent the NPIS procedure. In any event the appeal documents do not provide the information required to calculate the capacity of the site in accordance with EN-3 and to determine whether what is proposed is in fact a NSIP.

Nor would it be possible, without this information, to limit the capacity of the site through the use of planning conditions to ensure that it remained below the NSIP threshold. As Fordham J. held in Galloway, export capacity is not the correct or appropriate measure so reliance on the claimed grid connection capacity would not suffice.

I would be grateful if you would review this case and advise whether the planning application and s.78 appeal is appropriate or whether the proposals should be determined as a NSIP.

I am concerned that the R6P and other parties will incur significant costs in an inquiry, which may not take place if it is found that the proposals are in fact an NSIP. I would, consequently, be grateful for an early decision or advice.

The capacity of the site also has implications for screening under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

I look forward to your response.

Best wishes

Helen Hamilton

Marches Planning & Environment

